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CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
1.	SOCIAL NETWORKS IN THE ERA OF MOBILE DEVICES: THE SIMULATION OF PRIVACY <i>ALEX J. CAMACHO-MARTÍNEZ, EDGAR FERRER-MORENO, ISABEL RIVERA-RUIZ & ANGEL OJEDA CASTRO</i>	1
2.	THE BEST PRACTICES FOR SOCIAL MEDIA, THEIR CONSUMERS, AND REGULATORS <i>APPALAYYA MEESALA, VANI, H. & MUTYALU NAIDU, MURRU</i>	5
3.	REVISITING BRIC ECONOMIES: TESTING STOCK MARKET INTERDEPENDENCE: COMPARISON BETWEEN PRE AND POST CRISIS PERIODS <i>TARUNIKA JAIN AGRAWAL & RAHUL AGRAWAL</i>	10
4.	IMPACT OF FDI ON S & P NIFTY INDEX <i>H NANJEGOWDA & ABDUL HALEEM QURAISHI</i>	15
5.	CULTURAL FACTORS INFLUENCE EFFECTIVE KNOWLEDGE MANAGEMENT <i>FASEEHA BEGUM & DR. C. SWARNALATHA</i>	20
6.	ROBOTICS IN NURSING <i>DR. JANET. J</i>	24
7.	COMPOUND EXPONENTIAL LIFETIME DISTRIBUTION-II AND ITS APPLICATIONS <i>G. SIRISHA & R.J.R.SWAMY</i>	28
8.	A STUDY ON ETHICS AND CHALLENGES IN ORGANISED RETAIL IN INDIA <i>DR. MARUTHI RAM.R, MANJUNATHA.N. & VINISH.P</i>	36
9.	UNDERSTANDING HUMAN FACTORS THROUGH HUMAN FACTOR ANALYSIS AND CLASSIFICATION SYSTEM (HFACS) CAUSING AVIATION INCIDENTS / ACCIDENTS <i>DR. ASHUTOSH SHUKLA</i>	39
10.	MERCHANT BANKING: A BOON FOR THE INVESTORS! (WITH REFERENCE TO REGULATIONS AT SEBI IN INDIA) <i>CHALUVADI.B.V.L.SUDHEER, Y.JAYARADHA SANKAR & ISAAC NAVEEN DEEP</i>	43
11.	AN INSIGHT INTO THE RECENT TRENDS IN FDI: AN ANALYTICAL STUDY WITH SPECIAL REFERENCE TO BRICS NATIONS <i>DR. MOHD ASIF KHAN & NISHA KM</i>	46
12.	A COMPREHENSIVE STUDY ON NETWORKING ISSUES <i>R. ANURATHA & DR. M. GANAGA DURGA</i>	54
13.	A STUDY OF THE IMPACT OF MICRO FINANCE ON THE EMPOWERMENT OF RURAL WOMAN IN INDIA <i>DR. P. SEKAR</i>	57
14.	COMPARATIVE ANALYSIS OF BROADBAND SERVICES IN TWIN CITY: AIRTEL Vs. OTHERS <i>DR. S. K. PATIL</i>	60
15.	AN EFFECTIVE STUDY ON CAUSES AND PREVENTIONS OF CURRENCY FLUCTUATION <i>RAJSHEKAR, M.ABDUL RAHAMAN, M.JAMMANNA, M.SRIKANTH & B.VENKATESH</i>	65
16.	AN EMPIRICAL STUDY ON STAY INTERVIEW: A SPECIAL EMPHASIS ON WORKING ENVIRONMENT CASE OF ABC HOTEL HUBLI <i>KIRAN AMBEKAR, DR.RAMANJENEYALU & TEJASWINI PATIL</i>	68
17.	A CRITICAL APPRAISAL OF NIGERIAN CABOTAGE POLICY, REGULATIONAL FRAMEWORK, EMPLOYMENT PROSPECTS AND WAY FORWARD <i>OBED B.C. NDIKOM & BUHARI SODIQ .O</i>	74
18.	FOREIGN DIRECT INVESTMENT INFLOW IN INDIA <i>SARWAN KUMAR</i>	79
19.	ASSESSMENT AND MANAGEMENT OF FLOOD HAZARD, DIGARU RIVER CATCHMENT ARUNACHAL PRADESH <i>RINKIOLU CHAI</i>	85
20.	EVALUATING THE PERFORMANCE APPRAISAL SYSTEM (PAS) OF SENIOR LEVEL EXECUTIVES WITH REFERENCE TO INDIAN CEMENT INDUSTRY <i>SHANKAR K.JHA</i>	90
	REQUEST FOR FEEDBACK & DISCLAIMER	94

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A CRITICAL APPRAISAL OF NIGERIAN CABOTAGE POLICY, REGULATIONAL FRAMEWORK, EMPLOYMENT PROSPECTS AND WAY FORWARD

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ABSTRACT

This paper review the characteristics, nature, trends and structural overview of the Nigerian Cabotage policy regulational framework, employment prospects and wayforward of an act that was established to protect the local shipowner and restrict the carriage of local generated cargo to them aimed at eliminating the long-aged problem of overstretched foreign domination in our shipping industry. It was perceived that the Cabotage Act 2003 was conceived in good faith and aimed at awakening indigenous ship operation and ownership in the maritime business environment. It is very unfortunate therefore that, even up till now, eleven (11) years after, the problem of foreign domination still persists. Hence, the law is operational on paper but not in practice, and the condition of indigenous ship-owners seem worse than it was before the cabotage regime. Therefore, effort shall be made to critically x-ray the present operational modalities of cabotage in Nigeria and its foreign dominational effects on port's industry and national economy.

KEYWORDS

Cabotage Act 2003, Regulational Framework, Employment Prospect, Way forward, Ship-owners, Foreign domination and Maritime/Shipping Industry.

INTRODUCTION

Cabotage means inland trade along coastal waters. It is the trade along a country's coast; the transport of goods or passengers from port to port in the same country. It is expected that, the vessels so moved on coastal waters are built, owned, registered and manned by the nationals of that country. It also involves the provision of transport services between two points within one and the same nation's state. But it is very obvious that, the coastal trade is guided by international conventions and rules which govern general maritime operations (Ndikom, 2011). It should be noted that, the Nigerian cabotage law is vessel-based one, which, therefore, is similar to what operates in most countries of the world, including the United States, Brazil and Malaysia. Cabotage law is principally a protective law that safeguards local shipping interest in the carriage of locally generated cargo, mostly dry cargo, which are of agricultural extraction. The law restricts the participation foreign shipping companies in the carriage of locally generated cargo (Ndikom, 2011). Obviously, the functioning and operational modalities of cabotage in the United States are quite distinct from the Nigerian cabotage law concept. Really, taking due account of inadequate indigenous capacity, the Cabotage Act, 2003 advocates a liberal policy, using the internationally recognised waiver system. The waiver principle as provided by the Act, is based on non-availability of Nigerian-owned, crewed and built vessels. The objective of the Cabotage Act, is primarily to reserve commercial transport of goods and services within Nigerian Coastal and Inland waters to vessels flying the Nigerian flag and owned by Nigerian citizens. The law also has the objective of securing priority for Nigerian nationals, companies, seafarers, local fishermen, vessels and dockyards in providing services for the nation's inland water shipping (Ihenacho, 2005). This Act seeks to restrict the use of foreign vessels in domestic coastal trade, to develop indigenous tonnage and establish a cabotage – vessel financing fund. Moreso, the law is significantly meant to transfer a higher technological initiative from foreign operators to indigenous owners. It therefore means that, for such a transfer of technology to happen, the new shipping environment must provide enough room to accommodate them (foreigners) for a long time and that local stakeholders should be able and ready to learn the technical skills which these foreigners would transfer at the community and local operating levels. This is fundamental to grassroots economic development and nation building. The restriction of such lucrative trade to local and community operations is in the process of lifting locally generated dry cargo through this Act. This gives the latitude for growth and development at the national level and the transformation of grassroots economy (Ihenacho, 2005).

Over the years, there was clear evidence that the operational modalities of the shipping industry was bedeviled by over domination of foreign shipping companies and their attendant allied interests in the carriage of local generated cargo to the detriments of our local shipping company, stakeholders, which was not in the best for the operations of a developing economy like Nigeria to a large extent (Ndikom, 2011). The Cabotage Act was conceived in good faith and aimed at awakening indigenous ship operation interests and vessels ownership in the maritime business environment. The applause that greeted the pronouncement of a Cabotage law in Nigeria in 2004 was overwhelming, as it was seen as a welcome development and an assured hope of redressing the ills associated with foreign domination in the industry. It is very unfortunate, therefore, that even up till now, eleven (11) years after, the problem of foreign domination still persist. Hence, the law is operational on paper, but not in practice and the condition of indigenous shipowner's seem worse than it was before the Cabotage regime. This is why, it is very necessary to really develop a wholistic reform measures that are aimed at overhauling operational and service modalities as provided by this protective and restrictive policy with regard to local shipowner in the industry (Ndikom, 2010).

The level of sustained media campaigns that greeted the introduction of the cabotage law, sponsored by the shipping industry, in 2004 was a demonstration of the renewed and assured hope that the problem of foreign domination of local lifting of cargo would soon be over. Regrettably, however, more than eleven (11) years after the enactment of the cabotage law, there is still foreign domination in the operational and managerial workings of the shipping industry in Nigeria (Ndikom, 2007).

CHALLENGES OF CABOTAGE ACT 2003

Cabotage in Nigeria is governed by the Coastal and Inland Shipping (Cabotage) Act, 2003. The etymology of the word cabotage is the Spanish word 'cabo' or cab which simply imply 'maritime circulation at short coastal distances'. In Nigeria, the Act was enacted on 30th April 2003, with an obvious stipulation that foreign vessels are not allowed to partake in any domestic coastal trade, just as it is obtainable in the developed countries of the world; it is to be development of indigenous tonnage and an establishment of a Cabotage vessel financing fund (CVFF). The law stipulates that, Nigerian should carry goods and passengers by vessel, or any other mode of transport, from one place to another, either directly or via a place outside the country. It further stipulates that, only vessels wholly owned and manned by Nigerians should be engaged in the domestic carriage of cargo and passengers in coastal inland waters, or any point within the waters of the exclusive economic zone of Nigeria. Thus, except a foreign vessel is given waiver by the minister of transport to carry out such job, she must stay out of

Nigerian inland waters. But eleven years after, the law was enacted; most of the provisions of the law have not been implemented. Rather, waivers are being granted to foreign shipping companies to do jobs which Nigerians should do, even against the letters of the law (Ndikom, 2011). On the average, the government is conscious of the factors that contribute to the failure of its many initiatives and intends to learn from the mistakes of yesteryears; hence, it intends towards the success of the cabotage regime. Rather than the absence of policies, the government lacks the political will and strong commitment to enforce its policies; and this is one of the fundamental challenges of a successful cabotage regime in the country (Ndikom, 2011). In fact, effective enforcement has been identified as the bane of good legislation in Nigeria. It is hoped that, the Cabotage Act does not suffer this same fate. Extensive and practical enforcement provisions are provided in the Act in order for the country to achieve its laudable objectives. It has provisions to curb, if not completely eliminate, subversive practices by stakeholders (Ndikom, 2006). Ship ownership criteria are indeed very rigorous and any contravention of these provisions is also criminalized in the Act. It would therefore be quite difficult to have respectable citizens lend their names as fronts for foreign ship owners. Nigerians are thus advised to take counsel from their lawyers before permitting the use of their names to hold shares in trust for persons not eligible to own specified categories of cabotage vessels. This is where Nigerian operators should borrow a leaf from the Maritime Cabotage Task Force in the United States of America on effective monitoring of compliance with the Act (Ndikom, 2011).

CABOTAGE: AN OVERVIEW

Cabotage is a legislative tool restricting access to or reserving maritime or aviation trade within a country's territorial jurisdiction to local capacities. The Nigerian Cabotage Act was introduced in 2004, following calls by prominent maritime professionals and operators on the need for government to really harness the indigenous maritime capacity and utilise the abundant opportunities in the sector for the benefit of the Nigerian people (usually in the grassroots), and to reverse the trend of foreign domination. Hence, the intention of government in introducing the cabotage regime is to encourage the development of the maritime industry through an interventionist scheme aimed at boosting local capacity in the face of choking external competition and domination. Cabotage is a practice of coastal trading worldwide, and is over 100 years old; it is a contemporary economic approach of justifying intervention of this nature, to really induce some determined results – as against the classical economic approach of free market forces – and it is an acceptable tool for achieving set economic goals, especially where competition is unfair and dominance is prevalent (Ndikom, 2011). Cabotage practice worldwide, both in maritime and aviation industries, is often induced by diverse factors, such as the reservation of all or part of national market opportunities for national flagships or aircraft, for political, socio-economic, geo-cultural and security reasons (Ndikom, 2011). Regrettably, the released operating guidelines for the implementation of Cabotage have certain abnormalities in them. There is need to really adjust these guidelines, as some of the tenets are an aberration to known international maritime conventions (Ndikom, 2004). Obviously, the **waiver power vested only in the Minister of Transport** as at the point of its enactment, which empowers him to act without the advice of professionals and technocrats in the industry, for example, should not be so in a developing nation's state like Nigeria (Ndikom, 2011). This is because, waiver powers within the confines of the Cabotage operational business environment are technical issues so to speak, which may not be fully understood by the Minister himself, as he often lacks both the professional and technical knowledge to do so. Here, there is serious need at this critical point in time of our development to set-up a high-powered technical committee to really support the Minister in this regard, as this will give credibility, credence and tonic to the operational performance of our kind of Cabotage law in Nigeria (Ndikom, 2005).

Also, age-restriction on operational vessels, as imposed by the cabotage regime, is not fit to be in the guideline and should, therefore, be reconsidered (Ndikom, 2004). Beyond the operating guidelines embodying the objectives and general principles of the Cabotage regime, many observers in the maritime industry, question the safety of the environment within the confines of the regime (Onwukwe, 2005), as there seems to be little or no marine protection policy in the law. The content of the cabotage law is insufficient in this regard, especially as relating to the protection of inland waterways. Moreover, it has been expected that, the law would consider the diverse potentials of the indigenous maritime market, as an ongoing cultivation of indigenous marine resources through a well thought-out deliberate policy of protection, exploration and management (Ndikom, 2006). It is important that, Nigeria evolves and strengthens its environmental laws, as the latter are veritable factors for sustainable development in the maritime structure. The place of Cabotage and indigenous participation in the maritime trade within the inland and territorial waters must be viewed not just in relation with the movement of goods and persons by ships, but also in terms of the maintenance of the waterways, which are the primary infrastructure of the maritime industry. There is need to adopt a comprehensive development plan on maritime resources so as to produce far-reaching results – with regard to productivity and efficiency (Onwukwe, 2005). It is important to really note that, the management and performance of the Cabotage regime in Nigeria is basically anchored on the following "four pillars", which are:

- Nigerian citizens must wholly own Cabotage vessels.
- Cabotage vessels must be registered in Nigeria.
- Cabotage vessels must be manned by Nigerian's citizens.
- Cabotage vessels must be built at Nigerian shipyards.

REGULATIONAL OPERATION'S FRAMEWORK OF NIGERIAN CABOTAGE ACT 2003

It is common knowledge that the primary objective of Cabotage is to reserve the commercial transport of goods and services within the Nigerian coastal and inland waters to vessels flying the Nigerian flag and owned by Nigerian citizens, in conformity with the tenets of the law. Hence, the take-off of the Cabotage law in May 2004 was greeted with mixed feelings by operators and the international shipping community (Ihenacho, 2005). But there was a delay in the release of the guidelines, which gave some bleak signal as to the operational inabilities of the concerned authorities to manage a policy which other nations have successfully managed and used to promote their local shipping/maritime industry when the guidelines were finally launched, it was discovered that, there were some irregularities, which could create bottlenecks in the operational performance and enforcement. Thus, since the law came into effect, there has been a hill in the operational performance of the local shipping industry, a situation which was not envisaged by government while the Act was being prepared (Ndikom, 2006).

Moreover, it is claimed that, there is some sort of marginalization of local shipping operators, with regard to the carriage of local cabotage content; that, there is continued foreign domination, as against local shipping operators; that, there is noticed inefficiency in the concerned government agency that should enforce the law, and so on. Insufficient sensitization campaigns about its takeoff date and operational modalities made the Nigerian shipping community to nurture doubts and fears about the entire cabotage issue at the end (Ndikom, 2006). The point here is that, the government, guided by the Act and with tremendous input from the industry, indeed produced an implementation of the law, the guidelines set out in great details the expected procedures for different categories of registration, ministerial waivers, enforcement, cabotage vessel financing, fees and tariffs. Beyond involving a wider array of key players in the Ministerial Committee, the Federal Ministry of Transport is actively and continuously engaging every sector of the economy, and government ministries and agencies are directly and/or indirectly connected to the Act. It has to be emphasised once more that, the success of the cabotage regime depends on everyone (private sector operators and government) (Ndikom, 2006).

Obviously, the release of the operational guidelines of the Cabotage regime was greeted with much misgivings from stakeholders and operators, who had already lost faith in the law and its ability to favour local operators and stakeholders. Furthermore, the cabotage law has some fundamental problems and complications, which makes the foundation somewhat faulty. The abnormalities of the guidelines include:

- (a) Too much waiver powers vested in the Minister –waiver powers should be a matter of technicality; and most Ministers in Nigeria are not professionally competent.
- (b) Arbitrary/unconditional age limit of 15 years for operational vessels.
- (c) Possibility of double registration of vessels by Nigerians/local shipping operators under the cabotage regime.
- (d) Application of 2% charge for Cabotage vessel financing funds (CVFF).
- (e) Payment of \$50,000 fees as waiver on ownership.
- (f) Clarity of enforcement authority to defaulters on the tenets of cabotage law.

- (g) Lack of local training arrangements for ship operators by NIMASA (a government regulatory agency).
- (h) Faulty bidding process and unstreamlined contract awards by the Petroleum Price Monitoring Committee (PPMC) and the Nigerian National Petroleum Corporation (NNPC).
- (i) Lack of enough provisions on enlightenment/education of all stakeholders.
- (j) Lack of a private – public implementation committee for the cabotage law.
- (k) Lack of incentives to aid and empower Nigerians in the industry.
- (l) Options of first refusal by Nigerian operators for any intended award of new contract. There is need for a Nigerian operator indicates his ability to carry on with the contract or not. It is on this basis of first refusal option that a foreign vessel or operator can be allowed to carry on with the contract in conformity with the tenets of the Cabotage Act.
- (m) Inadequate vessels, which is a major problem that may affect smooth operation of the Act.
- (n) Inadequate manpower and expertise.
- (o) Inadequate firefighting equipment.
- (p) Lack of joint venture partnership amongst stakeholders in the industry (Ndikom, 2011).
- (q) Lack of enough funds and logistic chain support for indigenous stakeholders.

EMPLOYMENT PROSPECTS OF NIGERIAN CABOTAGE ACT, 2003

Obviously, Cabotage law is often seen as the foundation of domestic maritime industry growth pillars and development anywhere in the world. If well implemented, it could evolve into the largest and most vital sector in the Nigerian merchant marine and a key link in the nation's intermodal transport network. Cabotage provides safer, reliable, efficient and cost effective transport options for Nigerian shippers, efficient maritime infrastructure and, of course, a vital role in the nation's economic and national security (Ndikom, 2011). Really, there was the need to put in place a course of action that will create job opportunities and ensure a sound development or indigenous capacity and competencies, to enable the local maritime industry compete favourably with foreign shipping interests in domestic seaborne trade in the long and short-term and in the west and central African sub-regions. The problem of foreign monopoly over these years has deprived local operators a very good employment opportunity in seaborne trade (Ndikom, 2006). There is need to really arrest this age long problem of domination and employment denials through a well articulated home-grown Cabotage regime. Thus, when the cabotage regime was hatched, the prospects of employment creation for the nation's teeming youths was enlarged and hoped upon and soon after dashed. The regime also reduces the persistent and recurrent youth restiveness mostly in the Niger Delta, where the nation's crude resources are the richest. The full implementation of the Cabotage Act in line with the Jones Act of USA would offer sound employment opportunities to indigenous seafarers and artisans who hitherto had no employment. Foreign domination deprives indigenous operators their legitimate business in crude oil lifting (Ihenacho, 2005). It is obviously pertinent to state here that, a few common elements of Cabotage regime that will come to play in Nigeria are: ships would be built, owned, crewed and operated. The building and maintenance of modern coastal vessels of seaborne transport of cargo and passengers would mean the employment of Nigerian seafarers/seamen, masters, engineers, etc. These workers will be exposed to modern shipbuilding and ship repairs technologies (Ndikom, 2006). The fact that the ships must be Nigerian-crewed will also lead to employment opportunities for Nigerian seafarers to run and man the ships and for the cadets to obtain sea-time experience of Nigerian seafarers. Cabotage provides national training possibilities so that seafarers no longer rely on the training policies of foreign ship owners and manning agents. It also provides jobs for seafarers who, for various reasons (age, family etc), need to work close to home. Cabotage retains an employment based policy which is not dependent on the whims and caprices of the employers, who may decide to change crew nationality with little notice (Igbokwe, 2006). Moreover, it is expected that, more Nigerians will be employed in jobs that are directly related to the domestic shipping industry, providing materials required in dockyards and shipyards and meeting the needs of shipbuilding and maintenance industry. With more job opportunities for Nigerians, social unrest and vices, including those in the Niger-Delta, will be reduced. This is one of the basic merits of Cabotage (Aderson, 2000). Obviously, it is very clear that, for the way the operations of the Cabotage regime has been carried out for over eleven years now does not show any appreciable increase in employment opportunities for our teeming youths, seafarers and cadets due largely to non-shipping policy in place, and lack of managerial competence and political will in the management and operational control of the Cabotage regime in place. There is still continued perceived foreign domination in the carriage of our local generated cargo thereby demanding local ship owner's jobs meant for them and that has led to increase of unemployment of our youths, seafarers and cadets and continued idleness of most local ships which should not be the case at the end (Ndikom, 2013).

GAINS OF CABOTAGE ACT 2003 AND TRADE

As stated earlier, apart from the role of shipping as a strategic facility which supports international trade, its production process holds great promise for the realization of certain direct benefits through investments and other forms of economic activities. Such benefits may be in the form of monetary profit, job creation and technological diversification. Shipping, together with the port system, constitutes the largest and most important mode of international transport. In a free competitive market environment, where shipping functions are not constrained by the existence of artificial barriers, the shipping business alone has the same characteristics as any large exports industry.

For a developing country like Nigeria, investments in shipping may indeed serve as a means of stimulating economic growth through the potentials which would be created for exporting the fully delivered shipping services or other vital components of shipping production, such as competitive seafaring and manpower resources. Also, the country may derive substantial benefits from the following positive economic effects which shipping and trade are capable of engendering, such as:

- The substitution of domestically produced goods for imported shipping services, leading to possible foreign exchange savings on the trade import account.
- Export of domestically produced shipping services to third party end users, resulting in the positive balance of payment effects.
- Expansion of employment opportunities within the economy, together with the possibility of exporting the professional services of seafarer whose capacity may be considered surplus to local requirements. There is no reason Nigeria cannot, for instance, develop an industry for the supply of seafaring manpower to third party ship owning nations for the consideration of their earnings to be re-disbursed into the nation's domestic economy - the Philippines economy is reported to earn as much as US\$3 billion annually from the remittances of their seamen who serve aboard foreign registered vessels (Ihenacho, 2005).
- Moderating and stabilizing the level and structure of freight rates apply to the country's international trade, deriving from the competition which is posed by domestic operators in the various shipping trades.
- It will also help to develop interest in dry cargo vessels, thereby encouraging exportation of dry cargo.

There are also significant indirect economic benefits from investments in shipping. These benefits may ultimately manifest in the derived multiplier demands which are created in association with the original shipping investments. These shipping multiplier benefits include the development of a virtual industry for the supply of ship stores, spares and provision. Thus, it is clear that from the economic perspective alone, there are very compelling imperatives which drive the proposition for increased participation of indigenous operators in the business of international shipping services. The argument about the requirement to safeguard national security through ensuring continuity of the nation's trading commitments, using national resources to develop Nigerian flagged deep-sea fleets, thus, becomes overwhelming.

Assuming that our shipping industry's development journey so far involves a progress up to the promulgation and enforcement of the cabotage regime, we may be considered as being nominally successful; thus, beyond the Cabotage law, we must seriously look at the next logical process which would, in a very short time, lead to greater involvement of indigenous operators in the business of international ocean shipping services on a commercial basis (Ndikom, 2006).

WAY FORWARD AND RECOMMENDATIONS

Capacity building is important in the manning, ownership and operations of ships in cabotage trade. Without the acquisition of a ship, a local operator would not be able to build local capacity in the art of technology transfer, and also in the technicality and management of ships. The Cabotage Act does not seem to facilitate new business opportunities for local operators, who suggested the way forward was for long-term carriage contracts of locally generated cargo to members, tax incentives and customs duty rebates to be granted to buyers of ships and ship spare parts, and the removal of payments into the cabotage vessel financing fund (Igbokwe, 2006). It is important that government train and retrain maritime workers in the practice of shipping and genuinely implement the Cabotage Act. Igbokwe's position is that, for Nigeria to be self-sufficient in the maritime industry as intended by the Act, the country should look, from the macro level, at human capacity development for the sake of manning, shipbuilding and ownership from the scratch.

The government must give time to human development - it often takes more than 20 years to master the art of ship building - and not limit itself to the oil and gas sector at the expense of commercial shipping; it is a very small fraction of the maritime industry that the oil and gas sector uses for its logistics (Igbokwe, 2006). Government's repeated call for the continued stay of foreign shipping companies in Nigeria and its nonchalance towards the country's self-sufficiency in the marine industry are not helpful to the realization of the objectives of the Act. Due to this inconsistent behaviour on the part of government, foreign shipping companies believe that, foreign-owned ships are needed to run Nigerian economy. It is well known that, as the nation gradually develops its capacities the presence of foreign-owned, built and crewed ships would reduce and eventually disappear from the nation's maritime industry (Ndikom, 2006).

Consequently, the Act has not succeeded in improving on the low capacity of shipbuilding and repairs for cabotage vessels - the Act is also criticized for not specifically recognizing the importance and development of ship repairs, allowing tax relief and low or no import duties on materials (steel, etc) for building and repairing ships. Thus, the Act scores low on inducing local shipbuilding capabilities for increased tonnage. Therefore, it is right to recommend the following, to improve the operations and performance of the nation's cabotage law:

- The full implementation of the cabotage law within the confines of the Nigerian shipping industry will promote the development, maintenance, and expansion of an adequate and competent indigenous merchant marine fleet, as expected by the law.
- Full and proper implementation of the cabotage law will encourage effective and healthy competition among stakeholders, who would want to operate on a level-playing field.
- Full and proper policy implementation of the cabotage law will stimulate private and public sector investment in the development of the nation's maritime infrastructure, such as ports, inland waterways, intermediate connections, dredging of coastal and inland waterways and construction and repair shipyards.
- Full implementation of the cabotage policy will enhance national security in terms of external aggressions, as there would be available resources for the purpose of effective policing of the Nigerian waterways, and even combating pirates traversing Nigerian waters.
- The full implementation of the law will reduce foreign domination of the maritime industry, especially in the lifting of crude oil from Nigeria. It will also:
 - restrict the fundamental operational modalities of the cabotage shipping content to local indigenous operators.
 - contribute to general development of maritime facilities.
 - increase indigenous participation in the carriage of local shipping content in conformity with international rules and regulations.
- Full implementation of the cabotage law would help initiate ideas on the transfer of technologies to local operators and diversification of auxiliary and potential shipping business among core operators, in line with international rules and regulations.

CONCLUSION

Despite the fact that the importance of cabotage to an economy has long been recognized, indigenous participation in this sector is highly neglected in Nigeria. The Cabotage Act is a bold step towards resolving this anomaly. The use of legislation to achieve this has been noted, as well as the need for continued enlightenment of stakeholders, the beneficiaries of the law on its cost and implications.

The operational management and implementation of the fundamental principles of cabotage in Nigeria have been disjointed and a situation which has led to inept seafaring service provision. It has also widened the gap of unemployment within the system, even though the law should protect and provide for the nation's teeming youths. The lack of an operational shipping policy in Nigerian maritime landscape has contributed to an elongated foreign supremacy regime over the carriage of its locally generated cargo, despite consistent calls by indigenous shipowner for government to address the marginalization problem, ever since the cabotage law took off. In spite of the fact that the cabotage law has been in operation for close to eleven years now, the problem of foreign domination in our Nigerian maritime sector persists (Ndikom, 2006).

The sustained media campaigns that greeted the introduction of the cabotage law, sponsored by the shipping industry, in 2004 were a demonstration of the renewed and assured hope that the problem of foreign domination of local lifting of cargo will soon be over. But regrettably, the law only exists on paper and conditions of indigenous shipowners since it was introduced have only become worse (Ndikom, 2008).

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