The concept of strategy to support the improved sustainable performance of IMO member state obligations: the case of Nigeria

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WORLD MARITIME UNIVERSITY
Malmö, Sweden

THE CONCEPT OF STRATEGY TO SUPPORT THE IMPROVED SUSTAINABLE PERFORMANCE OF IMO MEMBER STATE OBLIGATIONS

The case of Nigeria

By

BHINE OBOM AMATARI
Nigeria

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the reward of the degree of

MASTER OF SCIENCE in
MARITIME AFFAIRS
(MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION)

2020
Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

Bhine Obom Amatari

Date: 15th October, 2020

Supervised by: Dr Jens-Uwe Schroder-Henrichs

Supervisor’s affiliation...... Professor at WMU
Acknowledgements

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Special thanks to Professor Jens-Uwe Schroder-Henrichs for displaying an unprecedented level of patience in guiding me throughout the entire process regardless of his tight schedule. I also acknowledge the efforts of Dr. Anish Hebbar for leaving his door open by sharing his thoughts with me every time I approached him even without notice.

Gratitude to my loving wife, family and friends, both at home and at WMU for their undeniable show of support, kindness, prayers, encouragement and for lending a shoulder to lean on in difficult times. May God bless you all.

Above all, with heart full of gratitude, I return all the glory to God all mighty who is my unending source of strength, knowledge, understanding and resilience that put me in the enviable position that pushed me through at every difficult point of this journey, even in the face of the challenges resulting from the global pandemic of Covid-19.
Abstract

Title of Dissertation: The Concept of Strategy to Support the Improved Sustainable Performance of IMO Member State Obligations: The Case of Nigeria

Degree: Master of Science

The difficulties encountered by IMO member States in giving complete effects to the provisions of all applicable mandatory IMO instruments has always been an area of concern for IMO. Therefore, through the adoption of a series of measures over the years, the IMO has retained its desires to assist the Member States in performing their obligations. This desire led to the recommendation of an overall strategy through the provisions of paragraph 3 of the III Code. This study seeks to establish how an implemented overall strategy can lead to the sustained performance of member States with the possible periodic incremental improvements following a periodic performance evaluation process. An overall strategy in this context is a high-level document that represents a framework for the effective coordination of all maritime related works and provides a mechanism for assessing the overall effectiveness of the State in meeting its international obligations under the mandatory IMO instruments.

This research followed the review of existing literature and information before illustrating the effectiveness of an overall strategy on the performance of a State using KPIs developed to reflect the present functionality of all entities involved in the implementation and enforcement of IMO instruments in Nigeria. The results suggest that the evaluation and review component of the overall strategy can be used to benchmark the level of performance of a State with some level of certainty to prompt the implementation of measures that will engineer improvement.

Ultimately, an overall maritime strategy is the bridge that links effectiveness, performance and sustained incremental improvement. Hence, every member States should consider the development, adoption and implementation of an overall strategy in the context of paragraph 3 of the III Code.

KEYWORDS: Strategy, Cooperation, Evaluation, Performance, Sustainability, Improvement, Obligations
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List of Abbreviations

AToN : Aids To Navigation
CASR : Consolidated Audit Summary Report
COLREGS: The Convention On The International Regulations For Preventing Collisions At Sea
CoS : Condition of Service
DG : Director-General
FEC : Federal Executive Council
FGN : Government of the Federal Republic of Nigeria
FMoJ : Federal Ministry of Justice
FMoT : Federal Ministry of Transport
FSI : Flag State Implementation
FSS : Flag State Surveyors
GBoD : Governing Board of Directors
III CODE : IMO Instrument Implementation Code
ILO : International Labour Convention
IMO : International Maritime Organization
IMSAS : IMO Member State Audit Scheme
KPI : Key Performance Indicator
MAN : Maritime Academy of Nigeria
MARAD : Maritime Administration
MARPOL : International Convention for the Prevention of Pollution from Ships
MEMD : Marine Environment Department
MSSSD : Maritime Safety And Seafarers Standard Department
MoU : Memorandum of Understanding
MSA : Merchant Shipping Act
MSR : Merchant Shipping Regulation
NIMASA : Nigerian Maritime Safety and Administration Agency
LL : The International Convention on Load Lines
NIMET : Nigerian Meteorological Agency
NIWA : National Inland Waterways Authority
NN : Nigerian Navy
NOSCP : National Oil Spill Contingency Plan
NOSDRA : National Oil Spill Detection and Response Agency
NPA : Nigerian Port Authority
OPRC : Oil Pollution Preparedness, Response and Corporation
PRDMSD : PLanning, Research and Data Management Services Department
PSC : Port State Control
PSJ : Port State Jurisdiction
ROs : Recognized Organization
SAR : Search and Rescue
SOLAS : International Convention for Safety of Life at Sea
STCW : International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
Chapter 1: Introduction

Many member States have always experienced difficulties in performing their mandatory obligations under the different IMO instruments they are party to. Few others have shown a considerable level of performance but not at an optimal level. Fewer others have notably performed optimally but arguably not sustainably. In any case, an IMO instrument is only as effective as the average number of member States sustainably performing their obligations optimally. Therefore, there is a continuously renewed desire for all member States to attain a certain level of sustainable optimal performance. The concept of strategy could serve as the bridge that links members States to sustainable optimal performance. The idea of a strategy is not just about performing optimally but about that element of periodic incremental improvement to the performance, that is sustainable through a periodic process of evaluation and review. This chapter tries to explore the variant definitions of strategy, how it applies to the problem, the objectives and limit of this research.

1.1 Background

There are numerous variant descriptions and definitions of strategy in different contexts but (Gray, 2013) by distinguishing strategy from grand and military strategies, distinctively defined strategy in a stand-alone context as “the direction and use made of means by chosen ways to achieve desired ends”. Implying that everyone intuitively but unconsciously behaves strategically, meaning a strategy may not always represent the best direction but may just be superior enough to achieve the desired end. There is an element of strategic bias in what anyone says, do, believe, have, experience and live through. Strategy can also be seen as a tool unconsciously but commonly deployed to accomplish various tasks. Tasks such as prompting action, imposing discipline, gaining legitimacy and power consolidation, to this end, strategies are flexibly continuous, contingent, courageous, consequential, co-creative, collective and constantly adapting to changing circumstances (Nonaka & Zhu, 2012).

“Strategy” is a word without a clear-cut and generally accepted definition which has several different interpretations both in theory and in practice, past and present.
Nickols (2016) refers to strategy as a course of action for achieving one’s goal and objectives, relating it to how a predetermined end is to be attained. He also saw strategy in the military sense as the deployment of resources through a general plan of attack or defence typically arranged beforehand to the ultimate disadvantage of the enemy. Whilst Freedman (2013) described strategy from the perspective of an evolutionist as the struggle for survival resulting from the natural consequence of scarce resources. Chandler Jr, (1962) gave a classic definition of strategy as the efficient allotment of resources following the adoption of a planned course of action for the realization of predetermined basic goals and objectives. It is a path consciously taken to bridge a gap towards realizing a vision or a distinct approach to actualize the desired future starting from the present or a ploy with intentional manoeuvres to directly or indirectly strengthen the overall competitiveness of an organization (Rosen, 2011). Mintzberg & Waters (1985) in an attempt to operationalize the concept of “strategy” described a strategy as a pattern of consistency in a stream of decisions or actions that is either deliberately (intentionally) realized or emergently (unintentionally) realized. Grant & Jordan (2015) took a broader view of strategy as the means or medium through which individuals or organizations accomplish their goals or objectives.

Clearly, the complexity of the concept of strategy in its various contexts can only be fully understood through a rundown of historical experiences where it has been deployed in different periods, situations, problems, ideas, outlook, mindsets, capabilities, technologies and decision-making process (Hattendorf, 2013) but unfortunately, a research work of this kind cannot afford the luxury of such historical exploration.

The presence of a strategy creates the impression of setting the long term goal to address root causes instead of short term symptoms especially when the situation requires a path that is hardly straightforward and needs the timely commitment of scarce resources following the right sequence (Freedman, 2013). Following this line of reasoning, it made perfect sense that IMO (2013a) with the objectives of the III
Code in mind, recommended all member States to develop a workable overall strategy to:

- Aid their obligatory duties and responsibilities as flag, coastal and port States
- Create a method of monitoring and Assessing the effective implementation and enforcement of all the mandatory international instruments
- Maintain and improve flag, port and coastal State performance through a periodic review of the strategy.

It is important to note that this recommendation is coming on the backdrop that the States have inherently displayed ineffectiveness in the administration of their member State responsibilities often due to lack of the necessary maritime infrastructure and legal provisions for the enforcement of the applicable laws they have legislated and IMO has continually failed to effectively carry out its monitoring and oversight role of flag States in the implementation of their obligatory duties due to the lack of teeth in the IMO present mandate (Mansell, 2009). So the strategy is part of the tool intended to address these shortcomings through a comprehensive action plan involving a fine blend of shared activities and responsibilities of all concerned ministries and entities of the State such as the Ministry of Transport: for transport policy and IMO related issues, Environment: for pollution prevention and control, Defence: Search and rescue and hydrography, Justice: for laws and enforcement and to be effectively coordinated by the Maritime Administration (Hebbar, 2020).

The effective actualization of the intended goals of any given IMO convention depends on the seamless ratification, national legislation for domestication, efficient implementation, enforcement and strict compliance to the required reporting procedures of that convention by the member States. In other words, IMO depends on the overall performance of the States through the plainly defined shift in roles as flag State; responsibilities to ships registered under its flag, port State: duties to ships calling at its ports and coastal State: responsibilities to ships trading within its coast as detailed the implementation of the IMO instrument Code (IMO, 2013a) for the
effectiveness of its conventions. Hence the need for a strategy to hopefully optimize the performance of the State.

1.2 Problem Statement
Member States have, however not always shown considerable commitments to the development of a strategy solely for the enhancement of the performance of their obligatory duties as IMO member States as recommended by IMO through the III Code. An analysis of the consolidated audit summary report (CASR) carried out by IMO (2018) showed that only two out of eighteen States have a strategy (figure 1.1). And it could be a valid question to ask if the overall strategies of those compliant States genuinely satisfy the conditions of part 1, paragraph 3 of the III Code. The reluctance of a member State to develop the recommended strategy may not be unconnected to the realization that most States already have existing strategies in the form of transport policy, maritime, national or security strategy which governs a bulk of the maritime

![Bar Chart]

Figure 1.1: Number of findings and observations on common areas (Source: IMO, 2018)
activities or maybe it is not considered necessary enough to impact on its performance as high performing States like Belgium, Germany, Portugal, Greece, China, Italy, Japan etc. as can be seen in the International Chamber of Shipping (ICS) (2019) published flag State performance table (figure 1.2), do not necessarily have this recommended strategy to aid their high performing decimal.

No doubt, the States mentioned above are operationally effective even without a formally documented overall strategy. Still, the idea of strategy is to establish a unique and valuable platform involving a predefined pattern of exercising a set of activities to enable a Member State to position itself strategically to perform its obligations sustainably following a distinctive pattern. Member States can meet their obligations without necessarily adopting a strategy, but it will not be optimally effective, and it may not be sustainable over time (Mankins & Steele, 2005).

It is on the forgoing discussions that this research seeks to explore all possible angles of reasoning regarding the need for the concept of the recommended strategy in Part 1, paragraph 3 of the III Code and the effects of its expected success or failure on the overall performance of member State’s obligatory responsibilities using the Nigerian State which does not presently have a formally documented overall strategy in the context of the performance of its obligatory IMO member State responsibilities as a case study.

1.3 Aims And Objectives
The phrase “Overall Strategy” as used by IMO in the III Code leaves it open to different interpretations as we have previously discussed in section 1.1 and there is no template on what it is expected to look like hence the few strategies that have been developed by member States genuinely lack uniformity in the basic overall goals and objectives.

Moreover, “Maritime Strategy” has this default perception that easily relates to military, navy, war and security. It is, therefore, the objective of this research to:

- Give an overview of the meaning of strategy in its different variant contexts
• Explain strategy in the context of the overall performance of IMO Member States, as stated in Part 1, Paragraph 3 of the III Code.
• Attempt to establish whether or not a strategy will impact on the performance of a member State using Nigeria as a case study
• Identify the effects of the presence or absence of a strategy in the context of the III Code on the overall performance of member State obligations of Nigeria
• Develop some Key Performance Indicators (KPI) to measure the effectiveness of a strategy on the performance of the member State of Nigeria

1.4 Research Questions
To effectively achieve the aims and objectives of this research, an attempt will be made to provide answers to the following research questions;
• What is the meaning of strategy in the context of the III Code and other contexts?
• How does the presence or absence of this strategy impact on the performance of member States?
• What KPIs could be used to measure the effectiveness of a strategy on the performance of an IMO Member State
• What is the present functionality of the existing structure, resources and collaborating entities of the member State of Nigeria?
• How can the KPIs be applied to demonstrate the effectiveness of a strategy to the member State of Nigeria?

1.5 Scope of Study
Different people have divergent perceptions of the term “strategy” depending on the context it is being used. The complexity of the term allows for the various definitions of strategy that have been put forward by different authors, and yet there is no clear-cut or popularly accepted definition for it. It is, therefore, difficult to successfully add value to a research work in this area without setting clear boundaries. To this end, this study will be limited to discussions surrounding a strategy in the context of Part 1, Paragraph 3 of the III Code which is a recommendation by IMO to its member States
to intentionally develop and document a practicable framework of a set of activities with a clear line of authority, following a consistent, distinctive pattern of operations to achieve clearly defined set out goals and objectives that support the efficient performance of its responsibilities as member States by being operationally effective in meeting the provisions of IMO mandatory instruments.

1.6 Research Methodology
This research will be largely carried out in the form of a literature review and the review of existing information, so the approach will be the providing of an elaborate overview of the different contexts of strategy, then narrow it down with clarity to the strategy that represents the provisions of part 1, paragraph 3 of the III Code. Thereafter try to establish a pattern using information gathered from the Nigerian State through qualitative means and philosophical reasoning in an attempt to suggest whether or not a strategy in this context will impact on the performance of the States. Then ultimately form an opinion on the degree of operational effectiveness of a State with a functional strategy using Nigeria as a case study. Existing literature relating to strategy in the context of the III Code is scarcely available. This is, therefore, a limiting factor to the approach of this research.
### Figure 1.2: Flag State performance table (source: ICS)

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Chapter 2: Literature Review
This chapter tends to review existing literature on member State obligations in the three directional categories of the flag, coastal and port States. It also presents a broad overview of strategy in its various contexts before attempting to identify the link between the performance of the obligations of the IMO Member States and a strategy in the context of the III Code by taking a closer look at the III Code.

2.1 IMO Member State Obligations
Merchant shipping trade is of huge economic importance as it accounts for 90% of the world trade in volume thereby prioritizing attention to the requirements of developing minimum international safety standards and regulations to adequately regulate international shipping activities to avoid the inevitability of chaos should there exist none, especially if there are no predefined structure or mechanism to ensure the effective implementation and enforcement of these regulations (Zwinge, 2011).

On the part of the ship, article 91 of the United Nation Convention on the Law of the Sea (UNCLOS), 1982 requires the ship to compulsorily fly the national flag of a State or the flag of an international organization like the United Nations (UN) with the additional requirement to own and carry a certificate displaying its size, tonnage, name and ship-yard of construction as a documented proof of registration for identification purposes (Sucharitkul, 2006).

The sustainability of the development of international shipping involves the proper level of the harmonization of the collaborative roles of the principal actors such as the IMO, Members States, Shipowners, Recognized Organizations (ROs) and the seafarers who are considered as the direct recipients of all the instruments formulated to improve shipping standards. The IMO is the specialized organ of the UN responsible for the development of global regulatory frameworks for the administration of the entire cycle of shipping activities in terms of technical safety, security and environmental pollution prevention standards but IMO was, however, never created to possess the coercive power of enforcement required to adequately enforce the full compliance to its formulated regulations by all parties concerned (Barchue, 2009).
Hence member States are obligated to apply their coercive powers to exercise regulatory authority over ships under their registries to ensure that the order of the high seas which is not under the exclusive jurisdiction of any single State does not experience disastrous repercussions (L'Esperance, 2016; Takei, 2013).

The delivery of the mandatory obligatory responsibilities of the IMO Member States under the different international maritime conventions is principally executed through an institutionalized government structured maritime administration with the adequate resources both in finance and personnel with the appropriate qualifications and experience to effectively discharge its obligations on the differentiated three directional categories of the flag State, coastal State and port State duties (Mansell, 2007; SERBAN, 2014). Although the administrative structure of any maritime administration of a Member State is largely skewed to favour the geographical location and the direction of maritime interest of the State, Figure2.1 represents a basic generic organizational structure of a maritime administration (Mukherjee & Brownrigg, 2013).

However, the seeming inability of member States to efficiently implement and enforce international standards due to the uneven level of availability of resources and sometimes sheer willingness to develop and sustain an administrative regime with the appropriate implementation and enforcement mechanisms has always been a major concern to IMO especially in the wake of strong political and public outcry that followed the occurrence of some defining accidents such as Aegean Sea (1992), Braer (1993), Erika (1999), Prestige (2002) etc. (Graziano, 2018). The IMO in its responsibility to ensure that member States understand their responsibilities and take accountability for their obligations resulted into the formation of the flag State implementation (FSI) sub-committee which subsequently facilitated the adoption of the self-assessment approach in the form of voluntary IMO member State audit scheme (VIMSAS) by adopting resolution A.974(24)- Code for the implementation of the IMO mandatory instrument in 2005. IMO then strengthened its position to assist member States in sustaining maritime safety and environmental protection through the efficient implementation of IMO instruments when its assembly adopted the IMO

Figure 2.1: A model of a generic administrative, organizational structure maritime affairs (Source: Mukherjee & Brownrigg, 2013).

Resolution A.973(24): Code for the implementation of mandatory IMO instruments adopted in 2005 contains the non-exhaustive list of obligations of contracting member States concerning IMO instruments (IMO, 2005a). While the major IMO instruments provide different obligatory duties for members who are party to them, the III Code has harmonised procedures for meeting these different provisions to make the obligatory duties generic enough to enhance the understanding of the States in the implementation of IMO instruments. The III Code did not only recognize the mandatory instruments of IMO (SOLAS, MARPOL, LL, STCW, COLREGS,
TONNAGE) but it also identifies the necessary provisions of the instruments that a Member State is required to give effect to completely.

2.1.1 Flag State Obligations
International shipping has rapidly evolved into a huge globalised competitive market for both private players and States in terms of ship registration. Still, before then, the seas has always been an object of possessory claims because it was the main route used to access countries and continents. The legitimate registration of ships by States, however, under international laws triggers the reciprocal primary responsibility of the State of the registry to ensure that the ships are fully compliant with international standards on maritime safety, security, manning and marine environment protection (Witt, 2007).

Following the principle of the freedom of the high seas as characterised by not being subject to any sovereign State but free to all States and ships under Article 87 and 90 of LOS, created a legal vacuum that the role of flag State grew to fill through Article 94 of UNCLOS which crystallizes a comprehensive set of obligations that requires the flag State to dutifully exercise administrative, social and technical jurisdiction and control over ships of its nationality (L’Esperance, 2016; Takei, 2012).

So while the supreme responsibility for the overall safe operation of the ship and the crew’s safety and welfare lies with the ship-owner, the flag State is the principal authority with the responsibility to ensure that the ship-owners of the ships of its nationality conduct the operations of the ships following international laws, regulations and standards within and beyond its national jurisdiction. These obligations of the flag State extend beyond the safe operation of the ship to more fundamental aspects of the cycle of shipping activities such as design and construction standards, ship’s equipment, maintenance, crew training and certification, marine pollution, maritime security and overall seafarers welfare (Warner & Kaye, 2015 pg.43-49).
All IMO and ILO conventions are predominantly flag State conventions that include contextual provisions for port State rights and responsibilities which is a clear signal of the significant importance of flag State obligatory duties in maintaining order in the high seas as the flag State is largely considered as the first line of defence against substandard ships. Hence it is beyond argument that the rise of substandard ships and shipping operations is widely attributed to the regrettable failure of the flag State to effectively discharge its obligatory duties in regulating ships flying its flag (Mukherjee & Brownrigg, 2013).

The III Code categorised the flag State duties under the different mandatory IMO instruments into the six(6) main obligatory elements of Implementation, Delegation of duty, Enforcement, Flag State surveyors, Flag State investigation and Evaluation & Review. Figure 2.2 shows a diagrammatic representation of Flag State duties.

Figure 2.2: The main flag State duties according to the III Code.

The flag State according to the III Code is obligated to legislate and implement national policies that will assist the implementation of IMO instruments, to regulate the authorization of Recognized Organization that discharges its statutory duties on its
behalf, take all necessary measures to ensure full compliance to international standards by ships flying its flag, ensure that the surveyors responsible for survey, inspection and audit are qualified etc. (IMO, 2013a).

2.1.2 Coastal State Obligations
Every coastal State in taking advantage of the persistent feature of the LOS has the sovereign right to exploit and exert jurisdictional control over the natural resources and activities of the marine spaces under its national jurisdiction, but in consistence with UNCLOS power structure, this right comes with the burden of obligations owed to the international community to adopt measures, policies and procedural steps to preserve, prevent and control ecological deterioration or degradation and damage to the marine environment resulting from activities from both the jurisdictional State and third party States in the seas. Since international laws have the systematic feature of having no centralized enforcement body, it is necessary to confer significant enforcement powers to States and in few instances, to international organizations to act on behalf of the international community of States. Hence the powers, duties and responsibilities the coastal States discharges individually or through the cooperative participation of other States to develop and adopt laws and regulations to support the prevention, reduction and control of pollution of the marine environment from sources such as land-based activities, atmospheric activities, dumping and conduct of ships of its nationality are key to ensuring the order and safety at sea, marine environment protection and the conservation of ocean’s both living and non-living resources (Dzidzornu, 1997; Warner & Kaye, 2015).

UNCLOS is the major fundamental framework that synchronizes the provisions of international laws on the scope and limit of the power and role of the coastal State in all the maritime space. Under the provisions of IMO conventions, clear references to the coastal State are noticeably few, that notwithstanding, by the unique features of the responsibilities, rights and interests of the coastal State in terms of its role in the overall structure of maritime governance, the coastal State was implicitly referred to in some
IMO conventions such as the search and rescue conventions and the Nairobi international convention on the removal of wrecks as well as in some non-treaty convention like the guidelines on places of refuge and the mandatory Code on casualty investigations. SOLAS Chapter 7 and COLREGs Rule10 with article 211 of the LOS draws the coastal State role to play on activities connected to routing and traffic separation schemes (Mukherjee & Brownrigg, 2013 pg.189).

The role of the coastal State is central in the chain of entities responsible for the maritime regulations and enforcement globally as it acts to complement, supplement and counter-balance the roles of the flag State, port State, international organizations and other maritime rules, regulations and enforcement entities. There is also an overlap in port and coastal State jurisdiction when the ship is at the port or offshore terminals as they both fall under the classified maritime zones. Coastal State control also serves to limit the treats to damages by substandard ships that may likely cause considerable damage before it gets to the ports (Purvis, 2011; Warner & Kaye, 2015).

There are certain rights, obligations and responsibilities of the coastal States under the various mandatory IMO instruments empowering the State to implement, update and revise policies and guidelines in the course of trying to exercise these rights (IMO, 2005). The III Code requires that coastal State ensures the availability of legislation, guidance and procedures for the consistent implementation and verification of these rights, obligations and responsibilities, develop measures to ensure their observance of international rules in exercising these rights and periodically evaluate and review its performance in exercising its obligations. The Code specified the rights, obligations and responsibilities to include:

- Radiocommunication services
- Meteorological services and warnings
- Search and Rescue services (SAR)
- Hydrographic services
• Ship’s routing
• Vessel traffic services (VTS)
• Aids to navigation (AToN)

2.1.3 Port State Obligations
Ideally, the coastal States and the port States would have no reason to concern themselves with the growing issues of substandard ships if the flag State has not regrettably fallen short of its responsibility to legislate and enforce the minimum standards of design, construction, maintenance, operation, training and certification, manning and seafarers welfare through established working mechanisms to survey, inspect, monitor and regulate the activities of ships flying its flag to ensure safety standards at sea (Mansell, 2007).

While the port State is different from the coastal State following the provisions of the UNCLOS Arts. 218, 226, 230, 231, all port States are coastal States in reality. Port State control (PSC) is, however, the preferable option to deploy due to the difficulty and cost of enforcement of coastal States control at sea. PSC which under international laws is a prerogative of the port State that is designed to protect the interest of the Port and coastal States from the potentially devastating effects of the resulting operations of substandard ships within the port and coastal areas is, therefore, an important complementary mechanism to flag State jurisdiction for the efficient enforcement of standards of maritime safety and environmental protection (Mukherjee & Brownrigg, 2013; Warner & Kaye, 2015).

The jurisdiction a State may exercise over vessel calling at its ports is referred to as Port State Jurisdiction (PSJ) which is rooted in the fundamental principle of territoriality and practically enforced, applied and exercised through the mechanism of PSC that was introduced as a corrective measure to address the shortcomings of the classification society, ship-owners, flag State and seagoing ships that spend a huge percentage of their service life outside the jurisdiction of their flag State (Ho-Sam Bang, 2009; Zwinge, 2011).
PSC which has become an integral tool due to the ineffectiveness of the flag State in discharging its duties is seen as a safety net that involves the inspection of foreign-flagged vessels in the ports or anchorages to verify their compliance with international regulations with regards safety, environmental protection, equipment, manning and operations. Its principal characteristics evolved largely through customary international laws but UNCLOS, however, made express provisions to it, in regards to marine pollution generated by ships. Maritime conventions such as MARPOL and SOLAS also have provisions for PSC (Emecen et al., 2020; Mukherjee & Brownrigg, 2013)

An attempt to codify PSC was first mentioned after the spill of 119,000 tons of oil following the grounding of the Liberian Torrey Canyon flagged ship in 1969. This eventually led to the PSC codification in MARPOL and SOLAS following other events before the signing of The Hague Memorandum of Understanding on PSC by eight European countries in 1978. The disaster of AMOCO CADIS in 1978 then gave birth to the first regional Memorandum of Understanding on PSC in 1982 (Paris MoU) following the reaction of fourteen European countries to harmonize the PSC procedures of the participating countries to achieve an effective control system that ensures the compliance of ships to the main international safety and pollution conventions. The Paris MoU has since grown to 26 participating countries, and the system has been replicated in other maritime regions amounting to nine regional MoUs covering the entire globe (Mansell, 2009b).

The Port State has certain rights and obligations under the IMO instruments, and in exercising these rights, the port State incurs additional obligations. The III Code specified these rights and obligations to include:

- Provision of appropriate port reception facilities to accept all streams of waste regulated under all IMO instruments
- Port State control
- Keeping a register of fuel oil suppliers

According to the III Code, the roles and responsibilities of the port State concerning maritime safety and environmental protection are derived from a combination of IMO instruments, national laws and bilateral or multilateral agreements (IMO, 2013a).

Nigeria as a State with port State obligations does it under the non-binding treaty of the Western and Central regional Abuja memorandum of understanding on port State control signed in 1999 between 22 countries (Abuja MoU, 1999). PSC is also a good indicative measure of the performance of the flag State through the separate listing of negative and positive flag States.

2.2 The IMO Instruments Implementation Code (III Code)

The innate inability of contracting member States to fulfil their primary responsibility to develop an adequate and effective system to give complete effect to the mandatory IMO and other relevant conventions mostly due to lack of capacity, experience, expertise, resources and sometimes willingness, has always been of great concern to IMO. While IMO is responsible for the adoption of international maritime legislation that promotes maritime safety, security and the prevention of pollution from ships, the effectiveness of such legislations sadly depends on the full participation of the member States in being party to them, implementing and enforcing them and meeting with the reporting requirements (IMO, 2020).

In response to the sad reality of the failures on the part of the States, IMO initiated measures to assist the States by setting up the sub-committee on Flag State Implementation (FSI) in 1992 that has since evolved into the sub-committee on implementation of IMO instruments in 2013 following the transition of the FSI’s intervention measures of Voluntary IMO member States audit scheme: VIMSAS-Resolution A.946(23) to mandatory IMO member State audit scheme: IMSAS-Resolution A.1068(28) which signifies a slight shift from the traditional persuasive approach of IMO (IMO, 2005b; IMO, 2013b).

IMO, with the consciousness of the difficulties being faced by some States in giving complete effects to the relevant IMO instruments, still recognizes the need to limit such difficulties to the barest minimum, hence, maintained the continuous desire to fine-tune measures that will
enhance the effectiveness of States in their roles as a flag, port and coastal States depending on their geographical location and circumstances. This ultimately led to the adoption of Resolution A.1070(28)- III CODE with the primary objective of assisting member States in the implementation of relevant IMO instruments by serving as guidance to the conduct of IMSAS and detailing the obligations of the State in its capacity as a flag, port and coastal States (IMO, 2013a).

The III CODE is composed of four parts, thus: Part 1- Common Areas, Part 2- The Flag States, Part 3- The Coastal States and Part 4- The Port States. Part 2, 3&4 shares the common features of implementation, enforcement and evaluation and review which highlight the importance of these three aspects in the administration of maritime affairs. Figure 2.3 shows the composition of the III Code (IMO, 2013a).

![Diagram of III Code](image)

Figure 2.3: Composition of the III Code (Source: Author)
A strategy, which is a provision of Part1, paragraph 3&9 of the Code is the one single element of the provisions of the Code that technically unifies and connects every other element in the provisions of part 1,2,3&4 of the Code geared towards achieving the objectives of the Code by institutionalizing a documented framework of consistent patterns of the process of implementing and enforcing the provisions of the Code, and then monitor, assess, evaluate and review its performance periodically to attain a certain level of incremental improved sustainable performance.

2.3 Overview of Strategy in General Historical Perspective
The origin of strategy dates long before the emergence of humanity as separate studies by Frans De Waal, Richard Wrangham, Jane Goodall, Richard Byrne and Nadia Corp, on apes and chimpanzee which is believed by evolutionist that man evolved from showed some indicative elements of strategic behaviours through the violent expression of aggression to show superiority, demonstration of empathy (for social interaction, coordinated activities and cooperating to achieve shared goals), the display of the ability to interact in a complex environment and forge a coalition to its benefit through the use of strategic intelligence to assess the costs and benefits (Freedman, 2013).

Away from evolutionists, are the stories of the Hebrew Bible depicting God as the superlative strategist as clear strategic indices can be observed when he placed man in garden that he strategically grew a forbidden tree to test man or when he orchestrated the escape of the Jews from Egypt using the strategic coercion of turning the screw with the ten plagues. The stories of Achilles and Odysseus of ancient Greece shows strength and deception were respectively used as a strategy in times of war (Freedman, 2013).

While the ancient Greeks maintained their reservations on the deceptive approach employed by Odysseus, Sun Tzu became the great master strategist and standard reference in war times in East Asia for deploying the very principle of the strategy of deception echoing that being a master of deception amounts to being a great strategist.
Thereby, implying that all warfare is inherently based on deception. Being deceptive means doing the opposite of what the opponent expects (seem unable when able to attack, seem passive when very active, seem far when very near), Which supports one of Sun Tzu’s famous quote “all men can see these tactics whereby I conquer, but what none see is the strategy out of which victory is evolved” (Sunzi & Giles, 1910) pg. 3, 5&23).

Niccolo Machiavelli, generally regarded as the father of political science, was also revered for his strategy in the art of war, deploying means to win the war without losing sight of the need to conquer politically also. His methods were empirical, asserting that political survival requires a realistic, unsentimental assessment of conflicts of interest and resolving it either by trick or force with the understanding that it is only natural to encounter another danger when trying to escape one, so the idea is to be aware of the various dangers and settling for the one that is least dangerous (Hornqvist, 2010; Winter, 2014). While Machiavelli’s methods relate war to politics and Sun Tzu concerned with the war, their underlying strategic principles are largely similar: utilizing the advantages of being better informed than the enemy and deploying the right dose of deception, trickery and espionage to preferably win the war without going into the battlefield.

Only a proper analysis of historical events can create a clearer picture of the origin of the subject of strategy because, from a historical perspective, strategies are noticeably pronounced in wartimes which in turn transcends to maintain peace. But strategy, however, effectively applied in peacetime has long been associated with a military meaning relating to the determining factor in the conduct of war (Kivette, 1951). Seapower has also been associated with States who have been able to deploy strategies to control their surrounding waters successfully and beyond both in war and peace times through the effective acquisition of colonies, trade domination and prosperity (Till, 1984).
"Strategy" is therefore arguably one of the oldest practices of humankind that has since expanded from the old narrow context of war, related to land power: military, and sea power: maritime, to more contemporary contexts such as performance, organizational, implementation, business, pragmatic, political, competitive and shipping strategies thereby signifying a change in its application due to the complexity of the various situations but the fabrics of strategic behaviour remains largely unchanged though. The focus in these different perspectives is especially evident in the reality that physical warfare has since been relegated to the barest minimum in recent times (Nonaka & Zhu, 2012).

2.3.1 Strategy in Military or Maritime Context
Not until just before the 1950s, the strategy has its default reference to military operations and by extension maritime strategy for maritime nations whose concentration was on enhancing their grip on seapower to its benefit by initiating restrictions to an enemy’s shipping activities as they simultaneously support and carry out military actions against concerted enemies attempting to exert or seize control of the seas (Murray et al, 1996). In simple terms, maritime strategy refers to the governing principles of a war which the sea is a substantial factor. This should not be mistaken to a naval strategy which is just a fraction of the maritime strategy that controls the movement of the fleets in a broader spectrum of the maritime strategy which also entails land and air forces. Naval forces cannot possibly win a war all by itself since wars are historically won based on the harm the army can cause on land or the possible capability of the army when supported by the activities of the fleet in the waters, especially in the movement of men and equipment (Corbett, 2019; Gough, 1988).

The maritime strategy has experienced a dramatic shift from the focus of the navy in wartime during the time of sails to a wider perception in theory and practice by building, expanding and modifying the old theories, understanding and ideas of maritime strategy following the progression of shipping, propulsion systems and weaponry technologies, which advanced the capability of ships to operate more efficiently. The outlook of maritime strategy changed gradually to satisfy two
purposes: first to establish control in wartimes and then how to effectively use the “established control” in peacetime to develop a maritime atmosphere that can accommodate the huge dependence of the modern global world economy on merchant shipping activities. To this end, the maritime strategy could now be seen as the exercise of some degree of sea control in certain situations following a comprehensive plan or direction involving all aspects of national power towards the achievement of specific goals (Hattendorf, 1989; Hattendorf, 2013).

Every military strategy is accompanied by a series of tactics used for the proper allotment of resources already deployed in the course of engaging the enemy in a battle. The attainment of Strategic intent requires the effective execution of tactical manoeuvres in the heat of the battle. Strategies tend to fail, and when it does, the executed tactical manoeuvres, which then dominates the actions become the strategy (Nickols, 2016).

2.3.2 Strategy in The Context Business
Successful organizations require an effective business strategy to maintain a sense of consistent direction and purpose, allocate scarce resources efficiently and coordinate the diversity of decisions and activities of different individuals, which are the same reasons a maritime strategy is needed for the military. Majority of the theories and concepts governing the use of business strategies are of military origin. Hence, they are both rooted based on similar principles such as the clear distinction between tactics, which is a scheme deployed for a specific action invariably concerned with the manoeuvres necessary to win the battle and strategy, which is concerned with winning the war following a sequence of plans to allocate resources to achieve the overall end goal (Grant & Jordan, 2015).

The evolution of business strategies began when the increasing growth in size and complexity of companies in the 1960s resulted in the difficulty in maintaining control and decision coordination by the executives who turned to financial budgeting as a short-term solution. Then it progressed to the use of corporate planning to manage
diversification, that became inevitable to remain in a competitive advantage over competitors. The business sphere then experienced a transition phase in the form of strategic management to enhance business performance. This then formed the basis of business strategy which is concerned with implementing measures that put the organization or firm in a favourable competitive position within a given market or industry hence it is sometimes referred to as competitive strategy in some quarters (Grant & Jordan, 2015; Snow & Hrebinjak, 1980).

In today's business world, managers and management are needed to make impactful decision-making processes in the face of provoking uncertainty and complexity, which are the two main fundamental challenges that must be overcome to achieve economic survivability of the organization. Globalization, disruptive innovation and shareholder demands are the three most visible factors that fuels uncertainties that manifest at different levels of extreme variations such as volatility and ambiguity, which may interact at some point to create complex situations that render strategies formulated through the traditional strategic planning process ineffective. Strategies must now be formulated to flexibly adapt to the changing world of uncertainty and complexity by creating room for the seamless integration of tactics in real-time to deal with these uncertainties (Camillus, 2016; Miller, 1987). A clearer picture will be to view the business environment as comprising of two interdependent components in the form of market environment: market or private related activities and non-market environment: social, political and other arrangements that relate to issues outside the business sphere, but directly or indirectly reflects on the market and private agreements. Hence, a suitable business strategy would be a unified framework that integrates and synergizes the market and non-market components to create a superior overall business performance by fitting the firm’s capabilities and competencies into the right spaces in both environments. (Baron, 1997)

2.3.3 Strategy in the Context of Implementation
A strategy irrespective of how well developed remains an abstract projection until it is properly executed to produce some indicative performative variables that may be used
to rate the effectiveness of the strategy. As brilliant as a strategy may seem it may at best, place the organization on the competitive map, but only a concrete executed implementation plan keeps it there. Fortunately, most organizations already recognize that the implementation of most strategies requires the reorganization of the functional structure, which may potentially change the fundamental routines. Still, the reality, is that structural changes only amounts to short term gains as only symptoms and not root causes are addressed (Alkhafaji, 2011). Suffice to say, struggles in the implementation of strategies could be arguably attributed to less attention to clarifying decision rights to ensure that everyone involved understands the decisions and actions they are responsible for; Embracing flexible information flow pattern to facilitate the flow of information across structural boundaries; Aligning motivators by creating a direct link between performance and rewards (Baron, 1997; Martin et al., 2008).

Implementation is often neglected or rarely gets the kind of attention it deserves during the strategic planning process, but as history has proven, it turns out to be the drawback that kills a brilliant strategy and eventually becomes the graveyard that the strategy is buried-in. The conventional choice method will be to draft a strategic implementation process, neatly, but scholars had argued over time that it is more effective to approach implementation as process-based strategic management that prioritizes incremental management (tactics), deliberate or emergent change process rather than linear strategy development and the consideration of the main strategy and the implementation as inseparable processes instead of viewing them as distinct phases of strategic analysis and actions. Strategy implementation models, therefore, need to adopt more complex but flexible factors that are interdependent for it to be effective indeed, as a strategic implementation process can rightly begin as a deliberate strategy but speedily metamorphose into an emergent or submergent strategy (Grundy, 1998).

A common mistake is to assume that a strategy will spontaneously permeate, infuse and integrate into an existing organizational structure without making a deliberate attempt to chart out an implementation strategy that will create the right conditions for
such incorporation, thereby treating implementation as a variable that is wholly dependent on other independent variables. Hence its dynamics (the “HOW”) is not properly discussed to derive its key performance indicators (KPI) that will be used to measure its effectiveness (Merkus et al., 2019).

2.4 Strategy in the Context of the III Code
With the broad insight of what strategy is and how it has been successfully deployed in the various contexts as discussed in session 2.3, 2.3.1, 2.3.2 & 2.3.3, it will perhaps be easier to understand the importance of strategy in the context of the III Code. Although the provision of part 1, paragraph 3 is a recommendation, the importance of the need for a strategy can be fully appreciated from the choice of words in IMO (2013a) that says “in order to meet” as thus:

“In order to meet the objective of this Code, a State is recommended to:

1. develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
2. establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
3. continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State”.

This invariably means that the objective of the strategy in this context is to deploy a means that meet the intended objectives of the III Code continuously.

It is crucial at this point not to mistake a strategy in this context to the policy since a strategy is viewed as a plan that ensures specific desired outcomes by doing things in a certain way with the incorporation of features that serves as a mechanism that allows a member State to evaluate its effectiveness in discharging its obligations under the relevant IMO instruments. While policy, on the other hand, is a rule designed to ensure consistency in governance and to avoid undesirable outcomes. A policy is a statement of intent that defines the principles (Schroder-Hinrichs, 2019). A strategy in this
context works like a plan which contains a set of specific activities and procedures that are consistent enough to indicate clarity in roles and responsibilities of various entities to enhance the timely implementation and compliance of IMO instruments. As it ensures the avoidance of the spread of same treaty obligations over several participating entities that could result to turf wars and encourages the embrace of maritime administration as a corporate entity that is open to the culture of periodic audit and review (Schroder-Hinrichs, 2019). Figure 2.3 & 2.4 shows the typical form of the participating entities and the distribution of responsibilities between government entities, respectively.

The participating entities of the maritime administration (MARAD) of a Member State as featured in figure 2.4&2.5 will ordinarily function independently, which may result to the poor performance of the State due to lack of coordinated functions, hence, the need for an overall strategy to act as a central unit that galvanizes the functions of these separate entities to form a well-structured, coordinated and consistent pattern of performing the State’s obligations by benefiting from the strength of each entity.

A strategy in this context is not a wish-list or a laundry list of desirable outcomes or a list of unprioritized objectives or a list of conflicting goals or dedication of resources to unconnected targets by accommodating conflicting interests. In other words, the presence of a strategy may not always amount to good performance (bad strategy) hence the goal, mission, vision and objectives of a good strategy must be clearly defined to follow practical actions that reflect the genuine availability of capacity to coordinate and allocate resources appropriately and should be flexible enough to accommodate ruthless assessment and evaluation of results and the tendency to generate a new hypothesis, plans and solutions (Hoffman, 2012).
Figure 2.4: Participating entities in a maritime administration (source: Schroeder-Hinrichs, 2019).

Figure 2.5: Sample distribution of responsibilities between government entities (source: IMO, 2019).
2.5 Summary
In summary, there exist a common perception of the different authors which is the underlying failures of member States to develop an adequate implementation and enforcement system that supports them to carry out their responsibilities under the relevant international conventions effectively. The literature also shows that IMO has continuously maintained its desire to assist the member States in overcoming the difficulties faced in fulfilling their mandatory obligations by adopting resolutions after resolutions that contain measures that support the improved performance of member State obligations, including the recommendation to develop an overall strategy to assist members State in achieving the objectives of the III Code.
Chapter 3: Nigeria as a Member State
In this chapter, an insight into how Nigeria functions as an IMO Member State is discussed. The structure of the maritime administration of Nigeria is analysed to include the functions of the different entities performing duties concerning the implementation and enforcement of IMO instruments.

3.1 IMO Membership Status of Nigeria
Nigeria is a State with an expansive coastline of approximately 853km facing the Atlantic Ocean. It lies between latitude 4° 10’ to 6° 20’N and longitude 2° 45’ to 8° 35’ E with a composition of four distinct geomorphology units namely the Barrier-Lagoon complex, Arcuate Niger Delta, Mud Coast and the Strand Coast. Figure 3.1 shows the composition of the coastal areas of Nigeria. Nigeria is also the largest crude oil-producing and exporting nation in Africa with an average capacity of 1.9million BPD. The Nigerian State’s economy, therefore, largely depends on the exportation of petroleum products through the seas, and sea trade also accounts for 90% of imports and exports trade thereby making the interest in maritime governance an important component of the State’s affairs (Nwilo & Badejo, 2006).

Nigeria became an IMO Member State after the ratification of the Convention on International Maritime Organization 1948 (IMO Convention) in 1962 (IMO, 2020). Nigeria has since ratified 39 more IMO conventions including the mandatory conventions relating to the safety of life at sea, prevention of pollution from ships, standards of training, certification and watchkeeping for seafarers, load lines, tonnage measurement of ships and regulations for preventing collisions at sea, which the III Code seeks to address by encouraging States to give full effects to their provisions as stated in Part 1, Paragraph 6 of the Code. Table 3.1 contains details of the conventions that the Nigerian State has ratified, and it indicates that all the IMO conventions referred to in Part 1, paragraph 6 of the Code has been ratified (Green). Conventions such as:
- The International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);

![Image of coastal areas of Nigeria](image)

Figure 3.1: Composition of the Coastal Areas of Nigeria (Source: Nwilo & Badejo, 2006)

- The Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988);
- The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);
• The Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL PROT 1997);
• The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
• The International Convention on Load Lines, 1966 (LL 1966);
• The Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);
• The International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 1969); and
• The International Regulations for Preventing Collisions at Sea, 1972 (COLREGs 1972).

3.2 The Structure of the Maritime Administration (MARAD) of Nigeria
Nigeria operates a central administrative system, so the major entities of the maritime administration of Nigeria responsible for the implementation and enforcement of the provisions of the various mandatory IMO instruments in the 36 States of the nation are:
• Federal Ministry of Transport (FMoT)
• Nigerian Maritime Administration and Safety Agency (NIMASA)
• Nigerian Port Authority (NPA)
• Nigerian Navy (NN)
• Nigerian Meteorological Agency (NIMET)
• National Oil Spill Detection and Response Agency (NOSDRA)
Figure 3.2 shows a diagrammatic representation of the structure of MARAD in Nigeria.
<table>
<thead>
<tr>
<th>Treaty</th>
<th>Ratification type</th>
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</tr>
<tr>
<td>TONNAGE 1969</td>
<td>Accession</td>
<td>1982</td>
<td>1985</td>
</tr>
</tbody>
</table>

Table 3.1: Status of treaties ratified by Nigeria (Source: Author)
Figure 3.2: Structure of the MARAD of Nigeria (Source: Author)

Other entities of the State that are involved at some point along the entire spectrum of maritime governance in Nigeria are:

- Federal Ministry of Justice
- Federal Ministry of Foreign Affairs
- National Inland Waterways Authority (NIWA)
- Maritime Academy of Nigeria (MAN) Oron

3.2.1 Federal Ministry of Transport (FMoT)
The Federal Ministry of Transport (FMoT) which has its headquarters located in Abuja, the Federal capital city of Nigeria is the main maritime policy and legislation making body that supervises and superintends the ratification, transposition and domestication of all IMO instruments; formulation of national maritime transport policies and regulations for the effective implementation and enforcement of ratified and domesticated IMO instruments; supervises the other entities of the maritime administration when performing maritime-related functions (FGN, 2007a). FMoT
whose functions also covers the formulation of regulations and supervision of activities of all entities involved in the entire spectrum of railway transportation has two dedicated departments for maritime-related issues thus;

- **The Maritime Safety and Security Department** responsible for matters related to maritime safety, security, prevention of pollution and the development of cabotage shipping,

- **The Maritime Services Department** which mainly concentrates on activities related to the development, growth and expansion of maritime ports, inland waterways and carriage of cargoes by ships

The Department of Legal Services is not a dedicated maritime department of the FMoT but it, however, deals with the process of ratification of IMO instruments and the development of national maritime legislation.

The FMoT, following the provisions of the Merchant Shipping Act (MSA) of Nigeria, are directly or indirectly involved in the effective compliance to the entire provisions of the III Code on a supervisory level but its involvement is direct and more active when it comes to the provisions of the elements of Part 1 of the Code. Elements such as:

- **Initial Actions**: The response to the entry into force of new or amended instruments of IMO in the promulgation of national laws that allows the effective jurisdiction and control in administrative, technical and social matters over ships flying its flag, creating the legal basis for the enforcement of these national laws and ensuring the availability of sufficient personnel with maritime expertise in the discharge of these State’s responsibility.

- **Communication of information**

- **Records**: The establishment and maintenance of appropriate records to have a readily documented evidence of conformity to the requirements of the provisions of IMO instruments and the effective operation of the State.

- **Improvement**: Establish an enabling system that stimulates a culture that creates and supports opportunities for the continual improvement of the
adequacy of the measures deployed to give effects to ratified conventions and protocols.

The involvement of the FMoT is also very pronounced in the provisions of the first to second paragraphs of the first element (Implementation) of Part 2.3&4 of the Code which relates to the implementation of policies through the issuance of national legislation and guidance that will assist in the implementation and enforcement of the requirements of all ratified instruments and the assignment of responsibilities within the administration.

3.2.2 Nigerian Maritime Administration and Safety Agency (NIMASA)

NIMASA, which was established following the promulgation of the Nigerian Maritime Administration and Safety Agency Act (NIMASA Act) in 2007, is the agency under the direct supervision of FMoT responsible for the discharge of all the flag State duties of the Government of the Federal Republic of Nigeria (FGN). NIMASA’s headquarters is situated in Lagos and has Governing Board of directors (GBoD) as its highest decision-making body responsible for the determination of its general policy and operational programs in line with the provisions of the NIMASA Act (FGN, 2007b). The Director-General (DG) who is a member of the GBoD is the Chief Executive and Accounting Officer of the agency responsible for the daily coordination of the activities of the agency through the direct reporting system of three (3) Directorate Offices headed by three (3) Executive Directors who are also members of the GBoD. The directorate offices, in turn, have a total of eight (8) Departments headed by eight Directors under them while a total of nine (9) special Division/Units report directly to the DG/CEO. Figure 3.3 shows the organogram of the NIMASA (NIMASA, 2020).

NIMASA through its headquarter office functions and operates a structural four zonal office arrangements cutting across the four principal maritime zones of the nation to facilitate the effective coordination of its activities. The zonal offices are located as
follows: Western zone- Lagos; Eastern zone- Port Harcourt; Central zone- Wari and Northern zone- Abuja (NIMASA, 2020).

Figure 3.3: Organogram of NIMASA (Source: NIMASA).

The legitimate powers for NIMASA to carry out its functions, as shown in figure 3.4 comes from the enabling legislation of the:

- Nigerian Maritime Administration and Safety Agency Act, 2007
Figure 3.4: Core functions of NIMASA (Source: Author)

- Coastal and Inland Shipping (Cabotage) Act, 2003

The two departments of NIMASA practically involved with the implementation and enforcement of ratified and domesticated IMO instruments are the Maritime Safety and Seafarers Standard Department (MSSSD) and the Marine Environment Management Department (MEMD). Whilst the Legal Services Unit which reports directly to the DG/CEO of NIMASA is responsible for the interpretation of the principal legislation and all other relevant subsidiary legislation made in pursuant to the principal legislation. They are also hugely involved with the FMoT in the facilitation of the ratification and domestication of IMO instruments.
In brief, NIMASA represents the fulcrum all entities involved in the performance of maritime-related functions in Nigeria (see figure 3.2), and under the direct supervision of FMoT, it is involved in the compliance process of the provisions of Part 1, 2, 3 & 4 of the III Code either in the lead, collaborative or supervisory roles. While its involvement in the provisions of the elements of Part 1 (Common Areas) requires closer supervision due to the direct involvement of FMoT, the responsibility for the fulfilment of the requirements of the provisions of Part 2 (Flag State) largely lies with NIMASA with minimum supervision as it covers the elements of implementation, Delegation of Authority, Enforcement, Flag State Surveyors, Flag State Investigations and Evaluation & Review of Part 2. It plays the lead role in the provisions of Part 3 (Coastal State) as it collaborates and shares responsibility with other State’s entities such as NPA, NN, NOSDRA and NIMET on all the specific provisions of the element of implementation except for Search and Rescue Services that has the primary responsibility arrogated to it by the NIMASA Act. It similarly undertakes all functions in fulfilment of the provisions of the requirements of Part 4 (Port State) except for the specific requirements of Part 4, Paragraph 56.1 (Port Reception facilities) which it plays a supervisory role to NPA.

3.2.3 Nigerian Port Authority (NPA)
The Nigerian Port Authority (NPA) is the third most important maritime administrative entity closely following FMoT and NIMASA in terms of shared responsibilities. NPA which has the primary responsibility under the Nigerian Port Authority Act, 2004 (NPA Act) to govern and operate the ports in Nigeria, operates through a similar organizational structure to that of NIMASA, having a Board of Directors, a Managing Director (MD) in charge of the day to day running of the Agency’s affairs, three (3) Executive Directors (ED) heading three (3) Directorate Offices with a combined number of thirteen departments which are in turn headed by thirteen (13) General Managers (GM). Eleven (11) departments report directly to the MD too. Figure 3.6 shows the Organogram of NPA.
NPA functions under the direct supervision of the FMoT also and with its Head Office situated in Lagos, NPA does its operations through six major Port offices thus:

- Lagos Port complex (Lagos State)
- Tin Can Island Port Complex (Lagos State)
- Calaba Port Complex (Cross River State)
- Delta Ports (Delta State)
- Rivers Port Complex (Rivers State)
- Onne Port Complex (Rivers State)

And the statutory duties and functions NPA are displayed in figure 3.5.

![Statutory Duties of NPA](image)

Figure 3.5 Statutory duties of NPA (Source: Author)

These statutory duties which are regulated by the NPA Act (FGN, 2004; NPA, 2020) translate into responsibilities which include the provision of port reception facilities, Response to oil spills within the port limits, Vessel Traffic Service (VTS), Pilotage Services, Aids to Navigation (AtoN) and some Radiocommunication duties. Based on the foregoing, the NPA performs duties in fulfillment of some specific requirements in Part 3 (Coastal State: VTS, Radiocommunication, Oil spill response within ports, Pilotage services, AtoN) and Part 4 (Port State: Port Reception Facilities).
3.2.4 Nigerian Navy (NN)
Needless to mention the wide range of functions the Nigerian Navy (NN) performs in the maritime space but in the context of the III Code, the Armed Forces Act, Chapter A-20 in the Law of the Federal Republic of Nigeria 2004 arrogates the authority to chart and coordinates all hydrographic surveys and services in Nigeria to the Nigerian Navy. Hence the Nigerian Navy Hydrographic Office (NNHO) takes up this responsibility by superintending over all hydrographic survey services, collection and dissemination of maritime safety information (MSI) to include navigational warnings.
NIMASA, NPA and NIWA (National Inland Waterways Authority) are the other entities connected to this service. While NIMASA and NNHO through a formal agreement collaborate for collection and dissemination of hydrographic information, NPA provides Hydrographic services to specific merchant shipping and the areas within the harbour limits of the Nigerian waters. Whilst NIWA surveys the internal waters. NNHO then coordinates, supervise and validate the hydrographic data from these authorities. For the purposes of MSI, NNHO collates, verify, validates and processes information from Naval and merchant ships, NIMASA, NPA and NIWA to issue and disseminate danger to navigation, rig movement, floating objects on the surface and hydrographic information through Notices to Mariners and INMASART Transmission by UKHO (United Kingdom Hydrographic Office) and through NIMASA’s Radiocommunication services.

Nigerian Navy, on a general perspective, also assists in SAR operations. Therefore, the involvement of the NN is mainly in the fulfilment of the specific requirement of hydrographic services of Part 3 (Coastal State) of the Code.

3.2.5 Nigerian Meteorological Agency (NIMET)
The Nigerian Meteorological Agency (NIMET) was established by the NIMET (Establishment) Act 2003 as the Federal Government Agency responsible for all aspects of meteorology in Nigeria. The Act empowers NIMET to observe, collate, collect, process and disseminate all meteorological data and information within and outside Nigeria (FGN, 2003b). Hence it makes NIMET responsible for the provision of weather information to ships.

The Marine Division of NIMET provides services such as marine observation, marine forecasting, port meteorological services and marine publication & information to shipping. The agency’s Headquarters is in Abuja, but its operational office is in Lagos, and there are eight(8) functional marine stations located across the Nigerian coast to make observations. Data are collated, analysed, verified and supplemented as
necessary to produce local weather forecasts and Meteorological warnings twice daily. Forecasts are sent to NIMASA for onward dissemination to local shipping interests as it is also uploaded in the official website of NIMET. So NIMET services fall under the specific requirement of meteorological services and warnings in Part 3 (Coastal State) of the II Code.

3.2.6 National Oil Spill Detection and Response Agency (NOSDRA)
The National Oil Spill Detection and Response Agency (NOSDRA) is a Federal Government agency established by the NOSDRA Establishment Act of 2006 which stipulates the functions and responsibilities of NOSDRA to include the coordination of oil spill response preparations and activities (FGN, 2006). NOSDRA operates under the direct supervision of the Federal Ministry of Environment and has its headquarters located in Abuja with nine(9) Regional offices cutting across the coastline. Figure 3.8 shows the Organogram of the NOSDRA.

NOSDRA was established to co-ordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria per the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90) to which Nigeria is a signatory. NOSDRA perform the specific functions in figure 3.7

![Functions of NOSDRA](image-url)

Figure 3.7: Functions of NOSDRA (Source: Author)
Figure 3.8 Organogram of NOSDRA (Source: NOSDRA)

The Oil Fields Assessment Department is responsible for oil spills detection and response. NOSDRA has the overall responsibility for oil spill incidence and response at the national level, although its authority does not cover chemical. The Merchant Shipping Act and the NIMASA Act, however, placed the responsibility of coordinating oil spill response in the maritime sector to NIMASA, which eventually does this function through the Marine Environment Management Department. Whilst NPA is responsible for oil spill response within the port limits. Hence, there is an obvious overlap of functions here, but NIMASA acts as the lead Agency in marine oil spills in practice, especially after an MoU was signed between NIMASA and NOSDRA in 2020 (FGN, 2006; FGN, 2007a; FGN 2007b).
3.2.7 Federal Ministry of Justice
The involvement of the Federal Ministry of Justice (FMoJ) in the entire chain of maritime activities in Nigeria is limited to the preparation of an instrument of ratification following the approval of the draft instrument of ratification by the Federal Executive Council (FEC). Draft instruments are initiated and prepared by NIMASA after consulting with Stakeholders, under the direct supervision of the FMoT who will review and forward the draft to FEC and later send it to FMoJ after approval by the FEC. The involvement of FMoJ in the transposition of ratified IMO instruments into a domesticated law is also limited to the adoption of the draft bill taking into account, national procedures after the draft bill have been prepared by NIMASA, review, amended and approved by the FMoT. The FMoJ adopted draft is then returned to the FMoT to be forwarded to the Presidency to prepare an executive bill that is passed to the National Assembly.

3.2.8 Federal Ministry of Foreign Affairs
The Federal Ministry of Foreign Affairs, only responsibility in the context of maritime affairs, is to take possession of the instrument of ratification or denunciation prepared by the FMoJ for onward deposition at IMO secretariat.

3.2.9 National Inland Waterways Authority (NIWA)
The National Inland Waterways Authority (NIWA) which was established by the NIWA Act 2004 with the primary responsibility to improve and develop the Nigerian Inland waterways for navigation, functions under the direct supervision of the FMoT. NIWA, in reality, has no responsibility that directly relates to any IMO convention or instruments as its duty is to non-conventional small crafts and the inland waterways. Still, most of its functions are a duplication of the duties of NIMASA. Hence, an overall strategy that does not include NIWA will still leave room for non-delineation of duties in this perspective.
3.2.10 Maritime Academy of Nigeria (MAN) Oron
The Maritime Academic of Nigeria (MAN) Oron is the State’s maritime institution tasked with the responsibility to train all cadre of human resources to safely man merchant ships, Ports, Maritime Engineering Workshops, Pilotage, Shipyards and other Marine related industries. While NIMASA collaborates with MAN to set and regulate the standard of training of seafarers in line with STCW 2010 as amended, MAN takes up the responsibility to draw up, adopt and deliver the suitable curriculum to meet these standards.

3.3 Overall National Maritime Strategy in Nigeria
There is presently no nationally recognized document that represents a national strategy in the context of maritime in Nigeria. However, the process of developing a National Transport Policy and a National Maritime Strategy is in progress since 2016 as part of the steps taken towards the initiated Corrective Action Plan (CAP) following the observation made after the IMO Member State Audit Scheme (IMSAS) was carried out in 2016.

The finding resulting from the IMSAS exercise in Nigeria that is common to all sections (Part 1- Common Area; Part 2- Flag State; Part 3- Coastal State; Part 4- Port State) is the lack of a formal system in place to periodically evaluate and review the performance of the MARAD of the State as a chain of entities or as individual entities performing specific categories of functions to ensure improved performance which is an important element of an overall strategy of a State.

Most of the issues raised by the IMSAS exercise in 2016 still persist on different levels because only a well-structured designed overall strategic Plan can genuinely address them. Issues such as:

- Many of the ratified mandatory IMO instruments and their amendments are not transposed into domesticated legislation: An overall maritime strategy would incorporate a system of continuous performance review that will stimulate the periodic review of the Merchant Shipping Act to capture all newly ratified instrument and their amendments.
- Failure to consistently fulfil the reporting requirement of Mandatory IMO instruments: this is arising from the widespread of specific functions across different entities which give no specified entity the responsibility to fulfil the reporting requirements. An issue that can easily be resolved by an overall strategy with delineation of roles as lead and supporting entities.

- There are no documented criteria for the selection, nomination, employment, qualification and training of its surveyors: An overall functional strategy will indirectly engineer the formulation of such documents as the evaluation of performance requires a gauge of certain KPIs resulting from such documents.

Other findings and observations can be argued linked directly or indirectly to a non-functional overall strategy of the State. The lack of a strategy that depicts the roles and a clear line of authority of all entities, can also be associated to the inadequacy in proper cooperation and coordination of maritime activities such as oil spill response, wreck removal, SAR services, maritime security etc. that has led to the signing of multiple bilateral MoUs between maritime entities. A cycle that tends to repeat each time there is a change in management. An overall strategy will act as a multilateral MoU that is binding to all maritime entities without the need for different bilateral MoUs to ensure their commitment and this will, in turn, give more legitimate responsibility to the FMoJ in the domestication of IMO instruments into national laws and indirectly create a sense of the timeline for completion.

3.4 Summary
Overall, Nigeria as a member State has the required basics to be a very high performing State, but it lacks the internal mechanisms that stimulate, encourage, accommodate and sustain incremental improvement in its performance mostly due to the absence of any system of evaluation and review which is an element of a workable overall strategic plan. The major entities performing specific roles in the implementation and enforcement of IMO instruments in Nigeria can be categorized in line with the III Code as follows:
- Part 1- Common Areas: FMoT, NIMASA
- Part 2- Flag State: NIMASA, FMoT (Supervisory role)
- Part 3- Coastal State: FMoT(Supervisory role), NIMASA, NPA, NN, NIMET, NOSDRA
- Part 4- Port State: FMoT (Supervisory), NIMASA, NPA.

Figure 3.9 summarizes the distribution of functions within the maritime entities in Nigeria in a Venn diagram.

Figure: 3.9 The Distribution of maritime functions in a Venn diagram (Source: Author)
Chapter 4: Performance Evaluation Tool

In this chapter, the link between performance evaluation tool and the overall maritime strategy was established to describe how the periodic use of this tool when incorporated as part of the evaluation and review component of the strategy is key to maintain the improvement of the effective performance of the member State. Few KPIs were then used as calibration to demonstrate the performance of the Nigerian State. To this end, KPIs 1 to 11 were subsequently developed with specific consideration to the peculiarity of the present functionality of the Member State of Nigeria.

4.1 Evaluation and Review as an Important Element of Strategy

Discussions in the previous sections already support the suggestion of (Corres & Pallis, 2008) that to a great extent maritime safety and environment protection depends on the ability of flag States to perform their obligations effectively. And the realization of the proper level of performance of the member State can only be fully ascertained through a thorough evaluation exercise that represents a systemic self-auditing practice of the member State.

The III Code made performance evaluation for continuous improvement a priority with the elemental provisions of evaluation and review in Part 2, 3&4 of the Code mandating States to periodically, evaluate its performance in respect of exercising its rights in the implementation of administrative processes, procedures and resources necessary to meet its obligations as a flag, coastal and port States under the applicable international instruments. Paragraph 3.3 under the element of the strategy of the Code then requires the State to continuously review the strategy to achieve, maintain and improve the performance and capability as a flag, port and coastal State, thereby making evaluation and review a cardinal component of the overall strategy.

So while Evaluation tries to compare the resulted output of the means imputed by the member States in an attempt to meet their obligations with the acceptable minimum international standards going by the provisions of IMO instruments, a strategy enables this process of evaluation to be periodic and continuous thereby creating the enabling
circumstances for continuous incremental improvement. Therefore, a strategy with a proper strategic performance evaluation component serves as a bridge that links performance, effectiveness and continuous improvement. In simpler words, the overall strategy could be considered as an input indicator for performance as it serves as a means through which performance is achieved.

4.2 Measurement of Flag State Performance
The interest in monitoring performance of flag State by international policy-makers has considerably increased over the years following a succession of serious maritime accidents. This interest has evolved into the consistent search for ways to benchmark the performance of flag State in terms of the administrative means deployed to implement and enforce IMO instruments (Graziano, et al., 2018).

The measurement of flag State performance was initially reduced to PSC only through the famous established Black/Grey/White list by the Paris MoU in 1990, followed by the Tokyo MoU in 2002. A performance measurement tool that depends on detention records the MoUs has on the fleet belonging to the flag States over a period. Then came the introduction of a more representative performance measurement tool by the round table of shipping industry organizations (2003) through the use of flag State performance table in 2003. A table that is developed and published annually by factoring the activities of the flag States in the areas of PSC, Ratification of IMO instruments, Average age of fleets, Reporting requirement and attendance of IMO instruments.

The adoption of Resolution A.912(22)-Self-Assessment of Flag State Performance (IMO, 2001) in 2001, which later transitioned into VIMSAS, and then IMSAS came with the need to measure and benchmark the performance of flag States. The mandatory requirement of the periodic evaluation and review of Member State performance in the III Code, which entered into force in 2016, indirectly made this need mandatory. Discussions surrounding the measurement of flag State performance has since shifted in the direction of performance evaluation as a more accurate
measurement tool that better represent the true state of flag State performance. An evaluation process follows a pattern that represents a more objective scale and criteria for performance measurement. To this end, Graziano et al. (2018) and Kim (2017) each developed a set of possible Key Performance Indicators (KPIs) that could be used to measure and benchmark the performance of flag State in exercising its obligatory rights in the areas of implementation, the delegation of authority, flag State surveyors, enforcement and flag State investigation.

It is important to note at this point that the development of KPIs for the measurement of performance from the broad perspective of member States is beyond the scope of this work. Hence, the approach will be to consider a combination of a few possible KPIs, following the principle adopted in the earlier works of Kim (2017) and Graziano, et al. (2018) from a perspective that depicts the role of an overall maritime strategy in the performance of Nigeria as a Member State.

4.3 Key Performance Indicators (KPIs) and the Nigerian Flag State
The evaluation of the performance of a flag State begins with the identification of possible performance indicators using the provisions of the III Code as the baseline for consideration. These performance indicators are key to making the self-performance evaluation tool objective enough to rightly identify inadequacies and scale improvements such that self-improvement is continuously maintained. These indicators are, therefore called Key Performance Indicators (KPIs). The performance evaluation process of the flag State is an effective measurement tool, but like every other measurement tool, it requires calibration. So KPIs serve to calibrate the performance evaluation measurement tool.

The evaluation and review component of the overall strategy is purely the process of an internal audit that represents a proper self-assessment of the member State in respect of the capability of the State to deploy administrative procedures, processes and resources necessary to meet its obligatory responsibilities under all the applicable IMO instruments. Therefore, for this research, attention will be more focused in the direction of KPIs that indicates outputs that directly reflects on the internal assessment of the administrative performance of the flag State.
4.3.1 Implementation of IMO Instruments Through Promulgation Into National Laws
While the process of ratification is rightly considered an important step towards the implementation of IMO instruments, it does not necessarily translate into effective implementation by the Member State. Paragraph 4 of the III Code requires the States to under the general provisions of all IMO conventions, take responsibility for promulgating laws and regulations to give complete effect to the instruments. Paragraph 15.1, 46.1&amp;54.1 further obligated the State to implement policies through the issuance of national legislation and guidance to assist the implementation and enforcement of safety and pollution prevention conventions and protocols. Two KPIs will therefore be developed under this element.

4.3.1.1 KPI 1 - The ratio of the number of instruments that have been transposed into national laws
All of the mandatory IMO instruments require a party thereto to put in place legislation pertinent to the mandatory IMO instrument in question. Hence, KPI 1 is expected to be 1 (100% or ratio 1:1) for a State that is performing excellently well, but then that is not always the case in reality. For this study, the assessment of KPI 1 will be limited to the nine(9) IMO conventions (SOLAS 1974; SOLAS PROTO.1988; MAROL 73/74; MARPOL PROT. 1997; STCW 1978; LL 1966; LL PROT. 1988; TONNAGE 1969; COLREGs 1972) which are directly associated with paragraph 6 of the III Code.

There are two paths to the transposition of IMO conventions into domestic laws in Nigeria. First is if there is a direct reference to the applicable IMO instrument in the Merchant Shipping Act (MSA) 2007, the instrument will automatically be applied without further action. The second is following the standard procedures for the transposition of international treaties when there is no direct reference to the applicable instrument in the MSA, 2007.

Section 216 of the MSA made direct reference to twelve IMO instruments including SOLAS 1974, SOLAS PROTOCOL 1988 and STCW 1978 stating that “As from the commencement of this Act, the following Conventions, Protocols and their
amendments relating to maritime safety shall apply” (FGN, 2007a). There is also substantial provisions for the requirements of SOLAS 1974 and its protocol of 1988 in section 218 to 275 of the MSA whereas the requirements of STCW 1988 are provided for in six Merchant Shipping Regulations (MSR) of 2010 (Training And Certification Of Seafarers; Safe Manning, Hours of Work And Watchkeeping; Crew Accommodation; Health Protection and Medical Care for Seafarers; Disqualification of Holders of Seafarers; Medical Examination of Seafarers; Manning).

Section 336 of the MSA also made direct reference to nine conventions relating to pollution including MARPOL 73/74 and its protocol of 1997 followed by sufficient provisions for its requirements. Direct reference was made to LL 1966 convention in section 289 of the MSA but not to its protocol of 1988 and the Merchant Shipping 2010 Tonnage Regulations contains provisions for the requirements of Tonnage 1969. There are provisions for the requirements of COLREGs 1972 in the 2010 MSR for collision rules.


So if the number of IMO Conventions is A and the number of the domesticated conventions is B, then

\[ KPI \ 1 = \frac{B}{A} = \frac{8}{9} = 0.89 = 89\% \]

4.3.1.2 KPI 2- Are there established procedures that enable the proper legislation of the amendments to mandatory IMO instruments no later than the date of entry into force?

Following the requirement of Paragraph 8.1 (Initial actions) of the III Code, the Government of a State must show capability in promulgating and domesticating laws which permit the effective implementation and enforcement of amended IMO instruments before they enter into force. This can only be achieved if there is a formally
established procedure for the seamless integration of the amendments to the conventions into national laws.

Nigeria applies the same standard procedures for the transposition of IMO conventions into national laws for the integration of their amendments as well. This is considered not efficient enough due to delays in the process, but there is however a provision in section 437 of the MSA that permits the minister to effect the amendments by way of notifications and publications. Although the word expression in section 437 leaves room for misinterpretation, it is nevertheless clear enough to permit the minister to exercise such powers which will result in an efficient means of domestication of the amendments of the IMO instruments no later than the date of entry into force. Therefore \( KPI \ 2 = YES = 100\% \)

4.3.2 Cooperation Between Entities
Cooperation between the maritime entities of a State is necessary for the effective harmonization of the administrative duties of maritime authorities of the State as it ensures that continuous communication between entities is maintained for the easy discussions and dissemination of information regarding the direction of IMO on matters relating to amendments, resolutions, recommendations and outcome of meetings. The existence of a workable strategy would ordinarily incorporate such cooperation with the institutionalization of the clear line of authority with the means of coordination and procedures for communication between maritime entities. But even if a strategy exists, it will still allow provisions for assessment to ensure that the strategic plan for cooperation between entities is effective enough. Such corporations are achieved and maintained via formally established periodic meetings and conferences. Two KPIs are considered under this.

4.3.2.1 KPI 3- Is there a high-level panel for internal cooperation between the different maritime entities?
Nigeria as a maritime State does not have a high-level strategic document that is in force, and there is no standard procedure and guidelines that could suggest the
existence of a high-level panel for internal cooperation between maritime entities, but there are however isolated bilateral collaboration between entities by way of MoUs. NIMASA has from time to time signed different MoUs with other maritime entities to ensure their commitment to collaborate on related maritime duties but these MoUs are mostly bilateral (NIMASA & NOSDRA; NIMASA & NN; NIMASA & NIMET) and not involving all concerned entities on a multilateral level. Therefore

\[ KPI\ 3 = NO = 0\% \]

### 4.3.2.2 KPI 4 Are there periodic high-level meetings between ministries and maritime stakeholders to discuss maritime policy-related implications?

Periodic high-level meetings involving representatives of all the maritime entities and stakeholders in the way of maritime conferences to discuss and set policy priorities to achieve certain goals in maritime governance is an indication of cooperative efforts to get all concerned entities (Government and private) to key into the direction of the State’s maritime affairs.

In Nigeria, individual maritime entities (NPA, NIMASA, etc.) at their discretion organize meetings with stakeholders (shipping companies, shipowners, etc.) to discuss related issues. NIMASA in recent years initiated the NIMASA Merit Award Night, a dinner event that gathers stakeholders for different categories of merit awards to maritime stakeholders to encourage compliance with maritime regulations but it has no interactive session to deal with policy priorities. The DGs/MDs/CEOs come together in the way of monthly meetings that started early 2020 to discuss pressing maritime-related issues, but it includes only the agencies under the FMoT which exclude NN, NOSDRA and NIMET which are an integral part of the MARAD. It also excludes private maritime stakeholders. Therefore

\[ KPI\ 4 = NO = 0\% \]

### 4.3.3 Records

Paragraph 10 of the Code requires State to appropriately establish and maintain records to ensure that evidence of conformity to requirements and effective operations are
readily provided. The records must be such that they remain legible, readily identifiable and retrievable. Records may be filed as hard copies or electronically. These are records such as copies of minutes of meetings, certificates, exemptions, equivalents, inspection reports, investigation reports, technical cases such as new buildings and ships' drawings. The recording method must follow a documented procedure.

4.3.3.1 KPI 5- Are there established documented controlled procedures for the identification, storage, protection, retrieval, retention time and disposition of records?
Maritime entities must ensure the establishment of documented procedures to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records. This is an indication of the quality management system of the entities, and it creates a system that supports easy access to information.

National Archives Act of the Federal Republic of Nigeria 1992" and "General Record Retention Schedule" serves to guide the maritime entities in Nigeria in identification, storage, protection, retrieval, retention time and disposition of records. From the Schedule, archives officers in the Planning, Research and Data Management Services Departments (PRDMSD) develops the record-keeping procedures and schedule, including retention criteria, time and methods but individual departments are responsible for keeping their records centres following these policies. After a certain period, all the records are transferred to archives of the agencies. Therefore

\[ KPI \ 5 = YES = 100\% \]

4.3.5 Flag Surveyors
Paragraph 28 to 37 of the III Code stipulates requirements to be considered when recruiting and training personnel responsible for performing surveys, inspections and audits on ships and companies on behalf of the States. The flag State surveyors are an essential part of the maritime administration as the quality of the surveyors also reflects on the quality of the State’s fleet because surveyors are rightly at the sharp end of
implementation and enforcement. The State is therefore expected to formalize and document the criteria for qualification, accreditation, training and retraining of flag State surveyors. Three KPIs are considered under this element.

4.3.3.1 KPI 6- are there established documented guidelines for the recruitment criteria of qualified exclusive flag State surveyors (FSS)?
Paragraph 35 of the III Code was specific in the requirement of States to implement a documented system for the qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake with due consideration to paragraph 36. This is to ensure that the quality of the flag State surveyors in the ranks of the administration is continuously maintained at a certain level.

Section 219 of the MSA of Nigeria states that qualified surveyors shall be appointed without further details as to what the qualifications of surveyors entail. NIMASA which is responsible for the recruitment of flag State surveyors operates with a Condition of Service (CoS) that contains an employment policy that states that recruitment shall be based on qualification, experience, skills and suitability. But no further details or other formal documents defining the qualifications of FSS for recruitment purposes. Therefore

\[ \text{KPI 6} = \text{NO} = 0\% \]

4.3.4.2 KPI 7- Is there a formalized training programme that leads to the accreditation and acquisition of the status of a qualified FSS?
Paragraph 29.3 of the Code creates room for the accreditation of surveyors through a formalized training program that leads to the acquisition of experience and competencies required to be a FSS (paragraphs 29.1, 29.2 & 32). This could be by way of a regularized surveyor trainee or mentorship programs. It is an indication to maintain a systematic transition plan to guarantee the consistent availability of qualified FSS.
Internal records of staff deployment in NIMASA shows that NIMASA deploys young employees with engineering, science and maritime-related backgrounds to the technical department of MSSSD to train as surveyors on the job. This is, however, not formally regarded as surveyor trainee or mentorship programme, and it is not regularized to follow a pattern. Hence

\[ KPI\ 7 = NO = 0\% \]

4.3.5.2 KPI 8- are there formal procedures for the continuous training and updating of FSS?
The Code requires the training and continuous updating of the knowledge of FSS to keep them abreast with the latest professional best practices in the maritime domain. KPI 8 will ordinarily serve to complement KPI 6, and it is an indication of the State’s willingness to continuously maintain and improve professional best practices in ships survey, inspection and auditing.

NIMASA takes a huge interest in training and updating the knowledge of surveyors through an unregularized training schedule to complement national and regional training opportunities. There is, however, no formally adopted and periodically implemented training programme, thereby making the process irregular and at the discretion of the leadership of the management at that material time. Hence

\[ KPI\ 8 = NO = 0\% \]

4.3.6 Fleet Monitoring
Fleet monitoring is one of the key aspects of flag State responsibility because irrespective of the number of tasks delegated to ROs the flag is still responsible for the compliance condition of its fleets. So the level of performance of the fleet is a good measure of flag State performance. The flag State is obliged to verify and monitor the compliance of its vessels even if it is expected that the shipowners take the responsibility of ensuring that vessels comply with international convention.
4.3.6.1 KPI 9- What is the ratio of flag State Inspectors to the fleet size of the fleet?
The number of flag State inspectors compared to the number of vessels under the registry of the flag is an indication of the level of performance of a flag State in terms of fleet monitoring. It indicates the capacity of the flag State in terms of human resources deployed to monitor its fleet.

Internal records indicate that NIMASA has about 74 exclusive surveyors in its ranks with additional 50 non-exclusive surveyors (contracted). And records in Nigerian shipping registry as at 14/01/2020 shows that Nigeria has a total of 3365 (from 2006) ships under its registry (Appendix A). This number includes all categories of vessels of conventional and unconventional sizes (tugboats, tankers, barges, FPSO, merchant ships, barges, etc.). But according to internal records from MSSSD, only 1948 have valid registration. KPI 9 will therefore be:

\[ KPI\ 9 = \frac{1948}{124} = 15\ ships\ per\ Inspector. \]

4.3.6.1 KPI 10- Average number of inspections annually
The average number of flag State inspections per year is an indication of the willingness of the flag State to take responsibility in monitoring its fleet's compliance with applicable instruments. This number could be a combination of condition and renewal surveys in addition to random flag State inspections.

Internal records from MSSSD of NIMASA shows that a total of 1737 flag State inspections were carried out in 2018. So with 1948 active registered vessels, KPI 10 is, therefore;

\[ KPI\ 10 = \frac{1737}{1948} = 89\% \]

4.3.7 Monitoring Of ROs
It is common practice for flag States to delegate part of their duties to Recognized Organizations following the RO Code. While the ROs carry out specified duties on behalf of the flag State, full responsibility for the level of compliance of the ships still
lies with the flag State, and this responsibility cannot be transferred. Hence the member State should have sufficient technical personnel that are capable of developing and implementing measures of monitoring and evaluating the work of ROs in quantitative and qualitative terms in line with the provisions for oversight functions in the RO Code. Nigeria presently has 10 ROs authorized to perform duties on its behalf.

4.3.7.1 KPI 11- Are programs in place to ensure the effective oversight functions of the ROs concerning compliance and competencies?
Paragraph 20 of the Code requires the flag State to develop, implement, and manage an effective oversight programme for ROs that act on its behalf. The oversight programme could be a combination of audits of the ROs local offices, supplementary surveys and audits, review of survey reports, certificates issued by ROs and other relevant documentation and regular meetings with ROs.

The MSSSD of NIMISA undertakes scheduled annual audits of the local offices of the ROs and assesses their capacity to perform the delegated functions effectively. Although the department has been consistent with this oversight function, however, the “ROs article of agreement” is just at the completion stage, so it is still not documented formally. Hence:

$$KPI\ 11 = NO = 0\%$$

Table 4.1 summarizes the results of the KPIs.

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Table 4.1: Results of KPIs

4.4 Discussions
KPI 1 and KPI 2 are 89% and 100% respectively, which indicates that 89% of the IMO instruments considered has been domesticated into the national laws of Nigeria. This looks good from the face value, but other KPIs can be considered under this element to ascertain the effectiveness of this national legislation and identify non-conformities.
to prompt areas of improvement especially because references were mostly made to the MSA which was last updated in 2007. Indeed, the 100% score for KPI 2, implies that there are mechanisms in place for the seamless integration of IMO instruments into national laws. This should ordinarily translate into 100% score for KPI 1 but KPI 1, is, however, 89%, in reality, suggesting that there are underlying gaps along the line that are limiting the effectiveness of these mechanisms. The essence of an implemented overall strategy is to identify these gaps periodically and implore measures to close them.

KPI 3 and KPI 4 which were both 0% and other possible measurement parameters under this element could easily be upturned to 100% with the adoption of a workable strategy that will institutionalize cooperative initiatives between maritime entities. Although the antecedent of the present leadership of the various entities has indicated an interest in cooperative initiatives, everything may return to status-quo when there is a change in leadership if these initiatives are not institutionalized. Similarly, the 0% scores for KPI 6, KPI 7, KPI 8 and KPI 11 could be very misleading from the perspective of productivity as other possible KPIs that does not require a YES or NO response under this element may give a score that is nearer to 100% because mechanisms are largely in place except for the unavailability of documentation. Nevertheless, a performance produced from a process without a formally documented procedure is hardly sustainable.

The scores of KPI 9&10 shows the high level of willingness of the Nigerian State to perform its fleet monitoring duties effectively, but the results still fall slightly below expectations. In theory, 15 ships per Inspector is as good as it gets, but the fact that it translated into only 89% of KPI 10, indicate the existence of inadequacies from the enforcement end. Again, an overall strategy allows States to go beyond the balance of theory to investigate non-conformities and stimulate improvement measures.
While KPI 5 is 100%, but there is still the issue of poor implementation as access to information persist due to irregularities in record-keeping by departments. This can be resolved by having some staff members of the PRDMSD dedicated to each department to enable direct entry of data into the archives. An overall strategy guides States to apply similar analytical principles to other areas of performance such as casualty investigations, fleet accidents, PSC etc. and subsequently create opportunities for improvement.
Chapter 5: Conclusions and Recommendations

5.1 Conclusions
The measures adopted by IMO are mostly reactions targeted to assist underperforming States, but the provisions on the overall maritime strategy are, however, targeted to assist all States (performing, fairly-performing and underperforming States) as it serves as not just a recipe for good performance but a tool that engineers the willingness of member States to continuously strive to adopt efficient means to perform their obligations effectively and sustainably through the required incremental improvements in performance after every evaluation and review cycle.

The lack of an overall strategy especially in MARADs like that of Nigeria that has more than two entities involved in the implementation and enforcement of IMO instrument will most likely result to the underperformance of mandatory member State’s responsibilities due to lack of cooperation and proper coordination (KPI 3&4) of functions and resources; inconsistency in performance due to possible lack of formally documented procedures (KPI 6, 7, 8&11); limited opportunity to stimulate improvement in performance due to the possible absence of a periodic systemic performance evaluation process (table 4.1).

The implementation of an overall strategy comes with the acceptance of the member State to embrace the concept of continuous review of its performance and the effectiveness of the measures deployed to meet its international obligations. It almost guarantees the achievement, maintenance and improvement of organizational performance and capability. It also serves as a systemic tool for monitoring the improve performance of the MARAD by instituting procedures for determining each entity’s performance against its area of responsibilities. This will ensure the proper allotment of resources to meet the prioritised goals of the member State of obligations.
As this research has shown, an overall maritime strategy as recommended by the provisions of paragraph 3 of the III Code narrows the lenses of a member State to be focused on effective maritime governance with limited interference of the thought of economic interests. And “strategy” has been historically deployed effectively in other contexts (war, business, implementation, shipping) with huge success. So if effectively deployed in the context of paragraph 3 of the III Code with a proper performance evaluation component, the State will be continually aware of their performance level (KPI 1 to 11). This will trigger the adoption of measures for improvement. There is, therefore, a genuine link between effectiveness, performance and sustainable improvement in maritime governance, that link is called the “overall maritime strategy”.

5.2 Recommendations
Following the completion of this research, the following are recommended for consideration:

For the member State of Nigeria;

- The State should consider the complete review and update of the MSA to include a direct reference to all ratified IMO conventions and adopt more efficient means of the domesticated process.
- It should consider the initiation of the process of formally documenting all technical, operational procedures as non-documentation invalidates consistency in performance and limits the chances for improvement.
- Regularization of qualification, selection, training and retraining of flag State surveyors through formal documentation
- Assign dedicated PRDMSD staff members to all departments to enable the direct entry of records into the archives

For all member States and IMO;

- IMO should consider the facilitation of the transition of the recommendatory provision of paragraph 3 of the III Code into a mandatory provision
• Above all, all member States including Nigeria should develop, adopt, institutionalize and implement an overall maritime strategy that meets the requirements of paragraph 3 of the III Code with the special considerations to the evaluation and review component.

For further studies:
• Development of a template for the general framework of the overall maritime strategy in accordance with the III Code.
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IMO. (2005a). Resolution A.973(24), Code for the implementation of mandatory IMO instruments.


UNCLOS. (1982). *United nations convention on the law of the sea (UNCLOS)*


Appendices

Appendix A

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