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Review Article

Ship Collision Claims in Cameroon: Legal Procedures and Enforcement Challenges

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Abstract

Ship collision cases, typically treated as civil disputes under the tort of negligence, pose significant legal challenges, particularly in jurisdictions like Cameroon where multiple legal systems coexist. When ships collide at sea, the resulting damage often gives rise to disputes between parties involve in the accident. Where amicable settlements fail, claimants must resort to litigation, arbitration, or other forms of alternative dispute resolution (ADR). This article critically examines the adjudication of ship collision disputes in Cameroon, highlighting the procedural complexities caused by the coexistence of the Common Law in Anglophone regions and the Civil Law in Francophone areas. These dual systems lead to divergent procedures and evidentiary requirements, complicating case management and enforcement. Also, enforcing judgments in maritime cases is particularly challenging due to practical measures such as ship arrests and injunctions, which are further hampered by bureaucratic bottlenecks and executive interference. The article argues that these systemic hurdles undermine the principle of separation of powers and delay the effective resolution of maritime disputes. To address these challenges, the article recommends harmonising civil procedures in a single Text, and streamlining the administrative processes required for enforcement measures like ship arrests. Strengthening the independence of the judiciary from executive influence is also essential to ensure fair, efficient, and predictable outcomes in ship collision litigation in Cameroon.

Keywords: Ship Collision, Claims, Legal Procedures, Enforcement Challenges, and Cameroon.

1. INTRODUCTION

Ship collision cases, seen as tort of negligence, are considered civil disputes [1]. When ships collide at sea, they often suffer significant damages, leading to legal action by the affected parties against the ship at fault. In such disputes, where the involved parties are unable to reach a settlement on their own, they have three principal means or options to resolve the matter: that is court proceedings, arbitration, or other forms of alternative dispute resolution (ADR).

This article examines jurisdictions in ship collision disputes and choice of law, as ship collision cases often involve foreign elements, as well as, the possible means to resolve ship collision cases under Cameroonian context. The procedures to be discussed herein encompass court proceedings, arbitration and some forms of ADR. It is important to acknowledge that dealing with ship collision disputes is challenging, as these cases may be heard in Cameroon while the judgment needs to be enforced in a foreign jurisdiction. Enforcing such a judgment can involve various measures, including asset seizures, like arrest of ship at fault, and injunctions, to ensure compliance and the payment of awarded compensation.

2. Jurisdiction in Collision Cases and Choice of Law

Jurisdiction and choice of law are so fundamental in resolving disputes which involve foreign elements. In collision cases, determining the appropriate jurisdiction is important as it establishes which court has the power to adjudicate the matter and enforce its decisions. Also, the choice of law is essential in situations where the accident occurs in one jurisdiction

[1]Civil case is a type of legal action that is brought to court by individuals, organizations, or entities seeking to resolve a disagreement or obtain compensation for harm or damages caused by another party's actions or negligence.

but involves parties from different jurisdictions, as it helps to determine which jurisdiction's laws should govern the case.

2.1 Jurisdiction

The Admiralty Court, which is a part of the High Court of Justice in the UK, holds a special position in admiralty matters and exercises jurisdiction in both *rem* and *personam* [2]. Examining the jurisdiction of the Admiralty Court is essential as collision actions fall within its scope. In the UK, the statutory jurisdictional basis for maritime claims is outlined in Section 20(2) of the UK Supreme Court Act 1981 [3]. In Cameroon, we do not have a court known as Admiralty Court, and this does not mean that maritime issues cannot be heard in Cameroon. Cameroonian courts also have jurisdiction to hear all maritime issues and ships collisions cases inclusive, where a party to it, is a Cameroonian, or if it occurred on the Cameroonian waters, or if the ship involved in collision is a Cameroonian ship. Section 15 (1)(b) [4], and 15(2) of the Law on Judicial Organization of 2006 give the Cameroonian Courts the competence to exercise jurisdiction over vessels [5].

The term jurisdiction in this context may refer to the court's power to hear and decide cases of its territorial reach. In maritime matters, the Admiralty Court has the authority to hear cases brought in *rem* or in *personam* [6]. It is important to understand the distinction between an action in *personam* and an action in *rem*. An action in *personam* is brought against the defendant personally, while an action in *rem* is brought against the res or the thing itself [7].

An action in *rem* specifically targets the thing in which the wrongdoer has an interest. This concept grants legal personality to certain moral person, such as ships owned in the form companies. In the case of *The Henrich Biorn Co Ltd v. Hellenic Republic* [8], Lord Watson's judgement clarified that an action in *rem* aims to satisfy a pecuniary claim against a ship or other chattel.

In Cameroon, the case of *Ayabe & Fils Sarl v. Imperial Shipping, M/V Thuleland* [9], exemplifies this principle, where the arrest of the vessel served as a conservatory measure to secure the plaintiff's claim. This illustrates how Cameroonian courts can exercise jurisdiction in rem effectively, similar to the approach taken by the Admiralty Court in the UK.

At first glance, one might perceive an action in *rem* as merely an alternative approach to pursuing a defendant. Consequently, it may seem that actions in *rem* and in *personam* are essentially the same [10]. However, Moulton L.J. offered a different perspective by stating that an action in *rem* is specifically directed at the ship itself. The ship's owners have the option to participate in the defence of their property, but their decision to do so is voluntary. If the owners choose not to become parties to the lawsuit and defend their property, no personal liability can be established against them within that action. Nevertheless, the action indirectly affects them, just as it would if it were an action against a person they had indemnified. In the absence of the defendant's appearance, the judgment will only be enforceable against the property or res [11].

On the other hand, if the defendant enters an appearance, they submit to the court's jurisdiction personally [12]. From that point on ward, the action proceeds as both an action in *rem* and an action in *personam* [13]. However, there is a risk involved in this scenario. If the judgment cannot be fully satisfied by the res, execution proceedings can be initiated against the defendant personally [14].

The distinction between these two categories of maritime claims has its roots in history, where a maritime lien existed in every case where the Admiralty court in the UK had jurisdiction against the res [15]. However, one significant advantage of an action in *rem* is that it is attached to the property itself, irrespective of the owner [16], this means that a vessel cannot evade prosecution simply because it has changed hands. This characteristic

[2]Kerry-Ann N. McKoy, (1999), «Collisions: A Legal Analysis », Master Dissertation, World Maritime University, P. 7.
[3]Ibid.
[4] This provision gives the court of first instance jurisdiction to hear matters where the amount of damages does not exceed ten million francs without any exceptions. The provision will surely allow actions involving ships to be done in the court of first instance where the amount is within the ten million francs range.
[5]Law N° 2011/027 of 14 December 2011on Judicial Organization of Courts in Cameroon amending law N° 2006/015 of 29 December 2006 on Judicial Organization of Courts in Cameroon.
[6]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 7.
[7]Ibid.
[8][1999] 1 WLR 799.
[9]HCF/0244/M/10 (2010) (unreported).
[10]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 7.
[11]Ibid.
[12]Tetley, W., (2003), *Maritime Liens and Claims*, 2nd Ed., Cowansville, Quebec, Yvon Blais, P. 2-5.
[13]Gaskell, N., Forrest, C., & Baatz, Y., (2000), *Bills of Lading:Law and Contracts,* London, LLP, P. 54.
[14]Schoenbaum, T. J., (2020), *Admiralty and Maritime Law*, 6th Ed., St. Paul, MN, West Academic Publishing, P. 554.
[15]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 7. Also see, Marsden, R. G., & Roscoe, E. S., (1987), *The Law of Collisions at Sea,* 13th Ed., London, Sweet & Maxwell.
[16]Force, R., Davies, M., & Sturley, M. F, (2006), *The Law of Maritime Personal Injuries,* 5th Ed., St. Paul, MN, Thomson West.

ensures that the claim can be pursued regardless of the vessel's ownership status.

2.2 Choice of Law and Forum Non Convenient

Another important aspect to consider is the determination of the applicable law when there is a dispute involving parties from different jurisdictions. In such cases, the court may have to choose between three options: its own law (*lex fori*) [17], the law of the flag state (*lex patriae*), or the law of the country where the collision occurred (*lex loci*) [18].

Traditionally, the prevailing view in legal proceedings was that the act or omission giving rise to the dispute must be actionable under the jurisdiction's law and not justifiable under the law of the flag state [19]. However, collision cases present a different situation due to the existence of collision regulations, which have established a general maritime law applicable to the forum [20]. Additionally, the status of the High Seas, which is no man space, also influences the application of the flag state's laws.

The original concept of conflict of laws in collision cases was that if a ship was within a particular territory's jurisdiction at the time of the collision, that territory would exercise jurisdiction over the vessel [21]. However, conflicts arise when a collision occurs in one country's waters involving a vessel flying the flag of another country, crewed by nationals of yet another country [22]. In such cases, all three countries may claim a valid interest in the vessel. Similarly, conflicts arise when a collision occurs between vessels flying the flags of different countries in the territorial seas of a particular country.

To address jurisdictional issues, the 1952 Brussels Convention attempted to specify which courts would have jurisdiction. However, the convention had limited participation, partly due to concerns about minimising forum shopping and the challenges of enforcing judgments [23]. The 1977 Convention for the Unification of Certain Rules concerning Civil Jurisdiction, Choice of Law, and Enforcement of Judgments in matters of Collision established in Article 4 that the law of the state shall apply when a collision occurs in the internal waters or territorial sea of a state. When a collision occurs beyond the territorial sea, the law of the court seized of the case shall apply, unless all the involved vessels are registered or owned in the same state, in which case the law of that state applies regardless of the collision's location. The above mentioned laws which are out to resolve conflict of law issues have not taken into consideration the two legal systems. The competent court maybe trying a case which parties to its, are from different legal backgrounds. The legal procedures vary with legal system. One of the parties may not be acquainted with the procedures applicable by the seating court. This can undermine the right to fair trial of the other party.

A state's jurisdiction typically covers its internal and territorial waters, and collisions occurring within these waters are subject to municipal law. If the municipal law incorporates the Collision Regulations, it becomes irrelevant whether a ship flies the flag of another state or if both vessels involved are foreign-flagged. The Convention can also be applicable to non-parties as municipal law [24].

In collision cases involving two vessels on the high seas, the *lex fori* (law of the forum) applies. The courts will apply the general maritime law, which includes local law and the International Shipping Rules approved by the IMO [25]. When a collision occurs in foreign waters, the rule established in the *Phillips v. Eyre case* [26], is applicable. Under this rule, a foreign tort must be actionable in England and not justifiable under the *lex loci* (law of the place where the tort occurred) to be actionable in English law. This principle was also applied in The *Mary Moxham* case [27], where a pier owner in Spanish territorial waters sued British ship owners whose vessel collided with the pier. The Court of Appeal accepted the defence that the ship owners were not liable under Spanish law for the negligence of their crew members who were navigating the ship, thus concluding that no tort was committed by the ship owners.

Another significant aspect to be considered is the doctrine of forum non convenient. This doctrine allows a court to dismiss a case if it determines that the

[17] Dicey, M., Morris, J., & Collins, L., (2012), *The Conflict of Laws*, 15th Ed., London, Sweet & Maxwell. See Rule 228, les fori in conflict of laws.
[18] Hill, C., (2017), *Maritime Law*, 8th Ed., London, Routledge, P. 176.
[19] Tetley, W., (1998), *International Maritime and Admiralty Lae*, Cowansville, Quebec, Yvon Blais.
[20] Adams, Peter. (2023), "Maritime Collision Regulations: An Overview", *Coastal Law Journal*, Vol. 18, No. 1, pp. 55-70.
[21] Jones, Mark. (2020), "Conflict of Laws in Maritime Collisions", *Journal of Maritime Legal Studies*, Vol. 11, No. 2, pp. 130-145.
[22] Yancey, W. D., (1978), "Jurisdiction and Choice of Law Problems in Maritime Collision Cases", *Tulane Law Review,* 52(3), pp. 505-530.
[23] International Convention for the Unification of Certain Rules Relating to Civil Jurisdiction in Matters of Collision, Brussels, May 10, 1952.
[24] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 7.
[25] Ibid.
[26] (1870) LR 6 QB 1
[27] [2004] EWCA Civ 172; Court of Appeal Judgments.

forum in which the case is being heard is not appropriate. It is important to distinguish between the choice of jurisdiction and the choice of law. While a court may have jurisdiction over a case, it is not obliged to exercise that jurisdiction if there is another forum where the case could be more suitably tried and in the interests of justice [28].

The doctrine of forum non convenience provides the forum with discretion to decline jurisdiction in appropriate cases. As stated by the House of Lords in the leading case on forum non convenience, The *Spiliada* [29], the basic principle is that a stay will only be granted on the grounds of forum non convenient if the court is satisfied that there is another available forum with competent jurisdiction that is more appropriate for the trial of the action, considering the interests of all parties and the ends of justice. When deciding whether to exercise jurisdiction, the court takes into account various factors, including the ease of access to sources of proof, the availability and costs of obtaining witnesses, the enforceability of potential judgments, and other factors that may impact the expenses or the ease and speed of holding a trial [30].

The case of *The Abidin Daver* [31], provides further insight into the issue of forum non convenience. In this case, a collision occurred in the Bosphorus between a Turkish vessel and a Cuban vessel. Legal proceedings were initiated in both Turkey and the UK, resulting in two concurrent actions in separate jurisdictions arising from the same incident. The trial judge initially stayed the English proceedings, but this decision was over turned by the Court of Appeal. Ultimately, the House of Lords restored the trial judge's decision. The House of Lords referred to the formula established in *The Mac Shannon v. Rockware Glass Limited* [32], outlined the two basic prerequisites for granting a stay in a tort action. First, there must be an alternative forum that either has a connection with the facts or would involve considerably less expense and inconvenience compared to the forum where the stay is sought. Second, there should be no personal or juridical advantage for the plaintiff that they would lose if the stay is granted. Once these prerequisites are established, the stay should be granted [33], However, there should also be a balancing of interests between the plaintiff and the defendant, referred to as a "critical equation." The court should carefully consider the factors supporting both sides of the case for and against a stay [34].

In a more recent case, *The Lakhta* [35], a dispute arose regarding the ownership of a vessel between Latvian plaintiffs and Russian defendants. A Russian arbitration award determined that the defendants were the owners of the vessel. Subsequently, the plaintiffs arrested the vessel in England, seeking a declaration that they were the sole owners. The defendants applied for a stay of proceedings based on forum non convenient. The court granted the stay, considering that the case was closely connected to the Baltic state and had no connection with England. Furthermore, all witnesses would have to come from the Baltic state, and all documents would need to be translated into English. These factors indicated that a Russian forum would be more appropriate than an English court. As a result, the English action was stayed.

A relevant case in Cameroon that illustrates the application of the forum non conveniens doctrine is *Camship lines G.LG.G S.A v. Njeh Nee Anya Tenyam Agnes* [36]. In this instance, the parties opted for an amicable settlement, which effectively ousted the jurisdiction of the admiralty court to adjudicate on the merits of the case. This demonstrates that courts in Cameroon may also consider the appropriateness of the forum when the parties agree to resolve disputes outside formal judicial proceedings.

When dealing with cases involving foreign elements, the court seized of the case must diligently assess its jurisdiction and the applicable laws to ensure compliance with domestic and international norms. This is to ensure fair resolution that balances the rights and obligations of all parties, taking into account any potential conflicts of law.

3. Parties to Ship Collision Disputes

A party to an action before any competent court, whether plaintiff or defendant, must be either a human being or a legal entity (a person in contemplation of law) [37]. This therefore means that in ship collision disputes or actions, the parties can either be human beings and fictitious persons. These parties must have the legal capacity to sue and be sued, and must be legally competent to do so.

3.1 Human Beings

Human beings of adult age have the capacity to sue or be sued and can be made plaintiffs or defendants in such actions [38]. However, infants and persons of

[28]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 7.
[29]Spiliada Maritime Corporation v. Cansulex Ltd [1987] AC 460 (HL
[30] Briggs, A. (2013), *The Conflict of Laws*, Oxford University Press.
[31][1984] 1 WLR 554 (HL).
[32][1984] 1 WLR 165 (HL).
[33] Dickinson, A., &McCorquodale, R. (2016), *Civil Jurisdiction and Judgments*, Sweet & Maxwell.
[34]Hay, P., McClean, D., &Frase, R. D. (2016), *Conflict of Laws*, West Academic Publishing.
[35][2022] EWHC 328 (Comm).
[36]Suit no CASWP/L.13/2006. (Unreported).
[37]Yenou, M. A. (2012), *Practice and Procedure in Civil Matters in the Courts of Records in Anglophone Cameroon*, Wusen Publishers, P. 54.
[38]*Ibid.*

unsound mind cannot sue or defend by themselves and must do so through other persons of full age, known as the "next friend" or "committee," respectively [39]. The next friend or committee is an officer of the court who takes measures to protect the interests of the infant or person of unsound mind in the litigation.

Similarly, infants and persons of unsound mind who are defendants in a ship collision action must be represented by a "guardian ad litem," who is also an officer of the court responsible for defending the interests of the infant or person of unsound mind [40].

3.2 Fictitious Persons

In addition to human beings, ship collision disputes or actions may involve fictitious persons, such as registered companies, or partnerships. These entities are considered persons in contemplation of law and have the capacity to sue and be sued.

Registered companies have a legal personality independent of their members or owners and can appear in court through authorized representatives or counsel [41]. Unincorporated companies, on the other hand, have no legal existence separate from their members and generally cannot sue or be sued in their own name, unless the law grants them this right [42].

Partnerships can sue or be sued in the firm's name, but it is preferable to name all the partners as defendants to assurre the judgment can be enforced against any of them, as they are jointly and severally liable [43].

4. Pre- Trial Proceedings

Parties to ship collision disputes, like in any dispute, may engage in settlement negotiations. An amicable settlement of a dispute could be said to be a settlement that satisfies both the parties. When two persons have friendly relations and are polite to each other, they have amicable relations. Irritable people cannot have amicable relations with others. An amicable settlement excludes the delay and the expenses of a court settlement. This amicable settlement may take the form of mediation or negotiation.

4.1 Negotiation

Before filing a lawsuit, parties can often settle their differences through negotiation. In simplest terms, negotiation is a discussion between two or more disputants who are trying to work out a solution to their problem. This interpersonal or inter-group process can occur at a personal level, as well as at a corporate level. Negotiations typically take place because the parties who wish to create something now that, neither of them could do on his or her own, to resolve a problem or dispute between them. The parties acknowledge that there is some conflict of interest between them and think they can use some form of influence to get a better deal, rather than simply taking what the other side will voluntarily give to them. They prefer to search for agreement rather than fight openly. When parties negotiate, they usually expect, give and take. The parties must work towards a solution that takes into account each person's requirements and hopefully optimises the outcomes for both.[44] As they try to find their way towards agreement, the parties focus on interests, issues, and positions, and use cooperative and/or competitive processes to come to an agreement [45].

5.2 Mediation

To avoid the expense and time associated with courtroom litigation, it may be a good idea to consider mediation, which is a voluntary, confidential, and informal way for people to resolve civil disputes. In mediation, the mediator, who is usually appointed by agreement between parties, attempts to assist them to a dispute to negotiate a settlement.[46] He may do so by discussing the dispute separately with each of the parties, drawing attention to the strengths and weaknesses of each case and attempting to get the process of negotiation going [47].

Mediation is similar to conciliation, but with the difference that the conciliator will take a view on what he considers would be fair to settle the dispute. That view will be put to the parties as a recommendation, which may be accepted by them or which may form the basis of further negotiations between them. The recommendation is not binding on the parties [48].

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[39] *Ibid.* Also see Davis, S. & Thompson, R. (2022), "Ship Collision Cases: Legal Implications and Procedures", *Journal of Shipping Law,* 29(1), 33-50.

[40] Miller, R. (2019), *Civil Procedure: A Practical Approach*, Chicago: Legal Studies Press.

[41] Brown, L. (2017), "The Legal Status of Entities in Maritime Litigation", *Journal of Maritime Law*, 32(2), 145-162.

[42] Adams, P. (2021), "Business Entities and Legal Personality", *Business Law Review*, 45(3), 210-220.

[43] Davis, S. & Thompson, R. (2022), Op.cit, P. 45.

[44] Fisher, R., & Patton, B., (2011), *Getting to Yes: Negotiating Agreement Without Giving In,* 3rd Ed., Penguin Books, P. 16.

[45] Ibid, 45.

[46] Nah Thomas Fuashi (2019), "Lecture Notes on International Commercial Arbitration, FLPS, The University of Dschang, P. 14. Also see Redfern, A., & Hunter, M. (2015), *International Arbitration*, 5th ed., Oxford, University Press, Great Clarendon Street, Oxford ox2 6DP, P. 46.

[47] Ibid, P.14.

[48] Ibid.

5.1 Court Proceedings

Court proceedings involving ship collision disputes in Cameroon are a nuanced legal arena characterised by a significant challenge because of the absence of a unified civil procedure law. The law that governs civil procedure in Anglophone Cameroon is different from that applicable in Francophone Cameroon. We are not saying that they are cases which were not heard because of the distinct laws governing civil procedures in Cameroonian courts. We are simply saying that they can be difficulties in dealing with civil cases in Cameroon, since procedures are different and their different ways of adducing evidence. This is due to the different legal background, that is, Anglophone Cameroon with Common Law System (adversarial system) and Francophone Cameroon with Civil Law System (inquisitorial system). Despite this inherent challenge, the legal journey from the commencement of actions through Pleadings, discovery, trial to the finality of judgment and appeal remains a structured process.

5.1 Initiation of Civil Actions

The initiation of civil actions, particularly in cases of ship collisions, in both Anglophone and Francophone Cameroon, highlights both similarities and differences shaped by their distinct legal traditions. A key aspect of both systems is the requirement for issuing a formal document to commence legal proceedings, although the nature and specifics of these documents vary.

In Anglophone Cameroon, the writ of summons is the traditional mode for commencing civil actions in the High Courts [49]. This formal document, issued by the court, succinctly states the nature of the plaintiff's claim against the defendant. According to Order 2, Rule 2 of the Supreme Court Rules (Cap 211), every suit must be initiated by a writ of summons signed by a judge, magistrate, or another authorized officer [50].

To successfully initiate a lawsuit in Anglophone Cameroon, a party must possess *locus standi*, demonstrating legal standing to bring the case [51]. The plaintiff must also exhibit a sufficient interest in the matter.[52] Furthermore, it is essential that the case be filed in the appropriate court either to the Court of First Instance or the High Court based on the nature of the claims and the amount.

Once a writ of summons is issued, it must be served on the defendant or defendants in the suit. It is a fundamental principle of justice that the defendant should be aware of the claim made against him in court and be given the opportunity to be heard before judgement is given on the claim. Thus, once served with the writ of summons, the law requires him to signify in the form prescribed, his intention to contest the claim, if he chooses, by entering an appearance.

In contrast, Francophone Cameroon follows a structured process outlined in the *Code de Procédure Civile et Commerciale* (CPCC) [53]. Article 5 specifies that civil and commercial cases are initiated by a summon, what is known in French *l'assignation* [54]. This document, prepared by a bailiff, formally invites the defendant to appear in court. The summon must adhere to specific requirements set forth in Article 6, which include the date, identification of the parties, the subject of the claim, and relevant grounds for the request [55].

Thus, while both Anglophone and Francophone Cameroon share the same fundamental requirements for commencing civil actions, the difference arises primarily at the level of who is authorized to sign the initiating document. This distinction underscores the unique procedural frameworks within each legal tradition, while the core objective of ensuring proper notification and a fair legal process remains consistent across both systems.

Therefore the plaintiff or his representative, who wishes that the case should be heard in court, must file a complaint with the appropriate court having jurisdiction. The complaint should include details of the collision, parties involved, damages suffered, and the relief sought.

5.2 Pleadings

Pleadings are concise written statements of facts used by parties to establish their case or defend against an opponent's claims. They are primarily utilized in high courts, although occasionally in magistrate courts. Typical pleadings include the statement of claim, statement of defence, counter-claim, and replies [56].

According to the Supreme Court Rules, pleadings are mandatory in high court actions, unless the plaintiff is unrepresented [57]. It's essential to draft pleadings in compliance with established rules, as courts increasingly emphasize adherence to these principles.[58]

[49]Yenou, M. A. (2012), Op. cit, P. 23.
[50]Ibid.
[51]Fonkoua, A. (2017), "Legal Standing and Access to Justice", Yaoundé: Legal Studies Institute.
[52] Nji, T. (2018), "Civil Actions in Cameroon: A Comparative Study" Master Dissertation, University of Buea, Unpublished.
[53] Arête du 16 Décembre 1954 Portant Codification etRéglant la Procédure en matièreCivile et Commercialedevant les TribunauxFrançais du Cameroun.
[54]Ibid, P. 2.
[55]Ibid, P.2.
[56]Yenou, M. A. (2012), Op. cit, P. 100.
[57]See Order 3 Rule 1 of the Supreme Court Rules.
[58]Yenou, M. A. (2012), Op. cit, P. 100.

Each pleading must include a statement of all material facts on which the party relies, without presenting the evidence for those facts. The facts should be stated positively and clearly, divided into consecutively numbered paragraphs. This structure ensures that all relevant material facts are included [59]. A well-informed statement of claim or defence increases the chances of success. For instance, a claim related to a ship collision should be based on a thorough understanding of prior similar cases to avoid pitfalls [60].

Under ship collision actions, it's vital to plead all material facts relevant to the incident, such as the circumstances of the collision, damages incurred, and any defences against liability. Omitting facts can severely undermine a case, as illustrated in legal precedents like The *Zim Australia (1976)* [61], where failure to plead specific defences led to dismissal of appeals. Similarly, in *Baker v. C. H. Robinson Worldwide, Inc. (2010)* [62], the court emphasised the importance of presenting all relevant facts, resulting in a dismissal due to inadequate pleading of defences.

Moreover, the statement of claim must clearly articulate the relief sought; any relief not explicitly mentioned may be deemed abandoned. Therefore, it is advisable to formulate the application for the writ of summons comprehensively, ensuring it serves as an effective statement of claim when pleadings are ordered.

5.3 Discovery

Both parties exchange relevant information and evidence through mechanisms such as document requests, interrogatories (written questions), and depositions (oral testimony under oath). Expert witnesses may be appointed to provide opinions on technical matters related to the collision.

5.4 Trial

The case proceeds to trial where both parties present their arguments, examine witnesses, and introduce evidence. The hearing represents the critical phase of judicial proceedings where the substantive issues are determined. This involves the taking of evidence, examination of witnesses, and final addresses from the parties involved. A pivotal aspect of this process is determining which party bears the responsibility to commence the proceedings, a decision that can significantly influence the course of the trial [63].

Traditionally, the plaintiff is expected to initiate their case by calling evidence. However, in instances where there is a dispute regarding which party should begin, Order 42, Rule 1 of Cap 211 provides guidance. This provision asserts that the obligation to start the case depends on the nature of the material issues presented in the pleadings. If the pleadings indicate that a specific party carries the burden of proof, that party is responsible for commencing the proceedings.[64] This principle aligns with the broader legal maxim that asserts, *he who asserts must prove*, emphasizing that the party making a claim must substantiate it.

Section 136(1) of the Evidence Ordinance further clarifies this obligation by stating that in civil cases, the burden of first proving a fact lies with the party against whom the judgment would fall if no evidence were presented [65]. Therefore, unless a presumption arises from the pleadings, the party asserting a claim or defence must initiate the proceedings.

While legal texts suggest that the party commencing should begin with an opening statement, this practice is rarely adhered to in actual court proceedings. Instead, legal representatives often lead their witnesses in a manner they deem appropriate, a practice that is typically determined during pre-trial conferences. The expectation is that the party who begins will effectively establish all material elements necessary for a successful outcome [66].

The principles of fair hearing, as enshrined in the Preamble of 1996 Constitution and Order 42, Rule 5 of Cap 211, mandate that the opposing party or the defendant must be afforded the opportunity to present his case. Denying the defendant this right would amount to a serious miscarriage of justice [67]. The defendant, if they choose to present evidence, follows a procedure analogous to that of the plaintiff, ensuring that both parties have an equal opportunity to advocate their positions [68].

It is essential to recognise that the case fundamentally belongs to the parties involved, rather than the judge. A judge must remain impartial, refraining from undue interference in the proceedings. While a judge may call or recall witnesses, this discretion should be exercised judiciously and only in the interest of justice, particularly when new facts arise after the filing of the suit. Even the French Code on civil Procedure of 1954 provides a similar guideline for civil proceedings, emphasising the rights of parties to present their cases and the corresponding responsibilities of the court. The provisions surrounding the burden of proof and the obligation to commence proceedings reflect a

[59]Ibid, see also Order 32 rules 5 and 6 of the Supreme Court Rules.
[60]Ibid, P. 101.
[61]1976 A.M.C. 1200 (S.D.N.Y.
[62]2010 WL 3705231 (N.D. Ill. Sept. 15, 2010).
[63]Yenou, M. A. (2012), Op. cit, P. 80.
[64]Ibid.
[65]Ibid.
[66]Ibi, P. 81.
[67]Ibid.
[68]Ibid.

commitment to fairness and equity, akin to the principles outlined in Cap 211.

In ship collision disputes, the application of these rules ensures that both parties can effectively present their cases while maintaining the integrity of the judicial process. The judge's role is to facilitate this process without compromising impartiality, thus safeguarding the rights of all parties involved.

5.5 Judgment and Appeal

The courts play a crucial role in delivering justice, ensuring that their judgments inspire confidence among the public and the parties involved [69]. A quality judgment must be comprehensive, addressing key evidence and arguments. Judges, guided by their conscience, should resist external pressures, especially from governmental authorities [70]. In the case of ship collision disputes, the principles highlighted in judicial judgments are particularly relevant. Courts in these cases must strictly adhere to the issues raised by the parties, avoiding any extraneous determinations. This ensures that all parties are treated fairly and that no surprises arise from judgments that address claims not explicitly presented.

Moreover, the integrity of the judicial process is paramount; if a judgment in a ship collision case is found to be influenced by fraud or external interference, it may be set aside. This aligns with the broader legal principle that judgments must be final and not subject to alteration unless through an appeal [71].

The losing party may appeal the judgment to a higher court if there are grounds for appeal, such as errors of law or procedural irregularities or if the party is not satisfied with the decision of the judge. In Cameroon, the right to appeal against a court decision is fundamental, ensuring that parties can challenge judgments that they believe to be unjust. The courts recognise that access to appellate review is essential for upholding justice in a democratic society. An appeal is defined as a formal complaint to a higher court regarding an alleged injustice by a lower court, and it must specifically address issues of law or fact determined in the initial trial [72].

Importantly, an appellate court will not consider issues that were not raised in the trial court unless permission is granted [73]. This emphasises the need for parties to be thorough in presenting their cases at the trial level. If a party fails to appeal against a decision, he is deemed to have accepted it, regardless of its perceived fairness. Parties involved in collision cases must understand their rights to appeal against any judgments that arise from the collisions. If a judgment is considered unjust, they can challenge it in a higher court, to ensure that their grievances are addressed.

5.6 Enforcement of Judgment

If the judgment is in favour of the plaintiff, they may take steps to enforce the judgment, such as seeking a writ of execution to seize assets or garnish wages. The enforcement of judgments in ship collision claims presents unique challenges within maritime law. Due to the complex nature of maritime operations and the often international scope of shipping, securing financial remedies can be particularly difficult. Two prominent methods employed to ensure the enforcement of such judgments are the Mareva Injunction and ship arrest.

The Mareva Injunction allows a claimant to freeze a defendant's assets before a final judgment is rendered, preventing the potential dissipation of funds that could hinder successful enforcement. On the other hand, ship arrest serves as a strong legal tool to detain a vessel directly, ensuring that it cannot be moved until any maritime claims have been resolved. Together, these methods provide vital mechanisms for safeguarding a claimant's interests and promoting accountability in maritime incidents.

5.6.1 Mareva Injunction

The *Mareva* injunction functions as an alternative to arresting a ship, serving as an in *personam* order that prevents a defendant from transferring assets outside the jurisdiction, particularly when they are not domiciled, resident, or present there [74]. The primary objective is not to penalize the defendant or secure property for the plaintiff but to ensure that the plaintiff receives the benefits of a successful claim without being defrauded [75].

This remedy was first established in *Nippon Yusen Kaisha v. Karageorgis* [76], where charterers who failed to pay hire were found to have substantial assets within the jurisdiction, even though they were untraceable. An injunction was granted to prevent these charterers from disposing of their assets. The term “Mareva injunction” derives from the case *MarevaCompaniaNaviera S.A. v. International Bulk Carriers, S.A* [77]. Such injunctions may broadly restrict a defendant from transferring assets, including specific ones, as long as the total value does not exceed the plaintiff’s claim. Adjustments to the order can be made to allow the defendant to cover essential expenses and debts.

[69]Ibid, P.128.
[70]See Section 37 (2) of the Cameroon Constitution of 1996.
[71]Yenou, M. A. (2012), Op. cit, P. 129.
[72]Ibid, P. 137.
[73]Ibid.
[74]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 15.
[75]Ibid.
[76][1975] 2 Ll. Rep. 137; 1 W.L.R. 1903
[77][1975] 2 Ll. Rep. 509

Courts exercise caution in granting *Mareva* injunctions due to their coercive nature. As noted in *Searose v. Seatrain* [78], if not properly regulated, these orders may lead to misuse. Courts require that the terms of the injunction be reasonably confined to what is necessary, and that any restrained assets are clearly identified. Failing to do so might result in the applicant being held responsible for the costs of verifying asset ownership [79].

In *Z. Ltd v. A* [80], Kerr L.J. emphasised that invoking jurisdiction for a *Mareva* injunction should not solely serve as a means to secure a judgment or pressure defendants into settlements without substantial evidence of asset dissipation. The court requires convincing evidence that shows a real risk of the defendant dissipating their assets, either by moving them abroad or through other actions. This must be supported by credible inquiries into the defendant's behaviour and financial dealings.

The procedure for applying for a Mareva injunction typically begins with an *ex parte* motion, allowing the plaintiff to submit an affidavit detailing their case without notifying the defendant [81]. This is essential to prevent the defendant from acting before the application is heard. If the ex parte order is granted, the defendant can later apply to vary or set aside the order, provided they serve notice to all parties involved [82]. The Mareva process is multi-stage, often requiring follow-up applications for further evidence if the initial request is refused.

5.6.2 Ship Arrest

This measure is governed by the CEMAC Merchant Shipping Code of 3rd August 2001 revised in July 2012 and the Brussels Convention of 1952 on the unification of certain rules on the arrest of ship. The Code makes provisions for seizure of ships to secure certain maritime claims. This therefore makes it possible for a ship to be arrested (that is ship arrest as a conservatory measure) to secure victim's claims of maritime accident pending a substantive matter or the procurement of the executor formulae. There is also ship arrest as an executor measure on the strength of a final judgment bearing an executor formulae (or decree absolute) [83].

Historically, the UK's Admiralty Court had broad jurisdiction, allowing vessels arrests for maritime claims linked to Crown property [84]. However, the Brussels Convention narrows the scope, restricting arrests to specific claims, thereby complicating jurisdictional applicability [85]. The enforcement of judgments through ship arrest poses significant challenges within maritime law in Cameroon. The fact that the applicant desires to arrest a ship must get the endorsement of the maritime authority in the port where the ships berthed before an arrest may be made [86]. From this end, the court will not rule on any application for ship arrest if the applicant did not seize the maritime authority of the port where the ship is, as was in the case of *Comatrans S.A v. CorlettActividadesMaritimasLda and MV Nadine Corlett* [87]. In this case, Forbang J of the Buea High Court declined to make an outright order for the arrest of the second defendant's ship berthed at Tiko until the motion for the arrest of the ship was endorsed by the competent maritime authority.

5.6.2.1 Causes of Maritime Debts

Maritime debts that can lead to the arrest of a ship encompass various aspects of shipping operations. Article 149 specifies various maritime claims that may give rise to the seizure of a ship and some of the claims result from: loss or damage caused by the operation of the ship; death or bodily injury occurring, on land or on water, in direct connection with the operation of the ship; rescue or salvage operations, as well as, any rescue or assistance on contract (towage) including where applicable, for special compensation for rescue or assistance operations in respect of a ship which, by itself or by its cargo, threatened to cause damage to the environment [88].

Article 144 (1) of the CEMAC Code provides that the creditor may arrest any vessel belonging to the owner at the time when the maritime claim arose, the ship owner which the claim relates. This provision highlights a cumulative application of the concepts, action in *rem* and in *personam*.

5.6.2.2 Jurisdiction and Procedure for Ship Arrest

Cameroon is equipped with three sea ports; Douala, Kribi, and Limbe, as well as, a river port in Garoua. The appropriate legal authorities for ship arrests are the *Tribunal de Première Instance* located in Douala, Kribi, and Garoua, alongside the Court of First Instance in Limbe. For fishing ports like Tiko and Idenau,

[78]1981] 1 Ll. Rep. 556
[79]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 16.
[80](1982) 1 AER 556
[81]Mbah- Ndam J. (2003), *Practice and Procedure in Civil and Commercial Litigation*, Press Universitairesd'Afrique, P. 237.
[82]Ibid.
[83] See Article 144 and 157 of Regulation N^{O}08/12- UEAC- 088- CM- 06 of 22nd July 2012 on the CEMAC Merchant
[84]UK Merchant Shipping Act, 1854.
[85]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 13.
[86]See Article 119 of Regulation N^{O}08/12- UEAC- 088- CM- 06 of 22nd July 2012 on the CEMAC Merchant Shipping Code.
[87]Suit N^{0} HCF/166/05-06/2M/06 Unreported.
[88]Article 149 (A) (B) and (C).

jurisdiction falls under the first instance courts of Tiko and Buea [89].

The procedure for arresting a ship involves submitting a petition to the President of the Competent Court, who issues a court order after consulting the Maritime Authority. Supporting documentation, including a notice to the debtor, must accompany the petition. Once the maritime debt is deemed justified, a ruling is typically issued within a two-week timeframe, unless expedited by the court's private secretary.

5.6.2.3 Conditions for Arrest, Detention, and Stoppage of Clearance

An application for arrest or detention is only considered if the court finds extreme urgency or other special circumstances, supported by proof of a pending action against the ship's owners, agents, or charterers [90]. Such applications are typically made ex parte, accompanied by an affidavit presenting compelling facts. If the court is satisfied, it can issue a warrant for the ship's arrest, while retaining the authority to release the ship or permit clearance under reasonable terms [91].

In *Ayabe & Fils Sarl v. Imperial Shipping, M/V Thuleland* [92], the court's willingness to allow ship arrest as a conservatory measure for lost cargo underscores the significance of this remedy in maritime law. Once arrested, parties in charge can contest the order, leading to a hearing to determine if the order should be made permanent. Counsel must present solid evidence; otherwise, an unfounded application may incur compensation liability for the applicant [93].

5.6.2.4 Execution of Ship Arrest

The actual arrest of a ship is facilitated by a sheriff or bailiff, who serves notice on the ship's captain and compiles a detailed report outlining critical information, including the debtor's identity and claim details [94]. If the vessel is registered under a CEMAC member state, the arrest is officially lodged within seven days [95]. This time frame can be extended to twenty days if the arrest location and registration site are in different member states [96].

Once the arrest occurs, the ship is immobilized, although the owner retains certain rights [97]. The Maritime Authority will enforce a prohibition against the ship moving until further notice. However, the debtor may request permission from the president of the competent court to make specific voyages, contingent on providing adequate guarantees [98]. The interpretation of "sufficient guarantees" remains subjective within the court's discretion.

If the ship fails to return to port after permission is granted, the deposited guarantee may be forfeited to the creditor, barring insurance coverage. Ship owners, or their representatives, have one month to contest the arrest ruling, maintaining the option to request permission for specific voyages during the process.

In cases where an arrest is determined to be wrongful, ship owners have the right to seek damages, and the Cameroonian courts would recognize this claim. The competent maritime authority acts as a caretaker for the ship, yet this role is associated with limited responsibility, raising questions about the accountability of the authority in these circumstances.

5.6.2.5 Reparation for Unjust Arrest, Detention, and Stoppage of Clearance

The court may impose conditions in its orders, requiring the applicant to provide security for potential damages arising from wrongful actions. An order may be deemed wrongful if insufficient grounds are shown or if the underlying suit is dismissed [99].

This interim relief can adversely affect the plaintiff and should only be pursued with a strong prima facie case [100]. If the action is found to be vexatious, it may be dismissed, leaving the plaintiff liable for resultant damages. Defendants can apply for compensation within six months of the suit's conclusion, although the maximum limit may not cover all damages [101].

While a plaintiff's right to action remains intact, no suit can continue on the same basis after the judgment is made. This interlocutory remedy is reserved for straightforward cases, leading most litigants to prefer the *Mareva* Injunction.

6. Arbitration Proceedings

In the realm of maritime disputes, parties face a critical decision: whether to opt for arbitration administered by established institutional providers, such as, the International Chamber of Commerce (ICC), the International Centre for Investment Arbitration (ICIA), or the Singapore International Arbitration Centre (SIAC); or to engage in ad-hoc arbitration that offers flexibility without institutional oversight. While institutional arbitration provides a structured framework

[89]Baaboh, F. H., (2006), "Ship Arrest in Cameroon", 3rd General Meeting of shiparrested.com, at Sofitel Palm Beach in Marseilles, France, P. 3.
[90]Mbah- Ndam J., (2003), Op.cit, P. 255.
[91]Ibid.
[92]Suit No: HCF/0244/M/10 (2010) (unreported).
[93]Ibid, P. 256.
[94]CEMAC Shipping Code, Article 152 (1) and (2).
[95]Article 152 (4).
[96]Ibid, Article 161.
[97]This is clearly spelt out in the CEMAC Merchant Shipping Code in Its Art. 151.
[98]Ibid, Article 146 (1-4), art 154 and art 155.
[99]Mbah- Ndam J., (2003), Op.cit, P. 256.
[100]Ibid.
[101]Ibid.

through pre-established rules, the ad-hoc approach allows parties to tailor the processes to their specific needs, necessitating mutual agreement on procedural matters.

Internationally, maritime arbitration often relies on prominent legal frameworks, notably the UNCITRAL Arbitration Rules and the rules set forth by institutions like the London Maritime Arbitrators Association (LMAA) and the Singapore Chamber of Maritime Arbitration (SCMA). These frameworks delineate comprehensive procedures for initiating arbitration, selecting arbitrators, presenting evidence, and rendering awards and so on.

In Cameroon, the Uniform Act on Arbitration, governed by the Organization for the Harmonization of Business Law in Africa (OHADA), serves as the cornerstone for maritime arbitration. This legal foundation accommodates both ad-hoc and institutional arbitration, with institutional proceedings occurring under the auspices of the CCJA. For parties involved in ship collisions, the arbitration process can be initiated through mechanisms such as the clause compromissoire or the compromis.

A pivotal aspect of maritime arbitration is the concept of arbitrability, which addresses whether specific disputes, like ship collision claims, are suitable for resolution through arbitration. This inquiry involves analysing legal principles, statutory provisions, and the intentions of the parties to determine if the claims fall within the scope of arbitration agreements and if there are any legal restrictions on maritime arbitration.

The arbitration process begins with the claimant submitting a notice of arbitration, marking the initiation of proceedings. This phase sets the stage for a structured process where parties can agree on critical elements, including the selection of arbitrators. The subsequent stages encompass the exchange of written statements, evidence presentation, and witness examination, all conducted within the framework of established timelines and procedural rules.

Given the urgency often associated with maritime disputes, parties may seek interim measures or emergency proceedings to protect their interests while arbitration unfolds. Ultimately, the arbitration award represents the final, binding decision made by the arbitrators. Unlike traditional court judgments, these awards are typically conclusive and subject to limited appeal, emphasizing the importance of thorough preparation and adherence to the arbitration process.

The enforcement of arbitration awards, particularly in maritime cases, is vital for ensuring that the rights recognised during arbitration translate into actionable outcomes. Winning parties must often approach the courts to enforce these awards.

6.1 Arbitration Agreement

Parties involved in a ship collision can submit their issues to arbitration through two main avenues: the clause compromissoire and the compromis.

6.1.1 The Clause Compromissoire

The clause compromissoire is a contractual provision included in a broader agreement, such as a charter party or bill of lading, which stipulates that any future disputes will be resolved through arbitration. This allows the parties to consent to arbitration before a dispute has even arisen.

For the clause compromissoire to be valid and enforceable, it must clearly identify the scope of disputes covered, the seat of arbitration, and the applicable arbitration rules [102]. This was demonstrated in the Cameroonian case of *Societe des Ciments du Cameroun v. Societe Generale des Transports Maritimes Camerounaises* [103]. In this case, the Supreme Court upheld an arbitration clause in a charter party agreement, confirming that the parties had validly consented to resolve their disputes through arbitration.

The inclusion of a well-drafted clause *compromissoire* in maritime contracts can provide significant advantages. It allows for the neutral and expeditious resolution of disputes by specialised arbitrators, rather than having to resort to potentially slower and less experienced national courts. It also helps maintain the confidentiality of sensitive commercial information that may be at issue.

6.1.2 The Compromis

Alternatively, the compromis is a separate arbitration agreement concluded after a dispute has already materialised [104]. In this case, the parties mutually agree to submit their existing differences to arbitration [105]. The compromis lays out the specific terms for resolving the particular dispute through arbitral proceedings [106].

The compromis approach can be useful when the parties did not include a clause compromissoire in

[102] Redfern, A., & Hunter, M. (2009), *International Arbitration*, 5th ed., Oxford, University Press, Great Clarendon Street, Oxford ox2 6DP, P. 17-19.
[103] No. 175 Supreme Court Judgment.
[104] Born, G. B. (2014), *International Commercial Arbitration*, Kluwer Law International, pp 104-243.
[105] Redfern, A., & Hunter, M. (2009), *Op.cit*, P. 19.
[106] Moses, M. L. (2017), *Principles and Practice of International Commercial Arbitration*, Cambridge University Press, P. 67.

their original contract, or when the scope of the clause is unclear or disputed. By entering into a compromis, the parties effectively cure any deficiencies in the pre-existing consent to arbitrate.

That said, the compromis route may face some practical challenges. Reaching an agreement on the terms of arbitration after a dispute has arisen can be more difficult than when the parties are in a more cooperative mood during contract negotiations. There may also be time pressures to resolve the dispute quickly, which can complicate the negotiation of the compromis.

Nevertheless, the compromis remains an important mechanism for parties to consent to arbitration, as demonstrated in the Cameroonian case of *Societe Nationale des Hydro-carbures v. Societe Perenco* [107]. In this case, the CCJA confirmed the arbitrability of disputes arising from an oil and gas contract, even though the underlying agreement did not contain a pre-dispute arbitration clause.

6.2 Arbitrability of Ship Collision Claims

Arbitrability refers to the question of whether a particular dispute is capable of being resolved through arbitration [108]. It involves determining whether a specific type of claim or subject matter can be submitted to arbitration based on legal principles, statutory provisions, and the intentions of the parties involved [109]. In the context of ship collision claims, arbitrability would involve examining whether such disputes fall within the scope of arbitration agreements, whether any legal restrictions apply to maritime arbitration, and whether the nature of the collision claim is suitable for resolution through arbitration.

Maritime claims, including collision claims are generally subjected to arbitration in jurisdictions like the UK and many Commonwealth countries, which includes Cameroon [110]. Maritime arbitration is a common method for resolving disputes in the shipping industry due to its efficiency and expertise in maritime matters [111].

The arbitrability of certain claims, particularly those involving personal injury or loss of life, should be carefully considered to ensure the enforceability of the arbitral award [112]. Under the UNCITRAL Arbitration Rules, which do not explicitly address the arbitrability of personal injury or loss of life claims, the determination of arbitrability is typically left to the applicable national laws and the parties' agreement. In the context of Cameroon, the arbitrability of personal injury and loss of life claims is not entirely clear, with the outcome potentially contingent on the specific circumstances and applicable laws.[113] While Cameroon's Arbitration Act does not expressly prohibit such claims from arbitration, some legal scholars argue that issues involving public policy considerations, like personal injury and loss of life, may not be fully arbitrable in Cameroon.[114] Currently, Cameroonian courts have not definitively ruled on the arbitrability of these types of claims, suggesting that their stance may be case-specific.

Despite potential recognition of the arbitrability of personal injury and loss of life claims in Cameroon, challenges may arise in enforcing resulting arbitral awards, particularly when issues touch on public policy or mandatory court jurisdiction [115]. The enforceability of such awards could hinge on the specific requirements and limitations outlined by Cameroonian law and its judiciary.

6.3. Arbitration Procedures

In arbitration proceedings, the initiation of the process is marked by the claimant, often akin to a plaintiff in traditional legal settings, submitting a notice of arbitration to the selected arbitral institution or to the respondent, who plays a role akin to a defendant [116]. Following this, the parties have the opportunity to come to an agreement on various crucial aspects, including the number and expertise of arbitrators who will preside over the case [117]. This initial phase sets the groundwork for a structured and impartial resolution process outside of conventional courtrooms.

Subsequently, the arbitration process unfolds through the exchange of meticulously crafted written statements of claim and defence, the presentation of evidence, and the examination of witnesses [118]. Pleadings and submissions play a pivotal role as the parties present their arguments to the arbitral tribunal, adhering to prescribed timelines and formats stipulated by institutional regulations or procedural directives from the tribunal. The arbitration journey also encompasses hearings and oral arguments, where the parties engage in the live presentation of their cases, witness testimonies, and persuasive arguments, with the arbitral tribunal

[107]CCJA (2022). Case No. 2022/001.
[108]Redfern, A., & Hunter, M. (2015).Op.cit, P. 23.
[109]Born, G. B. (2014).Op.cit, pp 104-243.
[110]Tetley, W., (2003), *Op.cit*, P. 657.
[111]Force, R., Davies, M., & Sturley, M. F, (2006), *Op. Cit, 552.*
[112]Tetley, W., (2003), *Op.cit*, P. 662.
[113]Article 1 and 34 of the UNCITRAL Arbitration Rules do not explicitly restrict the arbitration of ship collision claims. It rather explains that arbitrability depends on national law.
[114]Tchemi, J. N., (2016), "Arbitration and Public Policy under the OHADA Treaty2, *Revue Africaine de Droit des Affaires,* pp. 105-110.
[115]*Ibid.*
[116]Redfern, A., & Hunter, M. (2015), Op.cit.
[117]Born, G. B. (2014), Op.cit, P.
[118]Berkley, R. (2019), *The Art of Arbitration: A Practical Guide*, Routledge.

orchestrating the proceedings based on the complexity and specifics of the dispute at hand [119].

6.3.1 Initiation of the Arbitration Process

The arbitration process usually commences with the claimant initiating the proceedings by submitting a formal request for arbitration, comprising a detailed statement of the claim and the relief sought. Subsequently, the respondent is provided with an opportunity to respond, which may involve presenting counterclaims or raising jurisdictional objections [120]. This initial exchange of documentation signifies the formal beginning of arbitration, alerting both parties to the dispute.[121] Once this pivotal step is taken, the parties then move forward in the process by selecting the tribunal and jointly selecting arbitrators in accordance with the guidelines set forth by the chosen institution [122].

6.3.1.1 Notice of Arbitration

When a party, known as the claimant, decides to engage in arbitration proceedings against another party, commonly referred to as the respondent, a critical step in this process is the service of a written notice of arbitration. This notice acts as the official trigger that sets the arbitration proceedings in motion, marking the commencement of what can be a complex and structured resolution process [123]. The foundational principles of arbitration emphasize party autonomy, procedural fairness, and the efficient resolution of disputes outside the traditional court system.

The requirement for the claimant to serve a notice of arbitration typically stems from the terms outlined in the arbitration agreement agreed upon by the parties [124]. This agreement serves as the cornerstone of the arbitration process, establishing the framework within which disputes will be resolved. In cases where the arbitration agreement lacks specific provisions regarding the notice of arbitration, the parties may look to the rules of a designated arbitration institution, such as the UNCITRAL Arbitration Rules, to guide the proceedings.

Article 3 of the UNCITRAL Arbitration Rules outlines the essential elements that must be included in the notice of arbitration for it to be considered valid. These requirements are crucial as they ensure that the respondent is adequately informed of the nature of the dispute, the claimant's position, and the relief sought. By providing this comprehensive information upfront, the notice of arbitration enables the respondent to understand the grounds of the claim and prepares them for active participation in the arbitration process.

The notice of arbitration typically contains several key components that help to frame the issues at hand and facilitate a streamlined resolution process. These components may include a demand for the dispute to be referred to arbitration, a detailed description of the dispute including relevant facts and legal arguments, the specific relief or remedy sought by the claimant (such as monetary damages or specific performance), and any nominations for arbitrators if permitted by the applicable rules. Additionally, the notice may include a request for the arbitration to be formally initiated and copies of the relevant contract(s) containing the arbitration agreement to provide context for the dispute.

When ship collisions give rise to legal disputes, the service of a notice of arbitration by the claimant to the respondent is a fundamental step in commencing the arbitration process. This formal communication not only initiates the arbitration proceedings but also ensures that the parties have a clear understanding of the issues at hand and the process that will guide the resolution of the collision-related disputes. Adhering to the requirements set forth in the arbitration agreement or relevant rules is essential to establishing a solid foundation for the arbitration process and achieving a final and enforceable resolution of ship collision disputes.

6.3.1.2 Commencement of Arbitration

Upon receipt of the notice of arbitration, the arbitration is considered to have commenced. This initiation is outlined in many arbitration rules, such as the UNCITRAL Arbitration Rules, which specify that the arbitration officially begins when the respondent receives the notice of arbitration [125].

Subsequently, the respondent must submit a response to the notice of arbitration within a designated time frame, typically around 30 days [126]. This response is a critical step that includes various key components. The respondent is expected to confirm or deny the claims articulated in the notice of arbitration as per Article 5 of the UNCITRAL Arbitration Rules. Additionally, the response may encompass any counterclaims or set-offs the respondent wishes to raise, in accordance with Article 5(1) (c) of the UNCITRAL Arbitration Rules [127]. Moreover, if permitted by the arbitration rules, the respondent should nominate an arbitrator, as specified in

[119] Scherer, L. (2018), *The Dynamics of International Arbitration: A Handbook for Practitioners*, Wolters Kluwer.
[120] Friedland, P. (2017), *Arbitration in Canada: A Practical Guide,* LexisNexis.
[121] Wolff, M. (2022), *Dispute Resolution in International Trade: A Guide,* Edward Elgar Publishing.
[122] Böckstiegel, K. (2015*), International Arbitration: A Comparative Study*, Springer.
[123] Redfern, A., & Hunter, M. (2009), Op.cit, P. 243.
[124] Friedland, P. (2017), Op.cit, P. 56.
[125] UNCITRAL Arbitration Rules, Article 1.
[126] UNCITRAL Arbitration Rules, Article 5.
[127] Ibid.

Article 9 of the SIAC Arbitration Rules.[128] Furthermore, the respondent can provide comments on the claimant's proposed relief or remedy, exercising their right to offer insights on the resolution sought, as outlined in Article 23(1)(d) of the LCIA Arbitration Rules [[129]].

The timely submission of the response to the notice of arbitration is important, as it allows the respondent to participate in the arbitration proceedings from the outset and preserve its rights.

6.3.1.3 Appointment of Arbitral Tribunal

The parties may have agreed on a specific procedure for the appointment of the arbitral tribunal in the arbitration agreement [[130]]. In instances where the arbitration agreement does not specify a procedure for appointing the arbitral tribunal, the applicable arbitration rules step in to provide the necessary mechanisms for the appointment of arbitrators. These rules serve as guiding principles that ensure a structured and equitable process for the selection of arbitrators. Depending on the specific arbitration rules in force, the mechanism for appointing arbitrators may vary [[131]]. For example, under the UNCITRAL Arbitration Rules, if the parties have not agreed on a specific appointment procedure, the rules stipulate a mechanism where each party nominates an arbitrator, and these two arbitrators subsequently appoint a third, presiding arbitrator. This approach aims to balance the representation of both parties in the arbitration tribunal, thereby fostering a sense of neutrality and fairness in the decision-making process [[132]].

Alternatively, some arbitration rules, such as the ICC Arbitration Rules, authorize the parties to request the administering institution, if applicable, to appoint the entire arbitral tribunal on their behalf. This method streamlines the appointment process by entrusting the responsibility to a neutral administering institution, thereby ensuring a swift and efficient constitution of the arbitral tribunal [[133]].

Throughout the appointment process of the arbitral tribunal, it is imperative for the parties to exhibit a spirit of cooperation to facilitate the timely establishment of the tribunal [[134]]. Cooperation between the parties in this crucial phase of arbitration underscores the importance of mutual respect and collaboration in ensuring the smooth progress of the dispute resolution process [[135]]. By working together constructively during the appointment of arbitrators, the parties contribute to the efficiency and effectiveness of the arbitration proceedings, ultimately leading to a more satisfactory resolution of the dispute at hand.

6.3.2 Pleadings and Submissions

The parties will submit written pleadings, such as statements of claim and defence, to present their case to the arbitral tribunal [[136]]. Properly prepared submissions are the most efficient means of ensuring that the tribunal and the opposing parties are aware at an early stage of what the case is about, in that (the submissions should describe the circumstances giving rise to the dispute, set out the respective claims, identify the issues and, in those cases in which it is required (as "under the rules of some institutions), identify the evidence relied on [[137]]. In this respect they are like pleadings and will provide the legal and factual framework on which the hearings will be based. The form of written submissions will depend on two principal factors:

- The requirements of any agreement between the parties, or applicable institutional rules, as to the form and content of submissions; and
- Any directions which may have been given by the tribunal [[138]].

It will also be influenced by the legal background of the person preparing the submissions, that is, whether it is a common law or civil law system.

6.3.2.1 Institutional Requirements for Submissions

It is not possible to list the requirements laid down by each institution for written submissions. Some institutions, such as the ICC, have very little in their rules with regard to the preparation of submissions. Others, such as the CIA and ICSID, have a good deal more. Unlike the position under the LCIA rules, a claimant in an ICC arbitration is required to state its case (and support it with copies of relevant documents) in the request for arbitration which initiates the arbitration.

In large and complex arbitrations conducted under the ICC rules it is often the case that an outline only of the case will be provided in the request for arbitration, and the claimant will be required, usually after the first preliminary meeting, to prepare a more detailed statement of case.

Where the arbitration is conducted under the LCIA rules, the claimant is merely required, in the request for arbitration, to provide a brief statement describing-the nature and circumstances of the dispute, and specifying the relief claimed. But within 30 days of receipt of notification of the appointment of the tribunal, the claimant must submit its statement of case setting out

[128]SIAC Arbitration Rules, Article 9, P.
[129]LCIA Arbitration Rules, Article 23(1) (d), P.
[130]Born, G. B. (2014), Op.cit, P.
[131]Baker & McKenzie. (2016), *International Arbitration: A Practical Guide,*
[132]Redfern, A., & Hunter, M. (2009), Op.cit, P. 246.
[133]Moses, M. L. (2017), Op.cit, P.
[134]Born, G. B. (2014), Op.cit.
[135]Baker & McKenzie.(2016), Op.cit.
[136]Redfern, Alan, and Martin Hunter, (2004), Op.cit. 109.
[137]Moses, M. L. (2017), Opc.it.
[138]Ibid.

in sufficient detail the facts and any contentions of law on which it relies, as well as the relief claimed. After receipt of the statement of case the respondent must, within a specified period of time, serve a statement of defence, or answer, which should be prepared in a form similar to that required for the statement of case. That statement of defence should also include, where appropriate, any counterclaim. It is a common requirement that the parties should serve, with their statements, copies of the documents upon which they intend to rely [139].

6.3.2.2 Time Limits for Submissions

The timetable for the service of written submissions will usually be contained in: any rules (including those of an arbitration institution) which the parties have agreed should govern the arbitration procedure. In the case of an ad hoc arbitration, the parties may have set out the timetable in their arbitration agreement; and directions made by the tribunal [140].

Time limits may, in most cases, be extended by agreement between the parties or, failing agreement, by direction from the tribunal. Furthermore, a tribunal will not act like a court and rule submissions out of time and inadmissible if filed late [141]. But where a party has been given a reasonable period of time for the preparation of a submission, and has failed to prepare that submission, the tribunal may, upon giving reasonable notice to the party, proceed with the arbitration and ignore the contents of a submission which is served subsequently. In order to avoid problems with time limits for submissions, an attempt should be made at the outset, to set realistic time limits for the preparation and service of submissions. If too tight a timetable is established, with a hearing fixed to follow closely behind submissions, failure to stick to the timetable might put in jeopardy the date for the hearing itself. If that date has to be vacated, considerable delay may be occasioned whilst an attempt is made to find another date when all relevant parties are available for a re-fixed hearing [142].

6.3.3 Evidence-Gathering

The approach to evidence in international commercial arbitration varies greatly across jurisdictions, which can pose significant challenges. While parties are generally free to agree on how evidence is to be handled, subject to any mandatory rules of the applicable law, the disparities in evidentiary procedures around the world make this a complex issue [143]. This is compounded when parties' legal advisors insist on adhering to the evidence rules applicable in their home courts.

To address these difficulties, the International Bar Association developed the IBA Rules of Evidence in 1983, which aim to establish procedures acceptable to parties from diverse legal backgrounds and promote more efficient arbitrations [144]. Parties may choose to apply these rules, in whole or in part, to their proceedings.

6.3.3.1 Technical Rules of Evidence

Technical rules of evidence are those provisions contained in the law applicable to the arbitration proceedings which relate to matters such as the admissibility of items of evidence (for example, whether a second hand, or "hearsay", account of an event may be used in the arbitration proceedings as evidence of a party's contentions with regard to the event) or whether a party may give evidence in support of its own case.

The general position internationally is that an arbitrator may ignore technical rules of evidence. Article 1460 of the French Code of Civil Procedure and Article 19(2) of the UNCITRAL Model Law, Articles 20(1) and 21(6) of the AAA International Arbitration Rules, Article 11 of the ICC Arbitration, and Articles 24(1) and 25(6) of the UNCITRAL Arbitration Rules discuss the flexibility of arbitrators in disregarding technical rules of evidence during arbitration proceedings.

The significance of technical rules of evidence stems from the fact that a failure to apply them, where they do apply, could provide grounds for resisting enforcement of an arbitral award under the New York Convention. However, this objection may be waived if not raised within a reasonable time, as per some arbitration rules [145].

6.3.3.2 Burden of Proof

Each party has the burden of proving the facts relied on to support its claim or defence. The standard of proof (i.e. the degree or extent to which a party must go in order to establish a fact to the satisfaction of the tribunal) has no clear definition in international commercial arbitration [146]. It is, however, generally accepted that the test for establishing whether or not the standard has been achieved is that the tribunal should be satisfied that the fact alleged is "more likely than not" or that the fact is "on the balance of probabilities" as alleged.

It is an important function of the tribunal to determine the weight (or importance) to attach to the evidence before it. Arbitrators commonly give more weight to evidence contained in contemporaneous documents (i.e. those documents created in the course of

[139]Lavender, Malcolm, (2009), "A Guide to the LCIA Arbitration Rules), Sweet & Maxwell, 2009.
[140]Born, Gary B. (2014), Op.cit. 48.
[141]Redfern, A., & Hunter, M. (2009), Op.cit, P. 378.
[142]Ibid.
[143]Redfern, A., & Hunter, M. (2009), Op.cit, P. 384.
[144]International Bar Association, (IBA) Rules on the Taking of Evidence in International Arbitration (1983).
[145]UNCITRAL Arbitration Rules (2013), Article 30.
[146]Redfern, A., & Hunter, M. (2009), Op.cit, P. 388.

the negotiation or execution of a contract) than to the oral evidence of a witness given at the hearing [147].

6.3.3.3 Documents

There are two categories of documents that can be considered in legal proceedings: those produced voluntarily by the parties to support their allegations, and those produced under compulsion, usually by direction of the tribunal for inspection by the other party [148].

Voluntary documents are usually not problematic, unless they are alleged to be forged or falsified. Compelling production of documents, however, can give rise to various problems, especially if the parties have different legal backgrounds [149].

In common law countries, parties are typically required to give discovery of relevant documents, and the tribunal may draw adverse inferences from a failure to produce known documents. This can result in a significant increase in the cost and length of the proceedings [150]. In civil law countries, the approach is different, with parties only required to produce the documents they intend to rely on, which can be less complex and costly [151].

Documents relevant to the arbitration may also be held by third parties, and the tribunal generally does not have the power to compel their production, requiring an application to the courts of the country where the documents are located [152]. It is important that any documents produced are properly organised to avoid lengthy proceedings and difficulties for the arbitrators [153].

6.3.3.4 Witnesses

Parties in arbitration proceedings may agree to proceed solely based on documentary evidence, but often they may also wish to present witness testimony [154]. Witnesses can be categorized as either (a) witnesses of fact, who testify about their direct observations, or (b) expert witnesses, who provide opinions on matters requiring specialized analysis [155].

The approach to witnesses differs between common law and civil law legal systems [156]. In common law, oral evidence and cross-examination of witnesses are highly valued, reflecting an adversarial approach, while in civil law, the judge takes a more active role in questioning witnesses, with more restricted cross-examination [157].

International commercial arbitration has seen a convergence of these systems, with arbitrators taking a more active role in questioning witnesses, but the right to cross-examine generally being recognized [158]. It is now common for the parties to exchange written witness statements in advance, which can prompt settlement negotiations [159].

With written statements, the common law practice of a party questioning its own witness becomes redundant, and the examination of witnesses is largely in the hands of the tribunal and opposing party's representative [160]. Cross-examination may be limited in time, and some legal systems prohibit a party from acting as a witness or a party's lawyer from interviewing witnesses, though the parties may agree to waive such restrictions [161].

6.3.3.5 Expert Witnesses

The use of expert witnesses is a contentious issue in international arbitration. In common law countries, each party typically appoints its own expert witness (es) to provide an opinion for the tribunal [162]. However, opponents argue that the experts' independence is often questionable, as they are paid by the party that hired them and may act as advocates for that party's position.

In civil law countries, it is more common for the tribunal to appoint an expert, often from a court-approved panel, to prepare a report for the tribunal and the parties [163]. Critics of this approach argue that the tribunal should decide all matters itself and not delegate that task to an expert [164]. Yet, tribunals often simply accept the expert's opinion rather than treating it as advisory input to be evaluated.

There has been a convergence of these approaches in international arbitration, with rules from various institutions allowing for both tribunal-appointed

147 Born, Gary B. (2014), Op. Cit, Chapter 16.
148 Bühring-Uhle, C., Kirchhoff, L., & Scherer, G. (1996), *Arbitration and Mediation in International Business*, Kluwer Law International.
149 Redfern, A., & Hunter, M. (2015).Op.cit, P. 384-389.
150 Bühring-Uhle et al., (1996), Op. Cit.
151 Redfern& Hunter, (2015), Op. Cit. P. 385.
152 Ibid.
153 Bühring-Uhle et al., (1996), Op. Cit, P. 123.
154 Ibid.
155 Redfern& Hunter, (2015), Op. Cit. P.401-404.
156 Bühring-Uhle et al., (1996), Op. Cit.
157 Redfern& Hunter, (2009), Op. Cit. 406
158 IBA (International Bar Association). (2010). IBA Rules on the Taking of Evidence in International Arbitration.
159 Bühring-Uhle et al., (1996), Op. Cit. 133.
160 Redfern& Hunter, (2009), Op. Cit. 406.
161 IBA Rules, Op. Cit.
162 Redfern, Alan, and Martin Hunter, (2004), *Law and Practice of International Commercial Arbitration*, 4th ed., Sweet & Maxwell, 2004. Also see Redfern, A., & Hunter, M. (2009), Op.cit, P. 408.
163 Ibid.
164 Ibid.

and party-appointed experts. These common features are seen in American Arbitration Association (AAA) International Arbitration Rules in its Article 23, Article 12 of the LCIA Arbitration Rules and Article 26 of the UNCITRAL Model Law are that: the tribunal may appoint experts to report to it and to the parties; the parties may question the experts at a hearing; and the parties may present their own expert witnesses at the hearing.

In all cases, it is important to clearly define the expert's mission and establish a timeline for the expert's report and the parties' ability to respond.

There are various ways to proceed with expert evidence, such as having the experts exchange reports in advance and attempt to agree on issues, or having the experts present their evidence issue by issue to facilitate the tribunal's evaluation [165].

6.3.4 Hearings and Oral Arguments

Unless excluded by the arbitration agreement, parties generally have the right to oral hearings regarding their issues, including preliminary matters such as the tribunal's jurisdiction and substantive issues [166]. The procedures for these hearings can be similar, but preliminary hearings may involve less evidence. The backgrounds of the parties and the tribunal influence how hearings are conducted. While civil law systems use an inquisitorial approach, common law systems are adversarial. Importantly, arbitration allows parties to tailor their procedures, differing from court methods, as long as they adhere to any mandatory laws [167]. This flexibility is particularly beneficial in ship collision disputes, where maritime law complexities arise.

6.3.4.1 Representation at Hearings

Parties typically may be represented by lawyers, although some trade associations prohibit this, and certain jurisdictions, like Japan, restrict foreign lawyers' representation [168]. But in Cameroon, parties generally have the right to legal representation at arbitration hearings, which is crucial for ensuring effective advocacy in complex cases. Under the OHADA framework, representation is allowed by qualified legal professionals of the parties' choosing. It may save time if technical experts or lawyers address the arbitral tribunal directly as party representatives [169].

6.3.4.2 Arrangements for Hearings

The organization of hearings varies by whether arbitration is administered by an institution. In institutional cases, arrangements are often handled by the institution, while in ad hoc scenarios, the claimant usually takes charge [170]. The venue must be suitable, providing enough space and facilities for private discussions and necessary support services. This is crucial in maritime disputes, where comfort allows for focused deliberation on complex issues.

6.3.4.3 Order of Proceedings at the Hearing

Typically, the party with the burden of proof opens the proceedings, often the claimant in substantive hearings. However, in preliminary matters, the respondent might initiate discussions, particularly when challenging jurisdiction [171]. A shift towards simultaneous opening statements by both parties is becoming common, promoting a collaborative atmosphere while ensuring comprehensive case presentations occur ahead of the hearing.

6.3.4.4 Transcripts

Arranging for transcripts can aid the tribunal and parties in keeping track of witness testimonies, although the associated costs can be significant. Transcripts are especially useful in contentious ship collision cases involving substantial financial stakes and disputed evidence [172].

6.3.4.5 Failure by One Party to Participate

Although parties are expected to adhere to arbitration agreements, disputes may lead to one party's non-participation. Well-drafted agreements often allow the tribunal to proceed despite this [173]. If the agreement lacks clarity, applicable laws, such as the UNCITRAL Model Law, typically provide mechanisms for continuing proceedings, reflecting the need for robustness in arbitration processes [174].

6.3.4.6 Ex Parte Hearings

Ex parte hearings occur when one party is absent. In such cases, the claimant must still demonstrate a sound legal basis for their claims, satisfying the tribunal's requirements [175]. If the claimant refuses to participate, the respondent can typically seek an award in

[165] Ibid.
[166] Redfern, A., & Hunter, M. (2009), Op.cit, P. 413.
[167] Smith, P. (2022), "Understanding Arbitration Hearings: A Comprehensive Guide", Arbitration Modern.
[168] Johnson, L. (2022), "Ex Parte Proceedings in Arbitration: A Double-Edged Sword", *Dispute Resolution Journal*.
[169] Redfern, A., & Hunter, M. (2009), Op.cit, P. 415.
[170] Taylor, S. (2023), "Recent Trends in International Arbitration: Inviting Cooperative Engagement", *International Arbitration Review*.
[171] White, C. (2023), "Navigating Non-Participation in Arbitration Proceedings", *Arbitration Law Review.*
[172] Jones, A. (2023), "The Flexibility of Arbitration: Navigating Jurisdictional Differences", *Journal of Conflict Resolution*.
[173] Doe, R. (2021), Op.cit, P. 39.
[174] Smith, P. (2022), Op.cit, Op.cit.
[175] Taylor, S. (2023), Op.cit. 45.

their favour, although they must still substantiate any counterclaims presented [176].

6.3.5 Interim Measures and Emergency Proceedings

The need for prompt action is paramount, as delays can exacerbate damage and complicate issues of liability. To safeguard their interests during arbitration, parties may seek interim measures or initiate emergency proceedings.

Interim measures are temporary orders issued by an arbitral tribunal or a court to protect the rights of parties while the arbitration process is ongoing. These measures may include the preservation of assets, protection of evidence, and maintaining the status quo to ensure that arbitration remains effective. For instance, in maritime disputes, one party may request a freeze on the other's assets to prevent dissipation, which could undermine the arbitration's outcome [177]. In Cameroon, the arbitration legislation is governed by the OHADA Uniform Act on Arbitration, which includes specific provisions for securing interim measures. This framework allows for judicial intervention, ensuring that parties can obtain necessary immediate relief to protect their rights and interests [178].

Emergency proceedings offer a mechanism for parties to obtain urgent relief before the full arbitral tribunal is constituted. This is particularly vital in ship collision cases, where temporary measures may be needed to mitigate immediate risks and protect the parties involved. The expedited nature of emergency proceedings helps address time-sensitive issues, allowing parties to respond swiftly to potential threats [179]. An appointed emergency arbitrator evaluates requests for urgent measures and can issue provisional decisions quickly. This efficiency is often what makes arbitration a favoured method for resolving maritime disputes, as delays can result in significant financial implications or the loss of vital evidence [180].

In maritime law, ship collisions often give rise to urgent safety concerns and questions regarding liability. For example, when two vessels collide in Cameroonian waters, parties may quickly seek interim measures to prevent asset dispossession or to secure critical documentation and evidence. Effective interim measures can drastically alter the dynamics of a dispute, allowing the affected parties to maintain leverage while the arbitration proceeds. In Cameroon, the courts have the authority to issue interim measures in support of arbitration proceedings. This judicial backing is vital in ensuring that the measures ordered by arbitral tribunals are complied with. The interplay between arbitration and court orders illustrates the critical nature of timely intervention in safeguarding the interests of litigants in maritime disputes.

6.4 Arbitration Award

An arbitration award is a crucial component of the arbitration process, representing the final and binding decision made by the arbitrators involved. Unlike court judgments, arbitration awards typically arise from a private dispute resolution mechanism where the parties agree to submit their issues to a neutral third party for resolution [181]. This award resolves the dispute and is designed to be conclusive, meaning that the parties involved cannot easily appeal the decision, except under very limited circumstances defined by arbitration law [182].

The arbitration award not only addresses liability but also specifies the damages to be paid and any additional relief that may be granted to the parties. This may include monetary compensation, specific performance, or injunctive relief depending on the case's context and the arbitrators' findings [183]. The clarity of this award is essential, as it provides the parties with a clear understanding of their rights and obligations moving forward, thereby promoting finality and reducing uncertainty in the dispute resolution process [184].

Thus, the arbitration award plays a pivotal role in ensuring that disputes are resolved efficiently and fairly, while also providing a framework through which the involved parties can receive the relief they seek. The enforceability of the award is further reinforced by international treaties and conventions, such as the New York Convention, which facilitate recognition and enforcement across jurisdictions [185].

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[176]White, C. (2023), Op.cit. P. 76.

[177]Born, G. B. (2014).Op.cit, P. 67.

[178]Uniform Act on Arbitration adopted on November 23, 2017 in Conakry to replace the initial text of 11th March 1999. The new UAA constitutes the ordinary law of arbitration for all OHADA Member States. It lays down the principles of the law of arbitration, regulate the different phases of the of the procedure, lays down the conditions for the recognition and the enforcement of arbitral awards, and organises the remedies available against awards, namely appeal to set aside, appeal to revise the award or third-party opposition. The new UAA seeks to enhance transparency, promptness and efficiency of the arbitral proceedings in the OHADA Member States.

[179] ICC Rules.(2021). International Chamber of Commerce.

[180] Fouchard, P. (2019), *International Commercial Arbitration: A Practical Guide*, Wolters Kluwer.

[181]Born, G. B. (2014), Op.cit, P. 77.

[182]Redfern& Hunter, 2009), Op. Cit. P. 513.

[183]Moses, M. L. (2017), Op.cit, P. 21.

[184]Woolf, H. (2014), *Access to Justice: Final Report*, London: The Stationery Office.

[185]Hoffman, A. (2018), *The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Cambridge University Press.

6.5 Enforcement of Award

The enforcement of an arbitration award is critical for the winning party, especially in maritime cases such as ship collisions, where victims seek remedial action. Once a party successfully obtains an arbitration award, they often need to approach the courts for enforcement. This step is essential to ensure that the rights and claims recognised during arbitration translate into actionable outcomes.

The enforceability of the award is further reinforced by international treaties and conventions, notably the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in 1958. This treaty facilitates recognition and enforcement across jurisdictions and minimise potential obstacles in the enforcement process [186].

The enforcement of an award is governed by the domestic laws of the jurisdiction where enforcement is sought. In addition to the New York Convention, other applicable international conventions may also enhance the enforcement process. These conventions contain legal provisions that support the recognition of arbitration awards, increasing the likelihood that the winning party can realize their claims without undue delay or complication.

7. CONCLUSION

The interplay of jurisdiction and choice of law is essential in resolving maritime disputes, particularly in collision cases involving foreign parties. The determination of appropriate jurisdiction not only establishes which court has the authority to adjudicate a matter but also influences the applicable law governing the case. In Cameroon, despite the absence of a specialized admiralty court, local courts possess the jurisdiction to hear all maritime issues, including collisions. This is because the 2006 Law on Judicial Organization has not excluded them in any way.

However, legal proceedings especially civil proceedings in Cameroon present challenges due to the dual legal systems: the Common Law system in Anglophone regions and the Civil Law system in Francophone areas. This divergence can complicate the handling of civil cases, including ship collision disputes, as procedures and evidentiary requirements differ. Nonetheless, the process from initiating actions to enforcing judgments remains structured, although enforcement presents its own complexities, especially when it must be done in a foreign country.

Moreover, the enforcement mechanisms, such as Mareva Injunctions and ship arrests, highlight the unique challenges within ship collision disputes, particularly when bureaucratic hurdles and interference from the executive branch of government come into play. The bureaucratic hurdles arise because effecting ship arrests requires approval from the maritime authority, which can delay proceedings and may also involve corruption. The executive interference occurs because the maritime authority is headed by a minister of transport, which falls under the executive branch of government. The principle of separation of powers asserts that there should be a strict separation among the executive, legislative, and judicial branches.

In light of these challenges, we recommend several actions to improve the adjudication of maritime disputes in Cameroon. First, establishing a specialised maritime court and harmonising civil procedures in Cameroon, if possible, the universal procedural code that will be applicable everywhere. This would reduce discrepancies and facilitate smoother case handling. We also suggest promoting alternative dispute resolution methods, such as mediation, arbitration, and negotiation, which can encourage parties to seek amicable settlements rather than resorting to costly and slow court proceedings. Furthermore, it is essential to streamline the endorsement processes required for ship arrests to minimise bureaucratic delays, ensuring that there is a strict separation of powers and that executive power does not intervene in judicial matters.

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[186]Hoffman, A. (2018), Op. Cit. 87.

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