

Arbitration in Maritime Disputes

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Abstract: Prevailing maritime relations in the present era resort to arbitration to resolve arising disputes where parties of these relations should agree on the solution to the current or future conflicts arising from them to a specialist arbitrators of their choice known for their competence and experience in the maritime field to adjudicate the provisions of the arbitration binding. Maritime arbitration grew since the time of the Romans, and spread to the Middle Ages as a simple, flexible and specialized system to resolve maritime disputes, but it gained popularity in the present era as a result of booming international trade and commerce between different countries where this trade found that shipping is the best way among different means of transportation for its low costs and the large volume of cargo transported by it. Marine disputes submitted for arbitration are many and varied, some of which comes from the contract between the stakeholders and others arising from maritime accidents, and examples of the first group is the shipbuilding, repair, sold, leased and insured contracts, the transport of goods or people contracts, marine sales contracts as well as the diameter of maritime contracts. The second group is maritime collision, Assistance and Rescue and the settlement of joint naval losses. London and New York are considered of the most cities in the world that embrace this type of arbitration followed by Paris and Tokyo. In London alone there are more than four hundred nautical arbitration rulings in each year.

Key words: Arbitration, maritime, disputes, conflicts, trade, shipping, salvage, accidents.

1. Maritime Arbitration Vogue Reasons

There are several considerations which helped flourishing maritime arbitration and its vogue in maritime trade markets as a legal system to resolve their disputes and its preference to the national courts in different countries at the present time, some of which are:

The desire of practitioners of different marine activities in the settlement of disputes is arising from marine contractual or non-contractual relationships as a fair marine settlement which stems from the reality of the professional field in which they work in which is trade.

The desire of the Parties in the maritime relations in resolving their disputes in secrecy which the national courts do not allow it to them both for the confidentiality of the procedures or for the secrecy of the judgment issued by them.

The desire of the parties of maritime relations in resolving their disputes quickly may not be available

for them in national courts in different countries which are already burdened with large numbers of cases.

The International maritime activity in most cases is due to the difference between the nationality of the carrier and the nationality of the charger from the nationality of the ship. This activity is also due to the correlation of maritime activities and the transport of goods and services funds from one country to another. This international status copes with the nature of arbitration and its flexibility.

The increasing of the state's and public concerned people's intervention in practicing in maritime activities as one of the most important economic activities in which different countries decided to enter. This resulted in the desire of the marine transaction parties to exclude the jurisdiction of the national judiciary for fear of the judiciary to keep pace with the interests of the States Parties to the maritime relations.

2. Disputes Arising from the Navy Contracts

Time Charter Parties

These disputes often arise about the responsibility of the ship's owner or the tenant for certain loss which is

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realized during the term of the charter party contract such as the conflict that arises about determining the responsibility of the tenant for damage to rented vessel.

Voyage Charter Parties

These disputes may arise to determine the responsibility of the ship's owner or tenant regarding certain loss or for the disputes of ports and marinas safety for charging and discharging, or about the state of the ship when it is delivered to the owner, or disputes relating to demurrage

Contracts of Affreightment

The carrier undertakes, in accordance with the Contracts of Affreightment, to implement several nautical consignments on one ship or more during the period of time agreed upon and thus a dispute may arise over a series of voyage charter parties.

Bills of Loading

The bill of loading is one means of proving contract of affreightment between the carrier and the owner of the goods, thus the more disputes that may arise in connection with the bill of loading are those for losses and damage of the goods during the journey or delays in the arrival or non-arrival of the goods or delivery error of the goods.

Second-Hand Ship Sales

There are often model contracts used for this type of sales such as Norwegian contracts. More conflicts in this case revolve around the condition of the ship when it is delivered to the buyer.

Shipbuilding Contracts

Disputes arise about the conformity of the vessel when completed to the specifications agreed upon in advance between the contract parties.

Insurance

Some disputes relating to insurance aspects arise especially among those who replace original beneficiaries in accordance with the principle of Subrogation.

Associated Marine Matters

Disputes may arise related to maritime matters such as lawsuits against the ship providers or disputes with port authorities.

3. Disputes Arising out of Marine Accidents

Collision

Because of the nature of the maritime collision, one does not imagine the existence of prior contracts between the parties obliged to settle the dispute through arbitration in maritime collision cases. Therefore the settlement of these disputes is accomplished by resorting to the competent courts. There are two fundamental issues are highlighted in any maritime collision: the liability and compensation.

Salvage

It is carried out through special model contracts where the signing of the ship's captain on this model is a recognition of the responsibility of the ship's owner to pay this agreement expenses without specifying the



Fig. 1 Marine collision.



Fig. 2 Marine salvage.

value of these expenses, which are often determined by arbitration conducted according to prescribed rules for that and which is often attached to this model.

(Lloyd's Standard Form of Salvage Agreement "LOF")

Limitation

The ship's owner may wish to determine a particular responsibility resulting from certain accident and the disputes arise on the identification of this responsibility.

Average Loss

Some disputes regarding the identification of this type of losses may arise.

4. Maritime Arbitration Parties and Representatives

In most cases, ship's owners and tenants who are parties to this type of arbitration may be sellers or purchaser of ships and conversely protection and Indemnity clubs may be compensation (Protecting and Indemnity Clubs "P & I") a party to the Maritime Arbitration where these clubs provide insurance against any other party and an example is the insurance against damage or loss of the goods or marine insurance against various maritime accidents. Due to the nature of the insurance coverage provided by P & I Clubs and where most of the activities relating to tort claims or disputes arise from contracts which do not

usually include arbitration clauses. There are few of these disputes to be settled by arbitration. On the contrary, the defense Clubs do not secure this kind of responsibility, where these clubs are to secure legal expenses for its members in the case of prosecution or defense. In this regard, the members of these clubs do not have the absolute right to legal expenses where these subject to the discretion of the defense clubs.

5. Terms of Arbitration

Most of navigational contracts are based on model contracts or prior contracts on the basis of this model contracts. Most of these contracts contain arbitration clauses which in turn determine the number of arbitrators, the method of appointment and the place of arbitration. There is no doubt that the appointment of a sole arbitrator to consider the maritime dispute contributes to a large degree in the speed of procedures and cost savings. But there are some arbitration clauses that provide for the appointment of two arbitrators and a criterion. In many cases the parties may agree on the settlement of the dispute by the designated arbitrators by them without the appointment of the Chairman of the arbitral tribunal where the adjudication is agreed through documents only without holding hearings and this measure is used in approximately 80% of the Maritime Arbitration in London and some of the conditions provide for the conditions that must be met

by the appointed arbitrator.

6. The Request for Arbitration

After the formation of Maritime Arbitration Commission and this by selecting its members by parties of the conflict or by other parties under terms that must be met in the maritime arbitrator including: specialty, independence and impartiality of sea arbitrator. After all this maritime arbitration procedures begin by submitting a request for arbitration by arbitration applicant who acts as prosecutor in arbitral procedures. The procedures for the request for arbitration differ depending on the type of arbitration, whether maritime arbitration is institutional, which is an organized arbitration and managed through administrative organs of the permanent sea arbitration institution and in accordance with the rules such as arbitration maritime room in Paris or free (Ad Hoc) which is a structured arbitration and managed by the parties themselves.

Usually the demand for different data includes the identification of the subject of the dispute briefly, the appointment of the defendant, accompanied by a statement as well as all the documents that explain the reason for submitting the application and requests of the plaintiff and this in number of copies equals to the number of parties of the conflict. The applicant should apply this in time to be a law or an agreement lest his right to apply will not be subjected to the lapse of time or the expiration of the statute of limitations.

7. The Place of Arbitration

The place of arbitration means that place in which the judgment of the Maritime Arbitration, which is usually the arbitration proceedings, is issued. But if the arbitration took place in multiple places, it must choose one place of arbitration law where the arbitration is issued. The selection of the place of arbitration has multiple importances; some of which can be posed by this place as the decisive factor in determining the nationality of the issued arbitration and subsequent

results may affect the process of implementation of the issued arbitration. The place of arbitration is an important factor in determining the law applicable to a number of important issues raised by arbitration where it may recognize the law of the place of arbitration adjudicate if the arbitration agreement is true and how the formation of the arbitral tribunal and how to manage it. The place of arbitration as well is an important factor in estimating the size of the relationship between national courts and arbitration, the extent of the intervention of these courts in arbitration procedures whether by assistance as is the case in taking precautionary measures or by supervision on the validity of the original contract. In most cases, in the maritime arbitration practices, the place of arbitration is determined by the parties directly or covenants arbitration to nautical arbitration center founders which arbitration is held at its headquarters or under the list of Arbitration of Nautical Arbitration Center which defines this place since the will of the parties involved is the key factor in determining the place of arbitration in Marine arbitration practices.

8. The Conduct of Maritime Arbitration Procedures

There are some stable principles which control the conduct of maritime arbitration procedures, it can be summarized as follows:

First: Freedom of the parties to agree on the rules that control this conduct whether this arbitration is institutional or free.

Second: The freedom of Maritime Arbitration Commission in the conduct of these procedures when there is no agreement between the parties, which are in the conduct of these actions do not comply with the established procedures in national courts because the national courts' power source is the law while the arbitrator finds his power source in the agreement of the parties.

Third: Cooperation relationships between maritime arbitral tribunal and the national courts in connection

with what the arbitral tribunal cannot implement as taking temporary or conservatory measures.

9. The Law Applicable to the Subject of the Maritime Dispute

Parties of maritime disputes enjoy complete freedom in determining the applicable law on the subject of the dispute in an arbitration agreement concluded between them. Perhaps the choice of the parties of this law is to apply the principles established in the most comparative legislation when organizing conflict of laws' rules in the foreign-element contractual relationships as this legislation recognizes its priority which is the explicit will of contracting parties or the implied ones to choose the applicable law on the subject the dispute as long as this does not involve the violation of jus rules relating to public order in the concerned State or this option is fraught with fraud against the law that was supposed to be applied to the subject of the dispute. Thus Maritime Arbitration Commission is committed to apply the law which the parties agreed that it should be applied to the subject of the dispute explicitly. If not agreed on this law explicitly in the arbitration agreement, the arbitral tribunal may be looking for a tacit will of those parties.

If the parties to the maritime relationship did not determine the applicable law on the subject of the conflict explicitly or implicitly, the freedom that was entrusted to them in this regard is to be handed to maritime arbitral tribunal where it has the freedom to determine the law which may be a national or non-national law according to which the arbitral tribunal considers appropriate to settle the subject of the dispute. But this freedom entrusted to the arbitral tribunal in this regard was restricted by Hamburg Treaty of 1978 relating to international maritime transport of goods which is the first international text relating to sea arbitration in particular. This restriction is manifested as stated in the fourth paragraph of M/(22) of the Treaty which committed Maritime Arbitration Commission to apply the rules of the Treaty on the

arbitration and as the Hamburg Treaty is an international treaty on international maritime shipping with bill of Shipping, the scope of application includes only one side of the disputes of Maritime Arbitration while the freedom remain to the nautical arbitrator in determining the law applicable to the subject of the dispute in other marine areas.

10. Conclusion

Arbitration is no longer an extraordinary way but a basic legal system that has become indispensable in the settlement of maritime disputes and has been developed to push the international maritime trade wheel to further progress and prosperity.

Arbitration has the respect of the international community which speeds up the pace towards the conclusion of international treaties, establishing of arbitration regulations and typical arbitration laws that make arbitration language of the age and its favourite reality. The most important features of Maritime Arbitration nowadays are as follows:

Maritime Arbitration is a branch of the International Commercial Arbitration in general because it relates to the process of international trade as transferring money, goods and services across the borders of many countries whether this relationship is initiated among private persons or between them and one of the public entities.

Maritime Arbitration is characterized by the type of activity that takes to resolve its disputes and being sea contractually activity, the Maritime Arbitration settles in all maritime disputes arising from all International Maritime private relations contractual or non-contractual.

Maritime Arbitration is an independent arbitration with its rules of procedure manifested in Arbitration Maritime regulations whether institutional or free which is adhered to by the parties when choosing this institutional arbitration center or the other or to this arbitration regulation of the Centre for the free Maritime Arbitration then abide by the arbitrators as a

result of the commitment of the parties which has become accessible to all practitioners of marine activities.

Maritime Arbitration is an independent arbitration with its objective rules which is represented in the applicable law on the subject of the dispute where the Maritime Arbitration cuts a great strides in establishing its own vocational law with its sources manifested in the International Maritime treaties, conditions of typical Navy contracts as a solution of disputes, the habits and customs of maritime trade and Navy arbitral precedents.

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