



# NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES LAGOS, NIGERIA



## ROUNDTABLE ON THE STRENGTHENING NIGERIAS' MARITIME RIGHTS: IMPERATIVES FOR ACHIEVING GLOBAL STANDARDS

13th July, 2010

### COMMUNIQUE

#### Introduction

Statistics show that approximately two-thirds of the earth's surface is covered by water and Ninety percent of international trade is sea borne, whilst about eighty five percent of fossil fuel is derived offshore particularly on the continental shelf. The regimes of the seas as provided under the Law of the Sea confers certain rights on littoral States, that is, nations abutting the seas; geographically disadvantaged States, such as shelf locked States and land locked States. Whilst these rights inhere in the States, each State nevertheless, must muster the political will and purposive effort to ventilate these rights through conscious maritime economic policies and strategies pursuant to availing themselves of the windows of limitless potentials of the seas for economic growth and sustainable development.

Nigeria as a nation is endowed with a vast coastline as well as navigable inland waterways and is strategically placed on the Atlantic Coast of West Africa. For it to reap a bountiful reward from its maritime industry in promoting interregional and international trade, its maritime resources has to be properly harnessed. Nigeria is the sixth largest producer of crude oil in the world and also has some world's most prolific gas reserves which have only been recently exploited. The country is also rich in natural resources and agricultural produce. Most of these products are exported to international markets by sea where they are sold and foreign currency earned to ensure the country's developmental objectives. A virile and well organized maritime industry is therefore very important to facilitate Nigeria's international trade.

In view of the foregoing the Nigerian Institute of Advanced Legal Studies, under the auspices of its Olisa Agbakoba Centre for Maritime Law, organized a Roundtable on the Strengthening Nigeria's Maritime Rights: Imperatives for Achieving Global Standards. Participants and discussants at the roundtable were from the Nigerian Navy, the Nigerian Customs, the shipping companies, the academia, the Maritime Arbitration Association, lawyers and members of the public. Perspectives for the Roundtable include: Overview of the legal and Institutional Framework of the Nigerian Maritime Industry, the Maritime Industry in Nigeria as a Tool for Economic Development, the Role of the Nigerian Maritime Industry in promoting International Trade, Promoting Domestic and international Arbitration in the Maritime Industry, New and Emerging Developments in International Maritime Regulation and Issues and Current Trends in the Global Shipping Market.

#### Observations:

The Roundtable made the following observations:

1. At the international level, the regulation of shipping is done through the International Maritime Organization, (IMO), which Nigeria became a member in 1962. In order to achieve its objectives, the IMO has promoted and adopted about 54 Conventions and Protocols, which every ratifying State is obliged to put into effect by making its requirements part of its national law and also put in place proper legislative and administrative machineries to ensure its enforcement.
2. The Nigerian Maritime Administration and Safety Agency (NIMASA) , formerly known as the National Maritime Authority (NMA) is the agency of the Federal Government established for the regulation of maritime activities and the implementation of both the international conventions relating to the maritime industry which Nigeria has adopted and the local laws and regulations on maritime activities.
3. With the passage of the Merchant Shipping Act of 2007 (MSA), which repealed and replaced the former Merchant Shipping Act of 1962, most of the International Conventions and Treaties on shipping which have been passed by the IMO and acceded to by Nigeria were incorporated in the new law, thereby making Nigeria's maritime laws at par with what obtains internationally.
4. The role of the Nigerian Ports Authority (NPA) as the administrator of all the ports in Nigeria is critical to the efficient operation of Nigeria's maritime industry and the promotion of international trade.
5. Over the years, decay in port infrastructure lack of regular dredging of channels and berths, and poor cargo handling facilities have meant Nigerian ports have become uncompetitive internationally and hampers international trade.
6. The recent privatization and concessioning of some of our ports by the government have brought notable reforms such as economic growth, encouragement of foreign direct investment, bountiful financial returns to the Federal Government, better efficiency in Apapa Port cargo handling, etc,. However, several Nigerian ports are still underutilized such as Calabar, Warri and Port Hacourt, while the ports in Lagos are over utilized and frequently witness ports congestions.
7. The issue of safety and security of vessel on our territorial waters and ports deserves to be addressed. Nigeria has the second highest record of piracy and armed robbery incidents in the world coming only behind Somalia. This has resulted in increased freight and insurance charges. The problem of kidnapping in Nigeria also negatively affects foreign investment in the country.
8. The proper functioning of the Inland Container Depots (ICDs) depends crucially on a well developed multimodal transport system combining the various modes of transportation of sea, land and rail. The overdependence on road haulage of containers as a result of the collapse of our rail system and the impenetrable inland waterways are undesirable.
9. There are too many bottlenecks characterizing the clearance of goods which can be discouraging to importers and foreign investors.
10. Part of the activities of the Navy is the enforcement of international instruments like the law of the sea, maintaining standards of shipping and navigation in the Nigerian waters, provision of hydrographic maps and constant patrol of the maritime environment. The Navy personnel provide security at the shipping environment, especially because of the problem of kidnapping in the Niger Delta, which has caused most of the industries in the area to relocate.
11. The ports are the gateway for inward and outward movement of goods. The Customs service has a lot to do regarding what happens in the maritime industry. Customs has a role as collector of revenue and also functions in terms of security. The Eastern and Western Marine Unit of the Navy, have the functions of preventing smuggling through the waterways and examining cargo brought in. They have also contributed in the economy by preventing dumping of goods.

12. Nigeria is no longer a ship owning Nation. The Nigerian National Shipping Line (NNSL) has gone into liquidation, and presently, all the vessels that ply our waters, are all foreign vessels. A ship owner or merchant in one country wants to be sure that the same set of laws, rules and regulations which regulate his operations in his country which he is familiar with will equally apply when he sails his ship to another port.
13. The acute dearth of vessels owned, built, and managed by Nigerians has made the implementation of some of the provisions of the Cabotage Act 2003, especially on waiver and licence, impossible and also resulting in neglect in development of manpower capacity.
14. Maritime arbitration offers the option of privately resolving international maritime disputes outside the national court system. Its advantages include: attraction of foreign direct investment, sustenance of high level of local direct investment, cost effectiveness, timeliness, privacy, confidentiality, etc.

Recommendations:

At the end of the Roundtable, the following recommendations were made:

1. The Federal Government through the appropriate agencies should look into the causes of bottlenecks that characterize clearance of goods in our ports which can be quite discouraging.
2. It is important that security in the maritime environment is given serious attention in order to bring to an end the bad image the country has acquired in the international forum. In addition an immediate solution should be found to abate the incessant kidnappings going on in the country.
3. The problem of incessant congestion of the Lagos Apapa Port, while other ports like Calabar, Warri and Port Harcourt remain underutilized requires urgent attention.
4. Conditions for grant of waiver and licence should be made more stringent to discourage the easy grant of same to, at least wholly owned and crewed foreign vessels. There is no need to require Nigerian owned vessels to pay any fees for waivers in respect of manner and place of building.
5. While controversy is raging on the Maritime Security Agency (MASECA) 2009 Bill, the National Assembly should take a quick decision on whether or not to pass the Bill bearing in mind that it is not the name or designation of the agency charged with the responsibility for improving the security of our territorial waters that matters. What matters is how well the body is equipped and empowered to carry out its functions effectively.
6. There is need for a review of the Cabotage Act, 2003 in order to make it practicable. In addition, all the laws affecting maritime in Nigeria should be interfaced and harmonized so as to appropriately complement each other.
7. The National Inland Waterways Authority should be more alive to its statutory duties, and dredge our waterways to allow for large ships to ply them.
8. Government should revamp the entire rail system in Nigeria, so that rail transportation will take its place as the preferred means of transporting bulk cargo to and from the Inland Container Depots (ICDs).
9. To improve on maritime arbitration, the following were recommended:
  - a. States should repeal the old arbitration laws and enact new laws as was done by Lagos State, which enacted the Lagos State Arbitration Law, 2007 to meet up with international standards.
  - b. Our courts need to apply the provisions of the New York Convention and also appreciate that time is of essence in arbitration matters.
  - c. There is need to improve on the perception of corruption in our system which undermines the appointment of Nigerian arbitrators in cases involving foreigners.
  - d. Our infrastructures like airport facilities, environment, roads, electricity, etc. need to be given appropriate face-lift.

Lagos, Nigeria.  
13<sup>th</sup> July, 2010.

*Signed:*  
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*Director General*