LEAD DEBATE ON THE PROPOSED MARITIME OPERATIONS CO-ORDINATING (AMENDMENT) BILL

Sponsored by Hon. Abdussamad Dasuki

Nigeria being an integral member of the comity of nations is signatory to several maritime security and protection conventions such as the United Nations Convention on the Law of the Sea 1982, United Nations Convention Against Transnational Crime 2000, the OAU Convention on Prevention and Combating of Terrorism 2004 and the AU Charter on Maritime Security and Safety and Development in Africa 2016, to name a few.

It becomes imperative that the various Conventions be domiciled by active enactment of legislation encompassing the objectives of the Conventions. There is also a resultant need for legal and policy solutions requiring enactment of specific legislation in the maritime sector.

In the enforcement of the existing maritime protection laws (like the Cabotage Act) agencies like NIMA SA are inundated by challenges of logistics and equipment. Availability of manpower with the required skill set is also a constant challenge. Facilities and equipment for monitoring and enforcing of maritime laws are expensive and by no means within the financial and budgetary capacity of administrative agencies. Equipment such as amphibious aircrafts, patrols boats for offshore traffic areas are capital intensive both for acquisition and maintenance. The purchase cost and average annual maintenance cost of vessels as presently spent or incurred by the Nigerian Navy is expectedly high. This is coupled with the need to train operatives on the use of the equipment.

It is worthy of note that section 31 (3)(d) of the Cabotage Act empowers the Nigerian Navy to assist in the enforcement of the Act. This clearly underscores the recognition of the Nigerian Navy as a viable actor in the enforcement of Cabotage Act. Section 42(1) of the Cabotage Act creates the Cabotage Vessels Financing Fund while section 17 of the NIMASA Act, creates the Maritime Fund. The application and allocation of the resources from the Funds have been lopsided and a major issue for concern amongst stakeholders over the years. Section 17(2) of the former provides that monies in the Fund may be applied only for the purpose of furthering the objectives and functions of the Agency under the NIMASA Act. Undoubtedly, enforcement of the provisions of the NIMASA Act is an integral objective of the Agency. The practicality of enforcement makes the Nigerian Navy a prime candidate for enforcement and facts abound to show the operational capacity of the Navy in intervening and enforcing the Cabotage Act time and again.

The unmistakable absence of a single anti-piracy law makes enforcement of maritime protection law like the Cabotage Act and the NIMASA Act incredibly effective. Stakeholders have complained about the lack of proper legal framework and competent jurisdiction to try all maritime-related offences as factors responsible for the high rate of sea piracy and robberies on the waterways.

From available data, while the incidence of sea piracy is dropping in other territorial waters, it is increasing in Nigeria and the Gulf of Guinea. This is apparently worrisome given repeated warning by the International Maritime Bureau (IMB) that attacks by sea-borne bandits of the west Africa coast are on the rise in Nigeria. To compound the problems the United Nations Security Council reported that Nigeria was losing about $1.5b monthly due to piracy, armed robberies at sea, smuggling and fuel supply fraud as Piracy and armed robberies in the Gulf of Guinea are on the rise.

Between January and March 2016, several attacks were reported off Nigeria's coast. This involved armed pirates stealing cargoes of crude oil and petroleum products. Within the period, no fewer than forty-four ship crew members were also abducted.

In the first quarter of 2016, no fewer than fourteen commercial vessels were attacked in Nigeria's maritime domain. In six of these incidents, twenty-three crew members were kidnapped for ransom in hundreds of millions of Naira. Against the background of piracy being on the decline since 2012 (after international naval patrols were launched off East Africa in response to a spate of violent attacks by mostly Somali-based pirates) the Nigeria is urgently required to fulfill its obligations to the international community under the various conventions ratified by the nation.

The spate of attacks and the lack of adequate enforcement have led to the high cost of freight as ship owners and crew members often demand for high insurance premiums before embarking on any voyage to Nigeria and the Gulf of Guinea. Apart from reducing the number of vessels calling at the nation's seaports due to the fear of attacks, it has helped in no small measure to increase the cost of doing business as ship owners and consignees are compelled to charge higher than they do for other places. These huge costs are eventually passed off to the final consumer. The number of lives lost to such crime aside, piracy drives fear into shipping practitioners, especially ship captains and Master Mariners.

While there is unanimity among shipping practitioners that sea piracy cannot be totally eradicated, it is also a fact that with concerted efforts by all the relevant stakeholders, the menace can be minimized. In addressing the challenge, NIMASA recently proposed that a legal framework that would prescribe stiffer sanctions, a more vigorous and vigilant military-led patrol, and better intelligence gathering network would be required.

These challenges daunting as it appears can easily be surmounted by giving teeth to our existing maritime protection laws and the enforcement agencies, principally through adequate funding. The Nigeria Navy stands out amongst the enforcement agencies in accordance with its constitutional roles in national defence.

The roles of the Nigerian Navy are stipulated in various statutes including the Constitution of the Federal Republic of Nigeria 1999, Armed Forces Act, Cap. A20, Law of the Federation of Nigeria 2004 and the National Defence Policy. These instruments charged the Nigerian Navy in particular with the following responsibilities:

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

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

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

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

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

The policing of the maritime environment towards ensuring that operations within our maritime borders are not disrupted undoubtedly remains the responsibility of the Nigerian Navy. The effective policing of the nation's waters will ensure a safer operating environment for harnessing the vast resources in the Nigerian maritime environment. The role of the Nigerian Navy in securing the maritime environment is therefore very critical to the economy and stability of the country, particularly in nation building.

The capacity of the Navy for development and strategic growth cannot be overemphasized. The Navy possesses the inherent capability to evolve into a comprehensive unit encompassing the traditional roles of the Army and the Air force. In other climes, the Navy has achieved significant progress in this regard.

The American Navy for instance, has a fleet of Aircraft carriers with over 3,700 aircrafts comprising jet fighters, bombers and reconnaissance aircrafts to rival the Air force of other nations. The Navy SEAL has also evolved to be the single most cohesive elite force of the American Armed Forces – the traditional role of the Army.

The Nigeria Navy has however been plagued with various challenges peculiar to the service over the years, made particularly worse by neglect and rising overhead cost. These include shortage of platforms, degraded operational support infrastructure, low level of research and development (R&D) efforts and low industrial capacity.

Other identifiable challenges are poor maritime culture, the inadequate Maritime Domain Awareness (MDA) infrastructure, inadequate facilities for operational training, personnel welfare and inadequate funding. The Nigerian Navy proposed overhead, amount appropriated and released have grossly been inadequate in relation to her needs. In the last four years, the Nigerian Navy has not received up to twenty-five per cent of her budgetary proposals for overhead. The capital vote has been far worse, where the Service has not got up to two per cent.

The purchase cost and average annual maintenance cost of vessels as presently spent or incurred by the Nigerian Navy is expectedly high. This is coupled with the need to train operatives on the use of the equipment. Between January and March 2016, several attacks were reported off Nigeria's coast. This involved armed pirates stealing cargoes of crude oil and petroleum products. Within the period, no fewer than forty-four ship crew members were also abducted.

Historically, the Armed Forces of Nigeria were created primarily with the Army as a foundational standing force. Funding the army therefore ranks prime in defence budgeting. However, the constraints of funding and other operational challenges will be drastically curtailed by an independent funding of the Nigerian Navy. As a consequence, the enforcement of maritime protection laws which falls under the purview of the functions of the Navy will become effortless.

Intuitive thinking, strategic reasoning and intensive research presents the amendment of the Maritime Operations Coordinating Board Act Cap. M4 LFN 2004 as the most viable option in achieving the above stated objectives. The amendment will incorporate anti-piracy laws to be enforced strictly by the Navy and create a Maritime Security Fund with a percentage of regulatory and administrative fees paid by operators under the Cabotage Act and the Merchant Shipping Act.

Objectives of the Bill

The main objective behind the bill is to collate a policy guideline towards management of all maritime laws and to provide adequate funding for the Nigerian Navy towards enforcing the maritime protection laws thereby favorably shaping the maritime environment in furtherance of national interest.

The bill amends the Maritime Operations Coordinating Board Act Cap. M4 LFN 2004. While the laudable objectives of the Act appear well suited to meet the operational demands of the maritime security and operations, the provisions do not really solve the challenges of adequate funding and piracy and other rising maritime offences. The composition of the Board as well as the financial provisions (as contained in sections 2 and 6 respectively) appears to hinder the effective implementation of the Act. Amendment of the Act in this regard will enable the Board function as intended – a central clearing house of sorts for all maritime operations.

The Chief of Naval Staff is made the Chairman of the Board. The membership of the Board is retained along the lines of one member each from the Army and the Air force. The primacy of naval majority and involvement in the composition and membership of the Board is of paramount importance.

Crucial to the bill is the achievement of the objectives of the law to accommodate funding for the Board without prejudice to funding from the Federal Government as already provided in the Act.

The source of funding may be a surcharge on the percentum of Maritime contracts, annual regulatory fees from maritime operators or a percentage of funds accruable to NIMASA under Section 42 of the Cabotage Act.

The law will re-create a truly independent and viable Navy capable of carrying out its constitutional functions. The bill will enforce and assist in co-coordinating the enforcement of all custom laws, including anti-bunkering, fishery and immigration laws of Nigeria at sea.

The bill also positions the Nigeria Navy at a strategic advantage and places the burden of enforcement of maritime protection laws squarely on the Nigerian Navy. Consequently the need to create more sources to raise funds to finance this ancillary 'oversight' function of the Nigerian Navy becomes imperative. This is more so in view of the already existing challenges of funding of the Nigerian Navy in the current recession.

HIGHLIGHTS AND MERITS OF THE PROPOSED MARITIME OPERATIONS CO-ORDINATING (AMENDMENT) BILL

1. Efficient co-ordination and increased enforcement of maritime protection laws under the proposed amendment of the Maritime Coordinating Operations Board Act with the active participation of the Nigerian Navy on the board

   (a) Section 2 of the proposed bill provides for the composition of the Board consisting of 12 members out of which 4 are officers of the Nigerian Navy.

   (b) The Chief of Naval Staff is the Chairman of the Board and the Director of Legal Services (Nigerian Navy) lends critical legal insight into the operations of the Board.

   (c) The Nigerian Navy is a principal actor and the major enforcement agency of maritime laws including the Cabotage Act and in the present Maritime Operations Coordinating Board (Amendment) Bill *vide* Section 6(12).

2. The proposed Maritime Coordinating Board (Amendment) Bill aligns with the necessity and demands of present day realities in maritime protection by criminalising and prescribing punishment for the rising crime of piracy and ancillary offences.

   (a) Section 6 of the proposed Maritime Operations Coordinating Board (Amendment) bill provides what may be considered appropriate punishment for the offences of piracy, armed robbery and kidnapping at sea and ancillary maritime offences.

   (b) Forfeiture of assets and properties recovered from offenders is prescribed as part of punishment under Section 6. This also serves as a veritable source of fund for the proposed Fund under section 7 of the proposed Bill.

3. The scope and source of funding has been expanded in the proposed Maritime Operations Coordinating Board (Amendment) Bill.

   (a) Section 7 of the Maritime Operations Coordinating Board Amendment Bill proposes an amendment of section 6 of the Maritime Operations Coordinating Board Act Cap M4 LFN 2004 by providing an increased source of funding for the Maritime Security Fund.

   (b) The increased source of funds includes 1 percent of funds derived by and accruing to NIMASA pursuant to the Cabotage Act and one percent surcharge on maritime contracts and annual regulatory fees payable by maritime operators

   (c) The increased source of funding promotes the effective administration of maritime protection under the proposed Maritime Co-ordinating Operations Board Amendment Bill

4. Decentralization of control and management of the fund under the Maritime Operations Coordinating Board (Amendment) Bill

(a) Section 9 of the Maritime Operations Coordinating Board (Amendment) Bill vests the operation of the fund in the Chairman of the Board, Treasurer and Secretary. The power of administration of the fund and allocation of resources will be utilized pursuant to 3 of the Act.

(b) This effectively checks abuse and decentralizes the financial operation of the Maritime Security Fund.