NINE

EVALUATING THE IMPACT OF INTERNATIONAL LAW ON CABOTAGE AND PETROLEUM INDUSTRY IN NIGERIA

Dr. Anugbum Onuoha*
&
Okemdi C. Nnubia**

Abstract

The global nature of the oil industry and its complexity makes international law an essential feature of the industry. Notwithstanding the avalanche of legal framework and regimes, that regulate cabotage operation in Nigeria, the municipal laws did not oust the potency and supremacy as well as operation of international law in Nigeria's oil and gas industry. The aim of this paper is to analyze critically the positive and negative influence of international law on the Nigerian oil and gas industry. While the objectives are to uncover the best form of relationship between the international law regimes and national legal regimes. The paper seeks to bring the national law in line with the international best practices, taking into account the peculiar circumstances in Nigeria. The contextual typology of this paper is to link international environmental standards with Nigerian laws and regulations, by incorporating international oil and gas law principles into binding local regime. The authors conclude that although plethora of international instruments relevant to the oil industry has been ratified in Nigeria, the adaptation of these instruments remains inhibited by cultural, social, legal and economic influences associated with the socio-political complexion of Nigeria. The authors made an informed recommendation which would help national oil and gas industries to be operated in a sustainable manner. The contributions of this paper will be enormous because national oil and gas industry will now have benchmarks, standards and best practices to follow.

Keywords: *International Law, Cabotage, Petroleum Industry and Nigeria*

* LLB; LLM; BL; PhD; Senior Lecturer Department of Private and Property Law, Associate Professor of Property Law and Secured Credit Transactions. Faculty of Law, Rivers State University, Port Harcourt Nigeria, Email: anugbum@yahoo.com

** ND-In-law, LLB(Hons) RSU; BL; LLM(RSU) Lecturer Department of Business law, Faculty of Law, Rivers State University, Nkporlu-Oroworukwo, Port Harcourt; GSM; +23408033134307; +23408188274170; Email:okemdinnubia@yahoo.com; Okemdi95@gmail.com

1. Introduction

International law has far-reaching implications on the global and national oil and gas industries due to the nature and interconnectedness of the industry.[1] It is an industry where the consumers and producers are far apart by geographical and territorial boundaries. It requires international means of conveyance and experts from diverse backgrounds to produce and develop the oil and gas industry. Besides, the industry possesses common but diverse challenges to many nations depending on their level of economic prosperity to absorb risk factors associated with the industry. Similarly, international means of dispute resolution have equally been developed due to the commonality of issues arising from oil and gas contracting, investment and oil and gas deployment and marketing among others. In fact, the impact of international law on national oil and gas industry can be noticed in the upstream, midstream and downstream sectors of the industry. There is therefore the need to see how the Nigerian oil and gas industry appropriate the positive impacts and mitigate the negative impact; or absorb the shocks created by the overarching global oil and gas regime.

Consequently, due to the wide range nature of the sphere of influence of international law over the Nigerian oil and gas sector, some selected indicators of the industry have been chosen to ascertain the level of influence. The objective is to analyze how far-reaching international law is over the industry in some developed jurisdictions and what lessons can Nigeria possibly draw for the growth and development of the industry. This paper will unravel the level of influence over Nigerian oil and gas industry using specified indicators of the industry in Nigeria.

2. Cabotage Operation in Nigeria

The word “cabotage” is derived from the French word “caboter” which means to sail coastwise or “by the capes”. Cabotage is the trade transit of a vessel along the coast (coastal trading), from one port to another within the territorial limits of a single nation.[2] Cabotage is the carrying of trade along a country’s coast, the transport of goods or passenger from one port or place to another in the same country. The privilege to carry on this trade is usually limited to vessel flying the flag of that country.[3] Cabotage is a term used to describe government measures used to protect or foster a domestic shipping industry by reserving all or a portion of intra-national sea commerce to ships which fly the national flag and are owned by local corporations or individuals, built or repaired in local shipyards, or are staffed by the home country’s seamen.[4]Cabotage is a legislative tool restricting 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 utilize 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.The treatise of L. Oppenheim on the meaning of cabotage is relevant to this study thus:

> “Cabotage meant originally navigation and trade along the same stretch of cost between the ports thereof such coast, belonging to the territory of one and the same state. However, the term cabotage or coasting trade as used in commercial treatise comprises now of seafarer between any two ports of the same country, whether on the same coasts or different coasts, provided always that the different coasts are all of them the coasts of one

[1] C Redwell, ‘International Energy Security’ in B Barton and others, *Energy Security: managing Risk in a Dynamic Legal and Regulatory Environment* (OUP 2004) 45.
[2] Retrieved http://www.duharine.or/leial Dictionary!clcabotage.asyxon3/1/18.
[3] B.A Garner, Black’s Law Dictionary, (9th Edn. Thomson West Print, 2004), 230
[4] C. J. Jones. The Practical Effects on Labour of Repealing American Cabotage Law (1994 – 1995) Transp. L. J 403.

> and the same country as a political and geographical unit in contradistinction to the coasts of colonial dependence of such country…"[5]

Also, the Act[6] defines coastal trade or cabotage as follows:

i. The carriage of goods by vessel or by vessel and any other mode of transport, from one place outside Nigeria and includes the carriage of goods in relation to the exploitation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters;
ii. The carriage of passengers by vessel 'from any place in Nigeria situated on a lake of river to the same place, or to any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria or to any other place in Nigeria, other than as in-transit or emergency call, either directly or via a place outside Nigeria;
iii. The carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian wasters and
iv. The engaging by vessel, in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria.[7]

3. The Legal Framework of Cabotage Regime in Nigeria

Nigeria made a bold attempt to change the face of maritime business within its coast when on 30th day of April 2003, President Olusegun Obasanjo assented to the coastal and Inland shipping (Cabotage) Act.[8]With the objective the restrict the use of foreign vessel[9] in domestic coastal trade and to promote the development of indigenous tonnage and to establish a Cabotage vessel financing fund and for related matters.

The Cabotage Act has fifty-five (55) sections divided into nine (9) parts, with a short title and interpretation, restrictions of vessels in domestic coastal trade, waivers, license to foreign vessels, vessel registration, enforcement, offences, cabotage vessels financing fund and miscellaneous provisions. The provisions under this Act shall be enforced from the first anniversary of the day on which this Act comes into force, this is to say, one (1) year after the commencement date of this Act. The Cabotage Act gives the Minister, the overall responsibility of making regulations and policies for the implementation of the Cabotage Regime.[10] The Federal Minister of Transport (FMOT) has in line with its functions under the Cabotage Act made certain guidelines and regulations for the seamless operation of cabotage regime in Nigeria[11] and regulations made by the Minister of Transport pursuant to the provisions of the Cabotage Act must be read and implemented in conjunction with the guidelines on the implementation of coastal and Inland shipping (cabotage) Act, 2003 Revised 2007.

Broadly speaking, implementing the cabotage law promotes the development and maintenance of an adequate and competent indigenous merchant marine tonnage, promotes the competition among stakeholders operating on a level playing field, stimulates private or

[5] L. Oppenheim, International Law: A Treatise, (1920) 1: The Lawbook Exchange Ltd. 336
[6] The coastal and Inland Shipping (CABOTAGE) Act, 2003.
[7] S. 2 Cabotate Act
[8] Coastal and Inland Shipping (Cabotage) Act Cap. C51, LFN 2004.
[9] Section 2 Cabotage Act defines a "foreign vessel" to man a vessel other than a Nigerian vessel
[10] Sections 14, 20, 22(4), 24, 27 & 46. Ibid
[11] Guidelines on Implementation of Coastal and Inland Shipping (Cabotage) Act, 2003 Revised 2007

public sector investment in the development of maritime infrastructure, helps the development of ports waterways and intermodal connections encourages dredging of coastal services; protects national security due to the availability of fleet personnel in time of war/conflict and effective policing of the waterways, maintains a pool of trained and efficient seafarers, and promotes expanding ship financing credit facilities for fleet and business expansion.[12]Although the preamble to the Cabotage Act restricts the use of foreign vessel in domestic coastal trade unlike other cabotage laws like the US where the policy objectives of the Act is clearly stated by congress, the National Assembly (NASS) did not expressly state the reason for restricting foreign vessel in domestic coastal trade, promote the development of indigenous tonnage and establish the Cabotage Vessel Financing Fund (CVFF).

A careful reading of the Cabotage Act and a comparative study of the cabotage laws in other jurisdictions show the policy of government behind the Cabotage Act is to protect the local shipping industry in Nigeria as can be gleaned from the build and repair of vessels provision of the Cabotage Act. Again, the provision for meaning of the vessels by Nigeria seafarers is an aggressive employment drive and local content development programme when strategically enforced.

4. Guidelines on Implementation of Cabotage Act

In compliance with the provisions of the Act, the minister of transportation shall issued the guidelines on implementation of the coastal and inland shipping (cabotage) Act in 2004. The guidelines have proved a useful tool for the operation and enforcement of the cabotage Act.

However, the Nigerian Maritime Administration and Safety Agency ("NIMASA") has experienced several challenges in the enforcement procedures. The revised guideline is the product of intense interaction with stakeholder and it is intended to introduce clarity and simplify the enforcement and monitoring processes. These guidelines should be read and implemented in conjunction with two important subsidiary legislation;

The Coastal and Inland Shipping Cabotage (Bareboat Charter) Regulations and the Coastal and Inland shipping Cabotage (detention of ships) regulations 2006, issued by the honorable minister of transportation in August 2006, in accordance with the provisions of the Act.

4.1 Objectives and General Principles of the Guideline

i. The guidelines seek to facilitate the establishment and development of national capacities to implement, manage, monitor, establish adequate information systems, develop expert human resources in cabotage administration and enforcement and generally promote the efficient operation of the cabotage regime. These would be achieved by the:

ii. Development of guidelines, standards, code of practice and monitoring capabilities for the operators, enforcement agencies and financial institutions

iii. Establishment of a comprehensive and up-to-date database, infrastructure for information exchange upon which cabotage administration and enforcement can be processed.

iv. Promotion of regular revive of administrative and policy measures on cabotage and encouraging the enforcement of such regulations and policies

v. Establishment and strengthening of national and institutional cabotage implementation mechanisms

[12] R-H. Chiu, "The Effect of Cabotage on the Cross-Strait Sea Transport Agreement between China and Taiwan', Journal of Maritime Law & Commerce, (2013) (44) (1), 73-74.

vi. Assessment and identification of priorities in human resources development and the implementation of national capacity-building programmes for domestic maritime industry
vii. Promotion of the use of regular monitoring to verify the enforcement strategies and to evaluate whether the recommended measures and procedures are appropriate and effective
viii. Establishment of effective collaborative mechanisms with other relevant government agencies.

Promotion of public awareness on the benefits and enforcement measures of cabotage regime through initiatives involving the community, policymakers, legislators, administrators, partner agencies, the private sector and the shipping industry.

The guidelines recognize and address the concern of operators in the domestic coastal trade online with the provisions of the Act. The need for cooperation, exchange and supply of information among the relevant government ministries and agencies is emphasized as the key to the successful implementation and achievement of the objectives of the Cabotage Act.

The guidelines extensively provide for the following
i. Preliminary issue in the cabotage regime
ii. Registration of cabotage vessels
iii. Eligibility criteria for registration of cabotage
iv. Vessels water provisions
v. Enforcement procedures
vi. Required statutory forms

5. Coastal and Inland Shipping Act

The coastal and Inland Shipping (Cabotage) Act, 2003 commenced on 30th April, 2003 but its provisions became enforceable one year after its commencement. The primary objective of the Cabotage Act is to reserve the commercial transport of goods and services within Nigerian coastal and inland waters to vessels flying the Nigerian flag, owned and manned by Nigerians and built in Nigeria. The Act imposes a ‘strict’ cabotage policy on Nigeria which means that vessels not built in Nigeria but owned by indigenous shipping companies will not be qualified to be registered or licensed to participate in cabotage trade with effect from the commencement of the Cabotage Act. The Act is divided into nine parts and each part deals with separate issues; these are short title and interpretation (part I)[13] restriction of vessels in domestic coastal trade (part II),[14] waivers[15] (part III)[16] licence to foreign vessels[17](part IV)[18], registration[19] (part V)[20]enforcement[21] (part VI), offences (part VII)[22], Cabotage vessels financing fund[23] (part VIII)[24], and miscellaneous[25] (part TX)[26]

---

[13] Section 1 & 2 Cabotage Act
[14] Sections 3-8 Ibid
[15] Sections 7(1) Ibid
[16] Sections 9-14 Ibid
[17] Foreign owned vessels are require to obtain a license from the Federal Ministry of Transport prior to registration in the Cabotage Register.
[18] Section 15-21 Ibid
[19] All vessels intended to use in Cabotagetrade are required to be registered by the Register of ships in the special Register for vessels and ship owning companies engaged in cabotage at the Nigerian Maritime Authority (NMA).
[20] Sections 22-28 Cabotage Act
[21] The Minister of Transport is empowered to create an Enforcement Unit (Cabotage Enforcement Unit) within the NMA with responsibility to enforce compliance with the provisions of the Cabotage Act.
[22] Sections 29-34 Cabotage Act
[23] The cabotage vessel financing fund (CVFF) aimed at empowering shipping practitioners
[24] Sections 42-45 Cabotage Act

6. Restriction of Vessel in Domestic Coastal Trade

This part of the Act places restrictions on certain vessels and at the same time stipulates which vessels are permitted to engage in cabotage services. Any vessel which does not fall under the wholly owned, built or manned by Nigerian criterion is automatically classified as a foreign vessel and is restricted from engaging in domestic trade in Nigeria.

However, the scope of the restriction on foreign vessels to engage in domestic trade within Nigerian inland waters is not total. This is because vessel classified as foreign vessels may be allowed to participate in coastal trade if they fall under any of the special exemption situations provided in the act. Such foreign vessels are allowed to participate in coastal trade subject to obtaining a waiver or license from the minister of transport.[27] Also foreign vessels are not precluded from providing assistance to persons, vessel or aircraft in danger of distress in Nigerian waters.[28]A foreign vessel can also be involved in:

i. Salvage operation which has been determined by the minister to be beyond the capacity of Nigerian owned and operated salvage vessels and companies,
ii. Activities related to a marine pollution emergency or to any threatened risk thereof, with the approval of the minister or any other relevant government agency;
iii. Any ocean research activity commissioned by the department of fisheries or any other department of the government responsible for such research; or
iv. Marine scientific research haven obtained the consent of the Minister of Foreign affairs to carry out such operations or under the sponsorship of a foreign government.[29]

7. The Concept of International Law

International Law is the combination of rules, customs and principles of general laws which guides relationships between nations and other subjects of international law, including states[30], organizations and individuals, etc.[31] In *Paquete Habana*[32] Justice Grey said: “the law of nations, although not specially adopted by the constitution or any municipal act, is essentially a part of the law of the law land”. Some basic principles of international law are: a. The Naturalist b. The Positivist and c. The Eclectics or Graotians. While the Naturalist deals with the natural and universal principles right and wrong, independent of any mutual intercourse or compact, which is supposed to be discovered and recognized by every individual through the use his reason and his conscience. The Positivist concerns itself with the tenet of the binding force of international law derived from agreements of sovereign states to be bound by it. It is not a law of subordination but of coordination. The Eclectics and Groatians offers both the law of nature and the consent of states as basis for international law. It contends that the system of international law is based on the “dictate of right reason” as well as the practice of states.

---

[25] Sections 46-55 Cabotage Act
[26]Cabotage law and its benefits assessed at<https://farriconsultingng.biogspot.com//.cobotage-law-and-itsbenefitson 25/05/19.
[27] 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.
[28] Section 4(1); section 8(2) Cabotage Act.
[29] Sections 8(1) Cabotage Act, 2003
[30] M N Shaw, *‘International Law’*, (Sixth edn., Cambridge University Press, 2010) P.197 Lauterpacht observed in his *International Law,* p. 489 that ‘the orthodox positivist doctrine has been explicit in the affirmation that only states are subjects of international law’.
[31] *Ibid.*
[32] (1900) Justicia US Supreme Court.

8. The International Community

The international community refers to the body of juridical entities which are governed by the laws of nations. The composition of international community includes[33]:

1. The States.
2. United Nations.
3. The Vatican City.
4. Colonies and dependencies.
5. Mandates and Trust Territories.
6. International Administrative Bodies.
7. Belligerent communities.
8. Individuals

9. The Doctrine of Recognition in International Law

Even when an entity has already acquired the elements of international personality, it is not for this reason alone automatically entitled to membership in the family of nations. Its admission thereto is dependent on her recognition at the international community.

Recognition is a method of accepting certain factual situations and endowing them with legal significance, but this relationship is a complicated one in the context of the creation of statehood. By the provision of Article 3 of the Montevideo Convention[34] recognition may be constitutive or declaratory.

The former theory maintains that it is only through recognition that a state comes into being under international law. Whereas the latter approach maintains that, once the factual criteria of statehood have been satisfied, a new state exists as an international person, recognition becoming merely a political and not a legal act in this context.

Recognition is the acceptance of the legal existence of a state as an independent sovereign. It is a unilateral declaration acknowledging the status of that new state. It is safe to say that it is recognition that presents an entity before the international community and admits the same to be dealt with and treated as an international personality.

10. The Operation of the Oil Industry in the Purview of International Law

After the end of Nigeria's civil war in 1970, which coincided with the rise in the world oil price, the country was able to reap instant riches from its oil production. Nigeria joined international legal entities such as: the Organization of Petroleum Exporting Countries (OPEC) in 1971, and in 1977 established the Nigerian National Petroleum Company (NNPC), a petroleum company owned and run by the state in both the upstream and downstream sectors of the petroleum industry. However, crude oil produced from the Niger Delta region sustains the economy of Nigeria but leaves the region heavily polluted. It will be contended that the weak provisions of the petroleum Act contribute to these negative consequences. The significance of this early historical development is that the Colonial Government, through shell BP, entrenched monopoly and lack of human right protection as it protected the interests of Shell BP to the exclusion of all other IOCs until much later. This was achieved through the Mineral oil Ordinance 1914, which created a special concession area in a discriminatory manner for its protected companies. Monopoly and poor human rights records are common themes that run through the industry till date. This paper considered that some of the ways by examining the upstream, midstream and downstream activities of the petroleum industry to see how international law affect the sector. Human right records are common themes that run through the industry till date.

---

[33] Culled from Dr. Nnamdi C. Akani Esq., Head of Department, Jurisprudence and International Law, Faculty of Law, Rivers State University LL.B Final Year Public International Law Lecture Notes, 2020/2021 Academic Session

[34] 1931-33

The oil industry includes the global process of exploration, extraction, refining, transportation and marketing of petroleum products. The discovery of oil has far-reaching influence on the politics of nations and the world at large. Oil has a global value that the world recognizes. In today's industrialized society, oil, means power. Oil has become the world's most important source of energy. The products from oil underpin modern society, mainly in supplying energy to power industry, heating and refrigerating homes and providing fuels for vehicles and aircrafts to convey goods and people all over the world. Petroleum oil is the raw material for many chemical products, including pharmaceuticals, solvent, fertilizers, pesticides, synthetic fragrances and plastics. The oil industry is also one of enormous complexity where production can stretch into the boundaries of two or more nations. The absolute size and scope of the oil industry and its important links to industrialization, economic growth and the global distribution of wealth and its complexity makes it a commodity of international concern. With proven oil reserves of about 23 billion barrels and a gas reserve of 160 trillion cubic metres, Nigeria is a top oil-producing nation in Africa. Apart from accommodating potentials for industrialization and job creation, oil is at the centre of Nigeria's security and economic well-being. This paper considers that some of the ways by examining the upstream, midstream and downstream activities of the petroleum industry to see how international law affect the sector.

11. International law and Nigeria's Petroleum Industry

International oil companies (IOCs) have over the years dominated oil industry activities in Nigeria. They include among others Shell BP, Mobil Producing Unlimited, Gulf oil (now Chevron Nigeria Limited), Agip Oil Company, Safrap (Elf Petroleum) Tenneco and Amoseas now (Texaco and Chevron). Prior to the early 1970s, they essentially had sole control of Nigeria's oil and gas resources and did very little to promote the transfer of technology and the development of indigenous capacity. They paid little regard to pollution control and environmental degradation. They made no efforts to involve host communities in decision-making and did not care about the human rights protection of indigenous stakeholders.

These companies were powerful, vertically integrated and for about two decades of their initial activities in Nigeria gained monopoly in the industry, exercised sole ownership of produced oil and gas, and were self-regulated. They determined the posted prices of oil and all fiscal regimes including the royalty payable and the value of tax oil. They also decided where and when the oil was to be exported.

Major government input towards regulating the Nigerian petroleum industry came in the early 1970s. Those early regulations were workplace oriented and focused more on fiscal policies and the health protection of land and safety of workers rather than on the control of environmental pollution or the concerns of host communities. Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well- being and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, colonial discrimination and other forms of oppression and foreign domination stand condemned and must be eliminated.[35]

States have, in accordance with the charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within the jurisdiction or control do not cause damage to the environment of other states or area of beyond the limits of natural justice". [36] To ensure peace and stability in the relationship between states as it

[35] United Nations Declaration on Human Environment "Stockholm Convention" 1972, Principle 1.
[36] *Ibid.*

relates to the exploitation of petroleum; various concepts on the international front evolved to guarantee the sovereignty of states and peaceful co-existence. The concepts have formed the basis for various legislations and regulations in the Nigerian petroleum legal framework. Nigeria has been further identified by the international community as a major concern about human rights violations and environmental degradation during the military era. Significant contributions in the Nigerian petroleum sector would not have been made possible but for the role of international law especially because at the time oil was discovered the requisite skill needed to effectively regulate the oil industry was lacking, resort was therefore made to international law.

Nigeria without a doubt made a considerable amount of development in its petroleum sector since the inception of its exploration activities by foreign oil companies from 1908 till date. However, it is the influence of international law that played a significant role in the said development by providing the requisite legal framework to regulate the oil industry at inception to establish the sovereignty of Nigeria over its natural resources; ensure stability within states and peaceful co-existence.

This paper therefore critically traces and examines the influence of international law on the development of the Nigerian oil sector and how such influence has affected our local legislation on the regulation of the oil and gas sector in Nigeria.[37]

Traditionally, international law consists of rules and principles governing the relations and dealings of nations with each other, though recently, the scope of international law has been redefined to include relations between states and individuals, and relations between international organizations.

Under Nigerian law, international law or treaty becomes binding when it has been incorporated as forming part of the municipal law by an Act of the National Assembly. Also, such International Law principles become enforceable in Nigeria, only to the extent that it has been incorporated by local legislation or locally enacted. Until passed into law, such treaties or principles have no force of law and their provisions are not justifiable in Nigerian courts.

Oil and gas operations can contribute to improving the livelihoods of communities living in Producing areas by promoting the sustainable development of the often-marginalized regions where the resources are typically located. Local developmental impacts of hydrocarbon developments can be realized in various ways: in the form of revenue transfers from the central government; and through what Hirschman called backward linkages[38] with the local economy by generating local employment, transferring knowledge, and outsourcing inputs locally. Moreover, in recent decades there has been a trend towards different forms of decentralization of executive and fiscal powers to the governments of producing regions, which are thought to be better informed about local needs and in a better position to attend to these quickly and efficiently. Sub-national governments are thought to be entitled to funds in compensation for the social, environmental and infrastructure costs of hosting oil and gas operations in their territories.[39] Increasingly, local governments from producing regions have

[37]M A Sunbola, An Overview of the Impacts of International Law on Petroleum Development and Regulation in Nigeria. <http://www.punditadvocates.com/jun112015/An%20Overview%20Of%20The%20Impacts%20Of%20International%20Law%20On%20Petroleum%20Development%20And%20Regulation%20In%20Nigeria. pdf> accessed November 11 2019.

[38] A Hirshman, *The Strategy of Economic Development* (New Haven: Yale University Press 1958) 67.

[39] M Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Priceton: Princeton University Press 2012) 45.

been demanding from the central government a bigger role in influencing oil revenue spending decisions, and a larger stake in the revenues themselves.[40]

An expanding body of research in recent years gave so far mixed results on the local impact of natural resource developments in general, and oil and gas in particular. Some studies found a as positive relationship with some indicators, such education, but a neutral impact on others, like poverty did not lessen nor exacerbate poverty indicators.[41]

Some scholars concluded that whether oil revenues have a negative or a positive development impact in the producing regions depends on the methodology used to measure.[42] Ultimately, the sub-national distribution of oil and gas revenues is largely dependent on the degree of political and economic interactions between the federal and local governments.[43]

The developments propagated by international law could be seen in areas like.

a. Establishment of the Nigeria National Petroleum Corporation and
b. The enactment of the Nigeria Content Development Act 2010.

12. The Extent of Offshore Areas Covered by Nigeria Law

The first major comprehensive composition of a legal framework was formulated and promulgated[44] in 1969 as Petroleum Decree (ACT) by the military government.

Section 1(2) of the Act could be seen in the Geneva international conventions. The section reads thus: This section applies to all land (including land covered by water) which-

i. Is in Nigeria; or
ii. Is under the territorial waters of Nigeria; or
iii. Forms part of the continental shelf areas; or
iv. Forms part of the exclusive economic zone of Nigeria”

This encapsulates onshore and offshore areas that are covered under Nigerian law. Under Section 1(2) (b), the Geneva International Convention on Territorial Sea and Contiguous Zone[45] was followed. The Convention provides for a three-mile coastal water belt measured from the low water mark or from selected baselines drawn at a distance from the coast. The convention also provided for a twelve-mile contiguous zone to the territorial sea over which the coastal state may not exercise sovereign rights but can nevertheless exercise control of its territorial sea rights and compliance with its municipal regulations from within that zone.

Nigeria has adopted the twelve nautical miles by virtue of the Territorial Waters Act[46] as referred to by the Act. According to Etikerentse, the adoption of the convention provides that

---

[40] J Cust and S Poelhekke, *The Local Economic Impacts of Natural Resource Extraction* (Oxford: University of Oxford 2015).

[41] E.Ticci, and J Escobal, 'Extractive Industries and Local Development in the Peruvian Highlands’ [2015] (20)(1) *Environment and Development Economics*, 101-126

[42] F Van der Ploeg, and S Poelhekke, *The Impact of Natural Resources Survey of recent quantitative evidence* (Oxford: Oxford Centre for the Analysis of Resource Rich Economies 2015).

[43] D Anderson and A Browne, ‘The politics of oil in Eastern Africa', [2011] (5)(2) *Journal of Eastern African Studies*, 369-410; J Arellano-Yanguas, and A Mejía-Acosta, *Extractive Industries, Revenue Allocation and Local Politics* (Geneva: United Nations Research Institute for Social Development 2014).; P I A Vasquez, *Argentina's Oil and Gas Sector: Coordinated Federalism and the Rule of Law* (Washington D.C.: The Woodrow Wilson Center for Scholars 2016) 45.

[44] Petroleum Act Cap P10 Laws of the Federation 2004

[45] Geneva International Convention on Territorial Sea and Contiguous Zone Signed on the 29th of April 1958

[46] Cap 428 Laws of Nigeria 1990 as amended by s 2(a) and (b) of the Territorial Waters (Amendment) Act, 1998 No 1 now Chapter T5 of the Laws of the Federation 2004

'a coastal state's local legislation is recognized by international law, to extend to its territorial sea with the same degree of enforcement'.[47]

Section 1(2) (c) includes the continental shelf areas [48] which by the Geneva Convention on the Continental shelf 1958 recognize the sovereign rights of a coastal state to exercise control over such an area for the purpose of exploring it and exploiting its natural resources. Section 1 domesticated the act and also by the Offshore Oil Revenues Act of 1971 No 9. Hence the licenses and leases given under the Act covers continental shelf areas under which the Minister of Petroleum through the Department of Petroleum Resources has the authority to make regulations.[49]

Section 1(2) (d) is a product of the amendment made in 1998.

13. Drilling and Production Techniques

This the fundamental regulation that controls the industry's operations. It prescribes the forms, condition, rights, and duties of holders of Oil Exploratory Licence (OEL), Oil Prospecting Licence (OPL) and an Oil Mining Leases (OML) in Nigeria.[50] However, the provisions of the PDPR are noteworthy, regulation 35 is concerned with the safety of drilling rigs.[51] section 41 provides that the minister may make regulations setting out target to ensure full utilization and growth of indigenous companies in the following areas:

i. Exploration
ii. Seismic data processing
iii. Engineering design
iv. Reservoirs studies
v. Manufacturing and fabrication of equipment and
vi. Other facilities as well as the provisions of other support services for the Nigerian oil and gas industry.

The general provisions are contained in the section 14, 15 and 16 of the Act provides as follows:

> Section 14 provide that all operators and project promoters shall consider Nigerian content when evaluating any bid; where bids are within 1% of each other at commercial stage, the bid containing the highest level of Nigerian content shall be selected provides the Nigerians content in the selected bid is at least 5% higher than its closest competitor.
>
> Section 15 provide that: all operators and alliance partners shall maintain a bidding process for acquiring goods and services which shall give full and fair opportunity to Nigerian indigenous contractors and companies.
>
> Section 16 provides that the award of content shall not be solely based on the principle of the lowest bidder where a Nigerian indigenous company has capacity to execute such job, the company shall not be disqualified exclusively on the basis that it is the lowest financial bidder, provided the value does not exceed the lowest bid price by 10 percent.

[47] G Etikerentse, *Nigerian Petroleum Law* (Lagos: Dredew 2004) 15; Regulation of the Petroleum (Drilling and Production) Regulations
[48] Portion of the sea bed or ocean floor which lies before the sea of a littoral country generally up to a depth of 200 meters and which forms a geographical and geological prolongation of the continental
[49] Petroleum (Drilling and Production) Regulations, Regulation 62(1)
[50] *Ibid,* Regulation 1
[51] *Ibid,* Regulation 32

Although section 14 focuses on conferring advantage in the bidding process on companies that utilize the highest Nigerian content, the provisions of section 15 and 16 deal more with conferring advantage on Nigeria business. Therefore, operators are mandated to give full and fair opportunity to Nigeria indigenous contractors and companies

i. Other factors to consider in the bidding process sections 12 and 13 as well as section 15 and 16 shows the primary considerations which the board will have in mind when conducting the review of the bidding process. The emphasis should be on Nigerian manufactured goods, Nigerian services and Nigeria indigenous contractors and companies.

In addition, section 17(2) highlights the fact that the board will be assessing compliance with the required level of Nigerian content.

ii. Document to be submitted.

The lists of documents to be submitted at each stage of the bidding process are contained in section 18, 20, 21 and 22 of the Act.

Project offices: Section 25-27 of the Act sets out the provisions of the Act in regard to the maintenance of a project office by operators or any other body submitting a Nigerian Content plan.

14. Conclusion

This paper has critically examined the influence of international law, its importance in solving both world and domestic critical issues. But in the Nigerian legal system, the opposite is the case as section 12 of the 1999 Constitution of the Federal Republic of Nigeria has negatively impacted or influenced the smooth application of the rules and principles of international law in the Nigerian legal system. In this paper, a lone deduction has been made; that as it is in Nigeria, so are the jurisdictions of so many less developed or the developing countries are plagued with draconian and insensitive laws. But despite this obvious fact, these countries' legal systems fail to incorporate and see as binding and enforceable decent rules or norms of the civilized countries of the world term "international law" in their corpus juris.

Considering also the role of international law in the maintenance of world peace and the realization of the common ideals of mankind, the importance of its application even in the municipal level cannot be over-emphasized. In the international level, this has led to the increased adoption of treaties and the proliferation of international institutions aimed at boosting greater participation in the development and enforcement of international law.

However, the facts that a state may refuse to ratify a treaty and for those that apply the transformation doctrine, refuse to domesticate an already-ratified treaty pose a great threat to the realization of the ideals intended by the founding fathers of international law. Nigeria is a typical example, as the provisions of section 12 of her Constitution has denied domestic potency to the numerous treaties she has ratified, amongst which is the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The nature of customary international law enables it to escape these impediments to the application of treaties above stated, since all states are bound by same, subject to few exceptions. It does so by committing them to uphold certain principles that comprise the "laws of nations" or "the customs of nations", an indication of social contract obligations on the international level. It most times imposes *erga omnes* obligations on the states to enforce enforceability against the state at the international level; all which is required for the domestic application of international customs is the appropriate constitutional machinery.

In the Nigerian context, this is provided for by section 4 of the Constitution and section 32 of the Interpretation Act. In view of the foregoing, a call is therefore made on the various institutions and agencies exercising governmental power in Nigeria to become alive to the potency and applicability of this branch of international law within the Nigerian legal system. The judiciary, as the last hope of the common man, is hereby also urged to apply the principles of common law wherever necessary to meet the justice of the numerous cases that are litigated before them, especially in those areas of Nigerian law that are yet undeveloped. It therefore behooves Nigeria, as a sign of credible commitment to her international obligations, to strive to apply international customary law towards fulfilling her pledge to the international community.

15. Recommendations

These recommendations will enrich government policy on oil and gas in the future. The government, legislators and National oil and gas industry will use it in improving oil and gas industry in Nigeria. Students will also rely on this recommendation to improve knowledge in oil and gas in future. To increase gas production, it requires investment in gas infrastructure which in turn requires gas pricing that provides the necessary return on investment, which is also stable and predictable. The knock-on effect of getting gas onshore is well known with gas-to-power plants the first in line, and benefits for other sectors such as fertilizer, petrochemicals, cement, etc. This will have a huge impact on the domestic economy through improved Gross Domestic Product (GDP), import substitution and employment generation

Today, the majority of Nigeria's natural gas is still being flared off. It is estimated that Nigeria loses $18.2 million daily from the loss of the flared gas. Yet gas flaring has been prohibited in Nigeria since 1984 under the Associated Gas Re-Injection Act Number 99 of 1979. The things required here are both carrot (in terms of attractive gas pricing and incentives to invest in gas infrastructure) and stick (in terms of enforcing this legislation).

The researcher makes an informed recommendation as follows:

1. A framework for a coherent future vision will help African Governments particularly oil and gas industry operator in Nigeria in their decision- making. It will provide updated and highly valuable data and analysis. It is also for future direction and option for maximizing the benefit of African oil and gas.
2. Nigeria needs to continue to diversity its economy and stop its reliance on oil and revenue diversification requires strong leadership, good policies, political will, as well as money. So ironically, income from oil is require to diversify Nigeria’s economy – to fill the infrastructural gap, to provide power, create and grow other industries that are holding the country back. This will help reducing reliance on international oil and gas companies which are the forbears of global oil and gas regime.
3. Nigeria needs to do more to promote the gas industry so that it becomes an integrated oil and gas producing country that generates as much revenue from gas as oil. Example of a country that grow their gas industry include Qatar, which is the world’s most dominant gas exporter. It has the highest per capita GDP that is mostly driven by natural gas. This will promote sustainable development and reduce the environment impact of oil and gas industry.
4. The government should provide adequate institutional capacity on national and local level participation in oil and gas revenue and supervision to avoid corruption. There should also be regional cooperation to be able to address the development challenges resulting from changes in international market and promote international equity
5. The international monetary fund and other international organization and institutes so far have been the initiatives from civil society to monitor oil gas revenues. There is

also need to establish an African petroleum fund that will work in conjunction with the world bank international monetary fund to source out fund to assist the developments of oil producing country to meet up with the global oil and gas scenarios for 2040.

6. The Nigerian policies makers need to strike the balance between the paradoxical objectives of maintaining a healthy balance of payment and protecting the environment as this will promote an understanding of government responsibility in relation to international law especially in the fight against climate change and how to go about it.
7. The study will help to guarantee some measures of geo-political stability by reducing the possibility of tension which sometimes arises from overlooking international obligation. The study will also help share and analyze best practice notes on how to adapt international law to domestic law in a manner that meet the multifarious desires of different stakeholders.
8. A study of how international law is adapted in Nigeria's oil industry will help multinational oil and gas companies in Nigeria appropriately measure legitimate expectations given the fact that hydrocarbon investments are made on the basis of net present value (NPV). The study will also reveal gaps in the legal and regulatory instrument of Nigeria that will help policy makers make appropriate arrangement for the proper adaptation of international law in the Nigeria oil and gas industry.