



THE ANATOMY OF INTERNATIONAL ARBITRATION

Edited by
Anna Petrig and Yarik Kryvoi



‘Anna Petrig and Yarik Kryvoi’s *The Anatomy of International Arbitration* is an invaluable contribution to the literature and deserves a place on the desk of all those involved in any form of international arbitration.’

Christopher Greenwood, *Arbitrator and Judge of the Iran-US Claims Tribunal, United Kingdom*

‘A most welcome, highly valuable overview and analysis of international arbitration as a widely applied dispute settlement mechanism. By thoughtfully highlighting the commonalities and distinctive features of arbitration across various areas, this book is an essential read for anyone engaged with or curious about international arbitration.’

Professor Laurence Boisson de Chazournes,
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‘This volume offers an original framework for understanding international arbitration. By focusing first on its social and human aspects before developing its doctrinal and procedural framework, Anna Petrig and Yarik Kryvoi—together with a global network of eminent contributors—deliver a work that is both conceptually rich and remarkably accessible.’

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‘*The Anatomy of International Arbitration* is a must have and a must read. It transcends the conventional boundaries of legal literature. This magnum opus, meticulously curated by Anna Petrig and Yarik Kryvoi is not merely a compendium of arbitral wisdom; it actually offers analytical insights and deftly navigates the intricate interplay between established norms and emerging challenges. It provides a kaleidoscopic view that is both panoramic in scope and microscopic in detail. The book’s innovative “anatomical” approach deciphers the complex language of arbitration for neophytes and veterans alike. In essence, this book is an intellectual odyssey and is destined to occupy a hallowed place not just on bookshelves, but in the minds of all who seek to comprehend and shape the evolving narrative of international arbitration.’

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The Anatomy of International Arbitration

This book offers a clear and intellectually rigorous gateway into international arbitration. The book's original 'anatomical' approach dissects arbitration into its core components to show how this dispute resolution system operates in practice.

The book begins with cross-cutting issues such as sources of law and soft law, institutional and ad hoc arbitration, diversity, digitalisation, review mechanisms, and the enforcement of awards. It then examines eleven arbitration mechanisms, illustrating the diversity of arbitral frameworks—from inter-State, investor-State, and commercial arbitration to specialised areas including maritime, commodities, intellectual property, sports, and business and human rights arbitration. Each arbitration mechanisms chapter covers jurisdiction, procedure, adjudicators, applicable law, review, and the relationship with domestic and international courts.

Written by leading practitioners, academics, and arbitral institutions figures, the volume serves as both an accessible entry point and a comparative resource for scholars, practitioners, and policy-makers.

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17 Maritime Arbitration

James Clanchy

1. Background and History

The carriage of goods and passengers by sea has always been a risk-laden business. The owners of ships and the merchants who use them choose to submit disputes under charterparties (contracts for the hire of ships) and other contracts to arbitrators who know their business and who are familiar with the applicable international conventions and rules.

Arbitration has been used to resolve commercial maritime disputes for more than two thousand years. Demosthenes mentions the submission of a dispute to one or more arbitrators to be chosen from the merchants of the port of Piraeus in around 322 BCE.¹ Major trading nations have developed laws to govern shipping and to promote the resolution of disputes outside their courts.

By the middle of the nineteenth century, London had become a global hub for the chartering of ships. The Baltic Exchange devised procedures for the resolution of disputes by experienced shipbrokers, one to be appointed by each party and with reference to a third if they could not agree.² From the list of members of the Exchange accepting appointments, the London Maritime Arbitrators Association (LMAA) was established in 1960.³ Its membership expanded outside the Exchange to include lawyers, naval architects, marine engineers, and other maritime professionals. It published its first set of Terms—rules of procedure—for the conduct of maritime arbitrations in 1984. The arbitrations are ad hoc. The association provides no administration or other services during the course of an arbitration. The LMAA Terms and Procedures (including the Small and Intermediate Claims Procedures)⁴

1 Demosthenes, 'Dareius Against Dionysodorus in the Matter of a Loan' in Demosthenes (translated by Augustus Murray), *Orations, Volume VI: Orations 50–59: Private Cases. In Neaeram* (Harvard University Press 1939) 189–228, 204; Derek Roebuck, *Ancient Greek Arbitration* (Holo Books 2001) 230.

2 Bruce Harris, 'London Maritime Arbitration' (2011) 77(1) *Arbitration* 116, 117.

3 Simon Everton and Bruce Harris, *50 Years of the LMAA* (Lloyd's List Group 2010) 3; Michael Summerskill, 'The London Maritime Arbitrators' Association' (1985) 51(4) *Arbitration – The International Journal of Arbitration, Mediation and Dispute Management* 503.

4 London Maritime Arbitrators Association (LMAA), LMAA Terms and Procedures (2021) <<https://lmaa.london/wp-content/uploads/2021/04/LMAA-Terms-Procedures-2021-FINAL.pdf>> accessed 12 May 2025 (LMAA Terms).

are used in more international commercial arbitrations than any institutional rules, but this is rarely acknowledged in arbitration literature.⁵

The Society of Maritime Arbitrators (SMA) was founded in New York in 1963. Like the LMAA, it is a professional membership organization which publishes rules for use in ad hoc arbitrations; it does not oversee or administer proceedings.⁶ The *Chambre Arbitrale Maritime de Paris* (CAMP) was established in 1966. Unlike the LMAA and the SMA, it administers arbitrations referred to it under its rules. Like its counterparts in London and New York, though, its panel of arbitrators comprises many non-lawyers with backgrounds in shipping and commerce.⁷

In 1972, some leading members of the LMAA, SMA, and CAMP attended the International Council for Commercial Arbitration (ICCA) Congress in Moscow. There, they participated in an alternative session, which was subsequently declared to be the first International Congress of Maritime Arbitrators (ICMA). At the initiative of Cedric Barclay, a naval architect by primary profession who became the president of the LMAA, the second ICMA took place in Athens in 1974. ICMA has brought together maritime arbitrators from around the world every two or three years since then.⁸

Each ICMA Congress organizes a Cedric Barclay Memorial Lecture to honour his enduring legacy as the ICMA founder. During the first Lecture, at the congress in Vancouver in 1991, Lord Mustill remarked, ‘Considering the scale of maritime arbitration, and the degree of technical expertise deployed, its profile in what may be termed the intellectual world of arbitration is low.’⁹ He called for maritime arbitration to ‘step into public view, look around and assert itself’.¹⁰

Maritime arbitration is an integral part of international commercial arbitration.¹¹ The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law) expressly confirms that the term ‘commercial’ should be given ‘a wide interpretation’ and include ‘carriage of goods or passengers by [...] sea’ and that ‘arbitration’ means ‘any arbitration whether or not administered by a permanent arbitral institution’.¹² However, maritime arbitration finds itself treated as

5 See Section 2 and, eg, Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 93; this monumental book notes that the LMAA sees more arbitrations than any other body but is silent about the nature of the association or its rules.

6 See website of the Society of Maritime Arbitrators (SMA) <<https://smany.org/about/>> accessed 9 May 2025.

7 See website of *Chambre Arbitrale Maritime de Paris* <www.arbitrage-maritime.org/CAMP-V3/les-arbitres/tous-les-arbitres/> accessed 9 May 2025.

8 Manfred Arnold, ‘Introduction to the First Edition’ in Bruce Harris and Philip Yang (eds), *The Ten First Cedric Barclay Lectures* (International Capital Market Association and Law Press 2017) 1.

9 *ibid* 6; for an enlarged version, see also Michael Mustill, ‘Maritime Arbitration: The Call for a Wider Perspective’ (1992) 9(2) *Journal of International Arbitration* 5.

10 Arnold (n 8) 38.

11 On commercial arbitration, see Duggal and Schmidt, ‘Commercial Arbitration’, this volume.

12 United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006 <<https://uncitral.un.org/sites/uncitral.un>

separate without explanation or supporting evidence.¹³ Lord Mustill was right: its traditions and practices merit more attention than they receive.¹⁴

By its nature, maritime arbitration is international. It usually involves parties of different nationalities, often funded by banks or insurers headquartered in other jurisdictions, contracting for the carriage of goods from their own or other jurisdictions to one or more ports in yet more jurisdictions on a vessel flagged in another.¹⁵ With so many international elements already at play, it is not surprising that standard form shipping contracts generally seek to anchor dispute resolution in one place, most commonly London, and under one law, usually English law.¹⁶ A study by an international law firm found that London handled over 85% of the world's maritime arbitrations in 2022, with Singapore, Hong Kong, and Paris following it in that order.¹⁷

This preference for a single applicable law is one of the reasons why maritime arbitration does not fit into the alleged 'international arbitration culture' and cannot be described as 'comparative law in action'.¹⁸ It is largely ignored by university law schools in their international arbitration programmes, rarely featured in conferences, and is sidelined by the arbitration media. The LMAA has been mentioned in 23 posts on the *Kluwer Arbitration Blog* from the blog's establishment in 2009 until May 2024, the International Chamber of Commerce (ICC) in more than a thousand.

In their seminal study of the sociology of international arbitration published in 1996, *Dealing in Virtue*, Yves Dezalay and Bryant G. Garth criticized London arbitration as complacent and insular, dominated by shipping, commodities, and insurance.¹⁹ Nearly thirty years later, with an annual caseload roughly twice the size of

.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf> accessed 9 May 2025 art 1, fn 2 and art 2(a).

13 See, for example, Stacie Strong, 'Representative Claims in Arbitration: Lessons from Lloyd's' (*Kluwer Arbitration Blog*, 13 April 2016) <<https://arbitrationblog.kluwerarbitration.com/2016/04/13/representative-claims-in-arbitration-lessons-from-lloyds/>> accessed 9 May 2025.

14 For a discussion of UNCITRAL's failure to study the LMAA Small Claims Procedure (see n 37) in its work in 2018–2020 on ad hoc expedited arbitration, see James Clanchy, 'A Neglected Blueprint: The LMAA's Small Claims Procedure' in Alan Anderson and Herman Verbist (eds), *Expedited International Arbitration: Policies, Rules and Procedures* (Kluwer Law International 2024) 137–157.

15 Daniella Horton, 'Maritime Arbitration: The Dispute Resolution Cornerstone of the Global Shipping Sector' (*Chartered Institute of Arbitrators*, 12 October 2023) <www.ciarb.org/news-listing/maritime-arbitration-the-dispute-resolution-cornerstone-of-the-global-shipping-sector/> accessed 9 May 2025.

16 Clare Ambrose, 'The Role of Standard Forms and Arbitrators: In Developing a Transnational Law of Shipping' in Miriam Goldby and Loukas Mistelis (eds), *The Role of Arbitration in Shipping Law* (Oxford University Press 2016) 249–254.

17 Ruth Allan de Maldonado and Holly Colaço, 'The Maritime Arbitration Universe in Numbers: Is London's Crown Under Threat?' (*Holman Fenwick Willan*, September 2023) <www.hfw.com/app/uploads/2024/04/005239-HFW-Maritime-Arbitration-Universe-in-Numbers-Sep-23.pdf> accessed 9 May 2025.

18 Joshua Karton, *The Culture of International Arbitration and the Evolution of Contract Law* (Oxford University Press 2013); Joshua Karton, 'International Arbitration as Comparative Law in Action' [2020] (2) *Journal of Dispute Resolution* 293.

19 Yves Dezalay and Bryant Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press 1996) 129.

the ICC's, the LMAA continues to demonstrate that it is neither complacent nor insular. A study of court applications for recognition and enforcement of international arbitration awards in China found that courts there had seen 28 applications relating to LMAA awards and 13 relating to ICC awards in the same 11-year period between 2012 and 2022.²⁰

The LMAA's model of ad hoc arbitration, close to the trades which it serves, is emulated in new and growing centres, notably in Singapore and Hong Kong.²¹ In a departure from China's entrenched preference for institutional arbitration and recognizing that parties to international shipping contracts do not generally share that preference, certain free trade zones in China, notably the Hainan Free Trade Port, have introduced rules for the conduct of ad hoc maritime arbitration.²²

2. Vital Statistics and Caseload Trends

Statistics demonstrate that maritime arbitration in general and the LMAA in particular account for significant portions of the global arbitration caseload every year.²³ In 2024, the LMAA saw 3006 appointments of arbitrators and an estimated 1733 new cases. In comparison, the ICC saw 1427 appointments and 841 new cases. It should be noted that the ICC is fairly unusual among institutions in not attracting or promoting maritime arbitrations. Notably, the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the Hong Kong International Arbitration Centre (HKIAC) count shipping among the major sectors using their rules.²⁴

In terms of specialist bodies, the LMAA's main competitors in New York (SMA) and Paris (CAMP) have ceased publishing their caseload statistics, while the Singapore Chamber of Maritime Arbitration (SCMA) in Singapore does so

20 Sam (Ronghui) Li, Michael (Haomin) Zhang, Lucas (Zhouquan) Lu and Tina (Yanfei) Qian, 'Recognition and Enforcement of Foreign Arbitral Awards in China between 2012–2022: Review and Remarks (Part I)' (*Kluwer Arbitration Blog*, 12 September 2023) <<https://arbitrationblog.kluwerarbitration.com/2023/09/12/recognition-and-enforcement-of-foreign-arbitral-awards-in-china-between-2012-2022-review-and-remarks-part-i/>> accessed 9 May 2025.

21 The Singapore Chamber of Maritime Arbitration (SCMA) broke away from the Singapore International Arbitration Centre (SIAC) in 2009, and its rules have become closely aligned with the LMAA's. The Hong Kong Maritime Arbitration Group (HKMAG) explicitly models its rules on the LMAA's 'with kind permission, with changes made to incorporate references to Hong Kong procedural law', see website of HKMAG <www.hkmag.org.hk/resources> accessed 9 May 2025.

22 Hainan International Arbitration Court, Several Provisions on the Development of International Commercial Arbitration in Hainan Free Trade Port (29 May 2024) <<https://en.hnac.org.cn/article/120/47.html>> accessed 9 May 2025.

23 James Clanchy, 'Arbitration Statistics 2024: Surveys-V-Reality' (*LexisNexis Blogs*, 30 July 2025) <www.lexisnexis.co.uk/blog/research-legal-analysis/arbitration-statistics-2024-surveys-v--reality> accessed 1 August 2025.

24 James Clanchy, 'Arbitration Statistics 2023: Rising Caseloads and Repeat Appointments' (*Lexis Nexis Blogs*, 26 July 2024) <www.lexisnexis.co.uk/blog/research-legal-analysis/arbitration-statistics-2023-rising-caseloads-repeat-appointments> accessed 8 September 2025.

from time to time.²⁵ In recent years, China has seen substantial increases in foreign-related arbitrations (almost always involving a Chinese party). The China Maritime Arbitration Commission (CMAC) is no exception, with 239 new cases in 2024, of which 38.91% (93) were foreign-related, approximately 5% of the LMAA's case-load. In view of its dominance in maritime arbitration worldwide, the focus of this chapter is largely on the LMAA.

Being an association of practising arbitrators, not an institution, the LMAA does not register new cases. For its statistics, it relies on data collected annually from its arbitrating members, barristers, and others, including lawyers based outside the United Kingdom, who accept appointments under its Terms and Procedures. It asks for a limited amount of information about numbers of appointments and awards.

The LMAA does not ask about claim size or the nature of the dispute. Such questions would risk delays. However, information volunteered by arbitrators, lawyers, and parties indicates that a wide range of disputes is submitted to arbitration under the LMAA Terms and Procedures. Apart from the carriage of goods, these include shipbuilding; sale of second-hand ships; bunkering; construction and chartering of mega-yachts; services to the offshore energy industries, including the dismantling of oil rigs and transportation of wind turbine blades; passenger and crew claims in the cruise industry; and sale and purchase of commodities. According to the LMAA, its members deal with disputes covering 'almost anything which floats or is fixed to the seabed'.²⁶

Nor does the LMAA collate data about the nationalities of parties. By its nature, maritime arbitration is international. It inevitably includes parties from the major ship-owning nations, such as Greece and China, as well as from exporting countries. Arbitrations between parties of the same nationality are rare, and those will generally concern contracts performed in other jurisdictions.

Between around 400 and 600 awards are issued in LMAA arbitrations every year. The numbers depend partly on economic and political forces affecting the markets. The highest number, 649, was seen in 2009 in the wake of the global financial crisis. Many arbitrations are settled before an award is made. The LMAA's statistics do not include interlocutory applications for orders, such as for security for costs, which can assist in achieving a settlement.²⁷

3. Arbitration Agreement and Consent

Most maritime arbitrations arise from transactions, not projects, and are therefore commenced under arbitration clauses contained in standard form contracts,

25 The SCMA has reported 95 new cases in 2024. See website of SCMA <www.scma.org.sg/about-us/#YearInReview> accessed 8 September 2025.

26 See website of LMAA <<https://lmaa.london/about-lmaa/>> accessed 9 May 2025.

27 See website of LMAA <<https://lmaa.london/statistics-of-appointments-awards/>> accessed 9 May 2025.

notably charterparties. Almost all business transactions are carried out on standard forms containing a set of contractual terms offered by one party and then amended and supplemented as agreed. Forms are published by industry bodies, trade associations, and leading companies. In international commodities contracts, standard forms have been described by the English jurist, Lord Robert Goff, as ‘our modern commercial codes, which achieve uniformity across national boundaries without any of the trauma and complexity of international conventions’.²⁸ So too in maritime contracts. The contracts are rarely signed by the parties themselves. They are more likely to be evidenced by exchanges of emails between brokers acting for the parties.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) requires that, for purposes of recognition, an arbitration agreement be ‘in writing’.²⁹ Charterparties were, for many years, concluded by exchanges of telexes. More recently, email has become current, and messaging applications, such as WhatsApp and WeChat, have also been used, particularly for last-minute amendments. The UNCITRAL Recommendation regarding the interpretation of Article II(2) New York Convention, published in 2006, indicates that it should be applied ‘recognizing that the circumstances described therein are not exhaustive’.³⁰

A shipper of goods will receive a bill of lading from the carrier, which also serves as a document of title to the goods, which the receiver will produce to take possession of them. A bill of lading evidences a contract of carriage, but it is open to a party named on it to show that it had been wrongly identified as a party to the contract of carriage and the arbitration clause contained in it.³¹ Consignees and endorsees of bills of lading may acquire rights of suit against the carrier. Standard form bills of lading are designed to be used in conjunction with specific charterparty forms. They usually incorporate the dispute resolution or arbitration clause of a specific charterparty.³² The rule under English law is that general words of incorporation in a bill of lading will not successfully incorporate an arbitration clause in a charterparty; a specific reference will usually be required.³³

The traditional arbitration clause in a charterparty would specify the governing law of the contract, the seat of the arbitration, and the number of arbitrators,

28 Derek Johnson, *International Commodity Arbitration* (Lloyd’s of London Press 1991) Foreword, v.

29 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 art II(1).

30 For a review of approaches taken in various jurisdictions, see Reinmar Wolff, ‘Article II [Recognition of Arbitration Agreements]’ in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 83–197, 138.

31 *MVV Environment Devonport Ltd v NTO Shipping GmbH & Co KG MV Nortrader (The Nortrader)* [2020] EWHC 1371 (Comm), [2021] 1 Lloyd’s Rep. 429.

32 Eva Litina, *Theory, Law and Practice of Maritime Arbitration: The Case of International Contracts for the Carriage of Goods by Sea* (Kluwer Law International 2020) 110.

33 *Navig8 Pte Ltd v Al-Riyadh Co for Vegetable Oil Industry (The Lucky Lady)* [2013] EWHC 328 (Comm), [2013] 2 All ER (Comm) 145.

possibly their qualifications (e.g., member of the Baltic Exchange), but not the rules under which the arbitration would be conducted.³⁴ It would fall to the arbitrators to accept their appointments on the LMAA Terms or propose other rules for the parties to agree.

The LMAA and other maritime arbitral bodies have developed model arbitration clauses, which provide for and work with their rules. They have options to allow parties to agree in advance on such matters as simplified and expedited procedures for smaller claims. The LMAA Arbitration Clause³⁵ confirms that the arbitration will be conducted in accordance with the LMAA Terms current at the time when the arbitration is commenced. The reference is to be made to three arbitrators, but nothing prevents the parties from agreeing in writing to vary the clause to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree), the arbitration is to be conducted under the LMAA Small Claims Procedure (LMAA SCP).³⁶

Cargo receivers with claims against a vessel may not be satisfied with the dispute resolution clause incorporated into their bills of lading from a charterparty. Following an arrest of the vessel and in negotiating security for its release, they may look to move the seat of the arbitration and even to change the governing law of the contract.

4. Jurisdiction

As with other types of commercial arbitration, the arbitration agreement between the parties forms the basis of jurisdiction in maritime arbitration.

Establishing the tribunal's personal jurisdiction can be more problematic than in a non-maritime arbitration in which the parties are typically those named in the contract containing the arbitration clause. As mentioned, it is a feature of disputes arising in a maritime context that the arbitration agreement and the parties to it may not be immediately identifiable.³⁷ For example, bills of lading may have been transferred down a chain of buyers. A cargo insurer may have had rights of suit assigned to it and may be bound by the arbitration clause.

As to subject matter jurisdiction, parties are generally careful to ensure that any arbitration will deal with all their disputes and they therefore confer the widest possible jurisdiction upon the arbitrators whom they appoint. Although an arbitration is usually commenced to resolve a particular dispute already known to both parties, the voyage may not be completed at that time, and new disputes could arise. The

34 For example, Association of Ship Brokers and Agents, *Asbatankvoy Tanker Voyage Charter Party* (October 1977) <<https://usbc.com.ua/public/ASBATANKVOY.pdf>> accessed 9 May 2025, cl 24.

35 London Maritime Arbitrators Association, *LMAA Arbitration Clause* (2021) <<https://lmaa.london/wp-content/uploads/2021/04/LMAA-Terms-Procedures-2021-FINAL.pdf>> accessed 12 May 2025.

36 London Maritime Arbitrators Association, *LMAA Small Claims Procedure 2021* (1 May 2021) <<https://lmaa.london/wp-content/uploads/2022/11/LMAA-Small-Claims-Procedure-2021.pdf>> accessed 12 May 2025.

37 See Section 3 of this chapter.

LMAA Terms contain default provisions extending the jurisdiction of the tribunal to ‘determining all disputes arising under or in connection with the transaction the subject of the reference’ and to ‘any further dispute(s) arising after the commencement of the arbitral proceedings’.³⁸

The leading English case on the scope of an arbitration clause, *Fiona Trust*, arose from a maritime arbitration under a series of charterparties.³⁹ The House of Lords decided in that case that there was nothing in the arbitration clause (a standard charterparty dispute resolution clause) to exclude disputes about the validity of the contract, even on the grounds that it was procured by fraud, bribery, or misrepresentation.

In terms of temporal jurisdiction, claimants in disputes under maritime contracts have to pay attention to time bars. Some international conventions and jurisdictions impose shorter limitation periods for certain claims. Arbitral tribunals can be faced with questions about the applicability of such time bars in different situations.⁴⁰

A tribunal may rule on its own jurisdiction (*Kompetenz-Kompetenz*). This principle was adopted in the English Arbitration Act 1996 (English AA), but the court (usually the Commercial Court in London) retains the right to consider a jurisdiction challenge instead of or after the tribunal has made an award on jurisdiction.⁴¹

5. Key Procedural Elements

The success of the LMAA and of the non-institutional rules and procedures offered by such bodies as the SMA, the SCMA, the Hong Kong Maritime Arbitration Group (HKMAG), the German Maritime Arbitration Association (GMAA), and the Nordic Offshore and Maritime Arbitration Association (NOMA) confirms the shipping sector’s preference for ad hoc arbitration. There is a perception in shipping circles that administration of an arbitration is unnecessary and costly. The dispute described by Demosthenes and mentioned at the opening of this chapter was submitted directly to three arbitrators, not to a third party who would oversee their appointment and charge a fee for doing so. Disintermediated arbitration has remained the preference worldwide among ship operators, their customers, and the various insurers who fund their claims and defences for more than two thousand years.⁴²

The success of ad hoc arbitration depends on supportive arbitration laws and courts. Arbitrations seated in London are governed by the English AA (revised in

38 LMAA Terms para 13.

39 *Fiona Trust & Holding Corporation and 20 Others v Privalov and 17 Others* [2007] UKHL 40, [2007] 4 All ER 951.

40 For example, *Fimbank Plc v KCH Shipping Co Ltd (The Giant Ace)* [2023] EWCA Civ 569, [2024] 1 All ER 502, a tribunal and then the courts had to decide whether a one-year time limit for claims for misdelivery of cargo applied to misdelivery occurring after discharge from the vessel.

41 English Arbitration Act of 17 June 1996 (English AA) sec 31 and sec 67.

42 Harris (n 2) 122; Miquel Roca López, *An Introduction to London Maritime Arbitration* (2nd edn, Thomson Reuters Aranzadi 2021) 93.

2025⁴³), which differs from the UNCITRAL Model Law in a number of important respects. This includes the speed of appointment of a tribunal, the right of appeal from arbitration awards, and the support of the courts in relation to evidence, costs, and other matters.⁴⁴

Ease and speed of commencement of an arbitration can be critical in maritime disputes. Parties may be facing a time bar, either contractual or statutory, which would prevent them from pursuing their claim unless they commenced arbitration within a certain time, for example, one year of the delivery of the cargo. They may then need to commence an arbitration to protect their position while they continue factual investigations, discuss with insurers, or pursue settlement discussions.

Under the English AA and the LMAA Terms, an arbitration is generally commenced by a short notice of arbitration served directly on the respondent and calling on it to appoint an arbitrator within fourteen days.⁴⁵ The integration of the appointment of the tribunal into the commencement process of an ad hoc arbitration, the notice of arbitration being the notice of the appointment of the first arbitrator, contrasts with the staggered procedure for the appointment/confirmation of a tribunal in an institutional arbitration. An institution's slow and bureaucratic appointment process and the pre-appointment advances on costs which it demands can put parties off from pursuing an arbitration after filing.⁴⁶

Without an institution to deal with such matters as collecting fees and issuing awards, the LMAA Terms contain detailed rules and timetables. The First Schedule deals with fees and contains provisions for interim billing by arbitrators, security for their costs, and rights to cancel hearings for non-payment of booking fees and resign for non-payment of invoices.

The default timetable in the Second Schedule provides room for accelerated procedures, making expedited and emergency arbitrator procedures unnecessary. It states that claim submissions are normally to be served within 28 days after the appointment of the second arbitrator and without waiting for the appointment of a third or for any procedural orders.⁴⁷ The detailed procedure makes terms of reference, a characteristic of ICC arbitration, unnecessary and undesirable. It is confirmed in the LMAA Terms that applications for directions should not be necessary.⁴⁸ If a party does apply for directions, it must satisfy the tribunal that it has attempted to agree on them with the other parties first.⁴⁹

Most maritime arbitrations settle before an award is issued, and most awards are made without hearings. In 2024, the estimated total number of references under

43 Revised English AA of 24 February 2025 (in force since 1 August 2025).

44 Litina, *Theory, Law and Practice* (n 32) 117.

45 English AA secs 14 and 16; LMAA Terms para 8.

46 James Clanchy, 'Arbitrations Without Arbitrators: An Institutional Paradox' (*LexisNexis Blogs*, 8 April 2021) <www.lexisnexis.co.uk/blog/dispute-resolution/arbitrations-without-arbitrators-an-institutional-paradox> accessed 9 May 2025.

47 LMAA Terms sch 2 para 3.

48 LMAA Terms para 16(b).

49 LMAA Terms sch 2 para 14.

the LMAA Terms and Procedures was 1733, the total number of awards was 478, out of which the number of awards following an oral hearing was 75.⁵⁰ If a hearing takes place in an LMAA arbitration, it is likely to be in London, but it is usual for witnesses abroad to give evidence via video link. The LMAA was one of the first organizations to publish a protocol for virtual and semi-virtual hearings, having had experience of them for many years before the COVID-19 pandemic.⁵¹ As most LMAA arbitrators practise independently, usually from home, they prefer to receive submissions and documents in electronic form.

The LMAA Terms confer limited powers on tribunals beyond those set out in the English AA. These include a power to direct that where two or more arbitrations appear to raise common issues of fact or law, they shall be conducted concurrently.⁵² In LMAA arbitration, arbitrators' fees are charged on an hourly basis and are usually lower than institutional fees calculated by reference to the amount of the claim. It is usual for the winning party to be awarded most of its legal costs, which may be assessed by the tribunal and made the subject of a separate award. Under the LMAA SCP, there are caps on the costs that may be recovered.⁵³

6. Arbitrators

In ad hoc maritime arbitrations, it is usual for the parties themselves to appoint the arbitrators and, if a third is required, for that appointment to be made by the two already appointed. It is usual for tribunals in LMAA arbitrations to comprise two arbitrators. This is a long tradition in maritime arbitration and is endorsed in the LMAA Terms, which confirm that the two arbitrators appointed by the parties may proceed unless they disagree or there is a hearing.⁵⁴ If the LMAA Terms have been agreed between the parties, then they provide that the president of the LMAA will act as the appointing authority in default of appointments by the parties.⁵⁵ The president also assumes this role under the LMAA SCP if the parties are unable to agree upon a sole arbitrator. In practice, a very small percentage of appointments are made by the president.⁵⁶

Appointment by a party is simple and quick, requiring 'no more than the exchange of a small number of very brief communications, which essentially involve the party asking the arbitrator if they are willing to accept the appointment,

50 See website of LMAA <<https://lmaa.london/statistics-of-appointments-awards/>> accessed 12 May 2025.

51 The Sixth Schedule to the LMAA Terms comprises 'Guidelines for the Conduct of Virtual and Semi-virtual Hearings'. On digitalization of international arbitration, see Bianchi, 'Digitalization in International Arbitration', this volume.

52 LMAA Terms para 7.

53 The limits fixed in 2024 are GBP 6,000 and GBP 7,000 for an arbitration involving a counterclaim exceeding the amount of the claim.

54 LMAA Terms para 8(b)(ii).

55 LMAA Terms paras 8 and 11.

56 In 2024, 115 out of 3006 reported appointments (3.8%) were made by the president. See website of LMAA <<https://lmaa.london/statistics-of-appointments-awards/>> accessed 1 August 2025.

the arbitrator confirming their willingness to do so, and the appointment then being notified to the other party, with the arbitrator copied in'.⁵⁷ Under the LMAA Terms, an arbitrator is entitled to an appointment fee, fixed at GBP 400 in May 2025.⁵⁸ Payment of the fee is not a precondition for an appointment.

The LMAA, SCMA, CAMP, and other bodies maintain lists of arbitrators, but subject to the terms of their arbitration agreement, parties are generally free to choose any suitable person to be an arbitrator. The term 'maritime arbitrator' has historically been associated with full-time professional arbitrators, notably the full members of the LMAA, coming from a variety of professional and commercial backgrounds. Practising English barristers, retired judges, and international arbitration lawyers have received increasing numbers of appointments in LMAA arbitrations in the last twenty years or so. The LMAA Advice on Ethics includes under 'competence' requirements that an arbitrator have 'sufficient knowledge and experience of the matters in dispute to enable him or her to understand them without requiring unduly long explanations'.⁵⁹ It also requires that an arbitrator have 'sufficient knowledge of the relevant law, and of arbitration law and procedure, to enable him or her to conduct the proceedings efficiently and to write a clear and enforceable award'.⁶⁰

The pool of available maritime arbitrators is not 'smaller', as the International Bar Association (IBA) used to assert in its Guidelines on Conflicts of Interest.⁶¹ However, parties to maritime disputes prefer to appoint individuals experienced in their business sector and familiar with the standard contracts. Such parties tend to be represented by a relatively limited number of Protection and Indemnity (P&I) clubs, other insurers, and law firms. This reality is reflected in the LMAA Advice on Ethics, which states, 'Consequently, there is a custom or practice for parties or their representatives to frequently appoint the same arbitrator in different cases'.⁶² The Advice confirms that this is not considered to be a matter for disclosure.⁶³

While different professional, educational, and socio-economic backgrounds are relatively well-represented on arbitral tribunals, there are calls for faster progress on gender diversity.⁶⁴ The shipping industry is male-dominated, with fewer than

57 *ARI v WXJ* [2022] EWHC 1543 (Comm), [2023] 1 All ER (Comm) 778 [13] (Foxton J).

58 See website of LMAA <<https://lmaa.london/fees/>> accessed 12 May 2025.

59 See London Maritime Arbitrators Association, Advice on Ethics (May 2024) <<https://lmaa.london/advice-on-ethics/>> accessed 12 May 2025 (LMAA Advice on Ethics).

60 LMAA Advice on Ethics para 3.1(b).

61 International Bar Association, Guidelines on Conflicts of Interest in International Arbitration (2014) <www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafce8918> accessed 12 May 2025 fn 3.

62 See LMAA Advice on Ethics preamble.

63 LMAA Advice on Ethics para 1.8.

64 Eva Litina, 'Sustainable Diversity in International Arbitration: The Case of Ad Hoc, Maritime, and Commodities Trade Arbitration' in Shahla Ali, Filip Balcerzak, Giorgio Colombo and Joshua Karton (eds), *Diversity in International Arbitration: Why It Matters and How to Sustain It* (Edward Elgar 2022) 83–100, 93.

2% of seafarers being women, but women play larger roles in land-based management, maritime law, insurance, and academia.⁶⁵

7. Applicable Law

As the high number of disputes submitted to arbitration in London confirms, English law has effectively become an international maritime code in modern times. It is chosen in thousands of shipping contracts and is written into numerous standard forms. Thousands of disputes arising from contracts governed by English law are dealt with every year. Most are settled amicably by in-house claim handlers, insurers, and solicitors, while others are submitted to arbitrators and judges. As the leading English jurist Lord Goff said, ‘For the English, the characteristic commercial contract is a contract for the carriage of goods by sea.’⁶⁶

The GENCON 2022 charterparty form,⁶⁷ used for thousands of voyages every year, gives the parties a choice of law and arbitration venue, but the default is English law together with arbitration in London before three arbitrators under the LMAA Terms. It is not unusual for English law to be chosen as the substantive law in maritime arbitrations at seats outside England, notably in Hong Kong and Singapore.

The SYNACOMEX form for the carriage of grains⁶⁸ has French law as the substantive law, but the clause is often deleted and replaced with a London arbitration/English law clause.

The standard form for the sale of ships offers six options with combinations of seats (London, New York, Hong Kong, and Singapore) and applicable law, with English law appearing in three.⁶⁹

65 International Maritime Organization and Women’s International Shipping and Trading Association, ‘Women in Maritime Survey 2021: A Study of Maritime Companies and IMO Member States’ Maritime Authorities’ (May 2022) <https://wwwcdn.imo.org/localresources/en/OurWork/TechnicalCooperation/Documents/women%20in%20maritime/Women%20in%20maritime_survey%20report_high%20res.pdf> accessed 12 May 2025; 6 out of 33 full members of the LMAA were women in June 2024: see website of LMAA <<https://lmaa.london/arbitrators-full-members/>> accessed 12 May 2025.

66 Lord Goff of Chieveley, ‘The Wilberforce Lecture 1997: The Future of the Common Law’ (1997) 46(4) *International and Comparative Law Quarterly* 745, 751.

67 Baltic and International Maritime Council, GENCON 2022 Standard Voyage Charter Party (2022) <www.bimco.org/contractual-affairs/bimco-contracts/contracts/gencon-2022/> accessed 12 May 2025.

68 Baltic and International Maritime Council, SYNACOMEX 2023 Standard Grain Voyage Charter Party (2023) <www.bimco.org/contractual-affairs/bimco-contracts/contracts/synacomex-2023/> accessed 12 May 2025.

69 Baltic and International Maritime Council, SHIPSALE 22 Standard Memorandum of Agreement for Ship Sale and Purchase (2022) <www.bimco.org/contractual-affairs/bimco-contracts/contracts/shipsale-22/> accessed 12 May 2025.

Using standard forms, parties to shipping contracts will rarely face uncertainty about the applicable law. If they have failed to make a choice, a default option will likely apply.

As for the law of the arbitration agreement, the LMAA Terms contain a default rule in paragraph 6, stating that it will be English law. This provision contrasts with, for example, the position under the ICC Arbitration Rules,⁷⁰ which contain no such default rule and thereby give rise to uncertainty and conflict of laws issues.⁷¹ The provision differs from the new default rule in the English AA as revised in 2025, which makes the law of the seat the law applicable to the arbitration agreement.

With many maritime disputes being submitted to arbitration, there is a demand for the publication of awards so that the shipping community may know how arbitral tribunals have decided recurring issues under charterparties, how they have interpreted standard wording, and how they have treated trade usages and customs. Under an agreement with the LMAA, Lloyd's Maritime Law Newsletter publishes anonymized summaries of awards.⁷² The SMA publishes awards in full through LexisNexis.⁷³ While arbitral awards do not constitute precedents, they may influence tribunals. They are cited in submissions and textbooks.

8. Awards and Enforcement

The making of awards in maritime arbitrations has to be seen against the background in which an arbitration is commenced. Often, the claimant will have obtained security for its claim, for example, by arresting a ship or by arranging for a sum of money to be paid into an escrow account. The terms of the guarantee or other agreement will set out the claim in respect of which an award is required before any money can be collected. The award does not, therefore, need to recite in any detail the identities of the parties, the jurisdiction of the tribunal, or the procedural history. It can quickly move to the substance of the dispute. It is generally the case that awards in maritime arbitrations are shorter and, consequently, less expensive than those in non-maritime commercial arbitrations.

Arbitrations are frequently split into phases, with partial final awards being made on different issues, typically liability, quantum, and costs. Tribunals in ad hoc arbitrations do not have their awards scrutinized, and there are no internal mechanisms in the LMAA or similar bodies for internal reviews of awards. Tribunals usually

70 International Chamber of Commerce, Arbitration Rules (2021) <<https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-2021-arbitration-rules-2014-mediation-rules-english-version.pdf>> accessed 12 May 2025.

71 See *Enka Insaat v Sanayi AS v OOO 'Insurance Company Chubb'* [2020] UKSC 38, [2021] 2 All ER 1 and *Kabab-Ji SAL v Kout Food Group* [2021] UKSC 48, [2022] 2 All ER 911.

72 LMAA Terms para 29; see website of Lloyd's Maritime Law Newsletter <www.lmln.com/aboutus/> accessed 12 May 2025.

73 See website of SMA <<https://smany.org/lexis-nexis-main/>> accessed 12 May 2025.

issue awards by email with electronic signatures.⁷⁴ Wet signatures can be made on hard copies if required.

With security often being in place from the start, enforcement is rarely a concern. Nevertheless, the sheer numbers of maritime arbitrations mean that awards do appear in courts for recognition and enforcement under the New York Convention.⁷⁵

9. Relationship Between Arbitration Tribunals and Domestic/International Courts

Without an institution to deal with matters such as challenges to arbitrators, objections to their fees, and requests for corrections of clerical errors in awards, parties to ad hoc maritime arbitrations must have recourse to supervising courts. Parties to maritime disputes are used to having recourse to local courts for measures such as arresting ships for security, appointing experts to carry out surveys, and issuing anti-suit injunctions. In addition, in London seated arbitrations, there is the possibility of an appeal on a point of law.⁷⁶ In practice, challenges to arbitrators are vanishingly rare, as are applications in relation to costs and corrections in awards.⁷⁷ The Commercial Court usually hears no more than around a dozen appeals from arbitration awards every year.⁷⁸

London maritime arbitration benefits from the presence of judges in the supervising courts who previously practised as barristers, specializing in commercial disputes, often including maritime arbitrations. Increasingly, judges will themselves have sat as arbitrators. Being accustomed to LMAA arbitration, Commercial Court judges fairly rarely mention in their judgments that the arbitration in respect of which an application has been made was conducted under the LMAA Terms, referring instead generically to ‘a London arbitration’.⁷⁹

Courts in other jurisdictions dealing with the recognition and enforcement of LMAA awards do not have such familiarity with ad hoc arbitration and with the association’s procedures and practices. Some courts may have difficulty

⁷⁴ LMAA Terms para 24.

⁷⁵ Christopher Drahozal, Donald Childress III, Jack Coe and Catherine Rogers, ‘Challenging and Enforcing International Arbitral Awards in U.S. Federal Courts: An Empirical Study’ (2024) 65(1) *Virginia Journal of International Law* 1: 23.1% of the awards submitted for enforcement were from ad hoc arbitrations, of which the highest number (49) were under LMAA Terms, followed by SMA (40).

⁷⁶ English AA sec 69.

⁷⁷ Osborne Clarke, ‘Arbitration in Court: Observations on Over a Decade of Arbitration-Related Cases in the English Courts’ (2021) <www.osborneclarke.com/system/files/documents/21/11/10/Arbitration%20in%20Court%20%20report%20-%20FINAL%28113485318.1%29.pdf> accessed 12 May 2025.

⁷⁸ *ibid* 16.

⁷⁹ *ibid* 11: 32.78% of the 642 court applications arose from shipping/shipbuilding but the LMAA Terms featured in only 36 cases (in comparison to 82 cases featuring the LCIA Rules and 56 featuring the ICC Rules).

with an award made by two arbitrators and, for that reason, having an eye on the place of enforcement, a tribunal of two might appoint a third before writing the award.

Although China restricts the use of ad hoc arbitration domestically, its courts recognize awards made in ad hoc arbitrations elsewhere.⁸⁰ Its arrangement with Hong Kong for mutual assistance in court-ordered interim measures is restricted to institutional arbitration, but the HKMAG has ‘Procedures for the Administration of Arbitration under the HKMAG Terms’ to convert an ad hoc arbitration into an institutional arbitration and bring it within the ambit of the arrangement.⁸¹

10. Outlook and Trends

Maritime arbitration’s long tradition of direct access to full-time independent arbitrators suits the *zeitgeist*. It is disintermediated, agile, and green. Over the centuries, it has adapted to new technologies in shipping and dispute resolution.

As with international arbitration in general, its success is countercyclical: Caseloads rise as economies falter. The imposition of tariffs and other trade barriers has many consequences for shipping, not least the disruption of trade routes and volatility in the freight market. In the short to medium term, upticks in disputes and in the commencement of arbitrations are likely to follow. In the long term, though, if world trade declines, so too will the number of disputes and the need to resort to arbitration to resolve them.

Meanwhile, in England and Wales, the English Arbitration Act 1996 has been amended by the English Arbitration Act 2025. There had been calls for the new statute to widen the right of appeal on a point of law, but no change was made.⁸² The availability of such appeals, on a limited basis, is one of the secrets of London’s success as a seat of international arbitration, as illustrated by the fact that arbitrations under institutional rules, which do not allow appeals, are outnumbered by around six to one by non-institutional arbitrations which do.⁸³ Singapore has risen as a seat in the twenty-first century but has struggled to attract maritime arbitrations

⁸⁰ See Li, Zhang, Lu and Qian (n 20).

⁸¹ Hong Kong Maritime Group, HKMAG Procedures for the Administration of Arbitration under the HKMAG Terms (14 October 2022) <<https://static1.squarespace.com/static/5c2e3f79da02bcf0960540ff/t/634916e5103e7e5ec9919289/1665734374025/HKMAG+Administrative+Procedure+web+v2.pdf>> accessed 12 May 2025.

⁸² Lord Thomas, then Lord Chief Justice, gave a controversial speech in 2016 in favour of reform, see Lord Thomas, ‘Developing Commercial Law Through the Courts: Rebalancing the Relationship Between the Courts and Arbitration. The Fourth BAILII Sir Henry Brooke Lecture’ (9 March 2016) <www.judiciary.uk/wp-content/uploads/2016/03/lcj-speech-bailli-lecture-20160309.pdf> accessed 12 May 2025.

⁸³ TheCityUK and Barclays, ‘UK Legal Services 2024: Legal Excellence, Internationally Renowned’ (December 2024) <www.thecityuk.com/media/ewkgespt/uk-legal-services-2024-legal-excellence-internationally-renowned.pdf> accessed 12 May 2025.

in significant numbers.⁸⁴ The Singapore International Arbitration Act 1994, incorporating the UNCITRAL Model Law, does not permit appeals, but the Ministry of Law's consultation on reform includes the question of introducing a right of appeal.⁸⁵ London's dominance in maritime arbitration could be eroded if such a reform were made in Singapore.

⁸⁴ See Section 2.

⁸⁵ See website of the Singaporean Ministry of Law <www.mlaw.gov.sg/public-consultation-on-the-international-arbitration-act-1994-of-singapore/> accessed 12 May 2025.