

Optimizing Maritime Dispute Resolution in Tanzania: A Comprehensive Assessment of Arbitration's Role

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Abstract

Maritime disputes significantly impact international trade, particularly in regions like Tanzania with complex legal frameworks. Traditional state court litigation, often plagued by delays, high costs, and procedural rigidity, exacerbates uncertainties for maritime stakeholders. This study evaluates arbitration as an alternative dispute resolution mechanism in Tanzania's maritime industry, highlighting its benefits such as expedited resolution, cost-efficiency, flexibility, and confidentiality. Arbitration typically resolves disputes faster and at a lower cost than court litigation, providing a crucial advantage in preventing financial losses in the maritime sector. The study also examines the comparative benefits of institutional versus ad hoc arbitration and suggests legislative updates, enhanced professional training, and increased awareness to bolster the arbitration framework in Tanzania. Ultimately, arbitration is presented as a viable and effective method for resolving maritime disputes, essential for the smooth operation and growth of Tanzania's maritime industry.

Keywords

Maritime Disputes, Arbitration, Judicial Proceedings, Cost-Efficiency, Flexibility, Confidentiality

1. Introduction

Maritime disputes present significant challenges in the realm of international trade, particularly in regions with complex legal frameworks like Tanzania (Glover, 2019). The maritime industry, integral to global commerce, often faces disputes arising from contractual disagreements, cargo claims, and collisions, among other issues (Chand, 2020). Traditional state court litigation, while providing a formal

resolution mechanism, is often marred by delays, high costs, and procedural rigidity. These drawbacks can exacerbate the financial and operational uncertainties faced by maritime stakeholders, making the quest for more efficient dispute resolution methods imperative (Glover, 2019).

Arbitration, as an alternative dispute resolution mechanism, offers numerous advantages over traditional court proceedings, making it particularly appealing in the maritime context. One of the most notable benefits of arbitration is its ability to provide faster resolution of disputes. This is critical in the maritime industry, where prolonged legal battles can disrupt trade and lead to significant financial losses. According to Smith (2018), arbitration proceedings are typically concluded more swiftly than court cases, as they avoid the extensive procedural requirements of state litigation. This efficiency not only saves time but also reduces legal costs, a significant consideration for businesses operating in a competitive global market.

Flexibility is another key advantage of arbitration in resolving maritime disputes. Unlike state courts, which must adhere to strict procedural rules, arbitration allows the parties involved to tailor the process to their specific needs. This flexibility extends to the choice of arbitrators, who are often selected for their expertise in maritime law and industry practices. By enabling the selection of knowledgeable arbitrators, parties can ensure that the nuances of maritime disputes are adequately understood and addressed, leading to more informed and appropriate resolutions. This expertise is particularly valuable in complex cases involving technical aspects of maritime operations, where generalist judges may lack the necessary background (Rodriguez, 2022).

Confidentiality is another significant benefit of arbitration that appeals to maritime stakeholders. Unlike court proceedings, which are typically public, arbitration offers a private forum for dispute resolution. This confidentiality helps protect sensitive business information and maintain commercial relationships, which can be crucial for companies looking to preserve their reputation and operational integrity (Khan, 2020). Furthermore, the private nature of arbitration allows parties to manage disputes discreetly, reducing the potential for negative publicity and fostering a more amicable resolution environment. The emphasis on confidentiality and the ability to design a dispute resolution process that aligns with the specific needs of maritime operations make arbitration a superior choice for resolving maritime disputes in Tanzania (Lee, 2019).

In the context of maritime boundary disputes, arbitration offers distinct advantages over judicial settlement, particularly due to its flexibility and confidentiality. Unlike the rigid procedures of international judicial bodies, arbitration allows disputing parties more control over the process, including the selection of arbitrators and the rules governing the proceedings, which can be tailored to the specific needs of the dispute. This is particularly beneficial in sensitive cases where confidentiality is paramount, as arbitration proceedings are typically private, protecting the parties' strategic interests (Hasan & Arifuzzaman, 2018). In the evolving

landscape of international commercial arbitration, the involvement of national courts remains a critical factor. While arbitration is valued for its independence and flexibility, national courts play an essential role in the arbitration process, particularly in the enforcement of arbitral awards and the provision of interim measures. This interplay ensures that arbitration can function effectively within the broader framework of international law (Mordi, 2016).

2. Theoretical Framework and Literature Review

2.1. Arbitration in Maritime Disputes

Arbitration has long been recognized for its role in peacefully resolving international trade conflicts, including maritime disputes. Unlike state courts, arbitration offers a neutral and efficient platform, mitigating the distrust parties often have in national judicial systems. The flexibility and adaptability of arbitration make it a preferred choice for resolving complex maritime disputes, where specialized knowledge and expedited processes are crucial.

One of the primary reasons arbitration is favored in maritime disputes is its neutrality. Parties involved in international trade often come from different jurisdictions and may harbor concerns about potential biases in national courts. Arbitration provides a neutral ground where decisions are made by mutually agreed-upon arbitrators with no inherent allegiance to either party's national system (Asouzu, 2001). This neutrality fosters a sense of fairness and impartiality, encouraging parties to engage more openly and cooperatively in the dispute resolution process.

Furthermore, arbitration offers a level of efficiency that is typically unmatched by state courts. The procedural flexibility inherent in arbitration allows parties to tailor proceedings to their specific needs, significantly reducing the time required to reach a resolution (Mistelis, 2013). For instance, in maritime disputes, where timely resolutions can prevent significant financial losses and operational disruptions, the ability to expedite hearings and streamline procedures is invaluable. This efficiency not only helps in faster dispute resolution but also reduces the overall costs associated with lengthy litigation processes (Park, 2006).

The adaptability of arbitration also plays a crucial role in its preference over state court litigation. Maritime disputes often involve technical and specialized knowledge, which generalist judges in state courts may lack. Arbitration allows parties to select arbitrators with specific expertise in maritime law and industry practices, ensuring that the nuances of each case are thoroughly understood and appropriately addressed (Carr, 2014). This specialized knowledge leads to more accurate and fair outcomes, tailored to the unique circumstances of maritime operations.

Despite the diverse national regulations governing arbitration, its core principles of flexibility, neutrality, and efficiency remain consistent across different jurisdictions. This consistency makes arbitration a reliable method for resolving international maritime disputes, providing a cohesive framework that parties can

trust regardless of their geographical location (Redfern & Hunter, 2009). The ability to navigate through varying legal landscapes while maintaining these core principles underscores arbitration's effectiveness in resolving maritime disputes. The inherent benefits of arbitration neutrality, efficiency, and adaptability make it an ideal mechanism for resolving maritime disputes. Its ability to provide a fair, timely, and specialized resolution process addresses many of the shortcomings associated with state court litigation, ensuring that parties can resolve their conflicts in a manner that supports the continued smooth operation of international maritime trade (Yas Banifatemi, 2010).

2.2. Institutional vs Ad Hoc Arbitration

The choice between institutional and ad hoc arbitration is crucial in maritime disputes. Both forms of arbitration offer distinct advantages and are chosen based on the specific needs and preferences of the disputing parties. Institutional arbitration provides structured procedural rules and administrative support, whereas ad hoc arbitration is tailored to specific disputes without a pre-existing framework. Understanding the merits of each form is essential for making an informed decision in the context of maritime disputes.

Institutional arbitration is administered by established arbitration institutions, such as the International Chamber of Commerce (ICC) or the London Maritime Arbitrators Association (LMAA). These institutions offer a comprehensive set of procedural rules and administrative services, which ensure a consistent and predictable arbitration process (Born, 2014). The structured nature of institutional arbitration means that parties can rely on predefined rules and procedures, reducing the potential for procedural disputes and delays. This predictability is particularly valuable in complex maritime disputes, where the clarity of procedures can significantly impact the resolution timeline and overall costs (Lew, Mistelis, & Kröll, 2003).

Institutional arbitration provides administrative support throughout the arbitration process. This support includes services such as appointing arbitrators, managing communications, and organizing hearings. The involvement of an established institution ensures that the arbitration is conducted efficiently and professionally, providing parties with confidence in the process (Blackaby et al., 2015). For maritime disputes, which often involve intricate technical details and substantial financial stakes, the administrative assistance offered by institutions can streamline proceedings and enhance the effectiveness of the arbitration (Redfern & Hunter, 2009).

On the other hand, ad hoc arbitration offers greater flexibility, allowing parties to design the arbitration process according to their specific needs and preferences. Unlike institutional arbitration, ad hoc arbitration does not follow a fixed set of procedural rules or rely on an administering institution. Instead, the parties agree on the procedures, including the appointment of arbitrators, the conduct of hearings, and the timetable for the arbitration (Moses, 2017). This flexibility can be

advantageous in maritime disputes where the parties require a tailored approach to address unique aspects of the case. For example, ad hoc arbitration allows parties to select arbitrators with specialized expertise relevant to the specific maritime issues at hand, ensuring that the resolution is informed by industry knowledge (Gaillard & Savage, 1999).

However, the lack of structured procedures in ad hoc arbitration can also be a drawback. Without the framework provided by an institution, parties may face challenges in managing the arbitration process, especially if they disagree on procedural matters. The absence of administrative support can also place a greater burden on the parties to organize and oversee the arbitration (Park, 2006). Despite these challenges, ad hoc arbitration remains a popular choice in certain maritime contexts, particularly when parties have experience with arbitration and prefer a more flexible, cost-effective approach.

The decision between institutional and ad hoc arbitration depends on the specific requirements of the maritime dispute. Institutional arbitration offers the benefits of structured rules and administrative support, providing predictability and efficiency. Conversely, ad hoc arbitration allows for greater flexibility and customization, catering to the unique needs of the parties involved. Both forms have their merits, and the choice should be guided by the nature of the dispute and the preferences of the parties (Redfern & Hunter, 2009).

2.3. Comparative Advantages

Arbitration's advantages over state court proceedings are multifaceted, making it an attractive option for resolving maritime disputes. One of the primary benefits of arbitration is the expedited nature of the process. Unlike state courts, which can be bogged down by procedural formalities and backlogs, arbitration allows for a more streamlined and efficient resolution of disputes. This expedited process is crucial in the maritime industry, where delays can lead to significant financial losses and operational disruptions (Park, 2006).

Arbitration proceedings are typically less formal than court trials, which can be advantageous for the parties involved. The flexibility in arbitration allows for a more relaxed and adaptable approach, tailored to the specific needs of the dispute (Born, 2014). This informality does not compromise the rigor of the process but rather enhances it by removing unnecessary bureaucratic hurdles. This is particularly beneficial in maritime disputes, which often involve complex technical issues that require a pragmatic and flexible resolution approach (Redfern & Hunter, 2009).

One of the standout features of arbitration is the ability for parties to choose arbitrators with relevant expertise. In state court proceedings, judges may not always possess specialized knowledge pertinent to maritime disputes. Arbitration, however, allows parties to select arbitrators who are experts in maritime law and industry practices, ensuring that the dispute is resolved by individuals with a deep understanding of the subject matter (Moses, 2017). This expertise leads to more

informed and competent resolutions, as arbitrators can appreciate the technical nuances and industry standards that are critical in maritime disputes (Glover, 2019). Furthermore, arbitration offers a level of confidentiality that is often not available in state court proceedings. Court cases are generally public, exposing sensitive business information and potentially damaging commercial relationships. Arbitration, on the other hand, is a private process, protecting the confidentiality of the proceedings and the details of the dispute (Blackaby et al., 2015). This confidentiality is particularly valuable in maritime disputes, where protecting commercial secrets and maintaining business relationships are of paramount importance (Lew, Mistelis, & Kröll, 2003). The advantages of arbitration over state court proceedings are substantial, particularly in the context of maritime disputes. The expedited, less formal processes, the ability to choose specialized arbitrators, and the confidentiality of arbitration make it a superior method for resolving complex maritime issues. These features not only ensure fair and competent resolutions but also protect the interests of the parties involved, supporting the smooth operation of the maritime industry.

2.4. Legislation for Maritime Arbitration in Tanzania

The legislative framework governing maritime arbitration in Tanzania is rooted in the Arbitration Act of 2020, which provides a comprehensive legal structure for the conduct of arbitration proceedings within the country. This Act aligns with international best practices and incorporates key provisions from the UNCITRAL Model Law on International Commercial Arbitration. The Act outlines the appointment of arbitrators, the conduct of proceedings, and the enforcement of arbitral awards, ensuring that maritime disputes can be resolved efficiently and effectively within the Tanzanian legal context (United Republic of Tanzania, 2020).

The Arbitration Act of 2020 emphasizes the importance of neutrality and impartiality in the arbitration process, which is particularly crucial in the maritime industry where disputes often involve parties from different jurisdictions. The Act also allows for the recognition and enforcement of foreign arbitral awards in Tanzania, provided they meet the criteria set out under the New York Convention, to which Tanzania is a signatory (United Republic of Tanzania, 2020; United Nations, 1958).

However, despite these legislative advancements, there remain areas for improvement. For instance, the integration of specific provisions addressing maritime arbitration, such as the appointment of arbitrators with expertise in maritime law and the handling of complex technical disputes, could enhance the effectiveness of the arbitration process in Tanzania. Studies have also suggested the need for legislative reforms to streamline procedures and reduce delays, which are often cited as significant challenges in the arbitration of maritime disputes (Chand, 2020).

Furthermore, the development of institutional arbitration frameworks, such as the establishment of specialized maritime arbitration centres, could bolster the

capacity of Tanzania's arbitration system to handle complex maritime disputes. These centres would provide the necessary administrative support and resources, ensuring that maritime arbitration in Tanzania is both efficient and accessible to all stakeholders (Redfern & Hunter, 2009).

3. Empirical Analysis of Arbitration in Tanzania

3.1. Cost and Time Efficiency

The empirical analysis of arbitration in Tanzania reveals significant advantages in terms of cost and time efficiency compared to state court litigation. According to a study by the International Chamber of Commerce (ICC, 2021), the average duration of arbitration proceedings in Tanzania is approximately eight months, compared to an average of two years for state court cases. This expedited process is crucial in the maritime industry, where prolonged disputes can lead to severe financial implications, including demurrage charges, loss of business opportunities, and increased operational costs.

Furthermore, the cost efficiency of arbitration is evident in the reduced legal fees and administrative expenses. A comparative analysis by Glover (2019) indicates that arbitration can save parties up to 40% in legal costs compared to traditional litigation. This is primarily due to the streamlined procedures and the ability to avoid protracted court schedules. The financial savings associated with arbitration are particularly beneficial for maritime companies, which often operate on tight margins and cannot afford the excessive costs of lengthy court battles. The ability to resolve disputes quickly and cost-effectively makes arbitration an attractive option for maritime stakeholders in Tanzania.

3.2. Flexibility and Confidentiality

Arbitration offers a level of flexibility that is unmatched by state court litigation. This flexibility allows parties to design arbitration procedures tailored to their specific needs, including the selection of arbitrators with expertise in maritime law and the ability to schedule hearings at mutually convenient times (Redfern & Hunter, 2009). This adaptability is crucial in the maritime industry, where disputes often involve complex technical issues that require specialized knowledge. By selecting arbitrators who understand the intricacies of maritime operations, parties can ensure that their disputes are resolved by individuals with the relevant expertise.

The confidentiality provided by arbitration is a significant advantage in commercial disputes. Unlike court proceedings, which are generally public, arbitration allows parties to keep the details of their disputes and the outcomes private. This confidentiality is particularly important in the maritime industry, where business reputation and competitive advantage can be affected by public disclosure of disputes (Blackaby et al., 2015). According to Lew, Mistelis, and Kröll (2003), the ability to conduct proceedings in private and keep sensitive information confidential encourages parties to engage more openly and honestly, leading to more

effective dispute resolution.

4. Discussion and Implications

4.1. Enhancing Arbitration in Tanzania

To further promote arbitration as a preferred method for resolving maritime disputes in Tanzania, this study suggests several strategic measures aimed at enhancing supportive legislation and strengthening professional organizations. These measures are crucial for increasing the efficiency and popularity of arbitration, thereby providing a robust framework for dispute resolution in the maritime industry.

4.1.1. Supportive Legislation

One of the key areas for enhancement is the legislative framework governing arbitration in Tanzania. Currently, the legal provisions for arbitration are outlined in the Arbitration Act of 2020, which, while comprehensive, could benefit from periodic reviews and updates to align with international best practices. Modernizing the arbitration laws to incorporate the latest developments and standards in international arbitration can help streamline processes and reduce ambiguities. For instance, adopting elements from the UNCITRAL Model Law on International Commercial Arbitration can provide a more uniform and predictable legal environment, encouraging more parties to opt for arbitration.

Furthermore, specific provisions that address the unique needs of maritime arbitration should be integrated into the legislation. This includes clear guidelines on the appointment of arbitrators with maritime expertise, the use of interim measures to protect assets, and the enforceability of arbitral awards. Strengthening these provisions can enhance the confidence of maritime stakeholders in the arbitration process, ensuring that disputes are resolved efficiently and effectively.

4.1.2. Strengthening Professional Organizations

Professional organizations play a pivotal role in the arbitration ecosystem by providing training, accreditation, and administrative support. Strengthening these organizations can significantly enhance the arbitration landscape in Tanzania. The Tanzania Arbitration Centre (TAC), could expand its role by offering specialized training programs for arbitrators and legal practitioners, focusing on maritime arbitration. These programs can ensure that professionals are well-versed in the latest practices and developments in maritime law and arbitration, thereby improving the quality and reliability of arbitration services.

Additionally, establishing partnerships with international arbitration bodies such as the International Chamber of Commerce (ICC) and the London Maritime Arbitrators Association (LMAA) can provide valuable resources and insights (Glover, 2019). These partnerships can facilitate the exchange of knowledge and best practices, helping Tanzanian institutions to adopt advanced methodologies and standards. Such collaborations can also open up opportunities for joint conferences, workshops, and seminars, promoting a culture of continuous learning

and improvement within the arbitration community.

4.1.3. Awareness and Accessibility

Increasing awareness about the benefits of arbitration among maritime stakeholders is another critical step. Many parties may still be unaware of the advantages of arbitration over traditional litigation, particularly in terms of cost, time efficiency, and confidentiality. Conducting awareness campaigns, publishing informative materials, and organizing outreach programs can help bridge this knowledge gap (Asouzu, 2001). These initiatives should target a broad audience, including shipping companies, legal professionals, and government agencies, highlighting the practical benefits and success stories of arbitration in resolving maritime disputes.

Improving accessibility to arbitration services is equally important. Establishing regional arbitration centers equipped with the necessary facilities and resources can make arbitration more accessible to parties across Tanzania. These centers can provide logistical support, including venues for hearings and administrative assistance, ensuring that the arbitration process is smooth and efficient. Furthermore, adopting technology-driven solutions such as online arbitration platforms can enhance accessibility, allowing parties to resolve disputes remotely without the need for physical presence.

Despite the benefits, arbitration in maritime boundary disputes is not without its drawbacks. One notable disadvantage is the significant costs associated with the arbitration process, including fees for arbitrators and related expenses, which can be prohibitive compared to judicial settlement where costs are often borne by international institutions. Moreover, the potential for delays in appointing arbitrators, particularly when disagreements arise between the parties, can undermine the efficiency that arbitration typically offers. Additionally, there is a concern that when the appointment of arbitrators falls to a third party, such as the President of ITLOS, there is a risk of perceived or actual bias, especially if the President shares nationality with one of the disputing parties. These challenges highlight the need for careful consideration when choosing arbitration as the method for resolving maritime boundary disputes (Hasan & Arifuzzaman, 2018). Despite the growing autonomy of international commercial arbitration, the effectiveness of arbitration is still heavily reliant on the support of national courts. Courts are necessary for enforcing arbitral awards and providing judicial oversight to prevent abuses of the arbitration process. This relationship between arbitration and national courts, often described as a “forced cohabitation,” highlights the need for a balanced approach where courts support but do not dominate the arbitration process (Mordi, 2016).

5. Conclusion

This study has comprehensively examined the role of arbitration in resolving maritime disputes in Tanzania, highlighting its advantages over traditional state court litigation. The analysis reveals that arbitration offers significant benefits in terms of cost and time efficiency, flexibility, and confidentiality, making it a superior

alternative for maritime stakeholders. The empirical data indicates that arbitration not only expedites dispute resolution but also reduces legal costs, thereby minimizing the financial and operational disruptions faced by the maritime industry. Furthermore, the study emphasizes the importance of specialized knowledge in arbitration proceedings, allowing parties to select arbitrators with expertise in maritime law. This ensures that disputes are resolved by individuals who understand the technical nuances and industry standards, leading to more informed and equitable outcomes. The confidentiality of arbitration proceedings also protects sensitive business information, maintaining the integrity and reputation of the parties involved.

To enhance the effectiveness of arbitration in Tanzania, the study suggests several strategic measures. These include updating and modernizing the legislative framework to align with international best practices, strengthening professional organizations to provide specialized training and support, and increasing awareness and accessibility of arbitration services. Implementing these measures can bolster the arbitration landscape, encouraging more maritime stakeholders to opt for this efficient dispute resolution mechanism. Arbitration presents a viable and effective method for resolving maritime disputes in Tanzania. By addressing the challenges of traditional litigation and leveraging the unique benefits of arbitration, the maritime industry can achieve more efficient, cost-effective, and confidential dispute resolution. The adoption of these recommended enhancements will further solidify arbitration as the preferred choice for maritime dispute resolution, supporting the smooth operation and growth of Tanzania's maritime sector.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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