

**COMMENTS BY MR. HASSAN BELLO, THE EXECUTIVE SECRETARY/CEO OF NIGERIAN SHIPPERS' COUNCIL ON THE PAPER "ROLE OF NIGERIAN SHIPPERS' COUNCIL IN THE MARITIME INDUSTRY AND TRANSPORT" PRESENTED BY CHIBUZO C.EKWEKWUO**

It is my pleasure to be called upon to comment on the paper "**The Role of Nigerian Shippers' Council in the Maritime Industry and Transport**" presented by an erudite Lawyer, Mr. Chibuzor C.Ekwekwuo of the A & E Law Partnership.

I believe that the choice of Mr. Ekwekwuo to present this paper is not a coincidence but a deliberate decision of the organizing committee based on his vast experience acquired through a long period of providing regulatory and reform related advisory services to the Federal Government, Federal Institutions and other public organizations, both local and international.

I also believe that my choice to comment on Mr. Ekwekwuo's paper was based on the fact that I am, at present, the person overseeing the affairs of Nigerian Shippers' Council and should therefore be able to corroborate and complement the contents of Mr. Ekwekwuo's presentation. That is exactly what I intend attempt to do.

I must start by Congratulating the learned presenter for a well-researched and excellently presented paper on the role of Nigerian Shippers' Council in the Maritime Industry and Transport. In my estimation, Mr. Ekwekwuo's paper covers sufficiently the key areas of functions of the Nigerian

Shippers' Council, and by way of corroboration, I wish to say the presenter has done a beautiful job and I concur with his presentation.

By way of supplementation, however, I intend to refer briefly to the areas covered by the presenter and to throw more light on issues that may require further clarifications or expansion.

### **ESTABLISHMENT OF SHIPPERS' COUNCILS**

The Maritime Industry is primarily made up of providers and users of services.

On the side of the providers of services, we have shipping companies, shipping agents, multimodal transport operators, port authorities, dry dock companies, inland transport operators, terminal operators and general logistics services providers.

On the side of the users of services, we have those who are interested in the transportation of cargo who may or may not have beneficial interest in the cargo. We are however, more concerned with users of services who have beneficial interest in the cargo being transported. These are, by UNCTAD definition, generally called **Shippers**. Shippers' Councils are organizations set up to protect the interest of shippers against the overbearing, exploitative excesses of the providers of shipping services. These excesses were having a negative effect on the economies of developing nations which were mostly shipper nations (or cargo nations as they were commonly referred to at the time). In 1968, therefore the United

Nation Conference on Trade and Development (UNCTAD) called on all countries, especially developing countries to establish **National Shippers' Councils** to protect the interest of their shippers' and by extension, the interest of their national economies.

The major problems confronted by shippers against which Shippers' Councils are expected to proffer solutions include, **shipment problems** such as availability and adequacy of shipping space, frequency of sailings, freight rates, safety of cargo on board vessels, terms of shipment, documentations technological changes etc. The shipper is also faced with **port-related problems** such as custom bureaucracy, port charges, port congestion, delay in cargo clearance, tracking of consignments, multiple inspections, etc.

**On the inland side,** the shipper faces yet, another set of problems including transportation cost, transit arrangement, availability and efficiency of road trucks and rail networks, security of cargo etc. The shipper also faces other ancillary problems such as insurance, documentation banking and legal requirements.

Shippers' Councils were established in most countries of the world to represent and protect the interest of shippers and assist them in solving problems confronting them in the areas mentioned above.

From the above, one may say that the main reason for the establishment of Shippers' Councils is to help propel the economic development and international trade facilitation in nations especially developing nations. In

that respect, Shippers' Councils are meant to be dynamic and evolutionary in serving the economic development needs of nations.

In appreciation of this important economic factor, the Nigerian Government established the Nigerian Shippers' Council in 1978 by Decree No. 13 of that year, now the Nigerian Shippers' Council Act, Chapter N133 Laws of the Federations of Nigeria 2004 (which will be hereinafter referred to as the NSC Act).

### **STATUTORY FUNCTIONS OF THE NIGERIAN SHIPPERS' COUNCIL**

**Section 3 of the NSC Act** lists out the functions of Nigerian Shippers' Council. These functions are mainly concerned with the economic and commercial aspects of shipping. These include advising on structure of freight rates, shipping space, terms of shipment, class and quality of vessels, port charges, port facilities, frequency of sailings, and other related matters. The Council's functions also involve negotiating various commercial issues including terms and conditions for service provision and consumption between providers and users of shipping and related services.

Taking into consideration the nature of functions prescribed by Section 3 of the NSC Act and the general intent of the Act, one could say that the spirit of the Act is consistent with economic regulation in the maritime industry and transport.

Also from the nature of the NSC functions as prescribed by Section 3 of the NSC Act, it is clear that while other Government Agencies in the Maritime

Industry were established to perform roles in specific subsectors of the industry, Government needed an agency which would advise it on matters arising from all the subsectors of the industry especially on matters which impinge on the economy of the country. Thus Nigerian Shippers' Council is to advise Government on:-

**Port issues** - (Port charges and facilities) **shipping companies issues** - (Structure of freight rates, frequency of sailings, availability and adequacy of shipping space, terms of shipment). **Maritime safety issues** - (Class and quality of vessels) **Cabotage issues** - (Coastal transport and Inland waterways transport).

**The role of NSC as stated above places, the Council in the centre of activities in the maritime industry and transport.** The Council's central position in the industry is well recognized and acknowledged by the industry stakeholders. It is therefore not surprising that when the need for economic regulation began to manifest in the industry, the stakeholders naturally turned to NSC to perform the functions. Even before that time, the industry **stakeholders have vested the Council with the role of being the "pivot of a permanent machinery for the resolution of disputes involving the suppliers and users of shipping, and port services, including other maritime services"** (This was through a Memorandum of Understanding between providers and users of shipping/port and related services dated 28<sup>th</sup> March, 2001).

## **ADDITIONAL ROLES OF NIGERIAN SHIPPERS' COUNCIL**

**In 1997**, the role of Shippers' Councils in the West and Central African Sub region was expanded to cover the entire transport chain. Due to technological advancement and the ever evolving complexity of the concept of shipping, it became necessary to protect the interest of shippers along the entire transport chain. As the concept of shipping became more complex and modern, shipping was no longer regarded as the sea link of the transport chain but as a more comprehensive door-to-door, multimodal concept involving sea, road, rail, air and inland waterways. This makes the port a mere transit point rather than a terminal. The role of Shippers' Councils was therefore expanded to cover the entire transport chain from door-to-door.

As stated earlier, Shippers' Councils were meant to serve the economic and trade facilitation needs of governments. The need to coordinate the interface along the entire transport chain therefore was naturally vested in the Shippers' Councils in developing countries especially in the West and Central African Sub-Region, via the **World Bank Cotonou II Round Table Conference of June, 1997**.

The expansion of the role of Shippers' Councils in 1997 was therefore necessitated by the evolving concept of shipping which has become a door-to-door activity rather than port-to-port, as was the case in the past.

**In 2001**, another additional role was given to the Nigerian Shippers' Council, this time, by the major industry stakeholders through a

Memorandum of Understanding (MoU). The additional role is that of dispute resolution within the industry. **The MoU, dated 28<sup>th</sup> March, 2001 made Nigerian Shippers' Council the pivot of a permanent machinery for the resolution of disputes involving suppliers and users of shipping and port services, including other maritime services.** This additional role was necessitated by prevailing circumstances characterized by unmitigated rancour and disputes between the providers and users of shipping/ports and related services, leading to court actions instituted by parties on both sides. This development was having a negative effect on the industry, as business was being conducted, as it were, between feuding rivals.

The Federal Ministry of Transport in an effort to sanitize the situation, constituted a committee of stakeholders to achieve an amicable settlement of the protracted disputes. The feuding parties were all represented and the committee reached an impressive agreement which was reduced into a Memorandum of Understanding (MoU) dated 28<sup>th</sup> March, 2001. Naturally, due to the centrality and neutrality of Nigerian Shippers' Council in the industry, the MoU appointed the Council to be at the centre of dispute resolution in the entire industry. This confirmed the Council's active role in dispute resolution within the industry.

### **ADDITIONAL ROLE OF ECONOMIC REGULATION IN 2015**

**In February, 2014,** the President of the Federal Republic of Nigeria, Dr. Goodluck Ebele Jonathan, GCFR, directed the Nigerian Shippers' Council

to perform regulatory role at the ports in the interim with the effective backing of the Federal Ministry of Transport. This was necessitated by the need to institute effective regulatory regime at the Nigerian Ports for enhanced efficiency.

This Presidential directive was later concretized into a Presidential Order, dated 25<sup>th</sup> March, 2015, titled **Nigerian Shippers' Council (Port Economic Regulator) Order, 2015**, and published in the Federal Republic of Nigeria Official Gazette No. 34. Vol. 102 of 27<sup>th</sup> March, 2015, as Government Notice No.40.

Again this additional role came about as a result of the prevailing situation in the industry. In the course of performing its statutory functions over the years, the Nigerian Shippers' Council observed a number of institutional weaknesses within the maritime and transport sectors that were detrimental to Nigeria's international trade and the economy. One of these weaknesses was the economic regulatory vacuum which existed in the commercial aspect of the transport industry which enabled services providers to fix excessive and arbitrary tariffs and charges in the industry without providing services of commensurate quality. This led to an outcry by users of shipping, ports, transport and related services who called for the appointment of a transport economic regulator for the industry. Naturally, the preponderance of opinion in the industry was that Nigerian Shippers' Council should be adapted to play the role of economic regulator. The opinions of the National Assembly at the time, the Bureau of Public Enterprises, and other stakeholders, including the Chartered Institute of

Logistics, Freight Forwarders, Nigerian Chamber of Shipping, Nigerian Road Transport Owners Association and a lot of others all expressed support for Nigerian Shippers' Council to play the role of economic regulator in the industry. The industry opinion in this regard was informed by the belief that it would be more economical and prudent to adapt the Nigerian Shippers' Council to perform the role of economic regulation, rather than creating another agency because of the following advantages derivable therefrom:

- a. Cost Saving – availability of existing structures, facilities, and other forms of assets.
- b. Avoidance of duplication of Agencies which perform similar functions, since NSC's functions are closely related to economic regulation, and therefore creation of any new agency will lead to conflict of functions.
- c. Utilizing the operational experience and knowledge of staff as well as institutional familiarity with the maritime and transport industry.
- e. Easy adaptability or convertibility of NSC into the desired goals of an economic regulator in functions, operations and structure.
- d. Nigerian Shippers' Council has been under the supervision of the Federal Ministry of Transport which is the ministry saddled with the responsibility of supervising the transport sector.

The Presidential appointment of NSC as an interim port economic regulator therefore did not come as a surprise as it was a response to industry's

yearning, supported by economic advantages. It is also in line with the postulation that Shippers' Councils were established to serve the economic and trade facilitation needs of governments. In the exercise of his constitutional powers, therefore, the President appointed the NSC to perform the function of economic regulation at the ports in line with the economic needs of the government.

The nature and scope of NSC's additional role as the Port Economic Regulator have been copiously discussed by Mr. Ekwewuo in the main paper and, therefore, there is no need for me to repeat it here. However, the question which has been asked in some quarters is whether the NSC Act has sufficient provisions to support economic regulatory functions. The answer to this question is being debated.

While some people argue that the Act does not have sufficient economic regulatory provisions, others believe that the provisions of the Act are adequate for economic regulation. They hinge their argument on the fact that **the NSC Act provides sufficient brickwork for economic regulation in Section 3**. This, according to them, requires only well-drafted Regulations to give more flesh to the spirit of the Act by elaborating on the provision of that section, which prescribes functions of an economic regulatory nature. This argument is also based on the postulation that **statutes usually rely on Regulations to elaborate on their working details**. According to this belief, **Regulations are**

**created by the Executive to clarify the intent and scope of the Acts of the Legislature.**

**It is therefore believed that the general spirit of the Nigerian Shippers' Council Act is the regulation of the commercial aspects of shipping even though some may hold the opinion that the Act may not have been drafted in such a way as to express this more clearly.**

For those who believe that the NSC Legal Framework needs to be retouched, they offer two ways of attaining that:

1. By a new legislation through an Act of the National Assembly creating a new body to regulate economic activities in the maritime industry and transport. The Nigerian Shippers' Council shall then be transformed into the new body to perform the economic regulatory functions as prescribed by the new legislation. **In this regard, the National Transport Commission (NTC) Bill before the National Assembly is relevant.** The NTC Bill prescribes similar functions for the NTC as those being performed by the NSC, at present. It would therefore be more reasonable and economical to transform the NSC into the NTC instead of creating a new agency, which will amount to an unnecessary duplication;
2. Another way of achieving an appropriate legal framework for NSC's economic regulatory function is by amending the extant NSC Act to give the NSC express powers to carry out economic regulation in the

maritime industry and transport. This will enable the Council to make Strong Regulations and issue Guidelines and Regulatory Notices for economic regulation without incurring the inconveniences of going through unnecessary litigation.

**This debate, to me, is largely theoretical as the Council has, indeed, been performing economic regulatory function on the strength of the provisions of Section 3 of its extant Act even before its appointment as the Economic Regulator.** However, the second opinion, if it must be considered **will require the full gamut of legislative process and therefore the role of the National Assembly in this regard is quite imperative.**

Mr. Ekwewuo's paper gives an excellent overview of Nigerian Shippers' Council's service areas. These are, by no means, exhaustive, as technological changes and economic needs may require the Council to render services in some other areas other than those discussed in the paper.

### **CONCLUSION:**

Mr. Ekwewuo's paper is highly informative and sufficiently detailed to capture in summary key areas of functions of the Nigerian Shippers' Council in cargo protection, trade facilitation and economic regulation. Being not a stranger to Nigeria's maritime industry, Mr. Ekwewuo was quite objective and factual in his presentation, which makes his paper highly informative and educative. This paper has thrown more light on, and

dispelled common misconceptions about, the role of Nigerian Shippers' Council in the maritime industry and transport.

Nigerian Shippers' Council is a Federal Government Agency established to serve the economic development needs of the country, through trade facilitation. The role of the Council in the maritime industry is therefore always expanding in tandem with economic and technological development which compels the government to give additional responsibilities to the Council based on contemporary needs.

The law setting up the Council, namely the Nigerian Shippers' Council Act took this need into consideration in making provision in Section 4, that "subject to this Act, the Minister may give the Council directions of a general character or relating to particular matters (but not to any individual person or case) with regards to the exercise, by the Council, of its functions, and it shall be the duty of the Council to comply with the directions".

The role of Nigerian Shippers' Council in the maritime industry and transport is therefore subject to expansion by the executive and not strictly circumscribed by the letters of the NSC Act, as some people may be led to believe.

What the Nigerian Shippers' Council needs at the moment to reenergize it to effectively perform its role in the industry is an appropriate legal framework. May I use this opportunity to call on the legislature to look into this need and come up with the envisaged permanent legal framework to

support the performance of the Council's additional role of economic regulation in the maritime industry and transport. This is without prejudice to the existing legal framework which comprises of the NSC extant Act and Regulations made pursuant to it as well as the Presidential Order appointing the Council as the Interim Port Economic Regulator.

I thank you all for listening to my comments.