

# AFRICAN MARITIME TRANSPORT CHARTER - A LEGITIMATE MECHANISM WITH A POTENTIAL TO RESTRUCTURE AND REJUVENATE MARITIME TRANSPORT SPHERE OF INFLUENCE IN AFRICA

**D NTULI**

Department of Transport  
South African High Commission  
South Africa House, Trafalgar Square  
London, WC2N 5DP  
Tel: +44 (20)7451-7264; [ntulid@dirco.gov.za](mailto:ntulid@dirco.gov.za)

## **ABSTRACT**

The paper provides an insight into the Charter's objectives and what it aims to achieve. It does not only highlight the key maritime transport challenges facing the continent and South Africa, but also offers the Charter's concrete propositions on policy, strategy and institutional framework for the regulation and management of maritime programmes, resources and infrastructure. Correctly, the paper identifies the Charter's proposition to a ring-fenced public sector driven financing approach for maritime transport provision and management. The paper further highlights the Charter's concern on the need for the development of the African shipping line and then provides a case for cabotage policy approach.

The paper laments the state of aids to navigation along the continent and the Charter's call for more cooperation at continental level to pull resources together for the common interest of developing and maintaining this marine tools and infrastructure supporting global trade and maritime safety and security in particular. With the vast areas of maritime restructuring propagated by the Charter it can be concluded that once coming into effect, the Charter will remain the legitimate mechanism with a potential to restructure and rejuvenate maritime transport sphere of influence in the Continent. The Charter will bring to the end the piecemeal approach adopted so far in dealing with matters maritime by the Continent.

## **INTRODUCTION**

*"...The African Maritime Charter is adopted by the Assembly of AU few minutes ago in Kampala... Now we have the legal framework for ratification by countries..."*. These were the words in a message received from Mr. A. BABA-MOUSSA Director for Infrastructure and Energy, African Union Commission on 26 July 2010. Earlier, a message had been sent suggesting the establishment of a small group of experts to help accelerate the ratification of the African Maritime Transport Charter. The national interest encompasses sovereignty national unity, safety, security, sustainability and the well-being of all people. In the South African context, the Constitution of the Republic is the embodiment of the national interest. Maritime objectives should therefore contribute in meeting the national interests of a country. It can be suggested that the Charter is about the meeting of the maritime interest of each country making the continent.

## **HISTORICAL BACKGROUND**

The original Charter was adopted in 1994 by the predecessor to the African Union, the Organization of African Unity. The 1994 Charter never came into force resulting in the African Union (AU) embarking on a process to review it, with the aim of introducing new elements and removing those provisions regarded as being obstacles to its early ratification and coming into effect. The need for its review was firstly raised by experts forming the African Maritime Advisory Group (AMAG). The AMAG is an informal forum proposed by South Africa and established in 2005 by African representatives at the International Maritime Organization (IMO) based in London.

The meeting of African Union Ministers responsible for Maritime Transport which met in Abuja, Nigeria, from 22 to 23 February 2007 adopted the Abuja Declaration and Plan of Action on Maritime Transport in Africa which formally concluded that it was urgent that the 1994 Charter was reviewed. Decision N° EX.CL/Dec.358 (XI) of the Assembly of Heads of State and Government of the African Union endorsed the Abuja Declaration and Plan of Action on Maritime Transport in Africa, particularly authorised the review of the 1994 Charter.

In a process initiated during the 2<sup>nd</sup> part of 2007, the Charter was finally reviewed and updated in 2009 following series of 'maritime pilgrimages' to the Headquarters of the African Union in Addis Ababa. As a formal process, it was agreed that the updated Charter was to be adopted during the 2<sup>nd</sup> meeting of Ministers responsible for Maritime Affairs under the auspices of the African Union Commission. Indeed at the invitation of the then Honourable Minister of Transport for the Republic of South Africa, Mr S. Ndebele, the Conference of Ministers was convened and held from 9-15 October 2009 in the port City of Durban, South Africa. As lead negotiator on behalf of South Africa in negotiations that lasted over four (4) days, the Charter was adopted with a plan of Action and the Durban Resolution on Maritime Safety, Security and Protection of the Marine Environment.

## **SCOPE AND OBJECTIVES**

The Charter seeks to restructure the present state of the maritime affairs of countries making the African Union. Maritime state of a nation is the totality of the maritime sector's organisation, governance, management and performance of specific and or related functions and activities for the protection and advancement of the country's sovereignty, and socio economic interests respectively. It therefore becomes paramount that the preservation of the country's maritime state must be governed by sound policies and strategies and the Charter aims to fill this gap.

There is no doubt that the Charter is an ambitious legal framework which does not only aim to highlight key maritime transport challenges facing countries making the Continent, but it also offers concrete proposals to establish appropriate programmes and appropriate institutions to support implementation of such programmes. Generally, the scope of the Charter encompasses maritime transport and related activities in the coastal, inland waterways, territorial seas including the Exclusive Economic Zones of Member States and by further extension, to related activities in landlocked Member States.

As an instrument, the Charter is conscious of the need to establish, inculcate and strengthen cooperation in order to coordinate and harmonize maritime, port and inland waterways policies, regulations and procedures both in our mutual relations within the continent and in our relations with third States; and it further accepts the fact that, there exist an interdependence between economic development and a sustainable policy for the protection and preservation of the marine environment.

The Charter recognises the critical role of maritime transport in the facilitation and development of trade between the Continent and other parts of the world and in this regard the need to develop and implement an effective maritime transport policy with a focus to promoting intra-African trade and trade between African States and other Continents; This recognition is made against the backdrop of the noticeable decline in intra-African trade.

## **IMPLEMENTATION**

Implementation of maritime strategy requires heavy investments especially where development and or commissioning of infrastructure and equipment is involved. In this regard, the Charter introduces a fundamental shift in the approach to infrastructure financing and investment in that, it envisages that Member States of the Union, with the Maritime industry itself will play a leading role in order to ensure confidence to foreign private sector investors with interest in maritime projects financing;

And this is not to suggest an absence of an appetite for foreign direct investment in maritime infrastructure, especially in ports reform and development, but it speaks to the critical question of ownership and control of such assets. Whilst the Charter recognises the role of private sector participation in port infrastructure, it is equally mindful of the fact that it is essential that Member States create the necessary conducive climate for private sector participation, investment and financing of both infrastructure and operations projects.

One of the disheartening realities in the Continent is that, though the Continent is heavily dependent on maritime transport and shipping in general, it is however not a ship owning Continent. Africa accounts for about 1.7% of ship ownership in the world. This is despite the fact that the Republic of Liberia is the 2<sup>nd</sup> largest register of ships in the world, but as we all know, registration does not equal ownership. It is in this context that the Charter aspire an Africa with viable merchant fleets to ensure sustained economic development of the Continent, in this regard, it calls for the germination of ship ownership by Africans utilising its strategic position in relation to the copious mineral resources characterising the Continent. For instance, the fact that the Republic of Liberia is the 2<sup>nd</sup> largest flag in the world it does not make Liberia a ship owning nation. If South Africa is compared to BRICS partners in terms of ship ownership, South Africa is ranked last.

The achievement of the objective of developing and growing ship ownership within the Continent is dependent on the realisation by countries making it, of the objective of implementing the proposed cabotage policies and to this end, the Charter promotes the establishment of national and regional maritime cabotage shipping lines in order to promote intra-African trade in the form of coastal shipping, thus facilitating the economic and socio-economic growth and integration of the Continent potentially resulting in its strengthened socio economic posture globally.

Beside its aim of promoting bilateral and multilateral cooperation among the Maritime Administrations of Member States in the field of maritime and inland waterways transport and port activities and as well as the promotion of cooperation between Member States, regional and international Organizations, there is a clear realisation that promotion of education and training at all levels, research, institution building and cooperation between States in the area of maritime economic development and maritime safety, security and protection of the marine environment are fundamental cornerstones of its implementation.

The sharing of best practices among Member States in the overall management and operation of Maritime Administrations and other maritime entities established in terms of the Charter is presented as an effective mechanism contributing in the creation of a harmonised system of performance of Administrations. It is also in this context that for the purpose of creating a cooperative mechanism between States that it envisages the establishment of an Association of African Maritime Administrations (AAMA) to take this work forward. In this regard, it must be stated that the Republic of Kenya, through the Kenya Maritime Safety Authority, convened a conference between 3 to 5 October 2012 which resolved to initiate the process to establish the AAMA with South Africa hosting the Secretariat and it was anticipated to hold a follow Conference sometimes in April 2013 to consider the draft constitution, the official launch of the body.

## CHALLENGES

One of the weakest points in sustainable development of maritime infrastructure and services in the Continent is a lack of a clear policy and framework for providing in legislation, the obligation to provide for resources in the form of budget to execute maritime industry development projects. The Charter proposes to deal with this matter in the manner that, Member States should individually ensure the provision of an appropriate and dedicated budget for the proper management, functioning and operation of a maritime function by individual Member States of the Union.

In the same context any allocation of financial resources in the form of budget must follow declaration of maritime policy and strategy at the highest level of government. South Africa our country itself has not managed to declare a comprehensive maritime policy. In the Brazil, Russia, India, China and South Africa partnership it is only South Africa that is yet to declare its maritime policy and strategy.

Maritime experts from various formations have been given strict timelines by Minister Martins to produce a final draft policy for adoption by government. Koji Sekimizu, the IMO Secretary General is also as part of the Integrated Technical Cooperation programme initiating a process to assist developing countries to craft their maritime profiles and policies. This is just to demonstrate that the matters that the charter provides for are real issues of global concern.

Of specific importance to South Africa, the following decisions need to be made urgently:

1. Declare the country's maritime policy in order to work towards developing into being an International Maritime Centre;
2. Ratify the African Maritime Transport Charter because with it SA can legislate for all the transformational provisions in it;
3. Develop and implement Maritime Agenda 2030;
4. Develop a policy to govern the negotiation of trade agreements with the top 5 export partners that will ensure the inclusion over carefully defined period preference clauses that South African ships carry a fair percentage of the goods to be freighted to and from SA, and
5. Inculcation of Sea-mindedness in the thinking of the nation. There is an urgent need to make South Africans generally and coastal citizens in particular more sea orientated and to also regard the sea as their means of livelihood.

One of the key challenge facing cargo owners within the Continent is the absence of a collective mechanism for the protection against the ever increasing cost of goods and

commodities. In a number of economies, there exist a body called Shippers' Councils whose responsibility is the protection and defence of the interest of shippers by focusing on the simplification of transport and trade procedures, as well as the negotiation of favourable transport costs and conditions. Indirectly, the existence of these Councils benefits consumers more especially in cases where they have been successful in pushing shipping costs down. In this regard, the Charter promotes the establishment and strengthening of Shippers' councils as a mechanism to enforcing protection of shippers as consumers. In South Africa we already have a shippers Council, albeit lacking recognition and support.

The state of aides to navigation in the continent especially provision of hydrography services and products in accordance with the specifications and the rules of the International Association of Lighthouses Authorities (IALA) and the International Hydrography Organization (IHO) requires urgent attention. It is in this context that, this area is identified as a sphere of potential cooperation between Member States of the AU. This is more so because of the cost associated with the upkeep of aides to navigation and most importantly hydrography surveys, production and reproduction of navigational charts. Almost all of the shipping routes along the coast of Africa with an exception of South Africa were last surveyed during the colonial era. The adoption of the charter will introduce opportunities for cooperation between countries.

In anticipation of the complexity of some of the propositions of the Charter and in order to help guide States during its implementation, there is provision to establish a Committee composed of fifteen (15) representatives of State Parties, designated by the Ministers Responsible for Maritime Transport, on the basis of geographical representation and rules and procedures of the African Union for a period of two years charged specifically with:

- a) Promoting and fostering of the implementation of the principles and objectives set out in the present Charter;
- b) Monitoring and conducting evaluation of the impact of the implementation of the Charter, and
- c) Preparing, submitting and publishing through the Commission an annual report and recommendations on the status of implementation to State Parties.

The manner and methodology used to review the Charter helped produce an instrument that has a direct input of Member States of the Union. It was because of the approach adopted that the Union achieved its revision. The focus should now be on its promotion and ratification by Member States of the Union.

With the Charter, we achieved an end to the somewhat unending process of restructuring and strategy development that has inadvertently characterised the Union without giving a chance to the implementation of the already adopted instruments. A focus on the Charter would help with the acceleration of its ratification. Priority should be given to urging Member States to sign and ratify the Charter in order to enable its early entry into force.

It is therefore against this backdrop that the African Maritime Transport Charter remains the legitimate mechanism with a potential to restructure and rejuvenate maritime transport sphere of influence in Africa.

## **CONCLUSIONS**

In conclusion it is important to echo the closing statement of the former Secretary General of the predecessor to the present African Union. The statement is as valid today as it was then nineteen years ago:

*"I am, therefore, urging all Member States of the OAU to sign and ratify the African Charter on Maritime Transport with the strong belief that it will foster cooperation among African countries in Maritime Transport Section and thus promote the development of this vital Sector."* (Salim, 1994).

## **REFERENCES**

- African Union Commission, 2010. Revised African Maritime Transport Charter.  
Ntuli, D.T., 2012. African Maritime Charter - potential to restructure and rejuvenate the maritime transport sphere. Southern Africa Shipping News, 67 p.8.  
Ntuli, D.T., 2013. Unpublished slides entitled: Preparation for BRICS Summit.  
Salim, S.A., 1994. African Maritime Charter, p.1.