Comparative insights into maritime arbitration: The case of international contracts for the carriage of goods by sea

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The international shipping industry has traditionally resorted to arbitration for dispute resolution. The agreement to refer disputes to arbitration is usually contained in standard-form contracts widely used in the shipping industry[[2]](#footnote-2).The majority of maritime contracts that regulate the most important moments of maritime life ranging from the birth to the demise of the vessel, namely shipbuilding contracts, contracts for the carriage of goods by sea, maritime insurance and salvage, provide for recourse to arbitration[[3]](#footnote-3).

Contracts for the carriage of goods by sea usually involve disputes of substantial sums between experienced parties driven by the rule to keep the ships sailing or they do not make money[[4]](#footnote-4).Important procedural advantages motivate their choice for arbitration: the global enforceability of arbitral awards, the neutrality of the forum, the ability to choose arbitrators specialized in shipping, the speed, cost and confidentiality of the proceedings[[5]](#footnote-5).

Furthermore, the shipping sector is one of the most important supporters of ad hoc arbitration[[6]](#footnote-6),ie arbitration that is not conducted under the supervision of any institution[[7]](#footnote-7).The maritime industry regards highly the flexibility and increased privacy that ad hoc arbitration offers. Given this strong preference for ad hoc arbitration, the most prominent maritime arbitration centers stress that they are not administering bodies[[8]](#footnote-8).

Against this background, there are some inherent difficulties in the study of maritime arbitration: maritime arbitral proceedings are typically ad hoc, arbitral awards are not necessarily published[[9]](#footnote-9) and many cases remain unreported. Thus, it comes as no surprise that there are no global statistics on the number of maritime arbitrations and there are no predetermined criteria on what should be counted[[10]](#footnote-10).All we know is some estimates on the appointments and numbers of awards issued per year under the rules of each association. According to these estimates, London handles 75% of the world’s maritime arbitration work[[11]](#footnote-11),followed by New York[[12]](#footnote-12),while Singapore has recently gained prominence as a maritime arbitration center[[13]](#footnote-13).

As maritime arbitration has received less scholarly attention compared to commercial and investment arbitration and remains largely unexplored, this paper examines in depth the phenomenon of maritime arbitration with specific focus on contracts for the carriage of goods by sea.

Firstly, this paper defines maritime arbitration and analyzes the reasons for its widespread use in contracts for the carriage of goods by sea. Secondly, it examines the theoretical background of maritime arbitration, and more specifically party autonomy and the interface of maritime arbitration with national legal orders. Thirdly, it analyzes the current legal regime of arbitration in contracts of carriage. It first examines the international instruments governing arbitration in contracts for the carriage of goods by sea and then it navigates the legal regimes and arbitration models in the most prominent maritime arbitral seats, namely London, New York and Singapore, as well as in a civil law jurisdiction, Greece.

On the basis of this elaborate comparative review, it evaluates the role of state courts and the effect of different arbitration models to maritime arbitration. Specifically, it examines the extent of judicial review of arbitration awards in these jurisdictions, particularly on the grounds of error of law. This analysis of the legal regimes and maritime arbitration practice, as evidenced by case law and published arbitral awards aims to shed light on the commonalities and differences in the approaches of courts and arbitrators in different jurisdictions and their effect to the parties’ choice for arbitration. Finally, on the basis of this comparative analysis of different arbitration models, this study attempts to conceptualize this phenomenon, by proposing a maritime arbitration continuum and suggesting the prospective position of each arbitration model on the opposite ends of the continuum.

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2. Clare Ambrose, Karen Maxwell, *London maritime arbitration* (Informa 2018) 42 [↑](#footnote-ref-2)
3. Francesco Berlingieri ‘Intenational Maritime Arbitration’ (1978-9) 10 J of Mar L & Com 201, see also Fabrizio Marrella, ‘Unity and Diversity in International Arbitration: The case of Maritime Arbitration’ (2005) 20 American U Intl L Rev 1056, 1059 [↑](#footnote-ref-3)
4. Russell Cortazzo ‘Development and Trends of Lex Maritime from International Arbitration Jurisprudence’ (2012) 43 J Mar L & Commerce 255, 257. [↑](#footnote-ref-4)
5. Thomas Carbonneau, *The Law and Practice of Arbitration* (5th edn, JurisNet LLC 2014) 370-1, see also Joshua Karton, ‘International Arbitration Culture and Global Governance’ in Walter Mattli and Thomas Dietz (eds) *International Arbitration and Global Governance: Contending Theories and Evidence* (OUP 2014) 74, 75. [↑](#footnote-ref-5)
6. Fabrizio Marrella ‘Unity and Diversity in International Arbitration: The Case of Maritime Arbitration’ (2005) 5 Am U Intl L Rev 1055, 1088 [↑](#footnote-ref-6)
7. Gary Born, *International Commercial Arbitration* (2nd edn, Kluwer L Intl 2014) 169. [↑](#footnote-ref-7)
8. See more about the form and independence of these associations: for London, the London Maritime Arbitrators Association (LMAA) <www.lmaa.london/uploads/documents/GUIDELINES%20FULL%20MEMBERSHIP%202018.pdf>; for New York, the Society of Maritime Arbitrators (SMA) <www.smany.org/new-york-maritime-arbitration- guide.html>; for Singapore, the Singapore Chamber of Maritime Arbitration has developed a hybrid arbitration model combining the advantages of ad hoc arbitration with institutional assistance (SCMA) <www.scma.org.sg > accessed 31 January 2019. [↑](#footnote-ref-8)
9. See LMAA Terms, para 28: “If the tribunal considers that an arbitration decision merits publication and gives notice to the parties of its intention to release the award for publication, then unless either or both parties inform the tribunal of its or their objection to publication within 21 days of the notice, the award *may* be publicised”; SMA Maritime Arbitration Rules, s 1: “Unless stipulated in advance to the contrary, the parties, by consenting to these Rules, agree that the Award issued *may* be published by the Society of Maritime Arbitrators, Inc. and/or its correspondents.” [↑](#footnote-ref-9)
10. Loukas Mistelis, ‘Competition of Arbitral Seats in Attracting International Maritime Arbitration Disputes’ in Miriam Goldby and Loukas Mistelis (eds), *The Role of Arbitration in Shipping Law* (OUP 2016) 135. [↑](#footnote-ref-10)
11. Bruce Harris, ‘London Maritime Arbitration’ (2011) 77 Arb 116, 123. Recently, the LMAA has published statistics for the number of appointments, arbitrations and awards in recent years <www.lmaa.london/event.aspx?pkNewsEventID=208da443-7800-4720-84b3-7f4f3f5fc9ce> accessed 31 January 2019. See also Petros Tassios, ‘Choosing the Appropriate Venue: Maritime Arbitration in London or New York?’ (2004) 21 J of Intl Arb 355; Loukas Mistelis, ‘Competition of Arbitral Seats’ in Miriam Goldby and Loukas Mistelis (eds), *The Role of Arbitration in Shipping Law* (OUP 2016) 145. [↑](#footnote-ref-11)
12. Andreas Maurer ‘Transnational Shipping Law’ in Miriam Goldby and Loukas Mistelis (eds), *The Role of Arbitration in Shipping Law* (OUP 2016) 236. [↑](#footnote-ref-12)
13. Leng Sun Chan, ‘Common Types of Shipping Arbitration in Singapore and London’ in Miriam Goldby and Loukas Mistelis (eds), *The Role of Arbitration in Shipping Law* (OUP 2016) 202. [↑](#footnote-ref-13)