

**INTERNATIONAL CONFERENCE ON PROMOTING
MARITIME ARBITRATION AND ALTERNATIVE DISPUTE
RESOLUTION IN THE WEST AND CENTRAL
AFRICAN SUB-REGION**

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**“MODALITIES FOR SETTING UP A REGIONAL CENTRE
FOR MARITIME DISPUTE RESOLUTION”**

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MODALITIES FOR SETTING UP A REGIONAL CENTRE FOR MARITIME DISPUTE RESOLUTION

1.0 INTRODUCTION

2.0 MARITIME LEGISLATIVE HISTORY OF THE WEST AND CENTRAL AFRICAN SUBREGION

2.1 A valuable way to commence the process of setting up a Regional Centre for maritime dispute resolution is to investigate the maritime legislative histories of the countries which form the West and Central African subregion. These countries are Mauritania, Senegal, Mali, the Gambia, Guinea-Bissau, Guinea-Conakry, Sierra Leone, Liberia, Côte d'Ivoire, Bukina Faso, Niger, Ghana, Togo, Benin, Nigeria, Cameroun, Equatorial Guinea, Gabon, Republic of Congo, Democratic Republic of Congo, Chad, Central African Republic, Cape Verde, Sao Tomé and Príncipe, and Angola.

2.2 The maritime legislative histories and heritage of these countries are influenced by their colonial administrators namely, France, Belgium, Great Britain, Germany, Portugal and the United States of America as indicated in the table below..

COUNTRIES	COLONIAL ADMINISTRATORS
1. MAURITANIA	FRANCE
2. SÉNÉGAL	FRANCE
3. MALI	FRANCE
4. THE GAMBIA	GREAT BRITAIN
5. GUINEA-BISAU	
6. GUINEA-CONAKRY	FRANCE
7. SIERRA LEONE	GREAT BRITAIN
8. LIBERIA	THE UNITED STATES OF AMERICA
9. CÔTE D'IVOIRE	FRANCE
10. BUKINA-FASO	FRANCE
11. NIGER	FRANCE
12. GHANA	GREAT BRITAIN
13. TOGO	GERMANY, FRANCE
14. BENIN	FRANCE
15. NIGERIA	GREAT BRITAIN
16. CAMEROUN	FRANCE, GERMANY, GREAT BRITAIN
17. EQUATORIAL GUINEA	SPAIN
18. GABON	FRANCE
19. REPUBLIC OF CONGO	FRANCE
20. DEMOCRATIC REPUBLIC OF CONGO	BELGIUM
21. CHAD	FRANCE
22. CENTRAL AFRICAN REPUBLIC	FRANCE

23.CAPE VERDE	PORTUGAL
24.SAO TOME &PRINCIPIÉ	PORTUGAL
25.ANGOLA	PORTUGAL

2.3 Thus the root of maritime law in the West and Central African region is largely European. Europe itself derived its maritime law from Roman law, laws of city states such as Marseilles[France] and Barcelona[Spain] to mention but a few and the Hanseatic League of Germany .

2.4 Maritime law is at once universal and then municipal. In deed the great Lord Mansfield of Great Britain observed in the case of Luke v Lyde[1759]97ER614@617, [1759]2BURR882@887 that “maritime law is not the law of a particular country , but the general law of nations ” Thus even the municipal maritime laws tend to be harmonized with the general law of nations namely maritime conventions.

3.0 UNIVERSALITY OF MARITIME DISPUTES

3.1 Consequently maritime disputes in the West and Central African subregion are disputes which are governed by universal principles of contract, commercial and maritime laws and the municipal laws of the relevant countries. Resolution of maritime disputes in the subregion will follow the same broad pattern.

4.0 WHY A REGIONAL CENTRE FOR RESOLUTION OF MARITIME DISPUTES?

4.1 ADVANTAGES OF A REGIONAL CENTRE

4.2 Regional Integration

According to its Constitutive Act and Charter , some of the prime objectives of the African Union is to encourage regional integration, solidarity and unity of its people and member States. To achieve these objectives Regional Economic Communities[REC] have been established to stimulate socio-economic activities generated by trade, whether local, international or regional.

4.3 In the West and Central African subregion, the Economic Community of West African States[ECOWAS], the Economic Community of Central African States[ECCAS] and the Maritime Organisation of West and Central Africa [MOWCA] stimulate trade and investments in the subregion.

4.4 The Market

Commercial activities naturally generate conflicts which must be resolved either through litigation and the court process or by Alternative Dispute Resolution through mediation ,conciliation and arbitration.

MOWCA is made up of 20 coastal and 5 landlocked countries.

COUNTRIES	COASTAL OR LANDLOCKED
ANGOLA	COASTAL
BENIN	COASTAL
CAMEROUN	COASTAL
CAPE VERDE	COASTAL
REPUBLIC OF THE CONGO	COASTAL
DEMOCRATIC REPUBLIC OF THE CONGO	COASTAL
CÔTE D'IVOIRE	COASTAL
GABON	COASTAL
THE GAMBIA	COASTAL
GHANA	COASTAL
GUINEA-CONAKRY	COASTAL
GUINEA-BISSAU	COASTAL
EQUATORIAL GUINEA	COASTAL
LIBERIA	COASTAL
MAURITANIA	COASTAL
NIGERIA	COASTAL
SAO TOMÉ &PRINCIPÉ	COASTAL
SÉNÉGAL	COASTAL
SIERRA LEONE	COASTAL
TOGO	COASTAL
BUKINA FASO	LAND LOCKED
CENTRAL AFRICAN REPUBLIC	LAND LOCKED
CHAD	LAND LOCKED
NIGER	LAND LOCKED
MALI	LAND LOCKED

4.5 The coastal states are likely to generate direct maritime disputes while the landlocked countries may generate ancillary issues. In any event the large number of littoral states in the subregion and international commercial, business and financial centres such as Lagos, Abidjan, Dakar, Douala and Accra to mention just a few, indicates that there is a sizeable number of maritime disputes to be resolved. The market for maritime dispute resolution is ready and available.

4.6 Fragmentation of Maritime Dispute Resolution Centres and the economies of scale

The absence of a regional centre for maritime dispute resolution means that all 25 countries in the subregion may individually set up maritime dispute resolution centres to meet their needs. Not only is this proposition unrealistic, it would lead to fragmentation and multiplicity of maritime dispute resolution centres with each country developing its own framework.

- 4.7 Such a proposition takes no cognisance of economies of scale, as some states in the subregion are among the poorest countries in the world and setting up their own centres would be a drain on meagre economic resources. However, the establishment of a regional centre for maritime dispute resolution, means that all countries in the subregion would take advantage of the economies of scale, pool their resources [both financial and human] together to develop a transnational centre for the resolution of maritime disputes in the subregion.

4.8 Harmonization of Laws and the Rules of Procedure

Given that the subregion is made up of countries whose legal roots are embedded in English common law and European Civil Code, establishing a regional centre for the resolution of maritime disputes will encourage harmonisation of business laws and the rules of procedure operating in the subregion. Of particular relevance is the law of contracts and the laws of arbitration and alternative dispute resolution.

The question “what is the lex arbitri of the Regional Centre”? will surely arise.

- 4.9 It is known that some civil code countries have a procedure which enables a high court to sever or strike out an arbitration clause in a contract, thus empowering parties to file fresh action at the high court if period of limitation has not expired.
- 4.10 Thus it would become necessary to have a uniform approach as regards understanding the laws governing contractual obligations, uniformity in matters of procedure and enforcement of arbitral awards.
- 4.11 **Capacity building and development of maritime intellectual skills.**

Setting up a regional centre for resolution of maritime disputes in the subregion will lead to the building and development of maritime intellectual skills. Work in the centre will lead to the establishment of a databank of judges skilled in maritime and commercial matters, maritime arbitrators, maritime lawyers, maritime scholars and institutions serving the sub region. Over a period of time the subregion will be

known for its pool of maritime intellectual resources sufficient to tackle maritime disputes in the subregion and become a place of choice for stake holders.

4.12 Uniformity of Court assistance of arbitration and the ADR process

Court assistance is important for the success of arbitration and the ADR process.

In the course of its work, the regional centre will require peremptory orders to compel parties to act, preservative orders, stay of proceedings, injunctions and a plethora of ancillary or interim orders to aid the resolution of disputes before it. It is known that it is not every jurisdiction that is supportive of arbitration and the ADR process. Some see the latter as competition.

4.13 Yet in order to run a successful regional centre for resolution of maritime disputes it is important that the centre receives uniform support from the courts in the subregion. To achieve this uniformity in courts assistance, it would be necessary to harmonise legislations in the subregion and come out with instruments which satisfy the needs of stake holders in the subregion. A legislation such as the International Arbitration Act comes to mind.

5.0 PRACTICAL STEPS TO BE TAKEN

In order to set up a regional centre for maritime dispute resolution, there are certain practical steps that need to be taken:

5.1 Governmental Support

The role of Government needs to be defined. The question is 'should the governments in the subregion be involved in the setting up of the regional centre or should it be purely private sector driven'? Should it be a public private sector partnership.?

5.2 Considering the divergent economic and financial standing of countries in the subregion, it would be unrealistic to have a regional centre for maritime dispute resolution without governmental support. The organising of this conference alone is testimony to the relevance of governmental support. Therefore how governments should aid the process need to be established from the onset.

5.3 In my considered view governmental assistance here need not be and in fact should not be direct financial injection giving it any kind of control over or in the decision making process of the regional centre. However governmental assistance should be one of playing coordinating supportive roles as follows:

i. Promotion of the Regional Centre

Governments in the subregion should take practical steps to promote the centre as a venue of choice for resolving maritime disputes. This is achieved by nominating the regional centre as the place of settlement of disputes in all government contracts having maritime or international flavour.

ii. **Manpower Development.**

Government has a substantial role to play in the development and sustenance of maritime intellectual and dispute resolution skills in the subregion.

Lawyers from different jurisdictions should be able to represent parties at the regional centre without being called to the bar of the country where the centre is located.

iii. **Education**

Additionally the teaching of Arbitration law and Alternative dispute Resolution law should be encouraged as part of the normal law curriculum, or part of the business administration courses at universities in the subregion.

Finally institutions such as the Nigerian Law School and its equivalent in the subregion in collaboration with local Arbitration institutions such as the Chartered Institute of Arbitrators, should organise and admit students for courses where they can prepare for and receive professional training in maritime dispute resolution.

5.4 Legal Framework and Harmonisation of laws

The countries individually and collectively need to enact and harmonise enabling legislation regarding Arbitration and ADR in the subregion

5.5 Location of the regional centre

As quick as possible, the location of the regional centre must be decided. The factors to be considered in choosing the location of the centre should be guided by practical economic and business interests such as, availability of materials to keep the centre functioning. The location must be a port city that has thriving business and commercial activities. It should be a place with robust legal activities-arbitrators, maritime and commercial lawyers, skilled maritime and commercial judges, supporting court system and sound intellectual support-universities, polytechnics, arbitration institutions etc.

6.0

CONCLUSION

From the foregoing, it is clear that the time has come for the establishment of a Regional Centre for maritime dispute resolution in the West and Central African subregion. It is a project that calls for the support of all countries in the subregion.

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