LEGAL AND INSTITUTIONAL FRAMEWORK FOR ARBITRATION IN MARITIME DISPUTES IN NIGERIA

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Abstract

Maritime law in Nigeria encompasses a wide range of laws, regulations, and international conventions such as the Arbitration and Mediation Act 2023, the Admiralty Jurisdiction Act, Merchant Shipping Act, Nigeria Maritime Administration and Safety Act, and Cabotage Act are key legislations that shape the industry. Adhering to these provisions is essential for promoting safety, security, and sustainable growth in Nigeria's maritime sector. In addition to the laws and conventions, relevant institutions are also discussed in this paper. It is however recommended that these laws and institutions be strengthened to ensure adequate regulation of the players and general activities in the Maritime industry.

Keywords: *Maritime, Arbitration and Disputes*

1.0 Introduction

There is an array of legal and institutional frameworks that need to be analyzed to determine their efficacy in maritime arbitration in Nigeria. The sea is a crucial medium through which human trade and commerce is conducted; it is also a means of voyage, a valuable source for mineral extraction and power generation and an essential source of the blue economy.[3] It is of vital importance for Nigeria, as a coastal state located strategically on the west coast of Africa in the Gulf of Guinea, to have an effective maritime arbitration legal regime for the regulation and protection of conflicts arising from commercial sea activities.

Disputes are inevitable in any societal context. Human beings are bound to disagree on and at almost every point in life, as long as they interact. In human relations therefore, disagreements and disputes are bound to occur.[4] Man has been described as a gregarious animal and thus disputes must occur during co-existence and interactions in daily activities. The maritime sector is not left out. Dispute arises in it too. Just as there are varying types of transactions, so are myriads of parties involved in the maritime industry. These include ship owners, charterers, the crew, insurance companies, port administrators, dock workers, inspection agents, bankers, sellers and buyers. Thus, the many contractual relationships generated thereby are potential sources of disputes in the sector.[5] Maritime disputes cover a wide range of areas such as charter parties, bills of lading, sale of ships, ship financing, ship building contracts and contracts of marine insurance. Such disputes usually span oceans and are sometimes international in nature.[6] Disputes under bills of lading are usually concerned with damage to or loss of cargo. Less frequently, disputes may be referred under memoranda of agreement for the sale of ships, such disputes

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[5] A. Rhodes-vivour, 'The Agreement to Arbitrate- a Primary Tool for the Resolution of Maritime Disputes' (2008) <http://www.drvlawplace.com/media/AGREEMENT- TO-ARBITRATE.pdf> accessed on 28 September , 2023

[6] *Ibid*

usually concern delay in delivery, failure altogether to deliver, to take delivery or technical issues as to the condition of the ship on delivery. There are also contracts of affreightment, under which substantial exporter or importer may secure the agreement of a company for the supply of a number of ships to carry cargo over a period of time. In addition, there are disputes under ship building contracts (which generally concern the specification of the ship, delay in delivery or failure to take delivery) and those which arise under contracts for the repair of ships.[7] Such disputes are governed by universal principles of contract, commercial and maritime laws and the municipal laws of the relevant countries. Dispute Resolution as the name implies is the settling of conflicts. The course of settling disputes may involve litigation or any of the alternative dispute resolution mechanisms (ADR) and arbitration. Maritime activities naturally generate conflicts which could be resolved through any of the above methods. This thesis considers arbitration as a way of resolving such disputes.

Maritime arbitration is like arbitration relating to other aspects of law, as such similar rules and procedure is applicable. Nigeria has adopted various relevant international instruments relevant to arbitration proceeding. Nigeria was the first African state to accede to the United Nations (UN) Commission on International Trade Law (UNCITRAL) model law and the United Nations Convention on recognition and Enforcement of Foreign Arbitral Awards (New York) Convention was acceded to in 1970. These two instruments were domesticated in the Arbitration and Conciliation Decree which came into force in 1988 and was later known as the Arbitration and Conciliation Act (ACA)[8] by virtue of section 315 of the 1999 constitution. The applicability of the ACA covered all disputes resulting from commercial transactions, including international commercial transactions. This law has been repealed and replaced with the Arbitration and Mediation Act 2023. The legislative framework governing arbitration proceedings in Nigeria is this Act, the Rules appearing in the schedule to the Act and the arbitration laws of the federating states.

However, the legal frameworks for maritime protection and arbitration in Nigeria includes the Constitution, statutes and government regulations, case law, which provides binding judicial precedents, and international maritime conventions.[9] Maritime law in Nigeria encompasses a wide range of laws, regulations, and international conventions such as the Arbitration and Mediation Act 2023, the Admiralty Jurisdiction Act, Merchant Shipping Act, Nigeria Maritime Administration and Safety Act, and Cabotage Act are key legislations that shape the industry. Adhering to these provisions is essential for promoting safety, security, and sustainable growth in Nigeria's maritime sector. In addition to the laws and conventions, relevant institutions are also discussed in this paper.

2.0 Legal Framework of Maritime Industry in Nigeria

This section discusses applicable domestic, regional and international laws and conventions relating to maritime arbitration in Nigeria. They are discussed hereunder.

2.1 Constitution of the Federal Republic of Nigeria, 1999

[7] B. Harris , et.al, 'London Maritime Arbitration', (1993) (9) (3), *Arbitration International* , 275
[8] ACA 1988 Cap A18 Laws of the Federation of Nigeria 2004
[9] T. Aderoju ., 'Legal Framework for Maritime Law in Nigeria', 2022, <https://www.ibanet.org/legal-framework-nigeria-maritime-law > accessed 28 September 2023.

The Constitution of the Federal Republic of Nigeria 1999 (CFRN) is the *grundnorm* of the country, to which every state action and law is subject. The Constitution expressly provides for its supremacy over and above any other law in the country. Thus, any other law that is inconsistent with the provisions of this Constitution, shall, to the extent of the inconsistency, be void. In the Supreme Court case of *Nwaigwe and Ors v Nze Edwin Okere*,[10] Onnoghen, JSC (as he then was) held, on the effect, of any law or act that is inconsistent with the constitution, that the constitution is the supreme law of the land and it is settled law that any Law or Act or Section thereof that is inconsistent with any provision of the constitution is null and void to the extent of the inconsistency.[11]The provisions of the CFRN have a binding force on the Authorities and all persons in the Federal Republic of Nigeria.

The Constitution grants ownership of minerals, mineral oils, and natural gas to the government of the federation, including resources in the territorial sea, contiguous zone, and Exclusive Economic Zone. Of Nigeria.[12] The CFRN also charges the state to improve and protect the air, land, water, forest and wildlife of Nigeria.[13] It also vests exclusive jurisdiction over maritime and admiralty matters in the Federal High Court.[14] It confers jurisdiction on the Federal High Court to the exclusion of any other court in civil causes and matters relating to any admiralty jurisdiction, including: shipping and navigation on the River Niger or River Benue and their affluence; on such other inland waterway as may be designated by any enactment to be an international waterway; all federal ports (including the constitution and powers of the ports authorities for Federal ports); and carriage by sea.[15]

There is no gain saying the constitution of Nigeria plays an important role as an important legal machinery for maritime arbitration matters as it recognizes arbitration as a means of dispute resolution. Specifically, the Constitution provides for the settlement of disputes by Arbitration, Mediation, Conciliation, Negotiation and Adjudication.[16] This is in recognition of the crucial role Arbitration and other forms of ADR now play in the resolution of various types of disputes. The constitutional status accorded Arbitration and other forms of ADR for the settlement of disputes is a complementary role to the judicial powers conferred on the Courts by the Constitution.[17]

2.2 Arbitration and Mediation Act, 2023

The Arbitration and Mediation Act 2023 (AMA) was signed into law by the former President of Nigeria, Muhammadu Buhari on 26 May 2023. This new legislation repeals and replaces the previous Arbitration and Conciliation Act and serves as the principal legal framework governing arbitration, arbitral tribunals, arbitral awards, and mediation in Nigeria. This 2023 Arbitration and Mediation Act offers a revamped and modern legal framework to entities seeking to arbitrate their commercial disputes in Nigeria. The Act introduces several provisions that will be of interest to arbitration users in Nigeria. It

[10] SC 392/2002
[11] CFRN 1999 (as amended) s. 1(3)
[12] *Ibid*, s. 44 (3)
[13] *Ibid*
[14] *Ibid*, s. 251 (1) (g)
[15] CFRN (n11)
[16] CFRN (n11) s. 19(d)
[17] E. Odirri , 'Alternative Dispute Resolution', August 2004, <https://www.nigerianlawguru.com/articles/arbitration/ALTERNATIVE%20DISPUTE%20RESOLUTION.> accessed 02 October, 2023

comprises 92 Sections and a schedule to the Act. It is divided into three parts: Arbitration, Mediation and Miscellaneous Provisions. Part I provides for Arbitration which is our focus in this thesis.

The objective of AMA is to promote fair resolution of disputes by an impartial tribunal without necessary delay or expense.[18] This was not provided for in the defunct ACA 1988. This provision mirrors the current style of legislation in Nigeria which usually commences with the objective of such legislation. The Act is the contemporary primary law governing domestic and international arbitration proceedings in Nigeria. It is modelled after and reflects the provisions of the UNCITRAL Model Law (as revised); and expressly recognises that the UNCITRAL Model Law must be factored in when the Act is interpreted to foster uniformity of application and observance of good faith.[19] The Act provides for the general proceedings and enforcement of arbitration awards in Nigeria.

The Act, while embracing international best practices in Arbitration took precedence from the repealed legislation, its oversight, shortcomings and inadequacies and birthed a well and improved set of provisions and further provided a unified legal framework for the fair and efficient settlement of commercial disputes via Arbitration and Mediation channels in Nigeria.

3.0 Novel Provisions in AMA

The AMA contains several novel provisions, some of which are discussed below.

3.1 The Arbitration and Mediation Act

The Arbitration and Mediation Act in Section 2 (4) (a) took cognizance of the modern realities of communication, thereby permitting the conduct of Electronic Arbitration and Mediation within Nigeria. Furthermore, the Act recognizes a written Arbitration Agreement to include electronic communications. Electronic communication, as defined by Section 91, means any communication that the parties make by means of data messages, that is, any information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange, electronic mail, telegram, telex or telecopy. It introduces third-party funding arrangements by providing that the torts of maintenance and champerty will no longer apply in relation to arbitrations seated in Nigeria and arbitration-related proceedings in any Nigerian court. For context, in a third- party funding arrangement, a person or an entity who is not a party to an arbitration agreement or proceedings (the third-party funder) agrees to provide financial assistance to a party to arbitration proceedings in exchange for a return – usually a fraction of the damages awarded to the funded party. Indeed, these new provisions on third-party funding can, among others, encourage individuals and companies who lack the financial resources to pursue or defend a legal right. The Act also recognizes email correspondence and other like media or electronic communication referring to an agreement by both parties to submit disputes to arbitration as a form of arbitration agreement. Again, it reduces the default number of arbitrators from three (3) to a sole arbitrator.[20] There is also provision for lien on final awards pending full payment of arbitrators' fees and institutions' expenses by the parties.[21] Some of these key innovations of the

[18] AMA 2023, s.1
[19] AMA 2023, s. 91(10)
[20] AMA (n18) s. 6(2)
[21] *Ibid,* s. 54

Arbitration and Mediation Act, 2023 (AMA) alongside its corresponding provisions under the Arbitration and Conciliation Act (ACA) are discussed hereunder. The Use of Accessible Electronic Communication is provided for under AMA. The repealed ACA mandates all arbitration agreement to be in writing taking the form of a document signed by the parties; or in an exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement; or in an exchange of points of claim an of defence in which the existence of an arbitration agreement is alleged by one party and denied by another. The new AMA however, in addition to the above, introduces, "electronic communication" to satisfying the writing requirement. It provides that the requirement for an arbitration agreement to be in writing can now be satisfied by an "electronic communication" that is accessible to be usable for subsequent reference.[22] Implying that, if an electronic communication is readily accessible and can be used for future reference, it fulfills the criteria that an arbitration agreement must be in writing. Electronic communication as used in the Act is defined as any communication that the parties make by means of data messages, that is, any information generated, sent, received, or stored by electronic, magnetic, optical, or similar means, including electronic data interchange , electronic mail, telegram, telex, or telecopy.[23] The above definition thus recognizes the use of emails, text message correspondences, social media chats etc. as means to satisfy the mandatory requirement of a written arbitration agreement. Whilst the ACA may have presumed the inclusion of electronic means of communication under its provision for other means of communication which provide a record of the arbitration agreement,[24] it is not certain what it holds to constitute, "other means of communication" – an ambiguity the AMA has by its specific provision, laid to rest.

3.2 B. Third Party Funding (TPF)

In contrast to the repealed ACA, the new Act explicitly acknowledges and recognizes the concept of third-party funding (TPF). With the enactment of the Arbitration and Mediation Act, Nigeria joins Singapore and Hong Kong in expressly providing for third-party funding, contributing to its attractiveness as a seat for dispute resolution in Africa. Third-party funding in arbitration refers to a practice where an entity or individual, known as a third-party funder provides financial support to one of the parties involved in an arbitration proceeding. The funder's role is to finance some, or all the costs associated with the arbitration in exchange for a share of the potential award or settlement. The terms of the third-party funding agreement determine the extent of the funder's obligations, which may include covering the counter-party's costs and providing security for the opponent's costs if ordered by the Arbitral Tribunal. The Act defines a Third-Party funder as any natural or legal person who is not a party to the dispute but who enters into an agreement either with a disputing party, an affiliate of that party, or a law firm representing that party to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and such financing is provided either through a donation or grant or in return for reimbursement depends on the outcome of the dispute or in return for a premium payment.[25]

[22] AMA (n18), s. 2 (4)

[23] *Ibid,* s.91

[24] ACA (n8) s. 1 (1) (c)

[25] AMA (n18) s. 91

This funding arrangement is a relatively new phenomenon in international arbitration, and the arbitration community and states alike are grappling with its implications. TPF does raise concerns relating to conflicts of interest, confidentiality, and security for costs. Also, some state respondents, particularly in investment arbitration cases, have argued that TPF is designed to favour investors, given that funders have the incentives to fund claimants and not the respondents. Despite these contentions, there is nothing in principle that prevents the funding of respondents in an arbitration. More so, TPF demonstrably increases access to justice, reduces systemic inequalities in the legal system, and helps parties to maintain cash flow and balance sheet solvency. For these reasons, the Nigerian parliament should be particularly commended for being one of the two African countries to adopt a permissive statutory framework for TPF in international arbitration. The other African country is the Republic of Sierra Leone.[26]

3.3 Abolition of the Torts of Maintenance and Champerty

The Arbitration and Mediation Act abolishes the torts of maintenance and champerty in relation to arbitration and arbitration-related court proceedings. It provides that these torts do not apply in relation to Third-Party funding of arbitrations seated in Nigeria and related to proceedings in any court within Nigeria.[27] These torts were considered prohibitive of third-party funding, and their abolition invariably allows parties to enter these arrangements. The AMA expressly permits third-party funding of arbitration proceedings and introduces provisions for the disclosure of third-party funding and security for costs against third-party funders. The Act requires the funded party to disclose the name and address of the funder to its counterparties, the arbitral tribunal and, where applicable, the arbitral institution; and imposes a mandatory disclosure obligation on the funded party – requiring a written notice of the funding arrangement to be provided to the other parties, the arbitral tribunal, and, where applicable, the arbitral institution. In addition, the Act provides that where a respondent seeks security for costs based on the disclosure of TPF, the tribunal may allow an affidavit from the funded party confirming whether the funder covers adverse costs orders, and the tribunal will consider facts disclosed in the affidavit in reaching its decision. The implication of these provisions is that funding agreements are now fully enforceable in Nigeria. This may signal the beginning of a broader trend of adopting legislation to facilitate third-party funding in Africa. The Act also specifically provides that an arbitral tribunal shall fix the costs of arbitration in the final award and such costs include the cost of Third-Party funding.[28]

Further, in cases where the parties do not specify the number of arbitrators in their agreement, there are different provisions in the repealed ACA and the new AMA. Under the repealed ACA, if the parties failed to specify the number of arbitrators, the default provision stated that three (3) arbitrators would be designated to hear the case.[29] However, the new AMA has introduced a change in this regard. According to the new Act, if there is no agreement between the parties regarding the number of

[26] A. Okubote, ' A New Era for Arbitration in Nigeria: The Arbitration and Mediation Act 2023', July 2023, < https://www.afronomicslaw.org/category/analysis/new-era-arbitration-nigeria-arbitration-and-mediation-act-2023> accessed 25 October, 2023

[27] AMA (n18) s. 61

[28] *Ibid*, s. 50 (1) (g)

[29] ACA (n8) s.6

arbitrators, the default provision now designates a sole arbitrator to handle the arbitration proceedings.[30] Having a sole arbitrator can be more cost-effective compared to multiple arbitrators. This can be particularly advantageous for parties with limited financial resources or when the dispute involves relatively lower stakes. With a single arbitrator, the arbitration process can be streamlined and expedited. Decision-making can be quicker as there is no need for deliberations or reaching a consensus among multiple arbitrators. Whilst the inclusion of provisions for the designation of sole arbitrator may appear to simplify and streamline the process, it is crucial not to overlook the issue of justice and fairness that a three-member panel of arbitrators is more likely to achieve compared to a single arbitrator.

The Act further provides that such arbitrator shall not be precluded by reason of his nationality unless agreed upon by the parties. This brilliant provision is aimed at creating a standard and default number of arbitrators (where unspecified) for Arbitral proceedings. Furthermore, with respect to international arbitration, the AMA provides that, if no procedure is established for the selection of an arbitrator and no appointing authority is designated or agreed upon by the parties, it shall be deemed that the Director of the Regional Centre for International Commercial Arbitration in Lagos is the appointing authority designated by the parties.[31]

3.4 The Appointment of an Emergency Arbitrator

Another novel provision of the Act is the appointment of an Emergency Arbitrator which allows parties to apply to their designated arbitral institution or the court for the appointment of an emergency arbitrator when seeking interim relief prior to constitution of the arbitral tribunal.[32] The application must include relevant details such as the emergency relief sought, party information, the underlying dispute, reasons for urgency, and the arbitration agreement. Once accepted, an emergency arbitrator is appointed within two business days. This provision operates alongside the option of seeking urgent interim measures from a Court.[33] The introduction of the emergency arbitrator provision, in the main, enhances the Act's responsiveness in addressing the need for urgent provisional measures in an arbitration process and brings Nigeria arbitration law in line with international best practices.

The decisions from such emergency proceedings are binding and enforceable by parties pending the final decision from the arbitral tribunal. The goal of this provision is to ease and expedite arbitration proceedings in Nigeria. The Act permits the appointment of an emergency arbitrator in cases where a party seeks immediate relief. Furthermore, it allows for the conduct of emergency arbitration proceedings through various means of communication, including video conferencing, telephone, and similar methods. According to the new Act, if a party requires urgent relief in relation to a dispute, they have the option to apply for the appointment of an emergency arbitrator. This application can be made to an arbitral institution designated by the parties, or if no such designation exists, to the court. The application can be submitted either concurrently with or after the filing of a notice of arbitration, but before the formation of the arbitral tribunal.[34] In urgent situations where maintaining the status quo is crucial to prevent irreparable harm or preserve rights, parties can seek interim measures such as

[30] AMA (n18) s. 6(2)
[31] *Ibid*, s.59
[32] AMA(n18) s. 16
[33] *Ibid*, s. 16 (10) (11)
[34] *Ibid*, s.16

injunctions or asset preservation orders. Emergency arbitrators can provide speedy decisions on such matters, allowing parties to address pressing issues before the full arbitral tribunal is constituted, which may take time due to various procedural steps.[35]

4.0 Clarification on Statute of Limitation to Arbitration and Mediation Proceedings

In addition, the Act makes clarification on Statute of Limitation to Arbitration and Mediation Proceedings. The matter concerning the computation of time in relation to the limitation period when arbitration and mediation proceedings were initially undertaken is a familiar topic within the Nigerian legal system. Nigerian courts have established that the period between the initiation of arbitration and the issuance of the final arbitral award is not considered when considering the statute of limitations. The AMA resolves the controversy regarding the lack of clarity which resulted from the Nigerian court's decision in *City Engineering Nigeria Limited v. Federal Housing Authority*.[36] The AMA codifies this and aligns itself with this established judicial precedent concerning the computation of time in relation to the limitation period for both arbitration and mediation proceedings. With respect to arbitration, the new Act specifically states that statutes of limitation, which are time limits set by law for initiating legal actions, will be applicable to arbitral proceedings in the same way as they apply to judicial proceedings.[37] In other words, any time limits specified in statutes of limitation that apply to a particular legal dispute will also apply to arbitral proceedings relating to that dispute. The Act provides that the Limitation Act applies to arbitral proceedings as they apply to judicial proceedings.[38] This novel provision excludes the commencement of the arbitration and the date of the order for disputes where the subject matter is an award. It specifies the period to enforce an arbitral award and excludes the commencement of the arbitration and the date of the award. These provisions provide an additional statutory safeguard against the expiration of the limitation period in the context of arbitration proceedings conducted under the Act. This provides an extra layer of protection for arbitral proceedings.

Also, while the repealed ACA does not include provisions for consolidation of arbitral proceedings, the new Act introduces this possibility.[39] One of the issues thrown up by the old Act was whether the arbitral tribunal has powers to consolidate arbitration proceedings between multiple parties in related contracts. There was no helpful guidance in the old Act or judicial precedent, so the regime for consolidation was generally in a state of flux. Multiple parties in related construction contracts or parties in long-term commercial relationships may find themselves in multiple disputes over time. The AMA now has provisions on consolidation and concurrent hearings. This avoids the risks of conflicting decisions in cases involving related contracts and enhances the efficiency of arbitration in Nigeria. Based on the provisions in the new Act, parties involved in arbitration may agree to consolidate their arbitral proceedings with other ongoing proceedings, even if they involve different parties. They can also agree to have concurrent hearings, where multiple proceedings are conducted simultaneously. However, the arbitral tribunal does not have the authority to order consolidation or concurrent hearings unless the parties specifically agree to it.[40] It remains to be seen how this provision would be interpreted by

[35] *Ibid*
[36] (1977) 9 NWLR (Pt 520) 224.
[37] AMA (n18), s. 34 (1) (2)
[38] *Ibid*, s. 34
[39] AMA (n18), s. 39
[40] *Ibid*

tribunals and the courts - whether a joint application by parties or an application by one party with the consent of all other parties would be required? Notably, the Act also confers on the tribunal the authority to permit the joinder of an additional party in arbitral proceedings if it appears that the additional party is bound by the arbitration agreement that initiated the arbitral process.[41]

4.1 Consolidation of Arbitral Proceeding

The Arbitration and Mediation Act recognizes the agreement of parties to consolidate arbitral proceedings or hold concurrent hearings; with the parties' consent, an arbitral tribunal may consolidate proceedings or hold concurrent hearings.[42] It is imperative to emphasize that the tribunal may not consolidate arbitral proceedings if not expressly agreed to by the parties. Under the new Act, parties have the option to agree that their arbitral proceedings can be consolidated with other ongoing arbitral proceedings, even if they involve different parties, if all parties concerned agree to such consolidation.[43] This provision on consolidation of multiple arbitrations benefits parties by providing efficiency, cost savings, consistency, judicial economy, settlement opportunities, and increased finality. It offers a streamlined approach to resolving complex disputes involving multiple parties and related issues. The provision can also benefit the judicial system when court intervention is required. If the parties seek court assistance, consolidating multiple arbitrations can reduce the burden on the court system by consolidating related cases and avoiding duplicative proceedings. It enables the courts to allocate their resources more effectively and efficiently.

Another groundbreaking change in Nigerian arbitration is a provision in the new Act that allows an arbitral tribunal to exercise discretion in including an additional party in the arbitration, provided there is *prima facie* evidence that the party is bound by the arbitration agreement.[44] The term ''*prima facie*'' as used in the new Act indicates the need for reasonable belief or evidence of the party's obligation to the agreement. The arbitral tribunal evaluates the available evidence to establish a credible connection between the additional party and the arbitration agreement, ensuring their compliance with its terms and obligations. This provision aligns with the UNCITRAL Model Law on International Commercial Arbitration, empowering the tribunal to consider factors like the legal interest of the additional party, rights of existing parties, potential conflicts of interest, and the timing of the request when deciding on joinder.[45]

4.2 Power to Grant Preliminary Order

The Act also introduces new provisions relating to the grant of a "Preliminary Order" on an *ex parte* basis. By Section 22 of the Act, a party applying for an interim measure of protection may, without notice to his adversary, seek a Preliminary Order to preserve the purpose of the interim measure that is being sought. Where granted, the Preliminary Order will subsist for only 20 days as the Act envisages that during this period, the arbitral tribunal would consider the application for interim measures on an *inter partes* basis. Relatedly, the Act reinforces the arbitral tribunal's power to grant interim measures

[41] AMA(n18), s. 40
[42] *Ibid* s.39
[43] *Ibid*
[44] AMA (n18), s. 40
[45] UNCITRAL Rules 2021, art. 17

of protection and provides enforcement mechanisms for such measures. Thus, the new Act grants Power to the Courts to grant interim reliefs. The grant of the application for enforcement is subject to the grounds set out in Section 29 of the Act; however, the Court is not permitted to review the substance of the interim measure when making its determination. Upon the recognition by the court, the order of interim measures is enforceable irrespective of the country where it is issued.[46]

During the resolution of commercial disputes, whether by the court or an arbitral tribunal, it is always necessary to ensure that the property in dispute is not allowed to waste or be depleted to the detriment of either party. The need for an interim order of protection may arise because it may be too late if the tribunal has to wait until an award is made to resolve the disposition of the property. One of the contentious issues under the old Act was whether the court could grant interim measures of protection in arbitration. This arose because there was no express provision that empowers the court with such powers. In this regard, Section 34 of the ACA, which provides that a court shall not intervene in any matter governed by this Act except where so provided in this Act has been interpreted differently. Two strikingly divergent views emerged. On the one hand is the view that section 34 circumscribed the jurisdiction of courts to grant interim measures of protection in arbitration. Accordingly, some courts have interpreted this section to exclude their powers to grant interim measures. In *Statoil (Nig.) Ltd & Anor v. NNPC & 3 Ors,*[47] the Court of Appeal held that the intention of the legislature in drafting the provision of Section 34 of the ACA is to protect the mechanism of arbitration and to prevent the courts from having direct control over arbitral proceedings outside the circumstances specified in the Act. Thus, the Court held that the issuance of an exparte order of interim injunction was not permitted under the ACA.[48] On the other hand, relying on section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria, Nigerian courts have exercised the judicial and inherent powers to grant injunctions in deserving cases. Some cases where the courts have granted interim measures in arbitration include *Atlantic Energy Drilling Concepts Nigeria Limited & Anor v. Nigerian Petroleum Development Company Ltd & Anor*[49], and *Limak Yatrin Enerji Uretim Isletme Hizmetleri ve Insaat (Limak) v. Sahelian Energy & Integrated Services Limited*[50] where Hon. Justice Aladetoyinbo (retired) granted a Mareva Order of Injunction in aid of enforcement of an arbitral award.

The later view was given a judicial affirmation by the Supreme Court in *Owners of the MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd*,[51] where the apex Court held that a party to an arbitral proceeding would be permitted to institute an action for injunctive reliefs in Court during the pendency of the arbitral proceedings if there is a strong, compelling and justifiable reason for such an action. These tensions have now been put to rest with the express provision in the AMA granting the court powers to issue interim measures of protection in aid of domestic and international arbitration

[46] AMA (n18), s. 29
[47] 14 NWLR (Pt. 1373) 1
[48] A. Okubote (n26)
[49] FHC/ABJ/CS/477/2016
[50] Unreported FHC,CV/481/2018,
[51] (2003) 15 NWLR (Pt 844) 469

proceedings. The court is required to exercise this power within 15 days of receiving an application and in accordance with the Arbitration Proceedings Rules 2022 in the Third Schedule to the Act.[52]

Also, under the repealed ACA, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.[53] The new Act however expands this power by allowing the court to issue interim measures of protection in relation to arbitration proceedings conducted in Nigeria or another country.[54] The new Act recognizes the importance of court intervention when necessary to protect the rights of parties or preserve the effectiveness of the arbitration process. The court can provide interim relief in the form of injunctions, orders for the preservation of assets, or any other measures it deems necessary to support the arbitration process. These interim measures aim to prevent irreparable harm, maintain the status quo, or secure the effectiveness of the final arbitral award. Although it seems that any court has the authority to grant interim relief, the Act includes a provision stating that the court may refuse to recognize or enforce an interim measure if it determines that the measure is incompatible with its conferred powers.[55] Therefore, the power of any court to grant interim relief to an applicant is limited to the inherent powers granted by relevant statutory laws.

4.3 Withdrawal from Appointment by an Arbitrator

AMA also provides for consequences of withdrawal from Appointment by an arbitrator. The new Act introduces a unique provision regarding the consequences of an arbitrator's withdrawal from their appointment. This provision grants parties involved in arbitration the right to mutually agree upon the specific repercussions that will follow if an arbitrator withdraws from their appointment.[56] This provision in the Arbitration and Mediation Act regarding the consequences of an arbitrator's withdrawal from their appointment recognizes the importance of party autonomy and allows the parties involved in the arbitration to have a say in the outcome of such a situation. It would also help maintain the continuity of the proceedings. Instead of automatically halting the arbitration in the event of an arbitrator's withdrawal, the parties can agree on alternative measures to ensure the smooth continuation of the process. This avoids unnecessary delays and minimizes the potential disruption to the resolution of the dispute.

4.4 The Immunity of an Arbitrator

The new Act also introduces and recognizes the immunity of an arbitrator, an appointing authority, or an arbitral institution. Under the Act, an arbitrator, an appointing authority, or an arbitral institution is granted immunity in the performance of their duties; unless it can be proven that they acted in bad faith.[57] However, it's important to note that this immunity does not exempt an arbitrator from any liabilities arising from their withdrawal.[58] This provision ensures that arbitrators, similar to litigators, are now safeguarded by law while carrying out their responsibilities, alleviating concerns about

[52] AMA (n18), s.29
[53] ACA (n6), s. 13
[54] AMA (n18), s. 19
[55] AMA (n18), s.29
[56] *Ibid*, s. 12
[57] *Ibid*, s. 13 (1)
[58] *Ibid*, s. 13 (3)

potential liability. This is a novel provision that is not contained in the ACA. Indeed, this provision encourages impartial decision-making by shielding arbitrators from the fear of personal liability; the provision enables them to make decisions based solely on the merits of the case. It fosters an environment where arbitrators can exercise independent judgment without the concern of facing legal consequences for their decisions.

4.5 The Establishment of the Award Review Tribunal

Another innovation introduced by the AMA is the establishment of the Award Review Tribunal.[59] Under ACA, recourse against a final award may only be sought in court, thereby causing unnecessary delay to the enforcement process and undermining the objective of arbitration as an efficient and cost-effective dispute resolution method. The AMA offers parties the option to include a provision in their arbitration agreement that allows for the review of their arbitral award by an Award Review Tribunal.[60] Unless parties agree otherwise, the Award Review Tribunal will consist of the same number of arbitrators as the initial arbitral tribunal,[61] and shall reach a decision as to whether to set aside the award, either in part or entirely, or uphold it, within sixty days of being constituted.[62] Notably, reference to the Arbitral Review Tribunal does not wholly preclude the involvement of the court in annulment/enforcement proceedings; hence, a party has the option to seek a review of the decision of the Award Review Tribunal before the court. Where the Tribunal sets aside the arbitral award (partly or wholly), the court may reinstate the award if it considers the decision of the Tribunal to be 'unsupportable' having regard to the grounds for the annulment. On the other hand, if the Tribunal upholds the arbitral award, the court can only set aside the award on limited grounds, such as arbitrability and public policy.[63] This new provision offers dissatisfied parties an additional opportunity for redress before resorting to the Court. However, the potential shortcoming of this provision is that consistent practice of challenging the Award Review Tribunal's decision in court may lead to increased costs for the parties and, consequently, impede the efficient enforcement of arbitral awards.[64]

Further, this Arbitration and Mediation Act mandates the court to stay proceedings and refer parties to Arbitration for matters commenced in breach of the Arbitration Agreement unless the court finds that the agreement is void, inoperative or incapable of being performed.[65] This is an improvement on the Previous Arbitration Act, which made the decision to stay proceedings subject to the court's discretion and required the applicant to demonstrate its willingness to proceed with the arbitration. However, while the Act presents significant advancements, it is crucial to acknowledge that no legislation is perfect. Challenges may arise in the implementation and interpretation of the Act, requiring continuous evaluation and potential amendments to address any issues that may arise during implementation.

[59] AMA (n18), s.56
[60] *Ibid*
[61] *Ibid*, s. 56 (4) (a) (b)
[62] *Ibid*, s. 56 (6)
[63] *Ibid*, s. 56 (9)
[64] A. Okubote (n26)
[65] AMA, s. 5(1)

4.6 Merchant Shipping Act 2007

This principal legislation governs merchant shipping and related matters in Nigeria. It includes provisions for ship licensing, registration, collision regulations, limitation of actions for maritime claims, and provisions for salvage services. Compliance with the Merchant Shipping Act (MSA) is crucial for ship operators and businesses engaged in maritime trade. The Merchant Shipping Act generally regulates merchant shipping issues and other labour related matters.[66]The Act established an Agency for Maritime Safety Administration, responsible for maritime safety, administration and security.[67] All ships operating commercially in or from the waters of Nigeria are required to obtain a certificate of licence under the Act.[68] The Minister, charged with responsibility for matters relating to merchant shipping, may by notice exempt generally or specifically from registration under this Act, a licensed Nigeria ship or a class of Nigerian ship when operating outside the waters of Nigeria.[69]

The Merchant Shipping Act is the primary legislation governing collision,[70] including liabilities in collision cases in Nigeria.[71] Section 340 of the Act provides for rules as to division of loss. Where, by the fault of two or more ships, damage or loss is caused to one or more of them, or to their cargo or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault- if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and nothing in this section shall affect the liability of any person under a contract of carriage, or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law. This section applies to Nigerian Government ships as it applies in the case of other ships. The Merchant Shipping Act further provides for limitation of actions in Nigeria for maritime claims or lien against a ship or its owners in respect of any damage or loss. Proceedings in respect of such damage or loss are to be commenced within two years from the date when the damage or loss or injury was caused, or the salvage services were rendered.[72]

4.7 Nigerian Maritime Administration and Safety Agency Act, 2007

The Nigerian Maritime Administration and Safety Agency Act provides for the promotion of maritime safety and security, protection in the marine environment, shipping registration and commercial shipping, maritime labour, the establishment of the Nigerian Maritime Administration and Safety Agency and related matters. Its objective is to develop indigenous commercial shipping in international and shipping trade.[73] At the commencement of the Act, all assets, liabilities, rights and obligations of

[66] S. C. Dike and G. Gininwa, 'An Appraisal of the Nigerian Legislation and Institutions Governing Maritime Environment', (2019), *SSRN Electronic Journal*, 10
[67] Merchant Shipping Act 2007, s 2.
[68] *Ibid*, s 5(1).
[69] *Ibid*, s. 5(2)
[70] *Ibid*, ss 338 - 344
[71] *Ibid*
[72] *Ibid*, s. 343
[73] Dike (n66)

the Nigerian Maritime Authority (NMA) and the Joint Maritime Labour Industrial Council (JOMALIC) were transferred to NIMASA.[74]

The NIMASA Act applies to all ships, whether small ships or crafts that are registered in Nigeria, and to all other ships flying a foreign flag in the Exclusive Economic Zone, territorial and inland seas, inland waterways and the ports of the country.[75] It regulates ship registration and licensing, merchant shipping, seafarers' welfare, maritime training standards, vessel security measures, marine pollution prevention, and maritime labor regulations. The NIMASA is given the right under the Act to make regulations with approval of the Minister with regards to dumping of ship or generated waste into the Nigerian waters.[76] Complying with NIMASA regulations ensures safety and adherence to international standards.

4.8 Coastal and Inland Shipping (Cabotage), 2004

The Coastal and Inland Shipping (Cabotage) Act (Cabotage Act) restricts the use of foreign vessels in Nigeria's domestic coastal trade. It promotes indigenous tonnage and protects Nigerian shipping companies. The Act defines cabotage,[77] establishes licensing requirements,[78] and safeguards Nigerian citizens' participation in cabotage trade.[79] Compliance with this act supports the growth of Nigeria's maritime industry and protects local stakeholders. The Cabotage Act regulates the activities of maritime transportation. The Act is established to restrict the use of foreign vessels in domestic coastal trade; promote the development of indigenous tonnage; establish a cabotage vessels financing fund; and for related matters.[80]

However, the main purpose of the Act is to promote Nigerian ship ownership and delimit the honour and use of foreign vessels in the Nigerian marine trade while boosting the nation’s economy through the ownership of ships and in the engagement of the business of carriage of goods and services on the Nigeria inland waterways domain.[81] The Act empowers Nigerians involved in maritime activities to invest largely in domestic coastal trade, but it also allows Nigerians to manage vessels in collaboration with foreign partners.[82]

Further, a keen look at the Cabotage Act highlights salient provisions for the growth of a vibrant shipping sector. Carriage of petroleum products between oil rigs, platforms and installations whether offshore or onshore or within any ports or points in Nigerian waters has been restricted to Nigerian citizens. A big loophole in the Cabotage Act, 2003 is the provision of waivers for foreign-owned vessels which some may say has been responsible for the failure of cabotage in Nigeria. Section 9 of the Act provides that the Minister for Transport may grant a waiver to a registered vessel, to be wholly owned by Nigerian citizens, where he is satisfied that no wholly Nigerian owned vessel is suitable and available

B. Akodu, ‘Maritime Cabotage’ in Nigeria – the need to empower domestic shipowners’, 2015, <https://businessday.ng/news/legal-business/article/maritime-cabotage-in-nigeria-the-need-to-empower-domestic-shipowners/> accessed 25 September, 2023

[75] *Ibid*

[76] NIMASA Act, s. 22

[77] Cabotage Act 2003, s.2

[78] *Ibid*, s. 15

[79] *Ibid*, s. 42 (2)

[80] *Ibid*

[81] Okubote (n26)

[82] *Ibid*

to provide the services or perform the activities described in the application. This provision has been a big cog in the wheel for Nigerian shipowners. The reason is that they have been excluded largely from participating in transporting oil in coastal and inland waters. There appears to be a decline in shipping activities by our indigenous shipowners who have been excluded from the lucrative oil sector for lack of sea-worthy vessels. Most of these shipowners have been impoverished and frustrated by the lack of commitment by the government to heed their call for reforms in the cabotage regime. This trade is exclusively foreign and has given rise to the flight of foreign exchange, the non-development of local capacity in the sector and the loss of trillions in revenue terms.[83]

It is also apparent that applications for waivers have been made in respect of foreign tanker ships and anchor handlers both of which our local shipowners can provide. As the regulatory body, NIMASA has an inherent duty to enforce cabotage, unfortunately, this duty has been ignored in the face of the huge sums of money that NIMASA realizes annually from waiver levies. However, most of the foreign vessels are involved in the transportation of oil without obtaining waivers. This has placed our indigenous shipowners among some of the poorest in the world. Cabotage has failed woefully to build indigenous capacity in shipping which has resulted in the loss of trillions of Naira in revenue for the government. To turn things around will require a cabotage enforcement action plan which will involve a review of the Cabotage Act especially Sections2, 3, 5, 9, 10, 11, 12, 15, 22, 23, 29, 33 and 39 and, that certain related parameters are reviewed, revised and restructured.[84]

4.9 Admiralty Jurisdiction Act, 2004

This Act confers exclusive authority on the Federal High Court to adjudicate admiralty matters, including civil and criminal cases. It covers property interests in ships, aircraft, and maritime claims. The act consolidates previous admiralty jurisdictions, provides liability limitations, and addresses cases related to shipping, navigation, and national waterways. The Act provides for the extent of the jurisdiction conferred on the court as follows:[85] jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act; any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Act; any jurisdiction connected with any ship or aircraft that is vested in any other court in Nigeria immediately before the commencement of this Act; any action or application relating to any cause or matter by any ship owner or aircraft operator or any other person under the Merchant Shipping Act or any other enactment relating to a ship or an aircraft for the limitation of the amount of his liability in connection with the shipping or operation of aircraft or other property; any claim for liability incurred for oil pollution damage; any matter arising from shipping and navigation on any inland waters declared as national waterways; any matter arising within a Federal port or national airport and its precincts, including claims for loss or damage to goods occurring between the offloading of goods across space from a ship or an aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee; any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether

[83] B. Akodu (n74)

[84] *Ibid*

[85] Admiralty Jurisdiction Act 1991 , s.1

the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer; any cause or matter arising from the constitution and powers of all ports authorities, airport authority and the National Maritime Authority; and any criminal cause and matter arising out of or concerned with any of the matters in respect of which jurisdiction is conferred as stated herein above.

The admiralty jurisdiction of the court in respect of carriage and delivery of goods extends from the time the goods are placed on board a ship for the purpose of shipping, to the time the goods are delivered to the consignee or whoever is to receive them; it does not matter whether the goods were transported on land during the process or not.[86] Any agreement or purported agreement, monetary or otherwise connected with or relating to carriage of goods by sea, whether the contract of carriage is executed or not, shall be within the admiralty jurisdiction of the court.[87]

4.10 The Nigerian Ports Authority Act, 1999

This Act vests the Nigerian Ports Authority (NPA) with the responsibilities and functions of providing and operating necessary facilities in ports, maintaining, improving and regulating the use of the port and to provide for matters connected therewith.[88] Nigeria has a rich history of trade across seas and Ports constitute an important economic activity in coastal areas.[89] This makes this law relevant to maritime issues including conflicts arising.

4.11 International Conventions on Arbitration in Nigeria

The maritime industry is international by nature, as about 71 per cent of the Earth's surface is covered by water and the oceans hold about 96.5 per cent of all Earth's water.[90] It is therefore crucial, beyond the municipal maritime law of each state, to have international laws of the sea. International laws of the sea are laws of maritime space that peacefully settle global disputes on maritime boundaries between or among states and define various jurisdictions of maritime zones as well as the rights and obligations of coastal states in these zones.

4.12 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

This convention commonly known as the New York Convention, was adopted by a United Nations diplomatic conference on 10 June 1958 and entered into force on 7 June 1959. The Convention requires courts of contracting states to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. Widely considered the foundational instrument for international arbitration, it applies to arbitrations that are not considered as domestic awards in the state where recognition and enforcement is sought.[91] Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative

[86] *Ibid*, s. 1 (2)
[87] *Ibid*, s. 1 (3)
[88] NPA Act 1999
[89] J. Ojelabi, 'Policies Under the Nigeria Port Authority Act', <https://www.academia.edu/34389354/POLICIES_UNDER_THE_NIGERIA_PORT_AUTHORITY_ACT > accessed 28/9/23
[90] USGS, 'How Much Water is There on Earth?, 2019, < https://www.usgs.gov/special-topics/water-science-school/science/how-much-water-there-earth > accessed 25 October, 2023
[91] New York Convention 1958, art. 1(1)

standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" appears to embrace awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the proceedings, for example, where another State's procedural laws are applied.[92]

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against, and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal. The Convention is open to accession by any Member State of the United Nations, any other State which is a member of any specialized agency of the United Nations or is a Party to the Statute of the International Court of Justice.[93]

The New York Convention is very successful. Nowadays many countries have adopted arbitration laws based on the UNCITRAL Model Law on International Commercial Arbitration. This works with the New York Convention so that the provisions on making an enforceable award, or asking a court to set it aside or not enforce it, are the same under the Model Law and the New York Convention. The Model Law does not replace the Convention; it works with it. An award made in a country which is not a signatory to the Convention cannot take advantage of the Convention to enforce that award in the contracting states unless there is bilateral recognition, whether the arbitration was held under the provisions of the UNCITRAL Model Law.

Under the convention, an arbitration award issued in any other state can generally be freely enforced in any other contracting state, only subject to certain, limited defenses. These defenses are:[94]

1. a party to the arbitration agreement was, under the law applicable to him, under some incapacity, or the arbitration agreement was not valid under its governing law;
2. a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;
3. the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration, or contains matters beyond the scope of the arbitration (subject to the proviso that an award which contains decisions on such matters may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those matters not so submitted);
4. the composition of the arbitral tribunal was not in accordance with the agreement of the parties or, failing such agreement, with the law of the place where the hearing took place (the "lex loci arbitri");

[92] *Ibid*,
[93] *Ibid*, articles VIII, IX
[94] J T. McLaughlin and L. Genevro, *"Enforcement of Arbitral Awards under the New York Convention – Practic"* . <*https:www.scholarship.law.berkeley.edu*> quoted in Law Times Journal, ' International Arbitration', 2019, < https://lawtimesjournal.in/international-arbitration/#google_vignette > accessed 25 October, 2023

5. the award has not yet become binding upon the parties, or has been set aside or suspended by a competent authority, either in the country where the arbitration took place, or pursuant to the law of the arbitration agreement;
6. the subject matter of the award was not capable of resolution by arbitration; or
7. enforcement would be contrary to "public policy".

In addition, there are three types of reservations that countries may apply:[95] Conventional Reservation where some countries only enforce arbitration awards issued in a Convention member state; Commercial Reservation which allows some countries only enforce arbitration awards that are related to commercial transactions; and Reciprocity reservation where some countries may choose not to limit the convention to only awards from other contracting states, but may however limit application to awards from non-contracting states such that they will only apply it to the extent to which such a non-contracting state grants reciprocal treatment. States may make any or all of the above reservations. However, because there are two similar issues conflated under the term "reciprocity", it is important to determine which such reservation (or both) an enforcing state has made.

The New York Convention has the immense merit of demonstrating that arbitral justice offers the parties advantages and safeguards that are no less than those offered by ordinary justice. Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and ACA domesticated Nigeria's treaty obligations arising under the New York Convention. This implies that Nigeria has signed and ratified the New York Convention, which has also been domesticated under the Act. Section 60 of the Act provides that the New York Convention will apply to the recognition and enforcement of an award made in an arbitration held out of Nigeria, but in a country that is a party to the New York Convention. So far, the differences arise out of a legal relationship, whether contractual or not, considered commercial under Nigerian laws. As of January 2023, the convention has 172 state parties, which includes 169 of the 193 United Nations member states. Nigeria adopted this convention on the 17/3/1970.[96]

5.0 Convention on the Settlement of Investment Disputes between States and Nationals of Other States

The Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment. It established the International Centre for the Settlement of Investment Disputes, ICSID, an independent, depoliticized and effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. Nigeria was one of the first countries that signed and ratified the convention in July 13, 1965 and Aug. 23, 1965 respectively.

[95] New York Convention (n90), art. 1 (3)
[96] United Nations, Status. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) < https:s//uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards > accessed 28 September, 2023

5.1 International Maritime Organization Conventions/Convention on the Law of the Sea 1982

The Convention establishing IMO is the Convention on the International Maritime Organization.[97] The International Maritime Organization, IMO, is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea, facilitate trade among seafaring states and protect the maritime environment.[98] The most well-known is the International Convention for the Safety of Life at Sea (SOLAS), as well as International Convention for the Prevention of Pollution from Ships (MARPOL). Others include the International Oil Pollution Compensation Funds (IOPC), International Convention on Civil Liability for Oil Pollution Damage(CLC), 1969; 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992); Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR), 1971; Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974; Convention on Limitation of Liability for Maritime Claims(LLMC), 1976; International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 (and its 2010 Protocol); International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and the Nairobi International Convention on the Removal of Wrecks, 2007.[99]

5.2 United Nations Convention on the Carriage of Goods by Sea (The Hague Rules 1924)

The Hague Rules are the result of the International Convention for the Unification of certain Rules of Law Relating to Bills of Lading. It was signed at Brussels on August 25, 1924. The Convention marked the culmination of negotiations that had been in progress for some years under the auspices of the International Law Association. The rules were designed to bring certainty and legal uniformity to what was then, as it is today, the most important conduit of international trade in corporeal moveable property. The Hague Rules of 1924 formally the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, and Protocol of Signature is an international convention to impose minimum standards upon commercial carriers of goods by sea.[100] The Hague Rules should not be seen as a consumers' charter for shippers because the 1924 Convention actually favoured carriers and reduced their obligations to shippers.

These Rules represented the first attempt by the international community to find a workable and uniform way to address the problem of shipowners regularly excluding themselves from all liability for loss or damage to cargo. Its objective was to establish a minimum mandatory liability of carriers.[101] Under the Hague Rules the shipper bears the cost of lost/damaged goods if they cannot prove that the vessel was unseaworthy, improperly manned or unable to safely transport and preserve the cargo, which means

[97] International Maritime Organization, 'Convention on the International Maritime Organization', <https://www.imo.org/en/About/Conventions/Pages/Convention-on-the-International-Maritime-Organization.aspx#:~:text=The%20Geneva%20conference%20opened%20in,Maritime%20Organization%20(IMO).)> accessed 26 October, 2023

[98] *Ibid*

[99] International Maritime Organization, 'List of IMO Conventions', <https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx> accessed 26 October, 2023

[100] A.N Yiannopoulos, "Uniform Rules Governing Bills of Lading: The Brussels Convention of 1924 in the Light of National Legislation.", (1961) (10) (4) *The American Journal of Comparative Law*, 374–392

[101] ASEAN, ' International Conventions', < https://asean.org/wp-content/uploads/2023/02/Chapter-7-International-Conventions.pdf > accessed 26 October, 2023

that the carrier can avoid liability for risks resulting from human errors provided they exercise due diligence and their vessel is properly manned and seaworthy. These provisions have frequently been the subject of discussion between shipowners and cargo interests on whether they provide an appropriate balance in liability.

The Hague Rules form the basis of national legislation in almost all of the world's major trading nations and cover nearly all the present international shipping. The Rules have been updated by two protocols, but neither addressed the basic liability provisions, which remain unchanged.[102] The Hague Rules were slightly amended (beginning in 1931, and further in 1977 and 1982) to become the Hague-Visby Rules. In addition, the U.N. established a fairer and more modern set of rules, the Hamburg Rules (effective 1992). Also a more radical and extensive set of rules is the Rotterdam Rules, but only few states have ratified these rules, so they are not yet in force.[103] The Carriage of Goods by Sea Act 2004 **(**COGSA) domesticated the Hague Rules. COGSA essentially covers only outgoing cargo and excludes import. Accordingly, before the existence of the uncertainty surrounding the determination of the legal regime, imports were governed by the contractually agreed carriage regime usually contained in the bill of lading.

There is a Limitation of time to bring an action under Hague Rules. Pursuant to Article 3 rule 6 of the Hague rules, a notice of loss or damage must be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery or, in the case where the loss is not apparent, within three days. Where the cargo is removed, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. Article 3 rule 6 paragraph 4 further states that a ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one (1) year after delivery of the goods or the date when the goods should have been delivered. It is settled law based on a lead judgment delivered by Justice Karibi Whyte in *Kaycee Nig Limited V Prompt & Shipping Corporation*[104] that the Hague Rules provided for a one year limitation only to claims which the notice of damage was brought within the three (3) days stated under the rules. The possibility of parties contracting out of the legal provisions governing liability depends largely on the carriage regime governing the transaction. Generally, about carriage contracts providing for the Hague Rules, the fact that the Carriage of Goods by Sea Act 2004 does not apply to imports makes the act not compulsorily applicable to them. Therefore, the governing law of the bill of lading must be relied on.

5.3 United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules 1978)

The first of the international conventions on the carriage of goods by sea was the Hague Rules of 1924. In 1968, the Hague Rules were updated to become the Hague-Visby Rules, but the changes were modest. The convention still covered only "tackle to tackle" carriage contracts, with no provision for

[102] F. Ruiz, "Legal Study of Sea Carrier Limitation of Liability according to Brazilian Law in Comparison to the Hague-Visby Regime" (2010) (1) (1), *Lawinter Review, New York*, 144–198.
[103] UNCITRAL, 'Status: United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules")' < https://uncitral.un.org/en/texts/transportgoods/conventions/rotterdam_rules/status > accessed 26 October, 2023
[104] (1986) All N.L.R. 33 (SC)

multimodal transport. The industry-changing phenomenon of containerization was barely acknowledged.[105] The Hamburg Rules are the result of the United Nations Convention on the Carriage of Goods by Sea, which was adopted in Hamburg on March 31, 1978 and came into force on November 1, 1992. They were drafted largely as an answer to the concerns of developing nations that the Hague rules were unfair in some respects. These concerns stemmed mainly from the fact that they were seen to be drawn up by the mainly 'colonial maritime nations' and had the purpose of safeguarding and propagating their interests at the expense of other nations. The United Nations responded to this concern by drafting the Hamburg Rules. The Hamburg rules are far more than a simple amending of the Hague/Visby regime and came up with a completely different approach to liability. Under the Hamburg Rules, it is the carrier that is responsible for the loss or damage of all goods unless they can prove that they took all reasonable steps to avoid the loss.

The 1978 Hamburg Rules were introduced to provide a framework that was both more modern, and less biased in favour of ship-operators. Although the Hamburg Rules were readily adopted by developing countries, they were shunned by richer countries who stuck with Hague and Hague-Visby.[106] The Hamburg Rules are a set of rules governing the international shipment of goods; and establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea.[107] It was an attempt to form a uniform legal base for the transportation of goods on oceangoing ships. A driving force behind the convention was the attempt by developing countries to provide all participants a fair and equal chance of succeeding.[108] The Hamburg Rules being an attempt to form a uniform legal base for transportation of goods by sea applies to all carriage by sea contracts between two different states, provided that the ports of loading and discharge or the place where the bill of lading or other transport document was issued are in a contracting state-thus, the Hamburg Rules covers both inward and outward shipments of cargo.[109]

Article 31 of the Hamburg Convention covers its entry into force, coupled to denunciation of other Rules. Within five years after entry into force of the Hamburg Rules, ratifying states must denounce earlier conventions, specifically the Hague and Hague-Visby Rules. A long-standing aim has been to have a uniform set of rules to govern carriage of goods, but there are now five different sets: Hague, Hague-Visby, Hague-Visby/SDR, Hamburg and Rotterdam. (The Rotterdam Rules are not yet in force). The Hamburg Rules establishes a relative uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. It was prepared at the request of developing countries, and its adoption by States has been endorsed by such intergovernmental organizations as the United Nations Conference on Trade and Development (UNCTAD), the Organization of American States (OAS) and the Asian African Legal Consultative Committee

[105] Hague-Visby Rules: Article IV Rule 5c
[106] M.N Ishaya, 'International Maritime Law', <https://nou.edu.ng/coursewarecontent/JIL819%20%20INTERNATIONAL%20MARITIME%20LAW%201(1).pdf> accessed 26 October, 2023
[107] UNCITRAL, 'United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules) 1978 <https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg_rules> accessed 28 September, 2023
[108] *Ibid*
[109] D. Osinuga, 'Limitation of Time: The Conflicting Regimes of the Hague and Hamburg Rules in Nigeria', <https://famsvillelaw.com/2019/03/04/limitation-of-time-the-conflicting-regimes-of-the-hague-and-hamburg-rules-in-nigeria/ > accessed 26 October, 2023

(AALCO). A draft of the Convention was prepared by UNCITRAL and finalized and adopted by a diplomatic conference on 31 March 1978.

There are many countries incorporating the Hamburg Rules into their national law in search for better protection for the goods owner. After the Hamburg Rules entered into force, it brought about a system of liability which is significantly different from that of the Hague.[110] However, Article 5 does allow the carrier to exclude liability in certain situations where he proves that he, his servants or agents took all reasonable measures to avoid the occurrence.[111]Also, just like the Hague rules, the Hamburg rules has provision for time within which to make a claim and makes this Limitation of time subject to a notice of damage made in writing to the Carrier; however, the Hamburg Rules gives a shorter notice time which is one working day.[112] Also, any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.[113]

The Hamburg Rules represent a clear attempt to avoid the problems of application that have arisen under the Hague/Visby rules. The first major change is found Article 2(1) which states that the rules apply to 'all contracts of carriage by sea' and not only to contracts entered by way of bills of lading when the port of loading is in a contracting state; the port of discharge is in a contracting state; when any one of an optional group of ports of discharge is in a contracting state; when the bill of lading or other contractual document is issued in a contracting state; and when the Hamburg Rules are incorporated by reference in the contract.

The most obvious difference between these rules and the Hague/Visby rules is the extension of application from only bills of lading to all contracts of carriage by sea. This not only extends the application of the rules, but also avoids the potential for disputes regarding what exactly a bill of lading is, and whether the contract in question comes within such a definition. Any rules which avoid potential ambiguity and dispute represent an improvement in the trading environment and thus this innovation in Article 2 of the Hamburg Convention should be welcomed.

6.0 Conflict on the Applicable Rules in Nigeria

Due to the continued co-existence of the Hamburg rules and Hague rules, there have been confusion among industry players such as ship owners, carriers, cargo owner, shippers and other key players regarding which regime is applicable. Article 25, Rule 5 of the Hamburg Rules states that the Convention applies mandatorily to contracts of carriage in force as at the date of this Convention. Article 31 of the Hamburg rules also provides that upon becoming a Contracting State to this Convention, any state party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depository of the 1924 Convention of its denunciation of the said Convention with a

[110] All Answers ltd, 'Hamburg Rules for International Carriage' (Lawteacher.net, October 2023) <https://www.lawteacher.net/free-law-essays/international-law/hamburg-rules-for-international-carriage.php?vref=1> accessed 26 October 2023

[111] *Ibid*

[112] Hamburg Rules, art. 19, Rule 1

[113] Hamburg Rules, art. 20

declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State**.**

The formal notification to the Government of Belgium of the denunciation of the Hague Rules has not been done by Nigeria, neither has the Hague Rules been repealed by the House of Assembly hence the reason for the continued uncertainty as regards the applicable legal regime for carriage of goods in Nigeria.

The Supreme Court in the case of *Ibidapo .v. Lufthansa Airlines*[114] held that where it is intended to repeal a legislation, this should be expressly stated as the Courts generally lean against implying the repeal of an existing legislation unless there exists clear proof to the contrary. The Court will not imply a repeal unless two Acts are so plainly repugnant to each other that effect cannot be given to each other at the same time. Drawing an inference from the above decision, it appears that, in there must be a formal repeal, except where the acts are so plainly repugnant. The courts seem to have followed this position. The Federal High Court in *Megaplastics Industries V Mv Kota Halus*,[115] *per* Justice I. N. Buba questioned the applicability of the Hamburg Rules in Nigeria and applied the Hague Rules on the basis that they have not been denounced. The Court held that it is trite law that he who asserts must prove. The burden is the Plaintiff/Respondent's to establish that the Hamburg Rules have repealed the Hague Rules or that the Hague Rules have been repealed and therefore incapable of application to this matter. The Court stated that there was an absence of evidence that Nigeria has denounced the Hague Rules, the plaintiff cannot argue that the Hamburg Rules apply. Construing the decision, the effect would mean that the Hague Rules continues to take effect in Nigeria and the Hamburg rules have no legal effect. Notwithstanding the foregoing, it is imperative to note that the above decision is a Federal High Court decision (court of 1st Instance) and at best, same is only persuasive on other courts of coordinate jurisdictions. It is therefore possible that another court may take a different position on the application of Hamburg Rules where compelling arguments are canvassed on implied repealing of the Hague Rules whilst distinguishing that of *Ibidapo .v. Lufthansa Airlines*[116] and noting that the Hague Rules are inconsistent with the Hamburg rules thus falling under the exception stated by the supreme Court in Ibidapo v Luftansa Airlines.

In any case, these facts are limited given the difference in the scope of application of both regimes: the Hague Rules should be applicable only to outward carriage from Nigeria, while the Hamburg Rules apply to inward and outward carriage. Most carriage claims relate to inward carriage into Nigeria, for which the Hague Rules will not apply save by virtue of a contractual clause paramount. In that event, it would be wrong to assert that the Hamburg Rules Act, with its statutory compulsion, cannot apply over a contractual clause paramount simply because the Hague Rules have not been denounced.

This age long rivalry between cargo interests and carriers over favourable applicable legal Regime can never come to an end – it swings this way and then swings the other way. The Hague/Visby rules, being the older and therefore more traditional regime under which shipping has been carried out, are in force

[114] (1997) 4NWLR (PART 498) 124 at 163 PARAS. E-F
[115] FHC/L/CS/1436/12
[116] (n114)

over most of the world. Thus far, the Hamburg Rules have only been given effect by twenty-six shipping nations. Many nations will apply different rules in different circumstances depending on the rules applicable at the port of origin. Many European nations, while preferring the terms of the Hague/Visby rules, and applying these rules to outbound shipments, will allow the Hague rules to govern the shipment if the shipment originated in a country that applies the Hague but not Hague/Visby rules. It is accepted in such policies that the benefits of clear governing rules and uniformity outweigh the benefits that the Visby amendments confer. Many nations also apply their own local laws, which can be considerably modified from the international rules to internal shipments that begin and end within their own jurisdiction. Such complications in application are aggravated by the fact that different countries adopt the rules in different ways. There are countries such as France that upon ratification of international conventions, need take no further action to incorporate that convention into national law. Then there are countries such as Canada and Australia that have not signed or ratified the Hague Convention and therefore are not considered contracting states. Yet they have enacted respectively the Marine Liability Act and the Carriage of Goods by Sea Act which are national statutes, which attach the Hague/Visby Rules as a schedule and in that way operate their shipping law. Here, they may comply very closely with the relevant international instrument without making themselves subject to it. Add to this the countries that have never signed or ratified the Hague, Hague/Visby or Hamburg conventions at all, have adopted no equivalent national legislation but nevertheless, are for all practical purposes bound by international provisions through the practice of incorporating the various international instruments, or the law of a contracting state party by reference in the bill of lading.

The Current uncertain position on the applicable regime in Nigeria is clearly undesirable. The legislature is saddled with the responsibility of making laws and repealing same. Accordingly, it is best that the legislature repeals the Hague rules formally. The ministry of transportation must also take steps to notify the Government of Belgium of the denunciation of the Hague Rules with a declaration that the denunciation is to take effect as from the date when this Convention enters into force. Until this is done, there might be a recurring confusion as to which law is applicable to a contract of carriage by sea in Nigeria.

7.0 Institutional Framework of Arbitration in the Maritime Disputes in Nigeria

This section discusses institutions relevant to maritime arbitration in Nigeria. They include both national and international institutions.

7.1 Arbitral Institutions

There are myriad arbitral institutions in Nigeria including but not limited to the Regional Centre for International Commercial Arbitration Lagos, Lagos Court of Arbitration, the Regional Centre for International Commercial Arbitration and the Multi-Door Courthouses in various states of the federation. In 1989, the Regional Centre for International Commercial Arbitration Lagos (RCICAL) was established in Lagos, Nigeria under the auspices of the Asian African Legal Consultative Organisation (AALCO) as a non-profit, independent, international arbitral institution to provide, amongst other things, a neutral forum for dispute resolution in international commercial transactions. Its establishment is also geared towards encouraging settlement of disputes arising from international trade and commerce and investments within the

region where the contract was performed. In April 1999, Nigeria and the Asia African Legal Consultative Organisation ratified the continued operations of the Regional Centre for International Commercial Arbitration in Lagos as an independent and international arbitral institution that provides a neutral forum for the resolution of disputes arising from international commercial transactions in the African region. RCICAL renders assistance in the enforcement of awards made under its Rules. The continued operation of the RCICAL in Nigeria was ratified by a treaty executed in April 1999 between Nigeria and the AALCO. The legal framework for the existence of the RCICAL in Nigeria is embodied in the Regional Act No. 39 of 1999. The RCICAL has an autonomous international character and enjoys diplomatic privileges and immunities under international law for the unfettered conduct of its functions. [117]Other arbitral institutions also have branches in Nigeria such as the International Chamber of Commerce Nigeria and the Chartered Institute of Arbitrators, UK (Nigeria Branch). Each of these institutions have their respective rules governing arbitration and parties may elect those arbitrations be subject to the rules of the institutions rather than the rules attached to AMA.

7.2 Nigeria Ports Authority

The Nigerian Ports Authority is a federal government agency that governs and operates the ports of Nigeria. The Nigerian Port Authority was established as a continuous Public Corporation by the Ports Act of 1954 to address the institutional weakness that bordered on lack of coherent policy framework as ports development were done on adhoc basis driven by changes on the level and demand of sea-borne trade.

In 2003, the Federal Government of Nigeria initiated the drive towards improving efficiency at out Ports, and the landlord model was adopted for all the Nigerian Ports. This gave rise to the concession of 25 Terminals to private Terminal Operators with lease agreement ranging from 10-25 years. One of the concessions was a Build, Operate and Transfer (BOT) arrangement. Also, in the process of reorganizing the ports, the former eight (8) ports were reduced to six (6) major ports, with two (2) ports in Lagos and four (4) in the east namely; Lagos Port Complex, Tin Can-Island Port Complex, Calabar Port, Rivers Ports, Onne Ports Complex and Delta Ports Complex respectively.[118]

7.3 Nigerian Maritime Administration and Safety Agency

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the apex regulatory and promotional maritime agency. The Agency was created from the merger of National Maritime Authority and Joint Maritime Labour Industrial Council (former parastatals of the Federal Ministry of Transport) on the 1st August 2006. It is committed to the enthronement of global best practices in the provision of maritime services in Nigeria. Its areas of focus include effective Maritime Safety Administration, Maritime Labour Regulation, Marine Pollution Prevention and Control, Search and Rescue, Cabotage enforcement, Shipping Development and Ship Registration, Training and Certification of Seafarers, and

[117] E. Idigbe and E. Majemite, *International Arbitration*, (3rd ed., Global Legal Group:2017) 251

[118]Nigerian Ports Authority, 'History', <https://nigerianports.gov.ng/history/#:~:text=The%20Nigerian%20Port%20Authority%20was,demand%20of%20sea%2Dborne%20trade> accessed 26 October, 2023

Maritime Capacity Development.[119] Using modern tools that guarantee efficiency and effectiveness, it is determined to develop indigenous capacity and eliminate all hindrance.

The Agency is a Maritime Safety Administration responsible for regulating shipping activities in Nigeria, with a view to achieving safer shipping and cleaner oceans as mandated by the International Maritime Organisation (IMO) through its various Conventions and Protocols. The enabling Acts give NIMASA statutory powers as specified by International Conventions and protocols for the enthronement of global best practices in ensuring safety of Navigation and prevention/control of marine pollution in the shipping industry as regulated by the International Maritime Organisation (IMO), in which Nigeria is a contracting member state.[120]

Section 22 of the NIMASA Act provides for the functions and duties of NIMASA. These functions and duties include: administering the registration and licensing of ships; regulating and administering the certification of seafarers; pursuing the development of shipping and regulatory matters relating to merchant shipping and seafarers; establishing maritime training and safety standards; regulating the safety of shipping as regards to the construction of ships and navigation; providing directions and ensuring compliance with vessel security measures; providing search and rescue services; carrying out air and coastal surveillance; controlling and preventing marine pollution; providing the direction on qualification, certification, employment and welfare of maritime labour; establishing the procedure for the implementation of conventions – the International Maritime Organisation, the International Maritime Labour Organisation and other international conventions to which Nigeria is a party on maritime safety and security, maritime labour, commercial shipping and for the implementation of codes, resolutions and circulars arising therefrom among others.

7.4 Maritime Arbitrators Association of Nigeria

The Maritime Arbitrators Association of Nigeria MAAN was founded in Nigeria in 2005 as a professional organisation to provide effective cost and an alternative dispute resolution through arbitration, mediation and other mechanisms. Since its inception, MAAN in collaboration with various stakeholders in the maritime industry in Nigeria and beyond has promoted the resolution of maritime disputes through arbitration and other ADR mechanisms[121]. It is registered under Part C of the Companies and allied Matters Act, Cap C20, Laws of the Federation of Nigeria 2004. Its objective, amongst others, is to advance and encourage professional knowledge of maritime arbitration in Nigeria and to ensure the development of Nigeria as resource for arbitration in dispute resolution.[122]

7.5 International Maritime Organization

The International Maritime Organization (IMO) is a specialized agency of the United Nations responsible for measures to improve the safety and security of international shipping and prevent

[119] NIMASA, ' About Us', <https://nimasa.gov.ng/> accessed 26 October, 2023
[120] *Ibid*
[121] A. Anagor – Ewuzie, ' Maritime Arbitrators Association gets New Executives, December 2021, <https://businessday.ng/maritime/article/maritime-arbitrators-association-gets-new-executives/ > accessed 28 September 2023
[122] Maritime Arbitrators Association of Nigeria, 'Taking a Lead in Commercial Maritime Dispute Resolution, < https://maanigeria.org/#:~:text=Maritime%20Arbitrators%20Association%20of%20Nigeria%20is%20registered%20under%20Part%20C,to%20ensure%20the%20development%20of > accessed 28 September, 2023

marine pollution from ships.[123] Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented. The IMO was established by means of a convention that was adopted under the auspices of the United Nations in 1948 and entered into force on 17 March 1958.[124] Nigeria became a member on 15 March 1962.[125]

Throughout its existence, the IMO has concentrated on technical issues relating to safety at sea and the prevention of pollution from ships.[126] Its most important treaties cover/apply to more than 98 per cent of world shipping and it has been at the forefront for drafting conventions, treaties, protocols, codes and agreements securing the safety of international shipping and the marine environment through its specialized departments known as the Marine Safety Committee and the Marine Environment Protection Committee, respectively.[127] At the international level, the regulation of shipping and maritime activity is done through the International Maritime Organization.[128] It sets standards for the safety and security of international shipping. And oversees every aspect of worldwide shipping regulations, including legal issues, shipbuilding, and cargo size. The International Maritime Organization as an agency tasked with improving the security and safety of international shipping has one of its key duties to devise strategies and measures to keep the waterways clean by preventing marine pollution from ships. The IMO's governing body, the Assembly, meets every two years, with the first meeting in 1959. It is not responsible for enforcing its policies. When a government accepts an IMO policy, that policy becomes a national law that is the government's responsibility to enforce. Funding for the IMO comes from contributions by member states, as well as voluntary donations and commercial activities.[129]

The International Maritime Organization's objectives can be best summed up by its slogan – "Safe, secure, and efficient shipping on clean oceans." Basically, the IMO sets policy for international shipping and sets regulations on safety, security, and environmental best practices. The IMO is also involved in legal issues matters pertaining to international shipping, such as liability and compensation matters, and facilitating of international maritime traffic. The Assembly, the IMO's governing body, meets every two years to address issues in international shipping, and looking at the organization's budget. To break down the workload and to ensure each area of concern of the IMO is getting the attention it deserves, there are five committees tasked with making policies and developing, going over, and overhauling rules and guidelines. Those committees include the Technical Co-operation Committee, the Maritime Safety Committee, the Marine Environmental Protection Committee, the Legal Committee, and the Facilitation Committee. Furthermore, there are seven sub-committees working under these committees.[130] The International Convention for the Safety of Life at Sea (SOLAS), the International

[123] International Maritime Organization, ' Introduction to IMO', < https://www.imo.org/en/About/Pages/Default.aspx > accessed 26 October, 2023
[124] *Ibid*
[125] Aderoju (n9)
[126] O. Omo-Eboh, 'Maritime Reforms: The Interface between International Law and Nigerian Law', (2013) (1) (2), *International Journal of Legislative Drafting and Law Reform*, 175–205.
[127] *Ibid*
[128] *Ibid*
[129] International Maritime Organization, ' Funding Sources, 2019 <https://www.imo.org/en/OurWork/PartnershipsProjects/Pages/Funding.aspx> accessed 26 October, 2023
[130] *International Maritime Organization, "Structure of IMO." <https://www.imo.org/en/About/Pages/Structure.aspx >*

Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL) are some of the vital International Maritime Organization treaties.[131] The International Convention for the Safety of Life at Sea is regarded as the most crucial treaty regarding safety at sea. The first draft of it was adopted in 1914 following the sinking of the Titanic, before the creation of the IMO.[132]In addition, the IMO regularly interacts with Non-governmental organizations (NGOs) and intergovernmental organizations on maritime policy. There are 66 intergovernmental organizations with observer status in the IMO, including the Council of Europe, the Organization of American States, and OPEC. There are also 85 NGOs with consultative status, most of them associated with the maritime or shipping industries.[133]

7.6 Judiciary

The word "Judiciary" has been defined as the court system of a country. It also includes the judges of these courts and is the branch of government in which judicial power is vested.[134] The Judiciary is generally regarded as the third arm of government whose function is the interpretation of the laws enacted by the legislature.[135]

The foregoing definitions highlight certain essential attributes or certain prerequisites that go to make up a judiciary; namely: Judges, courts of law and administration of justice. But, the judiciary is a legal institution and so, one has to resort not merely to the ordinary definition in an ordinary dictionary but also decidedly to a legal definition in a legal dictionary. Thus, the Black's Law Dictionary defines the term 'judiciary' as the branch of government responsible for interpreting the laws and administering justice, a system of courts, a body of judges.[136] Therefore, teleologically, the judiciary is the arm of government which in a democratic system, like the present administration in Nigeria, is vested with the judicial power - the power to construe and apply the law.[137] Functionally, the judiciary is a mechanism for the resolution of disputes and balancing of conflict interests. Also, by judiciary, we mean the court system of a country.

The first and foremost function of the judiciary is to give justice to the people, whenever they may approach it. It awards punishment to those who after trial are found guilty of violating the laws of the state or the rights of the people. The aggrieved (hurt or pained) citizens can go to the courts for seeking redress (rectify & correct) and compensation. They can do so either when they fear any harm to their rights or after they have suffered any loss. The judiciary fixes the quantity and quality of punishment to

[131] International Maritime Organization, 'List of IMO Conventions', <https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx> accessed 26 October, 2023

[132] W. Kenton, ' International Maritime Organization (IMO)', November, 2020, <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2021/12/International-Maritime-Organization-IMO-Definition.pdf> accessed 26 October, 2023

[133] International Maritime Organization, 'Member States, IGOs and NGOs', 2019, <https://www.imo.org/en/About/Membership/Pages/default.aspx> accessed 26 October, 2023

[134]Merriam Webster, 'Judiciary', <https://www.merriam-webster.com/dictionary/judiciary> accessed 25 September 2023

[135] Y. Ali,' The Evolution of Ideal Nigerian Judiciary in the New Millennium', <https://yusufali.net/articles/THE_EVOLUTION_OF_IDEAL_NIGERIAN_JUDICIARY_IN_THE_NEW_MILLENNIUM.pdf > accessed 25 April, 2023

[136] B. Garner, *Black's Law Dictionary,* (Eight Edition, St. Paul, MN : Thomson/West, 2004) 864

[137] O. Duru, 'The Role and Historical Development of the Judiciary in Nigeria', <https://www.academia.edu/5185440/THE_ROLE_AND_HISTORICAL_DEVELOPMENT_OF_THE_JUDICIARY_IN_NIGERIA>, 3 ,accessed 14 April, 2023

be given to the criminals. It decides all cases involving grant of compensations to the citizens. It is also the function of the Nigerian judiciary to make sure that any judgment of the court of law is being enforced. It also has the power to order the executive to obey its decisions and it can at the same time summon any person to enter an appearance in court.[138]

One of the major functions of the judiciary is to interpret (explain or clarify) and apply laws to specific cases. In the course of deciding the disputes that come before it, the judges interpret and apply laws. Every law needs a proper interpretation for getting applied to every specific case. This function is performed by the judges. The law means what the judges interpret it to mean. Aptly, the real 'meaning of law' is what the judges decide during the course of giving their judgments in various cases.[139]

The judiciary also plays a role in law-making. The decisions given by the courts really determine the meaning, nature and scope of the laws passed by the legislature. The interpretation of laws by the judiciary amounts to law-making as it is these interpretations which really define the laws. Moreover, 'the judgments delivered by the higher courts, which are the Courts of Records, are binding upon lower courts. The latter can decide the cases before them on the basis of the decisions made by the higher courts. Judicial decisions constitute a source of law. Where a law is silent or ambiguous, or appears to be inconsistent with some other law of the land, the judges depend upon their sense of justice, fairness, impartiality, honesty and wisdom for deciding the cases. Such decisions always involve law-making. It is usually termed as equity legislation.

The judiciary has the supreme responsibility to safeguard the rights of the people. This is in accordance with Section 46 (1) of the Constitution of the Federal Republic of Nigeria, 2011 (as altered). A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the government or by private organizations or fellow citizens. In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people. From a common man point of view, the Judiciary is considered the most vital organ of government. The judiciary acts as the peoples' protector against all forms of legislative and executive rascality. It is often referred to as the last hope of the common man in the society.[140]

The judiciary acts as the guardian and custodian of the Constitution. The Constitution is the supreme law of the land, and it is the responsibility of the judiciary to interpret and protect it. For this purpose, the judiciary can conduct judicial review over any law for determining as to whether or not it is in accordance with the letter and spirit of the constitution. In case any law is found ultra vires (unconstitutional), it is rejected by the judiciary, and it becomes invalid for future. This power of the court is called the power of judicial review. Further, the judiciary has the power not only to deliver judgments and decide disputes, but also to get these enforced. It can direct the executive to carry out its

[138] K.K Ghai, 'Judiciary: Functions, Importance and an Essential Quality of Judiciary' <https://www.yourarticlelibrary.com/essay/law-essay/judiciary-functions-importance-and-an-essential-quality-of-judiciary/40352>, accessed 25 April, 2023
[139] *Ibid*
[140] J. Athanasius , '11 Functions of the Nigerian Judiciary', October 23, 2017, <https://infoguidenigeria.com/function-nigerian-judiciary/> accessed 29 June, 2023

decisions. It can summon any person and directly know the truth from him. In case any person is held guilty of not following any decision of the court, or of acting against the direction of the court, or misleading the court, or of not appearing before the court in a case being heard by it, the Court has the power to punish the person for the contempt of court. More so, in a federal system, the judiciary has to perform an additional important role as the arbiter of disputes between the centre and states. It acts as an independent and impartial umpire between the central government and state governments as well as among the states. All legal centre-state disputes are settled by the judiciary.

The judiciary is not a department of the government. It is independent of both the legislature and the executive. It is a separate and independent organ with its own organization and officials. It has the power to decide the nature of judicial organization in the state. It frames and enforces its own rules. These govern the recruitment and working of the magistrates and other persons working in the courts. It makes and enforces rules for the orderly and efficient conduct of judicial administration. The judiciary being manned by learned silks, people do consult them for advice and opinions that have to do with legal related issues. Also, Judges are very often called upon to head Enquiry Commissions constituted to enquire into some serious incidents resulting from the alleged errors or omissions on the part of government or some public servants. Commissions of enquiry headed by a single judge are also sometimes constituted for investigating important and complicated issues and problems.

However, besides the above major functions, the judiciary also performs several other functions such as the appointment of certain local officials of the court, choosing of clerical and other employees. Cases relating to grant of licenses, patents, and copy rights, the appointment of guardians and trustees, the admission of wills, to appoint trustees to look after the property of the minors, to settle the issues of successions of property and rights, issue of administrating the estates of deceased persons, the appointment of receivers, naturalization of aliens, marriage and divorce cases, election petitions and the like. Through all these functions, the Judiciary plays an important role in each state. It also plays a role in the evolution of Constitution through the exercise of its right to interpret and safeguard it against all legislative and executive excesses.[141]

The Courts are also part of the judiciary. The courts in Nigeria operate an adversarial system. The judge maintains the balance between the parties to the action and decides the case on the evidence brought by both sides, and in accordance with the rules of the particular court and the procedure and practice chosen by the parties in accordance with those rules. The Nigerian Constitution provides that all judicial proceedings, including trials and hearings, must be held in public.[142] The court is a public place accessible to everyone. However, the court can exclude from its proceeding's persons other than the parties and their legal representatives in the interest of public safety, public order, public morality and for the protection of the parties' where necessary. In Nigeria, we have both federal and state courts. The Federal courts are: the Supreme Court, the Court of Appeal and the Federal High Court. The State courts include: the High Court of a State, the Customary Court of Appeal of a State and the Sharia Court of Appeal of a State. The constitution guarantees the independence of the judiciary and permits the exercise of Sharia Law for consenting Muslims.

[141] Athanasius (n140)
[142] CFRN (n11), s. 36 (3)

8.0 Conclusion/Recommendations

Nowadays, there is an increase in the volume of trade among countries which has given rise to a corresponding increase in maritime activities in Nigeria. This also has resulted to a surge of disputes in the industry; and the need of Arbitration for settlement of disputes instead of using core litigation. In Nigeria, the new Arbitration and Mediation Act, 2023 came into force to ensure more efficacy in the dispute resolutions. The innovations brought by the Act is quite enormous and will ensure high level of improvement in the settlement of commercial disputes which includes conflicts arising from the maritime industry. The Recent call by the Director-General of NIMASA for the establishment of an International Maritime Arbitration and Dispute Resolution Centre is quite laudable because of the peculiarity and specialty of the Maritime Sector. Further, the existing Arbitration centres in Nigeria were not established to deal exclusively with maritime disputes and often preside over a wide range of commercial disputes they are best situated to handle. It is recommended that due to the technical nature of the maritime sector, it has become imperative for Nigeria to have Maritime Disputes Resolution centres only meant for Maritime disputes.

Finally, the Institutions in the Maritime Industry have their own specific roles to play as have already been discussed and which needs to be strengthened to ensure adequate regulation of the players in the Maritime industry.