

# Sub-regional Instruments as Vehicle for Domestic Maritime Legislative Development: Cameroon's Experience with the 'CEMAC' Merchant Shipping Code

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## Abstract

The regulation of the shipping industry is deeply rooted in treaties or agreements – whether bilateral, multilateral or universal. Where such treaties emanate from a sub-regional organization, however, it all depends on whether the organization in question is geared towards loose cooperation or formal integration. Basically, loose cooperation-oriented organizations such as the Gulf of Guinea Commission do not have treaty-making competence. However, they generally function alongside well-established international organizations such as the UN and IMO and are often credited with working to encourage states in the implementation and enforcement of major international instruments at the regional level. On the other hand, formal integration-oriented organizations such as the EU and CEMAC usually develop instruments that tend to heavily impact the legislative framework of their member-states. It is therefore to be expected that CEMAC instruments, notably the CEMAC Merchant Shipping Code, would impact Cameroon's maritime legislation. Such impact can be seen from what Cameroon has achieved in terms of the modernization of its maritime legislation and the provision of solutions to the challenges inherent in its dual legal system. Furthermore, the CEMAC Shipping Code regime must also be perceived as a component of Cameroon's overall effort geared towards meeting international maritime legislative implementation and enforcement standards. However, the challenges confronting the country at these various levels are huge and questions arise as to the adequacy of the CEMAC Shipping Code regime in addressing them. This article thus sets out to make an appraisal of the CEMAC Shipping Code regime in its perceived role as vehicle for developing Cameroon's maritime legislation and addressing the related challenges inherent in the country's dual legal system. The methodology adopted is doctrinal in approach and involves a content analysis of primary and secondary data. The article concludes with a proposed strategic framework for maritime legislative development and some practical suggestions directed at the government of Cameroon, but which should equally be useful to governments elsewhere.

**Keywords:** Maritime legislation, economic integration, shipping code, international standards.

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## INTRODUCTION

Over the years regional (and sub-regional) economic integration organizations have come to establish themselves as an important vector in terms of helping countries update and develop their maritime legislation. In Europe, for instance, the European Union (EU) has developed a strong maritime legislation applicable to its member countries. Similarly, the Economic and Monetary Community of Central Africa (CEMAC), of which Cameroon is a member [1], plays

an important role in uplifting what may otherwise be seen as the somewhat obsolete maritime legislation of its member states [2]. Although CEMAC transport regulatory instruments are designed to help the organization's member states contribute towards achieving economic integration and development for the sub-region, such instruments should also be seen as

<sup>1</sup> It would be recalled that the other CEMAC member states are: Gabon, Chad, Congo-Brazzaville, Equatorial Guinea and Central African Republic.

<sup>2</sup> See, for example, the view of: Vanchiswar, P. S., (1996), *The Establishment and Administration of Maritime Matters* – with particular reference to developing countries, Malmö, World Maritime University, at p. 7.

a means by which these states can continue to assume their maritime legislative responsibilities.

However, maritime governance requires looking beyond the work of regional (and sub-regional) economic integration organizations [ 3 ]. In fact, maritime legislation draws from several other sources as well, notably international conventions. Shipping is inherently international, so it is vital that shipping is subject to uniform regulations on matters such as construction standards, navigational rules, standards of crew competence, etc. The alternative would certainly be a plethora of conflicting national regulations resulting in commercial distortion and administrative confusion which would compromise the efficiency of world trade - hence the importance for countries to ratify [4], effectively implement and verifiably enforce at least most, if not all the major maritime instruments adopted at the international level when such instruments enter into force.

The interest of this article lies in the fact that it reflects on ways in which improvements can be brought to Cameroon by the CEMAC Merchant Shipping Code regime in order to help the country develop its maritime legislation in a manner that is beneficial to its domestic shipping stakeholders. Its objective is to show how the CEMAC transport and transit facilitation legislative package has helped Cameroon to modernize its maritime legislation and address the challenges inherent in the country's dual legal system, and how this newfound situation is reflected in the country's standing vis-à-vis international maritime implementation and enforcement standards. This raises the question as to the adequacy of the CEMAC Shipping Code regime and the attendant need to harness the ingredients necessary to give the country a good standing in terms of maritime legislation. The assumption is that the CEMAC regime has dispensed with the major obsolete and inconsistent elements which the Cameroon Merchant Shipping Code of 1962 epitomized, but in order to achieve genuine maritime legislative development, Cameroon needs to have the capacity, ability and willingness to respect IMO treaty implementation mechanisms and requirements and also develop strategies and policies

<sup>3</sup> (Economic) integration organizations must be distinguished from 'loose cooperation regional organizations'. The latter are basically those regional organizations that do not have treaty-making competence. This distinction is made clearer later in this article.

<sup>4</sup> A country may of course also become a party to a convention by acceptance, approval or accession under the Vienna Convention on the Law of Treaties, 1969 (VCLT), 1155 UNTS 331 Articles 14 and 15. In any event, most conventions do specify what steps countries are required to take.

aimed at ensuring that domestic shipping interests are safeguarded in the legislative development process.

The methodology adopted in the writing of this article is doctrinal in approach and involves a content analysis of primary and secondary data. As examples of primary data used, mention may be made of the Constitution of Cameroon and the CEMAC Merchant Shipping Code, while examples of secondary data include textbooks and journals.

This article is in two parts. The first part is a general discussion on the role of regional organizations in the development of maritime legislation, while the second dwells on CEMAC-Cameroon legislative dynamics relative to shipping regulations. The article ends with concluding remarks and recommendations.

### **Part I: Establishing the role of Regional Organizations in the Development of Maritime Legislation**

This part sets out to explain the concept of 'maritime legislation' as used in this article. It also considers the two categories of regional organizations in relation to legislative development and highlights the role of CEMAC as a sub-regional economic integration organization.

#### **Conceptual clarification of the term 'maritime legislation' [5] and related considerations**

The term 'legislation' is quite broad. It includes the action of "legislating" or making laws and also refers to a set of existing laws (substantive and procedural) - generally or with respect to a specific domain [ 6 ]. Without getting too bogged down in semantics, the term has been used in this article to refer to the substantive legal instruments falling within Cameroon's maritime statutory and regulatory framework.

Apart from regional/sub-regional organizations, maritime instruments also derive from the international and domestic spheres [ 7 ]. The

<sup>5</sup> It is important to note that 'maritime legislation' and 'shipping legislation' mean "one and the same thing". For more on this, see Mukherjee, P. K., (2002), *Maritime Legislation*. Malmô: WMU Publications, at pp. 1-2.

<sup>6</sup> See: <https://www.dictionary.com/browse/legislation>. (Accessed on 01/02/2020).

<sup>7</sup> In broader terms, the sources of law may be divided into two categories – international sources and domestic sources. International sources may be further divided into two categories – formal and informal. Formal sources of international law are well spelt out in the Statute of the ICJ, under Article 38 (1) – a), b), c) and d), respectively. Informal sources of law include the following: acts of international organizations, regional organizations, the international law commission and *jus*

international sphere includes ingredients such as international conventions and soft law instruments [8], while the domestic sphere brings into focus the Constitution as well as the executive, legislative and judicial branches of a country.

Typically, the full journey of an international (universal) convention begins with its adoption at the level of the international organization responsible for developing it. This is followed by ratification and an eventual entry into force. The next step is the implementation stage – i.e., when states that are parties to the organization that developed the instrument and have ratified it take steps to make the instrument part of their national legislation. However, according to Article 38 of the Vienna Convention on the Law of Treaties, 1969, nothing precludes a rule set forth in a treaty from becoming binding upon a third state as a customary rule of international law, recognized as such. Obviously, the implementation of an international convention at the domestic level may require a drafting process, depending on the nature of the convention in question. The third stage involves enforcement, with state parties giving effect “on the ground” to the legal instrument in question. The last stage, which is a fairly recent development in international maritime law, involves monitoring and verification by international organizations, notably IMO, and brings to mind IMO performance indicators such as the STCW White List which saw the light of day in the 1995 amendment to the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers (STCW 78). More recently, in 2013, IMO brought into effect an even stronger tool, the IMO Instruments Implementation (III) Code, the objective of which “is to strengthen the role of IMO member states in their functions as flag states, port states, or coastal states with a view to enhancing the safety of shipping and protection of the marine environment and enabling the IMO to better evaluate the performance of these states [9]”.

At the regional or sub-regional level, the legal personality of an economic integration organization may extend to a treaty-making competence, which enables such an organization to tend to shape substantive international law. Needless to add, regional

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*cogens*. Domestic sources are as follows: The Constitution; the Legislature; the Executive; the Judiciary and judicial precedent.

<sup>8</sup> International maritime legislation refers to the corpus of legal precepts regulating the maritime industry, and soft law as an international law concept covers all those rules generated by subjects of international law which are not legally binding but which are nevertheless of special legal relevance.

<sup>9</sup> See: <http://www.imo.org/en/OurWork/MSAS/Pages/AuditScheme.aspx>.

integration has many facets of which commercial (and shipping) interests may be one. A treaty establishing a regional integration organization needs to clearly indicate which specific legal instruments shall have a binding effect on member states of the organization. In the case of CEMAC, one of the legal instruments developed by the organization is the ‘Regulation’. A CEMAC ‘Regulation’ is self-executing and directly applicable in all CEMAC member states [10]. In that regard, one may want to recall the basic legal principle that an international instrument regulating a specific legal aspect supercedes a domestic instrument regulating the same aspect [11]. The CEMAC Merchant Shipping Code of 2001 saw the light of day thanks to Regulation No. 03/01-UEAC 088-CM-06 replacing the UDEAC Merchant Shipping Code of 1994 [12]. It is thus easy to understand why the CEMAC Merchant Shipping Code of 2001 would have an abrogative effect on the Cameroon Merchant Shipping Code of 1962.

Certain CEMAC instruments such as the Merchant Shipping Code are integral to the domestic legislation of each of the organization’s member states, although an important caveat here is that there may sometimes be some divergence in terms of objectives between CEMAC instruments that are “integral” to the domestic legislation of these states and “strictly domestic” [13] instruments, even if there must be no conflict between the two. For one thing, CEMAC’s legal instruments are one of the means by which the organization seeks to achieve integration and economic development for the sub-region, while strictly domestic legal instruments may seek to achieve additional objectives such as projecting the country’s image in positive light within the international maritime community. It is submitted that while it may be normal for CEMAC to have an interest in ensuring that its member states are giving effect to the organization’s legal instruments [<sup>14</sup>], each member state should in turn

<sup>10</sup> See Article 41(3) of the revised CEMAC treaty.

<sup>11</sup> See, e.g.: Shaw, N. M., (1998), *International Law*, 4th Ed., Cambridge University Press: Longman, p. 100. See also the principle of *pacta sunt servanda*, under Article 27 of the Vienna Convention on the Law of Treaties, 1969.

<sup>12</sup> Other related Regulations include: Regulation No. 08/12-UEAC-088-CM-23 of 22 July 2012 to adopt the Revised CEMAC Merchant Shipping Code; Regulation No. 14/06-UEAC-160-CM-14 (March 11, 2006) to adopt a Programme on the Regional Facilitation of Transport and Transit in CEMAC; the Regulation relating to the 2012 CEMAC Civil Aviation Code, etc.

<sup>13</sup> The following may be considered as “strictly domestic” sources of law: The Constitution; the Legislature; the Executive; the Judiciary and judicial precedent.

<sup>14</sup> In this connection, it is useful to note that in 2005 the CEMAC Conference of Heads of State deemed it necessary to order an audit to highlight the reasons for

assume the added responsibility of making sure that the *ensemble* of its maritime legislation is of benefit to its domestic shipping stakeholders.

### Types of regional organizations with focus on CEMAC

The aim at this juncture is to explain the major categories of regional (or sub-regional) organizations as a prelude to understanding the functioning of the CEMAC organization.

#### Categories of regional organizations

Regional (and sub-regional) organizations are, in a sense, international organizations, as they incorporate international membership and encompass geopolitical entities that transcend a single nation state in the way they operate. Generally, regional organizations could be classified into 'loose cooperation-based' regional organizations and 'formal integration-oriented' regional organizations'.

#### Loose cooperation-based regional organizations

Regional organizations enjoy varying degrees of legal personality. Loose cooperation-based regional organizations are basically those regional organizations that do not have treaty-making competence. Usually, it is the treaty establishing a regional organization that has to state whether the organization will have treaty-making competence or not. For instance, the Gulf of Guinea (GoG) Commission can be considered as a 'loose cooperation-based' regional organization because Article 3 of the 2001 Treaty Establishing the Commission clearly characterizes the objectives of the organization in terms of "cooperation" and "solidarity", the natural upshot being that legal instruments developed under the auspices of the Commission are not binding in the strict legal sense. Thus, for example, the Code of Conduct relating to the Prevention and Suppression of Illegal Acts perpetrated in the Maritime Space of the GoG, which happens to be a key instrument of the GoG Commission, is non-binding in character.

Another feature of 'loose cooperation-based' regional organizations is that such organizations tend to work alongside well-established multilateral organizations such as the UN and IMO. If one takes the Abuja MoU on Port State Control (PSC) as an example, it is important to note that 'Port State Control

inspections [15] were originally intended to be a back-up to flag state implementation, but experience showed that they could be extremely effective indeed. It was against this backdrop that IMO adopted Resolution A.682 (17) on regional co-operation in the control of ships and discharges by which it promoted the conclusion of regional agreements. The Abuja MoU, like other regional MoUs on PSC, unavoidably works in collaboration with well-established international organizations, notably IMO and ILO.

#### Formal integration-oriented regional organizations

According to Ladan [16] the term 'regional integration', "is a modern process of amalgamation or fusion or bringing together two or more sovereign entities within a given global or continental geopolitical zone into one unit for the greater or enhanced protection and promotion of their economic, political, social, cultural or legal priorities or interests." Hence regional integration may be economic, political, legal or a combination of any two or more of the above interests or priorities. Noteworthy is the fact that most integration-based regional economic organizations usually have a 'primary' and a 'secondary' law, and a treaty establishing a regional integration organization needs to clearly indicate which specific legal instruments shall have a binding effect on member states of the organization [17]. The treaty provision establishing the integration-based regional economic organization

<sup>15</sup> For a coastal state to apply port state jurisdiction (PSJ), a foreign ship must have voluntarily entered a port or offshore terminal, not if the entry is involuntary or due to *force majeure*. PSJ does not apply to a foreign ship operating in the waters of the coastal state, i.e., in its maritime zones. The right to do this is derived from both domestic and international law. A nation may enact its own laws, imposing requirements on foreign ships trading in its waters. Also, nations which are party to certain international conventions are empowered to verify that foreign ships operating in their waters comply with the obligations set out in those conventions. The purpose of Port State Control in its various forms is to identify and eliminate ships which do not comply with internationally accepted standards and domestic regulations of the State concerned. When ships are not in substantial compliance, the relevant agency of the inspecting State may impose controls to ensure that they are brought into compliance. For more on this, see: <http://www.abujamou.org/>.

<sup>16</sup> Ladan, M. T. (2019), *Legal Aspects of Economic Integration of West Africa*, Paper presented at the International Conference on the Theme: "Economic Integration of West Africa: Challenges and Prospects", Organized by the ECOWAS Court of Justice, Abuja, from 21-24 October, 2019, in Accra-Ghana, p. 5.

<sup>17</sup> For an understanding of this and related arguments, see: Salami, I., (2011), *Legal and Institutional Challenges of Economic Integration in Africa*, *European Law Journal*, Vol. 17, No. 5, pp. 667–682.

CEMAC inefficiency or non-performance in terms of legislative implementation and enforcement by CEMAC member states, a move that speaks for itself. For more on this, see, for example: Grosdidier de Matons, J., (2014), *Facilitation of Transport and Trade in Sub-Saharan Africa: A Review of International Legal Instruments - Treaties, Conventions, Protocols, Decisions, Directives*, Sub-Saharan Africa Transport Policy Programme (SSATP) working paper series - No. 73. Washington, DC: World Bank, at p. 111.

constitutes the primary law of the organization, while the secondary law is composed of all other legal instruments passed by the institutions of the organization [18].

The fact that it is possible for integration-based regional organizations to develop legal instruments that have a “binding effect on their member states” explains why such organizations have the capacity to harmonize the laws of their member states. It is submitted that the elimination of legal obstacles seems vital to the effective functioning of any economic integration scheme such as in the case of CEMAC. What then does “harmonization” imply in this context? According to Ladan [19] harmonization “[...] entails the convergence of various legal systems, laws or regulations, policies or practices which governments or organizations agree in a friendly way to make them the same or similar, or to make them fit well with each other.” Harmonization brings about certainty in the law or practical and predictable rules for the determination of the appropriate law to apply in the realization of practical problems on uniform basis [...]. Where harmonization exists, each country will still retain its legal system.”

#### **CEMAC as a sub-regional economic integration organization**

Two main aspects are necessary in order to understand why CEMAC is a sub-regional economic integration organization with powers to harmonize the maritime laws of its member states. The first aspect concerns the history and policy objectives of the organization. This sort of tells us where CEMAC came from and where it is going – what it seeks to achieve. The second aspect concerns CEMAC’s legislation – how the organization develops its laws and the power of such laws. Needless to add, ‘policy’ and ‘law’ are inextricably linked as the latter is a tool for implementing the former.

#### **Brief history and policy objectives of CEMAC**

CEMAC owes its first origins to the Treaty of Brazzaville of 8 December 1964 signed by Cameroon, Central African Republic, Congo, Gabon and Chad (later joined by Equatorial Guinea in 1983) creating the Central African Customs and Economic Union – UDEAC [20]. However, UDEAC itself succeeded the Equatorial Customs Union or *Union douanière équatoriale* (UDE) created in 1959 (the latter can now be considered to be an outdated and obsolete arrangement) [ 21 ]. The Treaty of N’Djamena established CEMAC on 16 March 1994 and the parties

to CEMAC were the same as those to UDEAC and UDE.

So, in essence, UDEAC was replaced in 1994 by CEMAC. However, a number of UDEAC covenants, agreements or regulations are still in place under their original UDEAC qualification [22]. Thus, for example, although the 2001 CEMAC Merchant Shipping Code has now replaced the 1994 UDEAC Merchant Shipping Code, two major UDEAC sets of rules are still in effect, namely, the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport [23].

Meanwhile, in order to have a clear insight into CEMAC’s policy objectives, it is necessary to consider such objectives relative to those of UDEAC, the organization it replaced. That is precisely what has been done for us in the following lines by Grosdidier de Matons [24]:

“Whereas UDEAC was based on cooperation between Partner States, CEMAC pursues an approach of integration. Its main policy objectives, not formulated in the instruments but only in separate declarations of intent, are the following:

- a) Reinforce the competitiveness of the economic and financial activities of the countries of CEMAC by harmonizing the legal framework (investment code, competition, regulation, etc.);
- b) Coordinate economic and budgetary policies to ensure coherence with the common monetary policy;
- c) Establish a common market, with total freedom of establishment, immigration, and free movement of goods and services;
- d) Coordinate sector policies, including trade and transport policies;
- e) Promote freedom of movement, residence, and establishment.”

#### **CEMAC legislation**

It is not possible to fully appreciate the nature of CEMAC’s legal instruments without first having some basic knowledge about the organization’s institutions. So while there may be no intention here to indulge in a detailed discussion on CEMAC institutions, it is necessary to begin by at least listing the organization’s institutional instruments and also elucidating the organization’s decision-making framework.

#### **CEMAC’s institutional instruments**

CEMAC’s institutional instruments are as follows: Treaty establishing the Central African Economic and Monetary Community (Treaty concluded

<sup>18</sup> For more on this, see *ibid*, at p. 670.

<sup>19</sup> Ladan, M. T. (2019), *op. cit.*, at pp. 13-14.

<sup>20</sup> Gbetkom, D., (1995), *La dynamique de l’intégration économique régionale par le marché, L’exemple de l’UDEAC*, Thèse de 3<sup>e</sup> cycle, Université de Yaoundé, p. 11.

<sup>21</sup> Grosdidier de Matons, J., (2014), *op. cit.*, p. 7.

<sup>22</sup> *Ibid*, at p. 109

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid*.

in N'Djamena, Chad, on 6 February 1998, with an addition related to the institutional and legal system of the Community, and slightly revised in Yaounde, Cameroon, on 25 June 2008, to create the Community Parliament) [25]; Convention Governing the Economic Union of Central Africa (UEAC); Convention Governing the Monetary Union of Central Africa (UMAC); Convention Governing the CEMAC Court of Justice; and Convention governing the Community Parliament (Convention adopted on 28 January 2004). The Community Parliament, which was commissioned in April 2010, has its headquarters in Malabo, Equatorial Guinea [26].

### CEMAC's institutional framework

CEMAC has eight executive branch institutions - namely: Conference of Heads of State, Council of Ministers, CEMAC Commission (which by means of an addition to the treaty signed in N'Djamena, Chad, on 25 April 2007, replaced the Executive Secretariat), Ministerial Committee, Inter-State Committee, Central Bank, Banking Commission, and Development Financing Institution [27]. In addition, the CEMAC treaty establishes the Development Bank of Central African States. The Community Parliament is the legislative institution, while the Supreme Court, which includes the *Cour des comptes* (Court of Auditors), constitutes the organization's judicial body.

It is important to note that the main decision-making power is assigned to CEMAC's political leaders, gathered annually in what is referred to as the Conference of Heads of State [28]. Further, the Council of Ministers ensures the direction of the Economic Union of Central Africa (UEAC) through the exercise of powers granted it by the governing Convention, namely the Convention relating to the Central African Economic Union, signed by the six CEMAC member states on 30/01/2009. The Council of Ministers consists essentially of the Ministers in charge of Finance and Economic Affairs of the member states and the number

of Ministers of each member state's delegation must not exceed three [29].

Another important CEMAC organ is the Ministerial Committee (governing body of the Monetary Union of Central Africa (UMAC)). Its role is to examine the broad economic policies of each member state of the Community and ensure consistency with the common monetary policy; it is composed of two Ministers from each member state (including the Minister in charge of Finance, who heads the delegation) [30]. Meanwhile, there is also the CEMAC Commission, which plays the role of *rapporteur* at the Council of Ministers level, while the BEAC Governorate plays that same role at the Ministerial Committee level. Among other things, the CEMAC Commission and BEAC Governorate make decisions and formulate recommendations or opinions [31].

### The nature of CEMAC's legal instruments

It is important at this juncture to understand the nature and weight of each of the various CEMAC legal instruments – i.e., regulations, directives, codes, etc. If one takes the case of CEMAC 'regulations' and 'framework regulations', for example, certain elements come to light. The Council of Ministers is responsible for adopting regulations, framework regulations and directives, on the proposal of the President of the Commission, with a view to achieving the objectives of the Economic Union[32]. Based on the CEMAC treaty, CEMAC 'regulations' and 'framework regulations' are of general application, but unlike 'regulations', which are self-executing and directly applicable in all CEMAC member states[33], in the case of 'framework regulations', only some of the elements are directly applicable[34].

Other CEMAC instruments include 'directives', 'decisions', 'recommendations', etc. A 'directive' is binding upon each member state with respect to the result to be achieved, but as far as the form it should take and the means of implementing it are concerned, competence lies with national bodies. Furthermore, CEMAC 'decisions' are binding in their entirety for the addressees to which they refer, while 'recommendations' and 'opinions' have no binding character[35].

### Part II: CEMAC-Cameroon Legislative Dynamics relative to Shipping Regulations

This part begins with a brief overview of how the shipping industry is regulated in prelude to

<sup>25</sup> For more on this, see: *Presentation of the Economic and Monetary Community of Central Africa*. [Online]. Available: <<http://www.izf.net/mobile-cemac?language=en>> [accessed on 19/02/2020].

<sup>26</sup> Kagisye, E., (2017), *Environnement juridique et institutionnel des affaires en Afrique: cas de la Communauté économique et monétaire de l'Afrique centrale (CEMAC)*, hal-01496562 (Accessed on 06/06/2019).

<sup>27</sup> See: *Presentation of the Economic and Monetary Community of Central Africa*. [Online]. Available: <<http://www.izf.net/mobile-cemac?language=en>>, *op.cit.*

<sup>28</sup> For details on the main organs of the organization, see: Article 3 of the Treaty Creating the CEMAC Organization.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> See Article 41(3) of the revised CEMAC treaty.

<sup>34</sup> See: <<http://www.cemac.int/node>>

<sup>35</sup> *Ibid.*

understanding the dynamics between the CEMAC transport and transit legislative package and Cameroon's maritime legislation.

### The regulation of the shipping industry

The international maritime regulatory process involves six principal participants - namely: classification societies, the UN, flag states, coastal states, IMO and ILO<sup>36</sup>. At any rate, two points need to be noted in the context of this article. First, the corpus of international (maritime) legislation includes both 'hard law' (conventions) and 'soft law' (e.g. IMO Resolutions), and a distinction must be made between conventions that are essentially of a "public law" character and those that relate to private law considerations. Secondly, the role played by each state in the maritime regulatory arena depends on whether the state in question is a flag state, coastal state or port state. Cameroon, it should be recalled, is concurrently a flag state, port state, and coastal state.

### International maritime legislation

The term 'international maritime legislation' refers to the corpus of legal precepts ('hard law' and 'soft law' instruments) regulating the maritime industry [37]. These precepts are tools that enable flag states, port states and coastal states to carry out what generally falls under Flag State Implementation (FSI) and Port State Control (PSC) responsibilities.

### Maritime conventions

The term 'treaty' (or convention) is defined under Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties as "*an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*" Similarly, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986, provides a definition for the same term as follows: "*[...] an international agreement governed by international law and concluded in written form – (i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation*[38]."

Conventions (or treaties or agreements) are the clearest expression of legal undertakings made by states. The existence of a treaty relating to any

<sup>36</sup> For more, see: Stopford, M., (2009), "Maritime Economics", 3rd Ed., NY: Routledge Publication, pp. 657-658.

<sup>37</sup> Okere, B. O., (1981), *The Technique of International Maritime Legislation*, I.C.L.Q., Vol. 30, at p. 513.

<sup>38</sup> Article 1.2(a).

particular matter will usually provide a clear and conclusive statement of the rights of the states that are parties to it in their relations with each other [39]. The relations between a state party to a treaty and non-party states continue to be regulated by customary law [40]. However, the provisions of treaties may become binding upon other states if the treaties pass into customary law [41].

### Maritime conventions that are essentially of a public law character [42]

Public law aspects of shipping include safety, security and marine environmental protection. Before elaborating on that, it is important to recall that the UN Convention on the Law of the Sea, 1982 (UNCLOS 82) covers most, if not all aspects of the law of the sea and constitutes a foundation instrument for most maritime conventions. However, certain UN specialized agencies, notably IMO, have continued to build on UNCLOS 82 and other sources in order to contribute to the progressive development of the law of the sea. Meanwhile, it is important to note that IMO maritime governance indicators such as the STCW White List and the III Code apply only in relation to maritime conventions of a public law character (e.g. STCW 78, SOLAS 74, MARPOL 73/78, etc.).

Cameroon is currently a party to a good number of Conventions relating to safety, security and marine environmental protection – e.g. International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended; Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 72); etc. It is important to note, though, that there are many other such conventions that Cameroon has signed but has not yet ratified, or to which the country is simply not yet a party.

Concerning international marine pollution conventions, Cameroon's status is a mixed bag as well. For example, although Cameroon is a party to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL), the country is yet to ratify the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL PROT 1997)[43].

<sup>39</sup> Churchill, R. R. and Lowe, A. V., (1999), *Law of the Sea*, 3<sup>rd</sup> Ed., Manchester: Juris Publishing, p. 6.

<sup>40</sup> *Ibid.*

<sup>41</sup> See Article 38 of the Vienna Convention on the Law of Treaties, 1969.

<sup>42</sup> The areas covered by this category of conventions include international Safety, Security, and Ship-Port Interface as well as international marine pollution.

<sup>43</sup> See: 2019 Status of IMO Treaties, at [www.imo.org/en/About/Conventions/ListOfConvention/s/Pages/Default.aspx](http://www.imo.org/en/About/Conventions/ListOfConvention/s/Pages/Default.aspx). [Accessed on 23/12/2019].

### Maritime conventions that relate to private law considerations

The expression “private law considerations” refers essentially to, but not necessarily limited to aspects concerning commerce and economics. This can be seen very clearly from the way the conventions are entitled. There are several Brussels/Geneva Conventions concerning bills of lading, penal jurisdiction, ship arrest, liner shipping and carriage of goods to which Cameroon is fully a party. Examples include: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading and Protocol of Signature “Hague Rules 1924”; International Convention for the Unification of certain rules relating to Arrest of Sea-going Ships (Brussels, 10th May 1952); United Nations Convention on a Code of Conduct for Liner Conferences (Geneva, 6 April 1974); and United Nations Convention on the Carriage of goods by sea Hamburg, 31 March 1978 “Hamburg Rules [44]”. These are all examples of maritime conventions that relate to private law considerations. Meanwhile, there are of course other Brussels/Geneva Conventions to which Cameroon has not yet become a party based on established international implementation procedures, a good example being the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules).

### Soft law

The term ‘soft law’ has several possible definitions [45]. However, for our purposes, a compelling definition for the term is given by Shelton [46], and it goes thus: “*Soft laws are legally non-binding instruments that are utilized for a variety of reasons, including strengthening member commitment to agreements, reaffirming international norms, and establishing a legal foundation for subsequent treaties.*” The implication of this definition is that soft law as an international law concept covers all those rules generated by states or other subjects of international law which are not legally binding but which are

<sup>44</sup> However, there are quite a few such conventions to which Cameroon is not yet a party. These concern bills of lading, ship arrest and maritime liens and mortgages. For more on this, see: *ibid*.

<sup>45</sup> See, generally: Sztucki, J., (1992), *Reflections on International Soft Law*, in de Lege, p. 365. See also: Olufemi, E. and Lim, C. L., (1987), *General Principles of Law, Soft Law and the Identification of International Law*, 28 *Neths. Ybk.IL* p. 3.

<sup>46</sup> Shelton, D., (1999), *Commitment and Compliance: What Role for International Soft Law?* [Online]. Available: <<https://carnegieendowment.org/1999/11/22/commitment-and-compliance-what-role-for-international-soft-law-event-47>> [13/05/2018].

nevertheless of special legal relevance. Soft law instruments are very important to IMO’s work, and examples include the Organization’s ‘Resolutions’ and ‘Guidelines’. Among other things, these instruments constitute one of the tools that IMO uses to assist its member states in the implementation (and enforcement) of conventions developed under its auspices.

### Importance of Flag State Implementation (FSI) and Port State Control (PSC)

FSI and PSC are of fundamental importance in the regulation of the shipping industry .

### The place of FSI in shipping

The duties of a flag state are pivotal to the shipping industry. Failure by a flag state to assume its duties fully as required under the contemporary IMO implementation scheme is likely to impact negatively on that state’s international image, which in turn could have negative consequences on the state’s economic shipping sector. The duties of a flag state are clearly spelled out in Article 94 of UNCLOS 82. Article 94 provides, *inter alia*, that: “*Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*” One major way of knowing a flag state’s performance in terms of international maritime legislative implementation (and enforcement) is to refer to IMO indicators such as the STCW White List and IMO Instruments Implementation (III) Code.

### The role of PSC

PSC is an additional method for ensuring implementation and administrative enforcement in the shipping industry. PSC is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules. Many of IMO’s most important technical conventions contain provisions for ships to be inspected when they visit foreign ports to ensure that they meet IMO requirements. These inspections were originally intended to be a backup to FSI, but experience has shown that they can be extremely effective [<sup>47</sup>]. Regional Memorandums of Understanding or MoUs such as the Abuja MoU, Paris MoU, Tokyo MoU, etc. push for the effectiveness of PSC inspections through their work.

### Historical and constitutional perspective of Cameroon’s legislation relative to Shipping

Cameroon’s legal system, like most in Africa, is a relic of the colonial era [48]. However, there is no

<sup>47</sup> For more, see: <http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>. [Accessed on 22/12/2019]

<sup>48</sup> Fombad, C. M., ‘UPDATE: *Researching Cameroonian Law*’, [Online]. Available:

intention here to be either too remote or detailed in approach; rather, the focus is to explain the origins of the country's dual legal system as that will subsequently relate to any discussions concerning Cameroon's maritime regulatory and enforcement regime. The period under consideration dates to the start of the 'French and English rule' in Cameroon.

As far back as 1915 when WWI was still raging, the British and French had agreed to maintain a condominium until the collapse of German resistance in Cameroon. Germany renounced all rights over her overseas possessions (including Cameroon) in favour of the Principal Allied and Associated Powers [49]. An agreement was later reached on 4<sup>th</sup> March 1916 ending the condominium, and the zones of influence of France and Britain were clearly delineated. Britain acquired two non-contiguous strips of Cameroon territory bordering Nigeria while France obtained the bulk of the country's land area and population, and it was obvious that Britain was primarily concerned with securing what she regarded as better boundaries for her vast territory of Nigeria [50]. On 6<sup>th</sup> March 1916 a line known as the "picot line" was adopted and served as the provisional boundary between the British and French spheres of Cameroon [51]. The sphere under the British was baptized "British Cameroon" while that under France was called "*le Cameroon français* [52]".

France and Britain jointly recommended to the Council of the League of Nations the conferment upon themselves of mandates to administer the territory of Cameroon pursuant to article 22 of the Covenant of the League of Nations. This was agreed to by a joint declaration signed in London on 10<sup>th</sup> July 1919 [53]. The League of Nations did confirm the recommended mandates, and the terms of the mandates were defined

by Acts done in London on 20<sup>th</sup> July 1922 [54]. Article 9 of the mandates agreement stipulated as follows:

*The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory...*"

It further provided that:

*The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate, with such modifications as may be required by local conditions...*

Article 9 as quoted above thus provided the basis and marked the official beginning of the existence in Cameroon of two legal systems - the civil law (from France) and the common law (from the UK) [55]. These two legal systems have remained in Cameroon until today.

It would be recalled that French-speaking Cameroon gained independence from France in January 1960 while British Cameroon gained independence from Britain in 1961, and the two sides joined together on 1<sup>st</sup> October 1961 to form the Federal Republic of Cameroon, with each side maintaining its own legal system [56]. This point is clearly buttressed by article 47 of the Federal Constitution of 1961, which provided that "*the legislation resulting from the laws and regulations applicable in the Federal State of Cameroon and in the Federated States on the day of entry into force of this constitution shall remain in force in all of their dispositions which are not contrary to the stipulation of this constitution, for as long as it is not amended by legislative or regulatory powers* [57]".

Furthermore, the two federated states became the United Republic of Cameroon through a constitutional referendum organized on 20<sup>th</sup> May 1972. Successive Constitutional amendments have consciously sanctioned the co-existence of the English and French legal systems in Cameroon since the reunification of the two portions of the country [58]. For purposes of clarity, it is useful to draw the curtain on this point by referring to article 68 of the 1996 Constitution (Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, as amended), which provides as follows:

<<http://www.nyulawglobal.org/globalex/Cameroon1.html>> [2018, April 10].

<sup>49</sup> Article 119 of the Treaty of Versailles, 28 June 1919.

<sup>50</sup> Njikam, M. S., (1986), *Insurance Law in England and Cameroon: A Comparative Study - with Specific Reference to Motor Vehicle Insurance*, thesis submitted to the University of Sheffield, Faculty of Law, in partial fulfillment for the award of a PhD in law, p. 3.

<sup>51</sup> Amaazee, V. B., (1995), *The Igbo Factor in the Politics of British Southern Cameroons - 1916-1961*. Thesis submitted to the Department of History, Faculty of Arts, Graduate School, University of Calabar, in partial fulfillment of the requirements for the award of the Doctor of Philosophy (PhD) in History, p. 12.

<sup>52</sup> *Ibid.*

<sup>53</sup> For the Franco-British declaration of 1919 fixing the frontier line between the two Cameroons, see Annexes 374f and 374g to the Minutes of the Nineteenth Sessions of the Council of the League of Nations.

<sup>54</sup> Njikam, M. S., *op cit*, at p. 4.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

*The legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution, and as long as it is not amended by subsequent laws and regulations.*

### **The Cameroon Merchant Shipping Code regime and its challenges**

Before the advent of the CEMAC Merchant Shipping Code in 2001 the Cameroon maritime sector was governed by regulation set out in the Cameroon Merchant Shipping Code of 1962. A 'code', from the etymological perspective, is simply a set of laws and regulations, normative or legal, which form a complete system of legislation in a branch of the law [59]. However, a code such as the Cameroon 1962 Code can hardly be truly "complete" or self-sufficient because it is usually supported by an extensive and wide ranging set of secondary legislation which governs international and domestic operations. It is noteworthy that a merchant shipping code may not cover everything concerning "water" transport. For example, a country may be using several codes simultaneously (e.g. merchant shipping code, inland waterway code, etc.).

### **The 1962 Cameroon Merchant Shipping Code**

The Cameroon Merchant Shipping Code owes its existence to Ordinance No. 62-OF-30 of 31 March 1962, signed by the then President. It should be noted that Ordinances are considered principal legislation even though they are not statutes [60].

The Code, in 301 articles, regulates quite a wide range of issues. Among other things, the Code "is" applicable to all ships registered in Cameroon. Articles 1 to 28 carry provisions relating to shipping and the ship. The Code defines maritime navigation and delimits territorial waters. It also defines commercial navigation zones and fishing navigation zones and provides for the possibility of reserved navigation. It further defines a seagoing vessel and regulates ship nationality, etc. In terms of jurisdiction, the Code provides as follows:

*The provisions of the present Code shall apply to all ships registered in Cameroon, ship's staff and crews embarked thereon, and to all persons of whatever nationality who, whether present on-board or not, shall commit an offence against the provisions of the present Ordinance or any enactments made under it.*

<sup>59</sup> Online Etymology Dictionary. [Online]. Available: <https://www.etymonline.com/word/code>. (Accessed on 14/12/2016)

<sup>60</sup> See: See Mukherjee, P. K., *op.cit.*, p. 48.

*Nevertheless, foreign seamen who are allowed under reciprocal agreements made between their country of origin and Cameroon, to ship on Cameroon vessels shall, so far as the regulations governing their status allow, continue to enjoy the benefits vested in them[61].*

### **Challenges under the 1962 Cameroon Shipping Code regime**

The Cameroon Shipping Code was obsolete and efforts made by the government to amend it seemed timid. There were also challenges inherent in the country's dual legal system.

### **Obsolescence of 1962 Code, coupled with ineffectual and inconsistent amendments**

The Cameroon Merchant Shipping Code entered into force on 31/03/1962. Given that the shipping industry evolves rather rapidly, it was only a matter of time before the Code would prove obsolete, unless resolute efforts could be made to amend or replace it. A merchant shipping code generally has to be reflective of a country's status of ratification, at least to a large extent – either by itself or, as is usually the case, with the support of other pieces of domestic legislation. In other words, after a country has ratified a convention, it becomes incumbent upon the country to implement the convention – i.e., make the convention part of its national legislation as evidenced by a code or some other form of domestic legislation. In that light, one may want to know what necessary steps were taken by Cameroon as years went by to ensure that the 1962 Merchant Shipping Code regime reflected the country's status of ratification. A look at how certain amendments to the Code were made would be helpful in that regard. Some of the amendments were: Act No. 74/16 of 5 December 1974 fixing the Limit of the Territorial Waters of the United Republic of Cameroon at 50 nautical miles, repealing and replacing Article 5 of Ordinance No. 62/DF/30 of 31 March 1962 relating to the Cameroon Merchant Shipping Code (and Law No.67/LF/25 of 3 November 1967)[62]; Law No. 2000-2 of April 2000 claiming 24 nautical miles for the country's contiguous zone; Law No. 2000-2 of April 2000 claiming a fishing zone/EEZ of 200 nautical miles[63]; and Law No. 2000-2 of April 2000 claiming continental shelf as provided for under UNCLOS 82[64].

<sup>61</sup> Article 1 of the 1962 Cameroon Merchant Shipping Code

<sup>62</sup> Maritime Space: Maritime Zones and Maritime Delimitation. [Online]. Available: <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm>> [Accessed on 17/11/2018].

<sup>63</sup> See: *ibid.*

<sup>64</sup> See: *ibid.*

If one takes the case of Act No. 74/16 of 5 December 1974 fixing the Limit of the Territorial Waters of the United Republic of Cameroon at 50 nautical miles, Cameroon could at that point be said to have “amended” the 1962 Merchant Shipping Code or at least a provision of it, given that Article 5 of the Code provided for a territorial waters limit of 6 nautical miles. It is obvious, though, that “50 nautical miles” was quite excessive under both customary international law and the “adopted” 1958 Convention on the Territorial Sea and the Contiguous Zone. To Cameroon’s credit, though, that situation was later corrected after the country became a party to UNCLOS 82. Cameroon came up with Law No. 2000-2 of April 2000 repealing the excessive 50 nautical miles claim and “accepting” 12 nautical miles for its territorial waters limit as provided for under UNCLOS 82[65]. Nevertheless, the impression one gets is that the maritime legislative amendment process in Cameroon during the period leading up to the advent of the CEMAC Merchant Shipping Code in 2001 was inconsistent and ineffectual.

#### **Discrepancy in Code’s applicability due to the duality of Cameroon’s legal system**

Until the advent of the 1972 Constitution Cameroon was a two-state federation under the 1961 Constitution, comprising the French-speaking (civil law) Cameroonian state and the English-speaking (common law) Cameroonian state. This implied that each federated state had jurisdiction in certain specific areas as allowed under the constitution [66]. For purposes of this paper, reference could be made to Article 6 of the 1961 Constitution, which provided a list of “subjects” that included “[...] means of transport of federal concern (roads, railways, inland waterways, sea and air) and ports [...]” and proceeded as follows: “*The Federated States may continue to legislate on the subjects listed in this Article, and to run the corresponding administrative services until the Federal National Assembly or the President of the Federal Republic in its or his field shall have determined to exercise the jurisdiction by this Article conferred*”. With regard to the English-speaking Federated State, it is important to note that the Southern Cameroons High

<sup>65</sup> See: *ibid*.

<sup>66</sup> It would be recalled that this idea of each of the federated states (now former federated states) maintaining jurisdiction in certain defined circumstances has survived all constitutional amendments until this day. For example, the 1996 Constitution (Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972) provides in its Article 68 as follows: “*The legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution, and as long as it is not amended by subsequent laws and regulations.*”

Court Law of 1955, in its Section 11 had earlier stated that: “[...] *the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 1st day of January, 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force with the jurisdiction of the court.*”

It would be recalled that the Cameroon Merchant Shipping Code was in force from 31/03/1962 until it was replaced by the 2001 CEMAC Merchant Shipping Code. Accordingly, it could be argued in light of the preceding paragraph that the Cameroon Merchant Shipping Code was essentially a legal instrument that was, strictly speaking, applicable only to the former French-speaking Cameroonian State while the former English-speaking State continued to rely on received English and Nigerian laws concerning similar matters [67]. However, any piece of domestic legislation that entered into force after 1972 amounting to an amendment to the 1962 Code was certainly applicable to the entire country.

#### **Translation problems of the 1962 Code in the context of former federal Cameroon**

It is trite knowledge that Cameroon is a bilingual country with French and English as the official languages. Among other things, ‘bilingualism’ means ensuring that good standards are maintained for both the French and English languages, at least when it comes to official communication. Unfortunately, that is not always the case.

Although it has been argued in this article that the 1962 Code was applicable only to the former French-speaking Cameroonian State, the Code of course equally concerned citizens of the former English-speaking Cameroonian State and foreign stakeholders as well, depending on the case at hand. For instance, where a maritime matter occurred within the territory of the former French-speaking Cameroonian State, the 1962 Code would apply and it didn’t matter where the parties concerned came from. An important correlation is that the 1962 Code was a bilingual document intended to serve both French-speaking and English-speaking users. Unfortunately, one thing that stands out about the Code is that it “is” not precisely worded and can hardly be of authoritative assistance to non-French speaking persons. Some opening lines (French version) of the Ordinance relating to the Code, which could serve as a tip of the iceberg, read as follows:

<sup>67</sup> For more on the reasons for the application of British and Nigerian laws in Cameroon, see Manka, R., (2013), *Attachment of Property: Innovation of OHADA to the Law Hitherto Applicable in Former West Cameroon*, PhD Thesis, University of Dschang.

*“Le Président de la République fédérale,  
Vu la Constitution de la République fédérale,  
et notamment son article 50,  
ORDONNE : ...  
Article premier. – Champ d’Application.”*

The official English translation of the above lines reads as follows:

*“The President of the Federal Republic,  
By virtue of the Constitution of the Federal  
Republic, and in particular of article 50  
thereof,  
ORDAINS : ...  
Article 1.– Field of Application.”*

It is humbly submitted, *inter alia*, that the terms “ORDAINS” and “Field of Application” used in the 1962 Code as indicated above could be replaced, respectively, with “HEREBY ORDERS AS FOLLOWS” and ‘Scope of Application’. However, the above illustration should be seen only as part of this writer’s research effort; it is not an attempt to criticize the otherwise excellent work done by the patriotic individuals who translated the 1962 Code.

### **FSI and PSC challenges in Cameroon prior to the CEMAC Shipping Code years**

Nowadays, the single most important way to determine a country’s FSI and PSC performance is to refer to IMO indicators such as the STCW White List and the recent III Code. However, these are relatively recent tools (the STCW White List was introduced in 1995 with one of the STCW Convention amendments, while the III Code saw the light of day in 2013). A country can only achieve good FSI and PSC performance if it meets three conditions. First, it must have a good status of ratification, which also includes being a party to the key maritime governance instruments. Secondly, conventions to which the country is a party should be effectively implemented – i.e., they should be made part of that country’s domestic legislation. Thirdly, the country should be seen to be giving effect on the ground to the conventions it implemented, possibly with assistance obtained within the framework of IMO technical cooperation (e.g. in relation to IMO soft law instruments). However, because of the obsolete nature of the 1962 Code, coupled with the inconsistent and ineffectual amendments that characterized that Code’s regime, it is hard to see how Cameroon could be considered to have been an exemplary IMO member state in terms of FSI and PSC. One related point to note is that the organization that plays the role of maritime administration in Cameroon is the Department of Maritime Affairs and Inland Waterways, which happens to be a Department within the Ministry of Transport. The organizations serving as maritime administrations in many countries around the globe (e.g. the US, Ghana, Liberia, etc.) are robust autonomous bodies that are well

equipped to assume the maritime legislative development and enforcement responsibilities of these countries. It would thus be safe to assume that the Department of Maritime Affairs and Inland Waterways in Cameroon is ill-equipped to cope with the country’s enormous maritime legislative challenges.

Finally, one other area where a country’s performance in terms of FSI and PSC can be appreciated concerns the category of ships called “non-convention vessels [68]”. IMO member states usually rely on technical cooperation with IMO to be able to develop legislation extending to their non-convention vessels. Such legislation usually takes into account regional considerations since such vessels sometimes sail regionally. However, it seems that Cameroon has until today relied only on its general legal framework when it comes to regulating non-convention vessels.

### **Impact of the entire CEMAC transport and transit legislative package**

The African Development Bank has stated that regional integration for Central Africa includes, among other things, multimodal transport systems that deliver goods and people safely and cost effectively to their destination in Central Africa and beyond[ 69 ]. This statement is very much in tune with CEMAC’s transport and transit facilitation objectives. In any event, the point to note is that CEMAC’s maritime transport instruments are part and parcel of the organization’s transport and transit facilitation legislation.

### **The CEMAC transport and transit package and its impact**

Although the 2001 CEMAC Merchant Shipping Code has long replaced the 1994 UDEAC Merchant Shipping Code, two major UDEAC sets of rules are still in effect, namely, the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport. In fact, very soon after its creation, CEMAC issued a number of new regulations and codes to replace those issued by UDEAC. These were: the River Navigation Code (*Code de la navigation intérieure*) and Hazardous Cargo Regulations (*Règlement de transport des marchandises dangereuses*) in 1999; the Civil Aviation Code (*Code de l’aviation civile*) in 2000; and the Merchant Shipping Code (*Code communautaire de la marine marchande*) and Road Traffic Code (*Code de*

<sup>68</sup> A non-convention vessel is basically any cargo vessel below 500 gross tonnage (or passenger vessel with less than 200 passenger capacity) involved in international trade. Or vessel of above 500 gross tonnage that sails only within national waters, or any vessel to which most International Maritime Organization (IMO) conventions do not apply.

<sup>69</sup> ADB, (2019), *Central Africa Regional Integration Paper*, Rep. Abidjan, at p. 4

*la route*) in 2001[ 70]. According to Grosdidier de Matons[ 71 ]. A somewhat exhaustive list of other CEMAC legal instruments within the organization's transport and transit facilitation legislation may be provided under the following main headings: instruments relevant to the freedom of movement, instruments relevant to Customs, instruments relevant to conflicts of laws, instruments relevant to air transport in CEMAC, etc.

In light of the foregoing, it is obvious that CEMAC adopts a multimodal approach to transport (sea, land and air). This is very much in tune with the modern approach to transport studies. What is significant here is that, just as the CEMAC Merchant Shipping Code impacts maritime legislation in the Organization's member states (e.g. Cameroon), so will the other CEMAC regulations within this package impact domestic legislation relating to the other modes of transport. At any rate, maritime legislation being the focus of this article, any further discussion will be reserved for the maritime domain alone.

### **The CEMAC Merchant Shipping Code and its impact**

In general terms, the CEMAC Merchant Shipping Code rules on a number of points, notably the following: applicability of the law to vessels; ship safety, classification, salvage, and wrecks; marine environment and pollution; seamen; maritime transport, including charter parties, bills of lading, and other carriage contracts; shipping and forwarding agents, consignees of cargo, pilots, and stevedoring companies; court and other procedures related to shipping [72].

In terms of jurisdiction, the provisions of the CEMAC Merchant Shipping Code are applicable to the following:[ 73 ] all ships registered in a CEMAC member state; crews and passengers on board, and to all persons, irrespective of their nationality, who, although not on board, have committed a breach of the provisions of this Code or its implementing regulations; foreign vessels in waters under the jurisdiction of a CEMAC member state, where provided for in reciprocal agreements between a member state and a third state or in accordance with international conventions in force; the crews and passengers of these foreign vessels, under the same conditions as in the preceding paragraph; seafarers who are nationals of a member state or who reside in a member state, regardless of the place of registration or chartering of the vessel on which they are employed; and floating platforms in waters under the national jurisdiction of a member state. In addition, where expressly spelt out, certain provisions of Books

IV, V and VII of the Code also apply to fixed platforms in those waters [74].

The CEMAC Merchant Shipping Code has had an impact on the challenges associated with Cameroon's dual legal system. It has also led to the fact that many new maritime Conventions are now binding for Cameroon. Finally, the Code also aims to promote FSI and PSC responsibilities among member states of the organization, including Cameroon, notably.

### **Certainty via removal of the confusion under the Cameroon Shipping Code**

One of the points highlighted in this paper is that the Cameroon Merchant Shipping Code of 1962 was obsolete and that efforts made by the government to amend it were rather ineffectual and ineffective. Moreover, there was discrepancy in the Code's applicability due to the duality of Cameroon's legal system. The question at this point is to know how the CEMAC Merchant Shipping Code regime has alleviated that reality.

Article 2 of the Regulation establishing the 2012 CEMAC Merchant Shipping Code, just like Article 2 of the Regulation establishing the 2001 CEMAC Merchant Shipping Code before it, makes the CEMAC Code applicable to the entire Cameroonian territory. Basically, the CEMAC Shipping Code has long abrogated and replaced the Cameroon Merchant Shipping Code, which means that the former has been able to address some of the major challenges which the latter epitomized. It should however be recalled that, though a major piece of legislation, the CEMAC Merchant Shipping Code is only one of the applicable maritime instruments in Cameroon.

One last point to note, however, is that no official English language version of the CEMAC Merchant Shipping Code exists to date, meaning the language aspect remains a major issue as far as the English-speaking area of Cameroon is concerned.

### **Maritime legislative modernization via increased number of binding conventions**

As far as the ratification and implementation of international conventions are concerned, at least on the surface of things, it is safe to say that more international maritime conventions are now applicable in Cameroon under the CEMAC Merchant Shipping Code regime. Two remarks are necessary in that regard. First, when an international instrument becomes directly binding for CEMAC member states because the Organization has implemented the instrument as evidenced by the presence of provisions of such instrument in the CEMAC Merchant Shipping Code, that relieves these states of the legislative drafting burden since legislative drafting is usually one of the

<sup>70</sup> Grosdidier de Matons, J., (2014), *op. cit.* at p. 218.

<sup>71</sup> See *ibid*, at pp. 218-219.

<sup>72</sup> See: <http://www.cemac.int/node>, *op.cit.*

<sup>73</sup> See Article 1 of the CEMAC Merchant Shipping Code.

<sup>74</sup> Grosdidierde Matons, J., (2014), *op. cit.*, p. 117.

tasks associated with the legislative incorporation process. Secondly, the CEMAC Shipping Code makes reference to and uses lines from many maritime conventions, irrespective of whether its member states have ratified them or not. For example, Articles 100 to 113 of the CEMAC Shipping Code have to do with the liability regime of ship owners. This CEMAC regime is based on the Convention on the Limitation of Liability for Maritime Claims, 1976 (London, 19 November 1976), yet Cameroon is not a party to the said London Convention since the country has not followed standard international treaty implementation procedures in that regard (e.g. ratification, adherence, etc.). The 1976 London Convention is thus binding for Cameroon by virtue of the CEMAC Code alone.

It would be recalled that what normally obtains under standard international convention implementation procedures is that states begin by taking a close look at the benefits, responsibilities and challenges associated with any convention before them before deciding whether or not to proceed with ratification and implementation (and subsequent enforcement). It is difficult to tell whether such caution is not sometimes sacrificed on the altar of the integration drive among CEMAC member states. The least one can say is that the approach used by CEMAC in rendering international instruments binding for its member states is susceptible to scrutiny. In any event, the CEMAC approach does not seem to constitute a recipe for successful legislative implementation (and enforcement) outcomes.

#### **Efforts geared towards improving FSI and PSC responsibilities**

The CEMAC Merchant Shipping Code, notably the revised 2012 version, does address FSI and PSC issues. FSI and PSC are covered notably under Title II of the Code, entitled “Safety (and Security) of Navigation”. The Code talks of FSI issues as provided for under international law (SOLAS 74 (as amended) and related instruments like Security Management Certificate, Safety Management Certificate, International Security Certificate, and so on; LL 66; etc.). However, what the CEMAC Shipping Code actually does is that it restates FSI responsibilities as contained in the relevant international conventions. Yet it is common knowledge that CEMAC does not have any FSI monitoring mechanism in place. In any event, in terms of legislative implementation, Cameroon has never featured under IMO good performance indicators such as the STCW White List, neither has the country been able at this point to fit into the IMO Instruments Implementation (III) Code scheme, which happens to be the single most important implementation and enforcement tool put in place to date by IMO.

As concerns PSC responsibilities, what the CEMAC Shipping Code does is restate some of the provisions of key IMO Resolutions on PSC, thereby transforming them into hard law provisions under the Code. So, the situation within the CEMAC sub-region is that, on the one hand we have the IMO PSC inspection regime based on IMO resolutions and the work of the Abuja MoU, and on the other we have the CEMAC Merchant Shipping Code regime with its hard law. However, it is important to note that all CEMAC member states are also members of the Abuja MoU [75]. Furthermore, the CEMAC Organization has no mechanism for monitoring PSC inspections and, in any case, the best way to appreciate the PSC inspection performance of any given country is to consult the statistics of the PSC MoU to which the country belongs. Consequently, it is safe to say that only the Abuja MoU can speak to a CEMAC member state’s performance in terms of PSC inspections, a fact which the CEMAC Code itself indirectly acknowledges in its Article 196 (1), as follows: “*Inspections of foreign vessels in the ports of the member states - and where appropriate their detention by the competent maritime authority - shall be carried out in accordance with the standards and procedures prescribed by Resolution A 787 (19) of the International Maritime Organization (as amended), in accordance with the guidelines for Port State Control Officers performing inspections under the Maritime Labour Convention, 2006 and the Memorandum of Understanding on Port State Control.*” Hence, the fact that all Abuja MoU statistics consulted in the context of this paper show that Cameroon has not at any time met the organization’s 15% PSC inspections annual minimum is of great significance.

#### **CONCLUDING REMARKS AND RECOMMENDATIONS**

This article has conducted a discussion that highlights the fact that the CEMAC Merchant Shipping Code regime has had some positive impact on Cameroon’s maritime legislative development. However, major challenges still remain, notably in light of Cameroon’s inability to project itself on the positive side of IMO implementation and enforcement indicators. In any event, the CEMAC Shipping Code regime will only bring true success if Cameroon, acting in concert with the other CEMAC member states, can help the organization achieve economic integration and development for the sub-region without prejudice to the interests of the country’s domestic shipping stakeholders. A step forward for Cameroon in that regard would be to avoid making CEMAC regulations a government affair only, by ensuring greater private sector and general public involvement through effective and transparent communication about the potential benefits of these regulations and also carrying out other

<sup>75</sup> See: <http://www.abujamou.org/>. Note: Cameroon has never met the MoU’s 15% PSC inspections annual min.

actions such as the provision of a good official English translation of all CEMAC transport Codes to ensure their widespread and effective use. A related consideration is that, as the executive body responsible for carrying out Cameroon's shipping responsibilities, the Department of Maritime Affairs and Inland Waterways (DAMVN) will need to play a major role in Cameroon's maritime legislative development drive. However, given that DAMVN is only a Department within the Ministry of Transport, it would be safe to assume at this point that, in terms of authority or resources, it is ill-equipped to do the job. By comparison, the maritime administrations (MARADs) of Ghana and Liberia are autonomous government administrative bodies.

Hence, without minimizing the achievements of the CEMAC Shipping Code regime in Cameroon, and while recognizing that a lot more needs to be done in the context of that regime, what the government of Cameroon needs to do, fundamentally, is to set up a maritime administration that is far more robust than what it has in place today, while also ensuring that such a body is adequately equipped to continuously help the country carry out its Flag State and Port State responsibilities in consonance with international standards.

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