

STATUS OF FOREIGN VESSELS IN NIGERIA AND THE NEED FOR LEGISLATIVE REFORMS

Omoniyi Bukola Akinola*

Abstract

Offshore and onshore activities are oxygen to Nigeria's economy and necessitates the need for regulating vessels within its maritime zones. This is important to the national security, economic development and environmental protection of the country. However, as more foreign vessels enter the Nigerian territorial sea, a number of legal and regulatory challenges have emerged, particularly concerning their status and the effects of their operations on the Nigerian maritime industry. This paper examined the legal framework that governs the status of foreign vessels in Nigeria. The paper took a second look at how international conventions and Nigerian laws work in tandem to regulate foreign vessels operating in Nigerian seas. The doctrinal research methodology is used to critically examine the legal provisions and identify areas of statutory conflict. The paper found that there is non-compliance with our outdated laws, as foreign vessels often disregard Nigeria's maritime rules and regulation, causing major economic and security problems. The paper recommended clearer and stronger enforcement mechanisms for better coordination amongst the maritime agencies and more consistent engagements

* PhD, Barrister at Law, Professor of Law, Department of Private and Commercial Law, Faculty of Law, Baze University, Abuja. He is a former Dean of Law, Redeemer's University and also former Dean, School of Law, Kampala International University, Uganda. Former Deputy Director (Academics), Nigerian Law School. Email: omoniyi.akinola@bazeuniversity.edu.ng, profobakinola77@gmail.com

with key stakeholders such as foreign shipowners and insurers. The paper concluded that, if these issues are addressed properly, the system would function more effectively and Nigeria's blue economy would thrive much more.

Keywords: Maritime law, foreign vessels, Cabotage Act, maritime security, maritime safety

1.0 INTRODUCTION

The Nigerian maritime sector is unarguably vital for international, regional, domestic trade and economic growth. This is because the maritime sector facilitates the movement of heavier goods, services, and people across borders.¹ Nigeria is endowed with vast maritime resources that supports both international and domestic transportation of goods.

While Nigeria's maritime potential is vast, it has also been accompanied by increasing challenges due to the rising presence of foreign vessels in Nigerian waters. The influx of these vessels has created legal and institutional complexities concerning their status, rights, and obligations under both international and domestic laws. The situation presents both economic and security concerns. The first part of this paper deals with description of some maritime terminologies while the second part deals with the theoretical framework around the topic. The third aspect of the paper examining the applicable legal framework for foreign vessels in Nigeria while the fourth part of the paper examined the challenges which

1 Adedotun Joseph Adenigbo, 'Effect of Shipping Trade on Economic Growth in Nigeria: The Vector Error Correction Model (VECM) Approach' *Journal of Shipping and Trade*, 8(15) (2023), p 1.

would arise out of the overlapping and outdated nature of our maritime legal regime. The latter part of the paper ends with the findings of the paper as well as recommendations for tackling the challenges posed by foreign vessels while taking advantage of our weaker maritime legal regime when compared with international maritime conventions, protocols and rules.

2.0 CONCEPTUAL CLARIFICATION

The maritime industry has its unique language this is the reason why this paper would clarify a number of terms that are used quite frequently.

2.1 Vessel

According to the Coastal and Inland Shipping (Cabotage) Act, '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.² By virtue of section 64 of the NIMASA Act, a vessel is defined as 'any kind of vessel that is used, or capable of being used, in navigation by water, however propelled or moved, and includes: a barge, lighter, floating platforms, restaurant or other floating vessel; and an air-collusion vehicle; or other similar craft that is used in navigation by water.' The International Regulation for Preventing Collisions at Sea 1972, defined a vessel as any description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.³

² s 2, Coastal and Inland Shipping (Cabotage) Act, 2003.

³ Rule 3 (a), International Regulation for Preventing Collisions at Sea, 1972.

2.2 Foreign Vessel

In terms of ‘foreign vessel’, the Cabotage Act defines it to mean a vessel other than a Nigerian vessel.⁴ They are ships or boats that are registered, flagged, or owned under the jurisdiction of a country other than the one in whose waters they are operating or entering. These vessels are subject to the laws and regulations of both their flag state⁵ (the country where they are registered) and the coastal state (the country whose waters they are in).⁶ It is important to add that, in another country's territorial sea, ports, or exclusive economic zone (EEZ), the vessel must comply with the local maritime laws and international maritime conventions.⁷

2.3 Vessel Ownership

The vessel owner is the actual or registered owner of a vessel, the master or other person responsible for operating a vessel, or any person in navigational control of a vessel.⁸ The ‘beneficial owner’ refers to the natural person(s) who ultimately owns or controls a company, and make the decisions that determine its activities. The registered owner is the legal entity (i.e., company, trust, etc.) that holds title to assets on behalf of some other person or persons.⁹ Third party operators are entities that operate a vessel on behalf of the owner.¹⁰ This could include entities such as a ship

4 s 2, Coastal and Inland Shipping (Cabotage) Act, 2003.

5 United Nations Convention on the Law of the Sea (UNCLOS), Article 91: Nationality of Ships.

6 International Seafood Sustainability Foundation (ISSF), 'Flag State' <<https://www.issf-foundation.org/glossary/flag-state/>> accessed 28 February 2025

7 UNCLOS, Part II: Territorial Sea and Contiguous Zone, Articles 17–32.

8 The Maritime Data, 'Beneficial Owners, Registered Owners, Charterers - What is Vessel Ownership Data?' (2022), page 10 <<https://www.maritimedata.ai/post/what-is-vessel-ownership-data>> accessed 28 June 2025

9 Ibid.

10 Ibid.

manager or freight forwarder, for instance. It is important to note that identifying the beneficial owner of a vessel, can be difficult. The registered owner might not always be the party exercising control over the vessel's operations. The said registered owner may solely hold ownership rights without any involvement in its management or decision-making. Additionally, there may not be a single individual deemed to be the beneficial owner. However, multiple parties, such as charterers and technical managers (who oversee safety and maintenance), could share varying degrees of authority in determining how the vessel is operated. It is important also to add that a vessel can be sold and ownership of title to a ship can be transferred to another in accordance with the Merchant and Shipping Act.¹¹

2.5 Ship Registration

This is the process by which a ship is documented and given the nationality of the country to which the ship has been documented.¹² Registering a ship under a country's laws grants the ship the nationality of that country and the right to fly its flag. Typically, this flag is displayed when the ship is on the high seas or when entering or departing foreign ports.¹³ Furthermore, once a ship is registered in a country, it becomes subject to the laws of its flag state, meaning the country's laws will govern matters related to the ship, including regulatory oversight.¹⁴ The Cabotage Act mandates that every vessel intended to operate under its provisions must be registered in the Special Register for Vessels and Ship-Owning Companies Engaged in

11 s 77 Merchant Shipping Act, 2007.

12 Emmanuel Ikuakolam, 'A Periscopic Appraisal of the Law and Practice of Ship Registration in Nigeria' <<https://foundationchambers.com/a-periscopic-appraisal-of-the-law-and-practice-of-ship-registration-in-nigeria/>> accessed 1 March 2025

13 Ibid

14 Art. 91 & 92, United Nations Convention on Laws of the Sea, 1982.

Cabotage. The vessel must comply with all eligibility criteria outlined in the Act and the Merchant Shipping Act, provided that the MSA does not conflict with the provisions of the Cabotage Act.¹⁵

2.6 Licensing

In the context of cabotage law, 'licensing' refers to the regulatory requirement for transportation companies or operators to obtain official permission or authorization from the government or relevant authority to engage in domestic transportation activities within a country's borders.¹⁶ 'License' means a document issued pursuant to the Act, authorizing a foreign ship or vessel to be registered for participation in the coastal trade while in Nigerian waters.¹⁷ The Act authorizes the Minister to issue a restricted license to foreign-owned vessels upon application, provided certain conditions are met.¹⁸ It addresses various aspects of the license, such as its terms and conditions, duration, suspension, cancellation, and modification.¹⁹ For the purpose of this paper, licensing will be understood as a regulatory instrument that enables the government to control and monitor foreign vessel operations, particularly in the restricted cabotage regime.

3.0 THEORETICAL FRAMEWORK

The jurisprudence behind this paper is hinged upon two theories: the protectionism theory and the legal positivism theory. These theories are discussed below.

15 s 18(1), Coastal and Inland Shipping (Cabotage) Act, 2003.

16 FO Agama and HC Alisigwe, 'Cabotage Regimes and their Effects on States' Economy' *NAUJILJ* 9 (1) (2018), page 15.

17 Part 1, Cabotage Act 2003.

18 s 15, Cabotage Act.

19 Ibid.

3.1 Protectionism Theory

Protectionism is an economic theory that advocates for the imposition of restrictions on international trade to protect domestic industries from foreign competition.²⁰ The primary goal of protectionism is to shield local businesses, jobs, and economies from the potential negative effects of global trade, such as job losses, declining industries, and trade deficits.²¹ Trade protectionism protects domestic industries from unfair foreign competition using tools such as tariffs, subsidies, quotas, and currency manipulation.²² A protectionist maritime cabotage approach often departs radically from the basic principles of reserving coastal trade for indigenous registered vessels, and extends to cover a wide scope of requirements and activities.²³

3.2 Legal Positivism Theory

Legal Positivism revolves around the belief, assumption or dogma that the question of what the law is (i.e. *lex lata*), is separate from, and must be firmly separated from the question of what the law ought to be (i.e. *lex ferenda*). In this connection, John Austin²⁴ propounded that the existence of law is one thing; its merit or demerit is another. Whether it be or be not is one inquiry; whether it be or be not conformable to an assumed standard,

20 Harry G. Johnson, 'An Economic Theory of Protectionism, Tariff Bargaining, and the Formation of Customs Unions' *Journal of Political Economy*, (1965) 7(3), page 10.

21 Ibid

22 Mfon Usoro, 'Liability Regime for Inland Carriage of Goods (Road, Rail and Inland Waterways)' A paper presentation at Sheraton Hotel Abuja, July 2018. Page 3

23 A. Akpan, 'The Intellectual Predicament of the Law of Maritime Cabotage,' Bournemouth University, page 6. <<https://eprints.bournemouth.ac.uk/PDF> > accessed 2 March 2025

24 B Bix, *Jurisprudence: Theory & Context* (Durham: Carolina Academic Press, 2004) page 33.

is a different inquiry. A law which actually exists is a law, though we happen to dislike it or though it varies from the text, by which we regulate our approbation and disapprobation.²⁵

4.0 LEGAL AND INSTITUTIONAL FRAMEWORKS ON THE STATUS OF FOREIGN VESSELS IN NIGERIA

4.1 INTERNATIONAL LEGAL FRAMEWORKS

4.1.1 United Nations Convention on the Law of the Sea (UNCLOS) 1982

The United Nations Convention on the Law of the Sea (UNCLOS), 1982, serves as the primary legal framework under international law, governing the rights and obligations of foreign vessels, in various maritime zones. It is otherwise known as ‘the constitution for the oceans.’²⁶ The convention came into force in 1994.²⁷ It codified the provisions of the preceding instruments, such as the, 1958 Geneva Convention on the Law of the Sea (GCLOS), on the status of territorial sea, contiguous zone, continental shelf and the high sea. It also introduced a new legal regime relating to the continental shelf, the seabed, and the ocean floor, as a common heritage of mankind.²⁸ The UNCLOS, specifies the coastal limits and regimes that governs coastal state claims, including 12 nautical miles of the territorial sea, 200 miles of the EEZ and 350 nautical miles for the extension of the

25 Ibid.

26 IMIO, ‘United Nations Convention on the Law of the Sea’ <<https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>> accessed 15 April 2025.

27 Tullio Treeves, ‘United Nations Convention on the Law of the Sea’, (2023), page 18. <<https://legal.un.org/avl/ha/uncls/uncls.html>> accessed 15 April 2025.

28 Ibid.

continental shelf. Nigeria, as a state party to the UNCLOS, incorporates its provisions into domestic law, thereby shaping the legal treatment of foreign ships within its waters.²⁹

One of the salient and often debated provisions of the UNCLOS, is on the right of innocent passage provided for in Article 17 of the UNCLOS.³⁰ The right of innocent passage, applies to all foreign ships, including commercial and state-owned vessels (excluding warships in certain contexts).³¹ By virtue of this Article under the UNCLOS, ‘ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial waters of a coastal state.’³²

Article 19 of the UNCLOS, makes provisions for acts that are considered to be prejudicial to the peace, good order or security of the Coastal State, under the right of innocent passage.³³ According to the aforementioned Article of the UNCLOS, a foreign ship’s passage is not considered as ‘peaceful’ in the territorial waters of a State, if it uses force against the sovereignty, territorial integrity, or political independence of the coastal State, if it engages in activities that threaten or otherwise violate international law as reflected in the UN Charter.³⁴ This includes, conducting

29 Ibid.

30 William K. Agyebeng, ‘Theory in Search of Practice: The Right of Innocent Passage in the Territorial Sea’, *Cornell International Law Journal*, 36(2), (2006), page 14.

31 According to Art. 29 of the UNCLOS, “warship” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

32 Art. 17, UNCLOS.

33 Art. 19, Para 2

34 Ibid.

exercises or practices with weapons, gathering intelligence harmful to the defence or security of the coastal State, or engaging in propaganda that affects its security. It also covers launching, landing, or taking on board aircraft or military devices; loading or unloading goods, currency, or people in violation of the State's customs, fiscal, immigration, or health laws; and causing deliberate and serious pollution contrary to international rules. Also, fishing, conducting research or surveys without consent, interfering with communication systems or coastal installations, and any other activities unrelated to innocent passage also render the passage not peaceful.³⁵ However, this provision is not without its lacunae. Foreign vessels may exploit the rights of innocent passage, by smuggling weapons, engaging in piracy activities, etc. and end up threatening the peace of the country. Also, foreign vessels may accidentally or deliberately discharge pollutants in the maritime area of the country, under the guise of innocent passage.

Another key article in the UNCLOS governing the regulation of foreign vessels, is Article 111,³⁶ which grants the right of hot pursuit. This doctrine allows a coastal state such as Nigeria, to pursue a foreign vessel beyond its territorial sea or EEZ if the vessel is accused of breaking the coastal state's rules and regulations while it is in its jurisdictional waters. For a hot chase to be lawful, it must commence while the foreign vessel is still within the Nigerian maritime zones and must not be interrupted once it enters international waters. This provision is essential in the enforcement of the country's maritime laws against foreign vessels involved in unauthorized activities such as illicit fishing, pollution or illegal exploitation of marine

35 Art. 19(a) to (l).

36 Art. 111 UNCLOS.

resources. Despite its significance, the right to hot chase, faces some drawbacks. One of the drawbacks is that due to the insufficient naval presence in Nigeria's territorial sea, maritime crimes are often not detected in time and this allows many foreign vessels engaged in unlawful activities, to escape into the high seas without getting punished.

Also, Article 25 of the UNCLOS, provides that, states can impose conditions for foreign vessels entering into its ports, including safety and environmental compliance.³⁷ Coastal states, also reserve the rights to protect their territorial sea. In accordance with the UNCLOS, a coastal state is entitled to take necessary measures within its territorial sea, to prevent any passage that does not qualify as 'innocent'. Basically, when ships are heading towards internal waters or seeking to call at a port facility located outside internal waters, the coastal state equally has the authority to take appropriate steps to prevent any breach of the conditions governing such access.

In addition, the coastal State may, without any form of discrimination against foreign ships, temporarily suspend innocent passage in designated areas of its territorial sea if such a suspension is crucial for safeguarding its security, including in circumstances involving weapons exercises. Such a suspension, however, will only become effective after it has been properly publicized.³⁸ However, it is important to point out that, the term 'necessary steps,' in Article 25(1) is undefined, allowing states to justify excessive actions.

³⁷ Ibid.

³⁸ Art 25, UNCLOS.

In the same vein, Article 25(3) empowers coastal states to “suspend temporarily in specified areas of its territorial sea, the innocent passage of foreign ships if such suspension is essential for the protection of its security.” Also, the UNCLOS does not define how long a suspension³⁹ can last, leading to potential abuse in the form of prolonged closures of key routes for political reasons.

Furthermore, Article 218 of the UNCLOS (Enforcement by Port States), allows Nigeria to investigate and detain vessels suspected of marine pollution violations, even if committed outside its waters.⁴⁰ This means that, if a foreign vessel enters into a Nigerian port, the country can take legal actions against it, for polluting or causing environmental harm to its port.

Originally, only a ship’s flag state (country of registration) or the coastal state where the pollution occurred, could punish such violations.⁴¹ However, Article 218 breaks this limitation, by allowing port states to act as ‘global enforcers’ against marine pollution. There are still many flag states that ignore pollution offences, and coastal states may lack the resources to monitor or prosecute offenders. This particular provision respects state sovereignty, prevents foreign interference with military/diplomatic vessels, which could escalate tensions. It also aligns

39 Art. 25(3), UNCLOS.

40 Aelex, ‘MARPOL and The State-Sanctioned Destruction of Crude Oil-Carrying Vessels on Nigerian Waters,’ (2025) < <https://www.aelex.com/marpol-and-the-state-sanctioned-destruction-of-crude-oil-carrying-vessels-on-nigerian-waters/#>> accessed 15 April 2025.

41 Changwoo Ha, ‘Criminal Jurisdiction for Ship Collision and Marine Pollution in High Seas-Focused on the 2015 Judgement on M/V Ernest Hemingway Case’, *Journal of International Maritime Safety, Environmental Affairs, and Shipping* (2020), page 4.

with international law principles,⁴² ensures freedom of navigation, encourages naval mobility for security, humanitarian, and research missions without legal harassment, reduces risks of conflicts.

Additionally, Article 32 of the UNCLOS, grants sovereign immunity to warships and other government-operated ships (used for non-commercial purposes). Such vessels are exempted from coastal state laws and they cannot be boarded, inspected, or detained by foreign states, even in territorial sea and only the flag state can enforce rules against them. Although, this provision guarantees the maintenance of stable diplomatic relations between states, the shortcoming of this provision is that, it does not cover for eventualities like warships causing oil spills or marine pollution.

4.1.2 International Maritime Organization (IMO) 1958

The International Maritime Organization (IMO), was adopted formally by the Geneva Conference in 1948, but the convention establishing it, came into force in 1958.⁴³ The purpose of the Organization, is to, provide a machinery for co-operation among governments in the field of governmental regulation and practices relating to technical matters of all kinds, which are affecting ships engaged in international trade.

Essentially, the IMO, as a specialized agency of the United Nations, is the global standard of setting authority for the safety, security and

⁴² For example, sovereign equality of states.

⁴³ International Maritime Organization (IMO), 'Brief History of IMO' <<https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx#:~:text=The%20IMO%20Convention&text=In%201948%20an%20international%20conference,changed%20in%201982%20to%20IMO>> accessed 16 April 2025.

environmental performance of international shipping. The IMO, as a regulator, provides and maintains a framework for safe, secure and efficient international shipping industry. Its main role, is to, create a regulatory framework for the shipping industry that is fair and effective, universally adopted, and universally implemented.⁴⁴ In other words, it creates a level playing field so that ship operators do not cut corners and compromise on safety, security and environmental performance. This helps to encourage innovation and efficiency.⁴⁵

However, while the organization is widely recognized for promoting maritime safety, environmental protection, and regulatory harmonization, it has not been without its fair share of pitfalls. A major shortcoming with the IMO, is that the organization, largely promotes a liberal and open shipping regime that emphasizes freedom of navigation. It does this, while discouraging excessive restrictions on foreign vessels. This position often clashes with the interests of coastal States like Nigeria, seeking to protect their domestic maritime industries through cabotage laws. Also, the IMO's minimal support for cabotage policies, undermines the sovereign rights of States to regulate their own maritime trade for economic, security, and developmental reasons.⁴⁶

44 Biocean, *Navigating the Seas: The Vital Role of the International Maritime Organization (IMO)* (2025), page 2. <<https://bioceanmarineservices.com/what-is-role-international-maritime-organization-imo/>> accessed 17 April 2025.

46 Bevan Marten, *Port State Jurisdiction and the Regulation of International Merchant Shipping* (Springer 2013) p. 212.

In addition to the above, a setback to the IMO's framework, is that it tends to prioritize international shipping efficiency, and flag-state jurisdiction over coastal State regulatory autonomy. This can weaken the ability of coastal States, especially developing nations, to foster their maritime industries and ensure that benefits such as employment, infrastructure development, and revenue generation accrue locally.⁴⁷ Ultimately, the organization's emphasis on uniform global standards, may indirectly favour major maritime powers and large shipping nations,⁴⁸ which have well-established fleets, to the detriment of emerging, or underdeveloped maritime economies like Nigeria.

4.1.3 The International Convention for the Safety of Life at Sea (SOLAS) 1974

The SOLAS of 1974, contains 13 articles, as well as a comprehensive annex of standard technical requirements. Ship inspections are carried out to ensure that, the SOLAS requirements are satisfied before a vessel commences trading, in connection with periodical surveys, etc.⁴⁹ If a ship is in good order, then one or more certificates will be issued. An important feature of the convention is that, a certificate issued pursuant to the SOLAS, will be accepted by all states that have ratified the Convention. The International Convention for the Safety of Life at Sea (Ratification and

⁴⁷ Ibid.

⁴⁸ R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3rd edn, Manchester University Press 1999), p 310.

⁴⁹ Anish Joseph, 'The International Convention for the Safety of Life at Sea: Highlighting Interrelations of Measures Towards Effective Risk Mitigation,' *Journal of International Maritime Safety, Environmental Affairs, and Shipping*, (2021) <https://doi.org/10.1080/25725084.2021.1880766>> accessed 17 April 2025.

Enforcement) Act, 2004, domesticated the SOLAS Convention in Nigeria without reservation and without amendment to its original form.⁵⁰

Consequently, the key SOLAS provisions affecting foreign ships in Nigeria are contained in 10 chapters. Chapters II, III, and V of SOLAS, which impose critical safety obligations on foreign vessels entering Nigerian waters.⁵¹ Chapter II, mandates fire safety measures, including automatic sprinkler systems, public address systems, and luminous escape route markings on passenger ships, which Nigeria enforces through NIMASA's Port State Control inspections. Chapter III, requires modern life-saving equipment, such as fast rescue boats, helicopter landing areas, and emergency management systems under the International Life-Saving Appliances (LSA) Code,⁵² with non-compliant ships facing detention or denial of access.⁵³ Chapter V, ensures navigation safety by mandating equipment like gyrocompasses, ARPA systems, and emergency towing arrangements to reduce risks of collisions and groundings in Nigerian waters.⁵⁴

50 Okogbe Anthony Okpako, 'Sea Safety In The Maritime Environment; The Enforcement Of The International Convention For The Safety Of Life At Sea In Nigeria (Solas 74) (Case Study Of Nigerian Inland Waterways, Warri),' *International Journal of Academic Multidisciplinary Research (IJAMR)*, 7(6), (2023), page 22.

51 Ibid.

52 International Maritime Organization, 'History of SOLAS Fire Protection Requirements,' <https://www.imo.org/en/OurWork/Safety/Pages/History-of-fire-protection-requirements.aspx#:~:text=The%201996%20amendments%20to%20SOLAS,fire%20safety%20measures%20for%20tankers>). Accessed 18 June 2025.

53 F.O Abiodun, 'Port State Control and Fag State Responsibilities on Maritime Safety Improvement in Nigeria' (1998), Presentation. National Maritime Authority Abuja, Nigeria. p 13.

54 International Maritime Organization, 'History of SOLAS Fire Protection Requirements,' <https://www.imo.org/en/OurWork/Safety/Pages/History-of-fire->

Similarly, Chapters VII and IX, focus on hazardous cargo management and operational safety management.⁵⁵ Chapter VII, mandates compliance with the International Bulk Chemical (IBC) Code, and International Gas Carrier (IGC) Code for ships carrying dangerous goods, subjecting non-compliant vessels to fines, detention, or blacklisting.⁵⁶ Chapter IX, requires foreign ships of 500 gross tonnage and above, to adhere to the International Safety Management (ISM) Code, ensuring operational safety, emergency preparedness, and proper crew training.⁵⁷ The NIMASA's enforcement of these chapters enhances maritime safety, protects Nigeria's maritime environment, and aligns domestic regulation with international standards.

Although, the SOLAS provisions on safety, covering fire protection, life-saving equipment, navigation, hazardous cargo, and ship management, are important for ensuring safer ships, they also create some problems when we consider the status of foreign vessels and Nigeria's cabotage policy. The Nigerian Cabotage Act is designed to protect and promote the local shipping industry, by reserving certain maritime activities for Nigerian-owned and Nigerian-flagged vessels. However, because SOLAS requires all ships, foreign or local, to meet the same safety standards, and also prohibits unfair discrimination, it limits Nigeria's ability to give preference

protection-requirements.aspx#:~:text=The%201996%20amendments%20to%20SOLAS,fire%20safety%20measures%20for%20tankers). Accessed 18 June 2025.

⁵⁵ Ibid.

⁵⁶ Akilu Wase Abdu, Recommendations for Improved Implementation of Port State Control in Nigeria (Msc Dissertation, World Maritime University 1999), page 47.

⁵⁷ Esma Uflaz, 'A Quantitative Effectiveness Analysis to Improve the Safety Management System (SMS) Implementation On-board Ship' (2022), page 156. <<https://www.sciencedirect.com/science/article/abs/pii/S0925753522002521>> accessed 17 June 2025.

to its own vessels. As long as a foreign vessel meets these international safety rules, it can easily operate in Nigerian waters, sometimes competing with local vessels that the cabotage policy was meant to protect. In addition, the strict SOLAS requirements, which Nigeria enforces through NIMASA's Port State Control inspections, can discourage some foreign vessels from trading in Nigerian waters, especially if they find compliance costly or difficult. Large foreign shipping companies, which often have better resources to meet SOLAS standards, can easily comply and enter the Nigerian market, making it harder for smaller local vessels, which may struggle with both SOLAS compliance and competing against these foreign ships. This creates a difficult situation for Nigeria.

4.1.4 Merchant Marine Act of 1920 (Jones Act)

A good example of the regime of strict Cabotage law, is the one found in the United States of America, by a combination of some of its shipping laws of which The Merchant Marine Act of 1920 also known as the Jones Act, stands out.⁵⁸ The law, regulates maritime commerce in the United States territorial waters and between ports in the United States.⁵⁹ Section 27 of the Act, deals with cabotage and provides to the effect that, 'all goods transported by water between the United States ports be carried on the United States flag ships, constructed in the United States, owned by the United States citizens, and crewed by the United States citizens and the United States permanent residents'. Also, the American Passenger Vessel Service Act of 1886, was a protectionist principle relating to cabotage. The

58 G. S. Robinson, 'Changing Concepts of Cabotage: A Challenge to the Status of United States Carriers in International Civil Aviation,' 34 J. AIR L. & COM (1968), p 553.

59 Joseph Morales, *The Jones Act – The real natural disaster: An analysis of the Merchant Marine Act of 1920* (A Masters Dissertation, Department of Public Policy and Administration, California State University Bakersfield, 2018), p 32.

Act provides that, ‘No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$300 for each passenger so transported and landed’.⁶⁰ As a result, vessels are not permitted to engage in coastal trading in the United States territorial seas except, they are qualified under the Act, that is to say they are US-built, owned and documented.

It is important to point out that, both the United States of America's Cabotage law, and Nigeria's Cabotage law, limit the commercial transportation of goods and services to vessels flying the country's flag, and owned by citizens of the country inside its inland and coastal waters.⁶¹ Also, some vessels are excluded from cabotage restrictions under both laws, including those that are less than a specified size, those that are engaged in specific sorts of fishing or research, and those that are transporting particular goods.⁶² Also, both laws have provisions in place to enforce compliance with the cabotage restrictions.⁶³

Evidently, the Jones Act influenced the Nigerian Cabotage Act, not only in its core protectionist principles, but also in how it shaped legal strategies, to safeguard national, economic, and security interests in maritime transport. Both laws recognize the importance of a strong indigenous maritime sector for economic development and national defence. However, while the U.S. has maintained a robust shipbuilding industry, and merchant marine to support the Jones Act, Nigeria has faced challenges due to the limited capacity of its domestic shipping industry and shipyards, thereby

60 Ibid.

61 s. 27 Jones Act and sections 3 and 6 Nigerian Cabotage Act.

62 s. 8 of the Nigerian Cabotage Act and S. 27 Jones Act.

63 Part VI of the Nigerian Cabotage Act and s. 27 Jones Act.

necessitating more flexible waiver provisions under its cabotage regime.⁶⁴ This has constituted a significant drawback to the Nigerian cabotage system. Basically, these waivers have undermined the efficacy of the cabotage policy, leading to continued dominance by foreign vessels in domestic shipping, a situation less pronounced under the Jones Act, due to stronger U.S. maritime infrastructure.

4.1.5 Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988

The Suppression of Unlawful Acts (SUA) Convention, was adopted in 1988 under the auspices of the International Maritime Organization (IMO). It is a series of international treaties aimed at addressing various forms of unlawful acts of violence against the safety of maritime navigation on the high sea. The SUA Convention (and its 2005 Protocol), plays a critical role in Nigeria's regulation of foreign vessels, by allowing the country to establish power over maritime crimes such as piracy, hijacking, terrorism at sea and other illegal acts, done within its territory. Also, Nigeria can prosecute offenders under its Suppression of Piracy and Other Maritime Offences (SPOMO) Act 2019.

Despite the relevance of the SUA Convention in helping countries fight maritime crimes, there has been some major lapses. The 2005 protocol of the SUA Convention, allows other countries to request extradition or the prosecution of offenders.⁶⁵ The shortcoming is that, the extradition clause,

64 E. O. Okechukwu, 'The Challenges of Nigeria's Cabotage Law in the Development of Indigenous Shipping Capacity,' (2015) *Nigerian Journal of Maritime Law*, vol. 30, p 87–89.

65 Art. 11, 2005 Protocol to the SUA Convention.

clearly limits the freedom, a coastal State like Nigeria may have, in dealing with some cases purely under its own laws.

4.2 NATIONAL STATUTES

4.2.1 Constitution of the Federal Republic of Nigeria 1999 as amended

The Constitution of the Federal Republic of Nigeria (1999), serves as the supreme legal framework governing Nigeria's territorial sovereignty, including its maritime jurisdiction. While it does not explicitly regulate shipping, its provisions indirectly shape the legal status of foreign vessels. Firstly, Section 4(1) of the Constitution provides that, the legislative powers of the Federal Republic of Nigeria, are vested in the National Assembly. Section 4 and Item 36 of the exclusive legislative list, grants the federal government exclusive authority to legislate on the territorial sea, Exclusive Economic Zone (EEZ), ports, and shipping regulations.

However, the constitution vests ownership of minerals, mineral oils, and natural gas in the government of the federation. This extends beyond resources located in the land territory to those located in the territorial sea, including the Exclusive Economic Zone and the continental shelf of the country.⁶⁶ Section 19(d), also provides that, Nigeria's 'foreign policy objectives shall be in respect of international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.' This provision, mandates Nigeria to safeguard its territorial integrity.

66 S. 44 (3), CFRN.

Furthermore, Section 12, requires the domestication of treaties (e.g., UNCLOS, SOLAS), before enforcement. This particular provision states that, ‘no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.’⁶⁷ Thus, foreign vessels must comply with the treaties that have been domesticated in Nigeria.

Additionally, Section 20 of the 1999 Constitution, focuses on the protection of the environment. It authorizes the state to improve and protect the air, land, water, forest and wildlife of Nigeria.⁶⁸ By virtue of this provision, it tasks the Nigerian government to make the environment safe, and further prosecute any persons or foreign vessels that may pollute the environment through their activities, especially the oil and gas companies.⁶⁹

It is important to note that, the Constitution, confers jurisdiction on the Federal High Court to the exclusion of any other court in civil cases, and matters relating to any admiralty jurisdiction, including: shipping and navigation on the River Niger, or River Benue, and their affluent; on such other inland waterway as may be designated by any enactment to be an international waterway; all federal ports (including the constitution and powers of the ports authorities for Federal ports); and carriage by sea.⁷⁰

67 S. 12(1).

68 S. 20, Ibid.

69 Samuel C. Dike and Prince Godwin Gininwa, ‘An Appraisal of the Nigerian Legislation and Institutions Governing Maritime Environment’ *SSRN Electronic Journal* (2019), p 10.

70 s. 251(1) (g), CFRN.

4.2.2 The Coastal and Inland Shipping (Cabotage) Act, 2003

The Coastal and Inland Shipping (Cabotage) Act was enacted to give local shipping companies a comparative advantage over their foreign counterparts that engage in the country's maritime jurisdiction, in order to develop local capacity and indigenous shipping industry.⁷¹ In May 2003, it was enacted, with enforcement starting in November that 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 sea, while making jobs available for vessels owned and managed by Nigerians, and Nigerian indigenous shipping companies.⁷²

The United States Merchant Marine Act of 1920 (Jones Act), one of the earliest formal cabotage laws, strongly influenced Nigeria's Cabotage Act. While the Jones Act is stricter, both laws share major similarities. They restrict the commercial transport of goods and services within their inland and coastal waters to vessels flying the national flag and owned by citizens.⁷³ Both laws also provide exemptions for certain vessels, such as smaller ships, fishing or research vessels, and those carrying specific goods.⁷⁴ Additionally, each law includes compliance and enforcement mechanisms to ensure adherence to these restrictions.⁷⁵

71 Olo Aria, 'An Appraisal of the Cabotage Act, Policies and Ship Registration,' (2024), page 9 <https://omaplex.com.ng/an-appraisal-of-the-cabotage-act-policies-and-ship-registration/> accessed 19 April 2025.

72 (n 54) 71-82

73 s. 27 of the Jones Act; Ss. 3 and 6 of the Cabotage Act.

74 s. 8 Cabotage Act; s. 27 of the Jones Act

75 Part VI Cabotage Act; s. 27 of the Jones Act.

Part II of the Cabotage Act, deals with the restriction of foreign vessels in domestic coastal trade.⁷⁶ This part places restrictions on certain vessels, and at the same time stipulates which vessels are permitted to engage in cabotage services within the territorial, coastal inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria.

The Cabotage Act contains several important parts that shape how Nigeria regulates domestic coastal shipping. Part III, sections 9 to 11, empowers the Minister of transportation to temporarily grant waivers to foreign vessels, to allow them participate in Nigeria's maritime trade, only when there are no local vessels, suitable or available for the trade. It also sets out how waivers are applied for, their duration, and the guidelines for its issuance.⁷⁷ Also, Part IV, lays out procedures for licensing foreign vessels, including how licenses are granted, suspended, or cancelled, along with the powers of the Minister.⁷⁸ Part V, deals with vessel registration, requiring ships engaged in cabotage to be listed in a special register and to meet eligibility rules, including ownership, proof of ownership, and age limits, while also covering issues like deletion from the registry and temporary registration.⁷⁹

In addition, Parts VI to IX, focuses on enforcement, penalties, funding, and other administrative issues. Part VI, establishes NIMASA as the agency responsible for enforcing the Cabotage Act, with powers to arrest and detain violators. Part VII, outlines offences under the Act, such as operating without compliance, obstructing officers, or providing false information,

76 Ss. 3-8, Cabotage Act.

77 Ss. 9-11, Ibid.

78 Ss. 9-14 Ibid

79 Ss. 22(1), Cabotage Act.

and makes violations, strict liability offences under the jurisdiction of the Federal High Court.⁸⁰ However, Part VIII, creates the Cabotage Vessel Financing Fund, to support Nigerian shipowners in acquiring vessels, funded by fees outlined in the Act. Also, Part IX includes various miscellaneous provisions such as powers of delegation, transitional measures, and repeal of conflicting laws.⁸¹ Lastly, Part V of the Cabotage Act mandates that all vessels used in cabotage operations must be registered in the Special Register for Vessels and Ship Owning Companies Engaged in Cabotage.⁸²

Furthermore, despite the Act granting the Minister of Transportation the broad powers to issue waivers and licenses to foreign vessels when Nigerian alternatives are unavailable,⁸³ in practice, this waiver regime has been overused due to the country's limited shipbuilding capacity, insufficient qualified seafarers, and underdeveloped maritime infrastructure. Thus, foreign vessels continue to dominate the cabotage trade and misuse the opportunity when issued waivers and licences, thereby undermining the main purpose of fostering indigenous maritime participation. Also, although the Act establishes the Cabotage Vessel Financing Fund (CVFF), to support indigenous shipowners, the fund's disbursement has been slow and bureaucratic. As a matter of fact, no indigenous shipowner is recorded to have benefitted from the fund. Without adequate financial assistance, Nigerian operators struggle to acquire and maintain vessels that meet cabotage requirements. This financial gap further perpetuates dependence on foreign shipping companies.

80 Ss. 38-41, Ibid.

81 Ss. 48-53, Ibid.

82 Part V, s. 22(1), Ibid.

83 Part III, Ss. 9-11, Ibid.

4.2.3 The Merchant Shipping Act (2007)

The Merchant Shipping Act,⁸⁴ commenced on the 28th day of May 2007. The Act was structured to provide for merchant shipping and related matters.⁸⁵ 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. Also, they qualify to participate in coastal trade as Nigerian-flagged, or Nigerian-owned ships, even though they are not owned by Nigerians.

Section 2 of the Certificate of Competency (Able Seamen) Regulation of 1963, states 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 vessel. This was enunciated in the case of *Niger/Benue Transport Co. Ltd v. Narumal and Sons Nig. Ltd*⁸⁶ that, ‘a seaworthy ship must be sufficiently strong and staunch and equipped with appropriate appurtenances and necessary manpower to enable it safely engage in any trade or voyage it has intended.’⁸⁷ Additionally, the Merchant Shipping Act, provides that every foreign going ship which proceeds from Nigeria, having one hundred

84 (n 10)

85 Oyetola Muyiwa Atoyebi, ‘A Comprehensive Analysis of the Challenges and Prospects in the Nigerian Maritime/Shipping Industry vis-a-vis its Implications for Foreign Investment’ <<https://lawpavilion.com/blog/a-comprehensive-analysis-of-the-challenges-and-prospects-in-the-nigerian-maritime-shipping-industry-viz-a-viz-its-implications-for-foreign-investment/>> accessed 20 April 2025.

86 *Niger/Benue Transport Co. Ltd v. Narumal and Sons Nig. Ltd* (1989) LLJR-SC

87 Per Nnamani JSC.

persons or more on board, shall carry, as part of her complement, some duly qualified medical practitioners.⁸⁸

It is important to note that, the Merchant Shipping Act empowers the Nigerian Maritime Administration Safety Agency (NIMASA), to detain any vessel within Nigerian waters that is unsafe; poses a security risk; or is a serious danger to human life, with regard to the service for which the vessel is intended.⁸⁹ However, while Section 282 empowers NIMASA to detain unsafe or non-compliant foreign vessels, which is a critical tool for maritime safety and security, the provision's subjective criteria (e.g., "serious danger to human life"), could lead to arbitrary enforcement, especially given Nigeria's history of bad government in port inspections.

4.2.4 Nigerian Maritime Administration and Safety Agency NIMASA Act 2007⁹⁰

The Nigerian Maritime Administration and Safety Agency (NIMASA) is a key player in the Nigerian maritime industry. It is the result of the merger of the now defunct National Maritime Authority (NMA), 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 2007.⁹¹ The NIMASA Act, provides for the promotion of maritime safety and security, protection in the marine environment, shipping registration, commercial shipping and maritime labour. The Act, in Section 1(2), provides for the establishment of the Nigerian Maritime Administration and Safety Agency, which is

88 s. 102 (1), Merchant Shipping Act.

89 s. 282, *ibid*.

90 (n 14).

91 NIMASA, 'About Us' <https://nimasa.gov.ng/about-us/> > accessed 20 April 2025

responsible for carrying out the provisions of the Act, the Merchant Shipping Act and the cabotage Act.⁹² Section 3 of the NIMASA Act, outlines the Agency's broad objectives, which include regulating shipping practices, ensuring maritime safety, and promoting indigenous participation in international maritime trade.⁹³

However, the NIMASA Act applies to all ships, whether small ships or crafts that are registered in Nigeria, and to all other ships flying a foreign flag in the Exclusive Economic Zone, territorial and inland seas, inland waterways and the ports of the country.⁹⁴ Thus, the NIMASA is given the right under the Act, to make regulations with the approval of the Minister, in regards to maritime affairs in the Nigerian waters.⁹⁵ The agency is tasked with the power to investigate and inspect marine accidents, pollution incidents and to impose sanctions on foreign vessels that are found liable. The Agency, is empowered under Section 22 of the Act. However, this provision, gives the NIMASA, a vast range of responsibilities and sometimes, it overlaps with the responsibilities of other maritime agencies such as, the Nigerian Ports Authority (NPA) and Nigerian Navy, leading to jurisdictional conflicts, especially in areas of maritime security and ship inspections.

Nevertheless, despite the role of this Act and its Agency, in strengthening Nigeria's regulatory capacity over its maritime domain, there are however some lacunae in this domain. The NIMASA's enforcement approach often

92 Olisa Agbakoba, 'Regulatory Battles Shaping Nigeria's Maritime Economy' (2025), p 3 <<https://oal.law/regulatory-battles-shaping-nigerias-maritime-economy/>> accessed 20 April 2025.

93 (n 197)

94 Ibid.

95 Ibid.

lacks transparency, and it is prone to bureaucratic delays, which can negatively affect both local and foreign vessels. While the Act also mandates adherence to international maritime conventions,⁹⁶ it still lacks clear provisions on how the NIMASA should coordinate with other arms of government (like the National Assembly), to ensure speedy domestication of international conventions, which often delays Nigeria's compliance with evolving global maritime standards.

4.2.5 The Exclusive Economic Zone Act 1978

The Exclusive Economic Zone (EEZ) Act, containing 7 sections, recognizes Nigeria's interest in exploiting its EEZ. Nigeria currently maintains a maritime area of 200 nautical miles as its exclusive economic zone, which is in accordance with the position of customary international law, codified as Article 57 of the UNCLOS III. The UNCLOS,⁹⁷ has delimited the EEZ not to 'extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.' Nigeria, through the Exclusive Economic Zone Act, 1978 ('EEZ Act'),⁹⁸ has delimited a 200-nautical miles EEZ for itself. Section 1 (1) of the EEZ Act, makes provision to that effect.

Essentially, the EEZ Act defines Nigeria's maritime zone, by granting the country sovereign rights over resources, and limited regulatory control over foreign vessels. Basically, Nigeria has the exclusive right to explore, and exploit all the natural resources in the sea bed, sub soil and super jacent waters in the EEZ, subject only to the provisions of any treaty to which it

96 s. 31, Ibid.

97 Article 57, UNCLOS.

98 s. 1 (1), EEZ Act.

is a party, with respect to the exploitation of the living resources of the EEZ.⁹⁹

Despite the copious provisions of the EEZ Act, the law is disregarded by super powers i.e. vessels that are carrying the United States of America flag. They enter into the EEZ and the territorial sea to do whatever they like, under the pretence of innocent passage.

4.2.6 The Nigerian Ports Authority Act, 2004

This Act, establishes the Nigerian Ports Authority,¹⁰⁰ outlines its duties, authority, and obligations, and governs its internal structure and financial matters. The Act, also addresses issues related to port operations, such as pilotage,¹⁰¹ as well as the Authority's right to compulsorily acquire land.¹⁰² The NPA Act¹⁰³ empowers the authority, with the Minister's approval, to make regulations for all, or any of the following purposes regarding the management, control, and maintenance of any port's good order: controlling traffic within a port's boundaries or on its approach,¹⁰⁴ regulating the berths and stations that ships must occupy, and overseeing the movement of ships between berths, stations, or anchorages, as well as the timeframes within which these movements must be carried out;¹⁰⁵ regulating ships while they are loading or unloading ballast or cargo;¹⁰⁶ and maintaining open passages of the width that is deemed necessary within any

99 s. 2, EEZ Act

100 Section 1, NPA Act.

101 Part X Ibid.

102 s. 24, Ibid.

103 s. 32, Ibid.

104 s. 32(1) (a), Ibid.

105 s. 32(1) (b), Ibid.

106 s. 32(1) (c), Ibid.

port as well as along or near the piers, jetties, landing places, wharves, quays, docks, moorings, and other similar works in, or adjoining the port, and for marking out the spaces to be kept free.¹⁰⁷

One of the main problems with the NPA Act, lies in the centralized control, and lack of flexibility within the Act. While the NPA is empowered under Section 32 to make regulations on port operations, with the approval of the Minister, this structure can slow decision-making, especially in urgent or commercially sensitive situations. It is given that, the Act, empowers the Authority to control ship traffic, designate berths, and regulate ship movements, which is crucial for port security and efficiency.¹⁰⁸ However, it can be argued that, the broad discretion granted to the NPA, can result in arbitrary or inconsistent enforcement, potentially affecting foreign shipping lines.

5.0 CHALLENGES ON THE STATUS OF FOREIGN VESSELS IN NIGERIA

5.1 Status of Foreign Vessels in Nigeria

Foreign vessels, continue to dominate Nigeria's coastal and inland shipping, despite the protective intent of the Cabotage Act. This is largely due to, inadequate and outdated maritime laws, poor enforcement, and the abuse of waivers. Also, non-compliance by foreign operators is common, as regulatory agencies lack the technological tools, and trained personnel, to properly monitor vessel activities. Overlapping responsibilities among institutions, further weaken enforcement, while loopholes in vessel

107 s. 32(1) (d), Ibid.

108 Ss. 32(c)–(g), Ibid.

ownership requirements, allow foreign interests to evade local content rules.

These systemic challenges do not only undermine the objectives of the Cabotage Act, and other relevant legal frameworks, but also place indigenous shipowners at a competitive disadvantage. Without urgent reforms, Nigeria risks continued foreign dominance in its maritime sector, which in turn, limits local capacity development, and economic growth.

5.1.2 The Menace of Outdated Laws replete in the Nigerian Maritime Sector

Nigeria as a nation, relies on a robust maritime legal framework to regulate the entry, operation, and exit of foreign vessels in its waters. These frameworks include the Merchant Shipping Act of 2007 and the Coastal and Inland (Cabotage Act) of 2003, among other laws. Several of the provisions of these laws are outdated and do not align with contemporary maritime practices, technological advancements and international standards. Some of these provisions, prescribe penalties that are no longer deterrent, for example, fines under the Merchant Shipping Act (MSA) are outdated and too low to discourage certain violations. Again, under the provisions for ‘marking of ship’ under section 23(3) of the MSA provides that;¹⁰⁹ ‘the owner of any ship who fails to keep the ship marked or suffers any person under his control to remove marks on the ship for the purpose of escaping and getting captured by a foe, commits an offence and would be liable to a fine of one hundred thousand (N100,000) Naira’. The fine of a hundred thousand (N100,000) Naira, is quite low and ineffective, considering the economic realities of Nigeria today. That sum is equivalent

109 s. 23(3), Merchant Shipping Act.

to sixty-three (\$63) US Dollars ¹¹⁰ and would have no financial consequences to a local or foreign shipper, who violates the aforementioned section of the MSA. Although, the UNCLOS, does not specifically provide for penalties for not marking ships, in Article 262¹¹¹, it provides that, ‘ships shall comply with the laws and regulations of the coastal state concerning identification markings and warning signals.’ This means that the coastal states can prescribe adequate and effective fines and punishments for shipowners who do not comply with this provision. The current Nigerian fines do not meet this standard. Also, a serious offence of forgery of documents and false declarations under the MSA, carries a fine of just two hundred thousand (N200,000) Naira.¹¹²

Apart from the foregoing, it must be pointed out that modern challenges,¹¹³ such as piracy, cyber-security threats and environmental pollution, are not adequately addressed in the Cabotage Act and the Merchant Shipping Act. However, section 3 of the Suppression of Piracy and Other Maritime Offences (SPOMO) Act, 2019 is a step forward. This section also defines piracy as consisting of illegal acts of violence committed for private ends by crew or any passenger of a ship or aircraft,¹¹⁴ while other laws remain

110 This is according to official Western Union exchange rates. <<https://www.westernunion.com/us/en/currency-converter/usd-to-ngn-rate.html>> accessed 28 April 2025.

111 Art. 262 UNCLOS.

112 s 53, MSA.

113 Kevin D Jones and others, ‘Threats and Impacts in Maritime Cyber Security,’ Engineering & Technology Reference, (2016), page 2 <https://www.researchgate.net/publication/304263412_Threats_and_Impacts_in_Maritime_Cyber_Security> accessed 25 April 2025.

114 Omeiza Alao, ‘Combating the Threat of Piracy in the Nigerian Maritime Industry: the Pith and Potentials of the Suppression of Piracy and Other Maritime Offences Act 2019,’ *UNILAG Law Review*, 4(2), (2021). Page 14.

deficient. The section indeed defines piracy in line with Article 101¹¹⁵ of the UNCLOS and this signifies a step towards aligning Nigerian domestic laws with international maritime conventions.

Under the Cabotage Act, section 3¹¹⁶, which restricts coastal trade exclusively to Nigerian-owned vessels, is obviously outdated. In the international realm, Articles 17 to 19¹¹⁷ of the UNCLOS, permits foreign vessels to exercise innocent passage in a coastal state's territorial sea without discrimination, as long as the passage is innocent. Essentially, this specific provision that is, section 3 of the Cabotage Act, is in conflict with Articles 17 to 19 of the UNCLOS and should be updated to align with the UNCLOS provisions, so as to ensure fair competition and be in tune with the modern maritime sector.

Furthermore, sections 9 to 11¹¹⁸ of the Cabotage Act, deals with granting waivers to foreign vessels to operate in Nigerian domestic coastal trade under certain conditions. The issuance of waivers has become so excessive and there is the need for the system to be reviewed by legislature¹¹⁹. A better replacement of these provisions, should be to reflect the principles of innocent passage and freedom of navigation under sections 17 to 19¹²⁰ of the UNCLOS. To align with UNCLOS, these waivers should clearly permit

115 Art. 101 of UNCLOS, defines piracy as acts of unlawful violence carried out for personal purposes by the crew or passengers of a ship or aircraft.

116 S. 3 Ibid.

117 Art. 17-19 UNCLOS.

118 S. 9-11 Ibid.

119 A. Ologe, 'Advancing indigenous ship building in Nigerian maritime industry: Strategies for bridging the gap'. *International Journal of Criminal Common and Statutory Law* (2024) (4) (1) page 6

120 Art. 17-19 UNCLOS. Ibid.

foreign vessels to operate under conditions that do not threaten Nigeria's security or violate national regulations, reflecting the "innocent passage" principle. This means that Nigeria's complete prohibition of foreign vessels in coastal trade is inconsistent with international norms.

Also, section 28 of the Cabotage Act¹²¹, stipulates that vessels exceeding fifteen years of age at the time of the Act's commencement may continue operating in Nigerian coastal trade for only five years, after which they are barred from participation, regardless of their operational condition. Scholars have described this approach as outdated, since it adopts an inflexible age threshold rather than focusing on the seaworthiness of vessels¹²². In contrast, the international regime established under the International Convention for the Safety of Life at Sea (SOLAS 1974/78) does not prohibit vessels purely on the basis of age. Instead, it allows vessels to continue trading beyond fifteen years provided they undergo rigorous inspections and introduces enhanced structural assessments for older ships to ensure their continued safety and operation. For instance, SOLAS Chapter XI-1, Regulation 2¹²³, requires more rigorous structural surveys of bulk carriers and oil tankers as they reach 10, 15, and 20 years of service. This is to determine whether they remain fit to operate. These international provisions reflect a global consensus that vessel safety should be determined by condition and compliance, not by age alone. However, section 28 of the Cabotage Act, would benefit from reform to harmonize with SOLAS and IMO standards, promoting safety in a manner consistent with international best practice.

121 s. 28, Cabotage Act

122 Ibid

123 Ibid.

Another provision under the Cabotage Act, that is considered to be outdated due to the lack of implementation, is Part VIII, section 42(1).¹²⁴ This section of the Act, does not specify the exact amount to be allocated to the Cabotage Vessel Financing Fund (CVFF). More than 20 years after the establishment of the Act, shipowners are still not certain on the amount that is to be allocated to them via the CVFF. This lack of clarity creates room for administrative abuses and mismanagement. As a result, the government's weak initial funding of the CVFF exposes serious flaws in the system¹²⁵, undermining its goal of supporting indigenous shipowners. This provision, does not reflect today's financing realities, such as public-private partnerships and international support.

5.1.3 Non-compliance by Foreign Vessels

One of the most persistent challenges facing the effective implementation of Nigeria's cabotage regime, is the widespread non-compliance by foreign vessels. Despite the clear provisions of the legal frameworks put in place, these foreign vessels, still do not comply with our laws properly. For instance, the Coastal and Inland Shipping (Cabotage) Act, which restricts the operation of cabotage trade to Nigerian owned and built vessels, foreign ships continue to dominate the sector under various guises.¹²⁶ They often disregard our maritime laws, causing major economic and security problems. Even with clear rules under our national laws and international treaties, many foreign-flagged ships operate with little respect for these regulations.¹²⁷

124 s. 42 (2), Ibid.

125 Ibid.

126 Ss. 3–5, Cabotage Act.

127 *The Incorporated Trustees of Indigenous Shipowners of Nigeria and Ors v. The MT Makhambet* (Suit No. FHC/L/CS/703/2009).

The cabotage Act provides that, ‘any person who without reasonable excuse, fails to comply with a requirement made, or direction given, by an enforcement officer, commits an offence, and shall on conviction if it is an individual, be liable to a fine not less than ₦100,000, and if the offence is committed by a company, be liable to a fine of not less than ₦5,000,000.’¹²⁸ In addition, Section 58(1) of the NIMASA Act stipulates that, ‘anyone who, without a valid excuse, disobeys a lawful directive from the Agency, or violates any provision of the Act or its regulations, commits an offence. Unless another penalty is specified, the offender is liable on conviction to a fine of up to ₦1,000,000 or imprisonment for up to 12 months, or both. If the offence continues, an additional fine of up to ₦200,000 may be imposed for each day the violation persists’.¹²⁹ These provisions are however, not being complied with by foreign vessels. They break cabotage limits, avoid fees, breach environmental rules, and ignore safety standards, usually without facing serious penalties.¹³⁰ This weakens Nigeria’s control over the waters it has territorial sovereignty over and it harms the maritime sector. The country, also lacks enough qualities and resources to ensure compliance by foreign vessels and this makes them take advantage of the weak surveillance.¹³¹ For instance, NIMASA, the agency in charge of maritime safety, faces challenges like, few patrol boats and outdated

128 s. 36, Cabotage Act.

129 s. 58(1), NIMASA Act.

130 Aaron Ologe, ‘Enforcement Framework for Maritime Regulations: Penalties and Compliance in Nigeria,’ *International Review of Law and Jurisprudence (IRLJ)*, 6(1), (2024), p 5.

131 Paul Mandela Ogoun, ‘Maritime Security Challenge in Nigeria and the Gulf of Guinea,’ *European Journal of Science, Innovation and Technology*, 2(3), (2022), p 3.

equipment, which makes it difficult to stop violations. Thus, maritime crimes often go unaddressed.¹³²

5.1.4 Limited Technological and Human Capacity to Monitor and Control Foreign Vessel Activities

Monitoring and controlling foreign vessels in Nigerian waters is a key part of maritime governance, but the country faces major challenges due to weak technology, and limited human capacity. The country's large maritime area needs advanced surveillance systems and skilled personnel, to enforce national and international maritime rules.¹³³ However, current resources fall short, leaving gaps that are often exploited.

On the technological aspect, Nigeria does not have full vessel monitoring systems that can track ships in real time across its waters. Although, the NIMASA has set up some Automatic Identification System (AIS) receivers¹³⁴ and recently added assets from the Deep Blue Project,¹³⁵ the coverage is still uneven and easy to bypass. Many foreign vessels,

132 Ifesinachi Okafor-Yarwood, 'Illegal, unreported and unregulated fishing, and the complexities of the Sustainable Development Goals (SDGs) for countries in the Gulf of Guinea', *Marine Policy*, (2017), p 99 <[10.1016/j.marpol.2017.09.016](https://doi.org/10.1016/j.marpol.2017.09.016)> accessed 26 April 2025.

133 Oditia Sunday, 'Navy polices 290,000 square kilometres of Nigeria's exclusive economic zone – CNS', *The Guardian*, (22 October 2024), page 10 <<https://guardian.ng/news/navy-polices-290000-square-kilometres-of-nigerias-exclusive-economic-zone-cns/>> accessed 28 April 2025.

134 Adaku Onyenucheya, 'NIMASA Participates in International Satellite System Testing', *The Guardian*, (11 January 2023) <<https://guardian.ng/business-services/nimasa-participates-in-international-satellite-system-testing/>> accessed 28 April 2025.

135 NIMASA, 'NIMASA: Deep Blue Project Driven by Competent Manpower' <<https://nimasa.gov.ng/nimasa-deep-blue-project-driven-by-competent-manpower/>> accessed 28 April 2025.

especially those involved in illegal activities, simply turn off their AIS transponders when entering into Nigerian waters, making them invisible to the authorities.¹³⁶ Without a fully connected coastal radar network and with limited satellite monitoring, large parts of Nigeria's maritime space go unwatched. This lack of coverage is clear in the Gulf of Guinea, where piracy and illegal activities, often happen without detection.

In the same vein, the lack of human capacity is just as concerning. Nigeria faces a major shortage of well-trained maritime law enforcement officers, marine surveyors and technical experts needed to properly monitor and inspect foreign vessels. NIMASA and other key agencies, often do not have enough skilled staff to carry out detailed vessel inspections, check compliance with international rules, or investigate maritime offences. Training centres like the Maritime Academy of Nigeria in Oron, struggle with outdated courses and poor facilities, making it hard to produce enough qualified maritime personnel.¹³⁷

The effects of the lack of technology and human capacity, is serious and wide-ranging. The country's weak ability to monitor its waters, has turned the Gulf of Guinea into the world's hotspot for illegal activities, driving up costs for maritime trade and insurance. The environment also suffers lack of protection, as foreign vessels release pollutants with little risk of being

136 Jonathan Nda-Isaiah, 'Oil Thieves Turn off Vessels' Automatic Identification to Evade Arrest – NPA', *Leadership Newspapers* (2022), page 5 <<https://leadership.ng/oil-thieves-turn-off-vessels-automatic-identification-to-evade-arrest-npa/>> accessed 28 April 2025.

137 'The Unending Troubles of Maritime Academy of Nigeria (MAN), Oron', *Shipping Position Online*, (25 September 2017), page 3 <<https://shippingposition.com.ng/the-unending-troubles-of-maritime-academy-of-nigeria-man-oron/>> accessed 28 April 2025.

caught. At the same time, the government loses large amounts of revenue from unmonitored shipping activities.¹³⁸

5.1.5 Inadequate Resources

Another major obstacle to the effective control of foreign vessels in Nigeria, is the overall inadequacy of resources. The operational capacities of maritime enforcement organizations, including the NPA, the Nigerian Navy, and the NIMASA, are sometimes constrained by the lack of financing. Insufficient funding, makes it difficult to purchase and maintain patrol boats, inspection facilities, and surveillance equipment needed for real-time tracking of foreign vessel activities. The lack of skilled workers, such as certified marine surveyors, port state control officers, and legal specialists required to interpret and implement national and international maritime laws, exacerbates this budgetary limitation.

Consequently, the Cabotage Act, sets up a special fund called, the Cabotage Vessel Financing Fund.¹³⁹ The fund aims to help Nigerian ship operators in coastal trade, by offering financial support, boosting local ownership of vessels.¹⁴⁰ By virtue of Section 43 of the Act, there shall be paid into the Fund, 2 percent of the contract amount paid by each vessel involved in the coastal commerce, plus funds earned under the Act, such as tariffs, penalties, and fees for permits and exemptions. This amount will be decided and authorized by the National Assembly on a regular basis'. Theoretically, the Act states that, the National Maritime Authority will collect the fund,

138 Oluwakemi Dauda, 'Fed Govt Loses over N5tr Revenue to Corruption, Foreigners at Ports,' *The Nation* (9 August 2021) <https://thenationonline.net/fed-govt-loses-over-n5tr-revenue-to-corruption-foreigners-at-ports/amp/>> accessed 28 April 2024.

139 s. 42 (1), Cabotage Act.

140 s. 42 (2), *Ibid*.

keep it in commercial banks, and manage it according to the guidelines set by the Minister and approved by the National Assembly.¹⁴¹ The Act, also specifies that only Nigerian citizens, and fully Nigerian-owned shipping companies, can benefit from the fund.¹⁴² Unfortunately, getting the funds is extremely difficult because of the complicated application processes and the government's failure to follow through on its promises.

Nigeria's capacity to enforce domestic laws and international agreements, is severely hampered by these resource shortages. As a result, several foreign ships seemingly take advantage of these enforcement weaknesses, undermining Nigeria's authority and sovereignty over its maritime territory.

5.1.6 Inadequate Resources

Another major obstacle to the effective control of foreign vessels in Nigeria, is the overall inadequacy of resources. The operational capacities of maritime enforcement organizations, including the NPA, the Nigerian Navy, and the NIMASA, are sometimes constrained by the lack of financing. Insufficient funding, makes it difficult to purchase and maintain patrol boats, inspection facilities, and surveillance equipment needed for real-time tracking of foreign vessel activities. The lack of skilled workers, such as certified marine surveyors, port state control officers, and legal specialists required to interpret and implement national and international maritime laws, exacerbates this budgetary limitation.

Consequently, the Cabotage Act, sets up a special fund called, the Cabotage Vessel Financing Fund.¹⁴³ The fund aims to help Nigerian ship operators in

141 s. 44, Ibid.

142 s. 45, Ibid.

143 s. 42 (1), Cabotage Act.

coastal trade, by offering financial support, boosting local ownership of vessels.¹⁴⁴ By virtue of Section 43 of the Act, there shall be paid into the Fund, 2 percent of the contract amount paid by each vessel involved in the coastal commerce, plus funds earned under the Act, such as tariffs, penalties, and fees for permits and exemptions. This amount will be decided and authorized by the National Assembly on a regular basis'. Theoretically, the Act states that, the National Maritime Authority will collect the fund, keep it in commercial banks, and manage it according to the guidelines set by the Minister and approved by the National Assembly.¹⁴⁵ The Act, also specifies that only Nigerian citizens, and fully Nigerian-owned shipping companies, can benefit from the fund.¹⁴⁶ Unfortunately, getting the funds is extremely difficult because of the complicated application processes and the government's failure to follow through on its promises.

Nigeria's capacity to enforce domestic laws and international agreements, is severely hampered by these resource shortages. As a result, several foreign ships seemingly take advantage of these enforcement weaknesses, undermining Nigeria's authority and sovereignty over its maritime territory.

5.2 PROSPECTS OF THE STATUS OF FOREIGN VESSELS IN NIGERIA

Irrespective of its current challenges, Nigeria's cabotage regime holds strong potential for growth and reform. With the adoption of good governance practices, enforcement of cabotage laws, can become more effective and transparent. Also, improved maritime security, will help create a safer operating environment for indigenous operators.

144 s. 42 (2), Ibid.

145 s. 44, Ibid.

146 s. 45, Ibid.

Additionally, enhanced coordination among key maritime agencies, can eliminate institutional overlaps, streamline enforcement, and ensure consistent regulation. These prospects are analyzed below.

5.2.1 Good Governance

Bringing strong governance into Nigeria's maritime sector, could be a game-changer for how foreign vessels are monitored, and how rules are enforced. When regulatory systems are clear, fair, and easy to navigate, it not only makes it harder for bad actors to slip through the cracks, but also gives legitimate operators confidence that, they are working within a system they can trust. For shipowners, captains, and maritime businesses, knowing that inspections, permits, and fees are handled transparently and consistently, would ease frustrations and encourage better compliance. It also sends a strong message that, Nigeria is serious about building a modern, well-run maritime economy.

Besides, there is the need to make NIMASA's day-to-day operations more efficient, and less dependent on personal discretion. If vessel inspections, licensing, and waiver approvals follow simple, predictable rules, it reduces the temptation and opportunities for under-the-table deals. By moving more of these processes online, whether it is applying for permits, or tracking ship movements, interactions can become faster and less prone to manipulation. Essentially, setting clear expectations for maritime officials, and tracking their performance, would help create a culture where doing the right thing is not just encouraged, but expected. These are practical changes that can make life easier for everyone, from the regulators themselves, to the ship crews, and businesses trying to operate safely and legally in Nigerian waters.

Also, stronger governance in Nigeria's maritime sector, goes beyond simply enforcing rules; it opens up real economic opportunities that benefit both the country, and the businesses operating in its waters. When shipowners and operators engage with a clear, fair, and predictable system, it draws reputable companies that aim to comply fully with regulations, and discourages those who try to exploit loopholes. For Nigeria, this means more reliable revenue from fees and taxes, while local operators benefit from a fairer environment, where they are no longer undermined by foreign competitors who sidestep the rules.

Furthermore, consistent enforcement of laws also improves Nigeria's international reputation. Insurance companies, for example, may begin to view the country as less risky, which could help lower the high premiums that vessels currently pay to operate in Nigerian waters. These kinds of practical benefits, makes a tangible difference for businesses and encourage greater trade and investment. Looking at the bigger picture, advancing good governance in maritime administration, represents a smart and strategic step for Nigeria's blue economy goals. Trustworthy institutions, and clear processes help create a maritime space that serves everyone; safer waters, cleaner environments, stronger revenues, and greater opportunities for coastal communities. Although achieving these reforms will take steady commitment from leaders, and continuous training for regulatory agencies, the potential rewards are substantial. Nigeria can build a maritime sector that sets a strong example in the region, and supports broader economic growth.

5.2.2 Updated Laws

Nigeria's maritime sector, currently operates within a legal framework that is a mix of outdated laws, and provisions, that were established decades

ago, many of which no longer reflect the realities of today's maritime world. For example, section 23 (3) of the Merchant Shipping Act of 2007, though more recent, still holds on to colonial-era principles that do not consider modern advancements. The fines prescribed under this section are relatively too low and they do not have any effects in the modern era. Other advancements such as digital shipping platforms, advanced vessel tracking systems, and updated environmental standards are not contained in the Merchant Shipping Act. On the other hand, Sections 9 to 11 of the Cabotage Act 2003, also needs significant changes to close loopholes that have allowed foreign operators to exploit the waiver system for years. These outdated laws create regulatory gaps that make it difficult for Nigeria to properly manage its waters, and ensure that foreign vessels adhere to its rules.

Clearly, the nature of global maritime operations is constantly evolving, and so too must the laws that govern them. Issues like cybersecurity risks to shipping systems, the rise of unmanned vessels, and new forms of maritime fraud, were not even on the radar when Nigeria's maritime laws were initially created. Leading maritime nations have already adapted, by introducing advanced legislation to address these modern challenges. Nigeria risks falling behind, if it does not update its legal framework to accommodate new technologies in vessel design, cargo handling, and port operations. Without clear provisions for these contemporary issues, both regulators, and operators, are left in a state of uncertainty, which could discourage legitimate foreign investment, while allowing non-compliant actors to exploit the gaps in the system.

The process of updating Nigeria's maritime laws, is an opportunity to align domestic legislation with international agreements which Nigeria has

ratified, but not fully incorporated into its legal system. Conventions like, the United Nations Convention on the Law of the Sea (UNCLOS), the International Maritime Organization's safety and pollution standards, and regional agreements, all have provisions that should be directly reflected in Nigerian law. By doing so, Nigeria would improve its standing in maritime disputes, strengthen cooperation with international partners, and enhance its ability to enforce regulations on foreign vessels. Modernized laws could also introduce harsher penalties for violations, streamline procedures for vessel registration and monitoring, and clarify which agencies are responsible for what, creating a more efficient and transparent regulatory environment.

Consequently, the impact of comprehensive legal reform, would be felt across Nigeria's maritime ecosystem. Updating the laws, would lay the groundwork for better monitoring of foreign vessels, more protection for Nigeria's marine resources, and fairer conditions for Nigerian operators who compete with foreign companies in domestic waters. Through replacing outdated provisions with forward-thinking regulations, Nigeria could build a more attractive environment for responsible foreign investment, while maintaining strong control over its maritime domain. This revision process should be inclusive, with input from maritime stakeholders, including shipping companies, port operators, legal experts, and international partners, ensuring that the new laws, meet both Nigeria's needs and global standards.

Therefore, timely action is of the essence. A modern legal framework will be the foundation for stronger governance, better security, and sustainable economic growth in Nigeria's waters. Failing to update the laws, on the other hand, would only continue the problems of weak enforcement, non-

compliance by foreign vessels, and missed opportunities for economic development. With focused effort and strong political will, Nigeria can transform its maritime legal system into one that is equipped to handle the challenges of the 21st century, while protecting the nation's maritime interests.

5.2.3 Enforcement of Laws

Nigeria's maritime sector continues to face serious challenges, due to inconsistent enforcement of the laws that are supposed to regulate it. While there are legal frameworks in place like the Cabotage Act, the Merchant Shipping Act, and the SPOMO Act, their effectiveness is often limited by weak implementation. Foreign vessels operating in Nigerian waters, have learned to take advantage of these enforcement gaps, engaging in illegal activities like bunkering, unauthorized coastal trading, and environmental violations, because they know the risk of facing any real consequences is low. This kind of selective enforcement, weakens Nigeria's ability to assert control over its waters, and robs the country of much-needed revenue that could support its development.

It must be asserted that, one of the primary reasons for this inconsistent enforcement, is the lack of adequate resources for the agencies responsible for regulating maritime activities. NIMASA, the Nigerian Navy, and the Nigeria Customs Service, are all stretched thin, struggling with limited patrol vessels, outdated monitoring technologies, and a shortage of personnel to cover Nigeria's vast waters. Even when violations are detected, bureaucratic delays, a weak prosecution system, and corruption, often prevent offenders from facing proper consequences. In some instances, foreign vessels can escape penalties by exploiting legal loopholes, or using their connections to avoid punishment. This lack of

consistent enforcement sends the wrong message, which is that, compliance is optional, which only emboldens non-compliant operators to continue flouting the rules.

Thus, strengthening enforcement within Nigeria's maritime sector, requires a comprehensive and strategic approach. The first step, is to equip regulatory agencies with the resources they need, including modern surveillance technologies such as satellite tracking, drones, and automated systems that allow for real-time monitoring of vessel activities. Secondly, the legal process must be more efficient, ensuring that violators are prosecuted swiftly, potentially through the establishment of dedicated maritime courts. Thirdly, there must be better coordination between key agencies like NIMASA, the Nigerian Navy, Customs, and EFCC, to eliminate the gaps that foreign vessels exploit due to disjointed enforcement. Finally, enhancing transparency in the enforcement process, by making penalties and violations publicly known, would discourage non-compliance, and increase trust in the regulatory system.

The benefits of consistent enforcement would be felt throughout Nigeria's maritime sector. It would create a fairer environment, where both domestic and foreign operators, who follow the rules, can compete without the unfair advantage of those who bend or break the law. With better compliance, Nigeria could see an increase in government revenue from more effective collection of tariffs, fines, and licensing fees. Furthermore, stronger enforcement would enhance overall maritime security, helping to combat illegal activities like piracy, smuggling, and unauthorized fishing. Over time, Nigeria's reputation as a place with robust and reliable enforcement, would attract reputable shipping companies, while pushing out bad actors who thrive in weakly regulated waters.

Essentially, for Nigeria to truly become a leading maritime hub, it must stop just having strong laws on paper, and start actually enforcing them. This means, investing in better tools for monitoring, and more resources for the agencies in charge, and making sure the government stays strong in the face of pressure from violators. It is also about applying the rules fairly, without favouritism. Through making sure foreign vessels know they will face consistent and clear consequences for breaking the rules, Nigeria, can create a well-regulated maritime environment that boosts economic growth, strengthens national security, and supports sustainable development. The time for hit-and-miss enforcement is over; what Nigeria needs now is a firm and consistent commitment to enforcing its maritime laws.

5.2.4 Enhanced Maritime Security

Nigeria's maritime domain, is vulnerable to serious security threats that put foreign vessels at risk, and negatively affect the country's economy. The Gulf of Guinea, a key area for Nigeria, still suffers from high rates of piracy, armed robbery at sea, and illegal trafficking. These security issues stem from weak surveillance, enforcement, and cooperation between countries, allowing criminal groups to operate with relative ease. As a result, foreign vessels face increased risks like hijackings, crew kidnappings, and cargo theft, which lead to higher insurance costs, and delays in shipping.

Furthermore, the country's maritime security efforts, are hindered by gaps in both capability and coordination. Though, initiatives like the Deep Blue Project and naval patrols exist, limited resources, and outdated equipment keep them from being fully effective. Coastal radars, and satellite monitoring cover only parts of Nigeria's waters, leaving large areas unmonitored. The lack of information-sharing between key agencies like

the Nigerian Navy, NIMASA, and neighbouring countries' maritime forces, allows criminals to exploit gaps in jurisdiction. Without coordinated security measures, foreign vessels often pass through high-risk areas without proper protection, forcing them to rely on private security, which drives up costs.

It must be stated that, improving maritime security, requires a well-rounded approach that blends technology, skill-building, and international partnerships. Investing in advanced surveillance tools, like drones, AI-powered monitoring systems, and regional networks for maritime awareness, would greatly boost the ability to detect, and respond to threats more quickly. At the same time, Nigeria must strengthen its naval and coast guard forces, by upgrading patrol vessels, providing specialized anti-piracy training, and improving coordination for faster response times. The enforcement of the SPOMO Act, must be more rigorous, with the establishment of dedicated maritime courts to speed up trials and serve as a deterrent.

Also, regional cooperation is essential for long-term security. Nigeria should take the lead in reinforcing the Yaoundé Architecture, the Gulf of Guinea's multinational security framework, by improving intelligence-sharing, and carrying out joint patrols with neighbouring countries. Standardizing legal frameworks across the region, would close gaps that pirates and smugglers exploit when crossing borders. Additionally, working with international partners like the IMO, and regional organizations, could provide extra support to enhance Nigeria's maritime security.

Therefore, improving maritime security, offers more than just protection for foreign vessels. A safer environment would mean, lower shipping insurance costs, more international trade flowing through Nigerian ports, and growth in industries like fisheries, and offshore energy. With secure waters, it would be easier to monitor ships for safety and environmental violations, which would help prevent pollution and accidents at sea. Over time, Nigeria could go from being known for piracy, to being a leader in maritime security in West Africa, gaining the trust of global shipping companies and investors.

5.2.5 Inter-agency Coordination

As previously discussed in this work, Nigeria's maritime sector is facing a serious issue with the way its agencies operate. There are multiple government bodies, such as NIMASA, the Nigerian Navy, Customs, NPA, and the Marine Police, each with overlapping responsibilities. Unfortunately, instead of working together, these agencies often operate independently, which allows foreign vessels to exploit the gaps in regulation. This lack of coordination, leads to repeated inspections, mixed signals to vessel operators, and important information slipping through the cracks. These inefficiencies cause delays, create congestion at the ports, and hurt Nigeria's reputation as a trusted destination for maritime trade.

A major part of the problem is that, the system encourages competition between agencies rather than cooperation. Even though NIMASA is supposed to be the primary regulatory authority, other agencies, each with their own role, sometimes end up doing the same things without clear communication. The Nigerian Navy's security efforts, Customs' revenue collection, and NPA's port management, often overlap with NIMASA's duties, but there is no coordinated effort to bring all these functions

together. When foreign vessels come in, they may face different compliance standards depending on which agency they encounter first, making the process confusing, and opening the door for non-compliant vessels to take advantage of these inconsistencies.

Obviously, the lack of coordination between Nigeria's maritime agencies, creates significant problems for the sector. When one agency gathers important intelligence about suspicious vessels, but fails to share it with others, the ability to respond effectively to threats is weakened. Similarly, when Customs, and NIMASA, operate separate tracking systems, it becomes harder to collect revenue properly. For foreign vessel operators, the real frustration is the inconsistency in enforcement, that is, some agencies apply stricter rules, while others are more relaxed. This creates confusion, which can be exploited by vessels looking to take advantage of the gaps. In the end, these coordination problems damage Nigeria's credibility, and hinder its ability to present a unified, efficient regulatory system to the world.

Effectively, Nigeria needs to make both institutional and technological improvements. A National Maritime Operations Centre could be set up, where all relevant agencies work together, allowing for better communication, and quicker resolutions of any disputes. This would help streamline the enforcement process, and ensure that everyone is on the same page. Furthermore, integrating the agencies' systems into one unified platform, could make it easier to track vessels and cargo, reducing inefficiencies. A single platform for clearance and monitoring, would eliminate unnecessary paperwork, and ensure smoother, more consistent operations.

Evidently, improving coordination between maritime agencies, would greatly benefit Nigeria's maritime sector. Foreign vessels would face a more consistent, and predictable regulatory environment, reducing chances for non-compliance. Port operations would become smoother, with fewer duplicate inspections and conflicting requirements. Security would also improve, as agencies share intelligence, and plan operations together. Most importantly, better coordination would allow Nigeria to monitor, and regulate foreign vessel activities more effectively, closing the gaps that allow illegal activities to continue.

However, to achieve this, Nigeria needs strong support from all levels of government. Changes to existing laws and regulations, may be needed to clarify the roles of different agencies. Training programs focused on collaboration, should be introduced for all maritime staff. Agencies, should also be measured on how well they share information and work together. These steps, would help Nigeria move from a fragmented system, to one that is more efficient, and effective, at managing foreign vessels while protecting the country's maritime interests.

6.0 SUMMARY OF FINDINGS

The essence of this paper is to explore, and assess the legal framework that governs how foreign vessels operate within Nigeria's maritime domain. The paper examined the international conventions, Nigerian maritime laws, and regulatory instruments, which define the rights, responsibilities, and liabilities of these foreign vessels in Nigerian waters. Consequently, the study uncovered several important findings that shed light on both the strengths, and shortcomings, of the current legal and regulatory landscape.

The paper further identified key areas where the implementation of cabotage laws has fallen short, particularly in the enforcement of restrictions on foreign vessel participation. These hurdles continue to hinder the growth of Nigeria's indigenous maritime industry, and weaken the overall effectiveness of the cabotage regime.

This research discovered that, although Nigeria has ratified key international maritime conventions such as the UNCLOS, SOLAS and MARPOL and established national laws like the Cabotage Act, Merchant Shipping Act, and the NIMASA Act, our laws still overlap and lack harmonisation with the International Conventions. For instance, while the UNCLOS under articles 17 to 19, grants foreign vessels the right of innocent passage in territorial sea, Nigeria's Cabotage Act under section 3, restricts foreign vessels from operating in domestic waters, creating tensions between international standards and domestic laws. Also, Nigeria's maritime laws, especially the Cabotage Act and Merchant Shipping Act, fall short of international standards. While Section 3 of the Cabotage Act limits domestic trade to Nigerian-owned vessels, the frequent abuse of waiver provisions in sections 9–11 undermines the Act's protective intent and weakens compliance with fair competition under international law. The Cabotage Vessel Financing Fund (CVFF) under section 42 has also been poorly managed, failing to support local shipowners as intended. The Merchant Shipping Act, lacks key provisions like dual registration and the fines under section 23 (3) of the Merchant Shipping Act, are relatively too low and this makes it difficult for foreign vessels to comply with our domestic laws. The interaction between international laws and Nigerian domestic laws therefore reflects inconsistencies and weak alignment.

This paper reveals that many of Nigeria's key maritime laws, such as the Merchant Shipping Act and the Cabotage Act, have not kept pace with today's maritime realities. Some provisions are too weak to be effective, with penalties so low, like fines of just ₦100,000 (\$63), that they fail to deter violations. However, the funding structure of the CVFF, which has left indigenous shipowners uncertain and unsupported for over two decades. In addition, the broad discretionary powers given to the Minister of Transport create opportunities for misuse and weaken transparency. These outdated laws discourage the growth of the Nigerian shipping industry.

7.0 CONCLUSION AND RECOMMENDATIONS

To strengthen the legal framework for foreign vessels in Nigeria, based on the findings in this research, the following measures are proposed:

This paper recommends that Nigeria undertake a legislative review to harmonise its domestic maritime laws with international standards. The Merchant Shipping Act and specifically, the waiver system under sections 9-11 of the Cabotage Act, should be amended to align with Articles 17 to 19 of the UNCLOS and international best practices by closing waiver loopholes, improving CVFF management, and introducing provisions for dual registration under the Merchant Shipping Act. This is to ensure stricter adherence for foreign vessel participation. While vessel registration processes under the Merchant Shipping Act, can be adjusted to align with the registration processes under the IMO standards. Amending these provisions will not only close loopholes, but will also ensure stronger enforcement of the UNCLOS and other international maritime laws, which is essential to boost safety, protect the environment, and enhance Nigeria's global maritime credibility.

To reduce the economic and security risks posed by foreign vessel dominance, the Nigerian government should strictly limit the issuance of cabotage waivers and prioritize support for indigenous shipping operators through access to funding, tax incentives, and capacity-building programs. Strengthening local participation will not only retain economic value within the country but also improve national oversight of maritime activities. Additionally, investing in advanced vessel monitoring systems and inter-agency cooperation will enhance maritime security and ensure better regulation of both local and foreign vessel operations.

This study has critically examined the legal frameworks governing the status of foreign vessels in Nigeria, underscoring its alignment with international standards and the challenges inherent in its enforcement and practical application. While Nigeria has a robust array of legal instruments regulating maritime affairs, it is evident that issues with enforcement, regulatory overlap, and maritime insecurity, continue to hinder the regulation of the activities of foreign vessels. Addressing these shortcomings, is necessary for Nigeria to fully harness the economic potentials of its maritime domain and to ensure that, foreign vessels operate under a clear, predictable, and secure legal regime. A reformed and strengthened legal framework, will not only attract more foreign maritime investments, but will also position Nigeria as a competitive maritime hub in West Africa. Ultimately, by bridging the gap between international obligations and domestic realities, this study provides a pathway for Nigeria to create a balanced regulatory environment, which safeguards national interests, while encouraging foreign participation. Implementing the recommendations set out in this study, will not only strengthen Nigeria's legal and institutional frameworks, but will also promote sustainable economic growth and maritime security in the country.