



James Clanchy
COMMERCIAL ARBITRATOR

www.jamesclanchy.com

Maritime arbitration

James Clanchy, FCI Arb

Arbitrator in independent practice

Former Honorary Secretary, The LMAA

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Maritime arbitration: arbitration for international commerce



Maritime arbitration

Agenda

- Maritime arbitration in context
 - maritime v non-maritime international commercial arbitration
 - English law v transnational law
 - ad hoc v institutional arbitration
- The London Maritime Arbitrators Association (LMAA)
Terms and Small Claims Procedure
 - appointments, procedure, fees and costs
- Case study: *A v B* [2018] EWHC 1370 (Comm)

Maritime arbitration in context

- A maritime arbitration is an international commercial arbitration which in some way involves a ship or almost anything which floats or is fixed to the seabed
- Maritime arbitrations arise in connection with:
 - international trade
 - offshore energy
 - cruise and travel
 - yachts and superyachts
 - shipbuilding
- Maritime arbitrations take place worldwide in institutions but more commonly they are ad hoc

History of maritime arbitration: the first two thousand years

- Ancient Athens, 323 BC:
 - ‘Against Dionysodorus’ (Demosthenes):
 - Breach of a contract with Darius: diversion of voyage to Rhodes, security of ship for loan of 3k drachmas
 - Darius was prepared to agree to a settlement on condition any remaining amount in dispute would be referred to arbitration before ‘one or more merchants of the port’
- Medieval maritime codes:
 - Costums de Tortosa (Catalan), 1272
 - Rôles d’Oléron (Anglo-Norman), 1286
 - Statuta of Doge Rainieri Zeno, Venice, 1255: any dispute between maritime people to be referred to ‘tres ydonei homines’

History of maritime arbitration: the modern era

- The Baltic Exchange in London
 - 24 May 1744 the Virginia and Baltick Coffee House was established at 61 Threadneedle Street in the City of London
 - Rules established in 1837
 - Grain trading to ship chartering worldwide
 - Disputes resolved between experienced shipbrokers in the Exchange with reference to a third if no agreement
- The London Maritime Arbitrators Association (LMAA) established in 1960
 - Origins in list of Baltic Exchange brokers accepting appointments
 - LMAA Terms published 1984

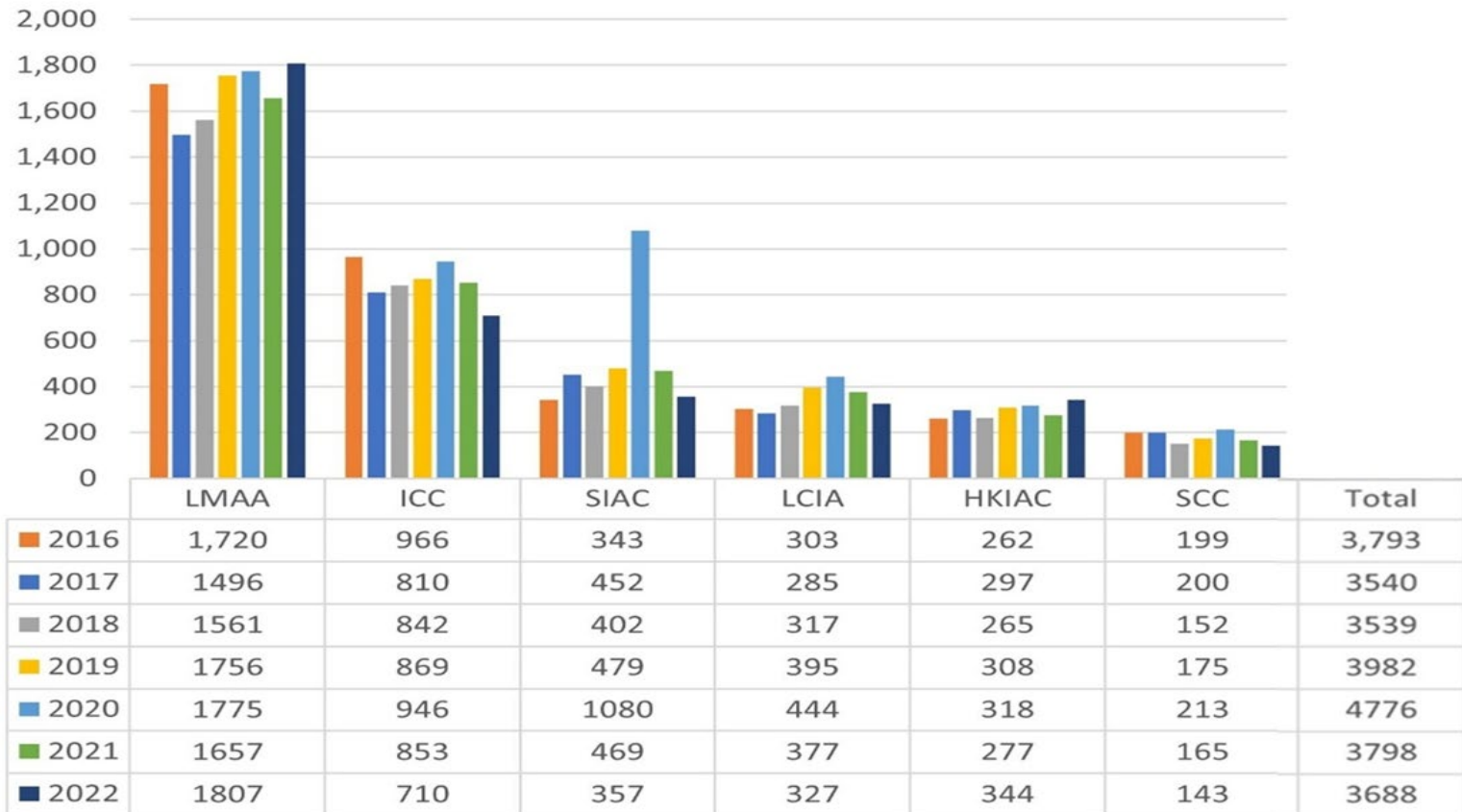
‘International commercial arbitration’

UNCITRAL Model Law Article 1

- ‘commercial’:
 - should be given a wide interpretation - all relationships of a commercial nature, whether contractual or not
 - ‘...any trade transaction for the supply or exchange of goods or services...carriage of goods or passengers by air, sea, rail or road.’
- ‘international’:
 - parties’ places of business are in different states or
 - the place of arbitration is in a different state or
 - performance of the contract takes place in a different state

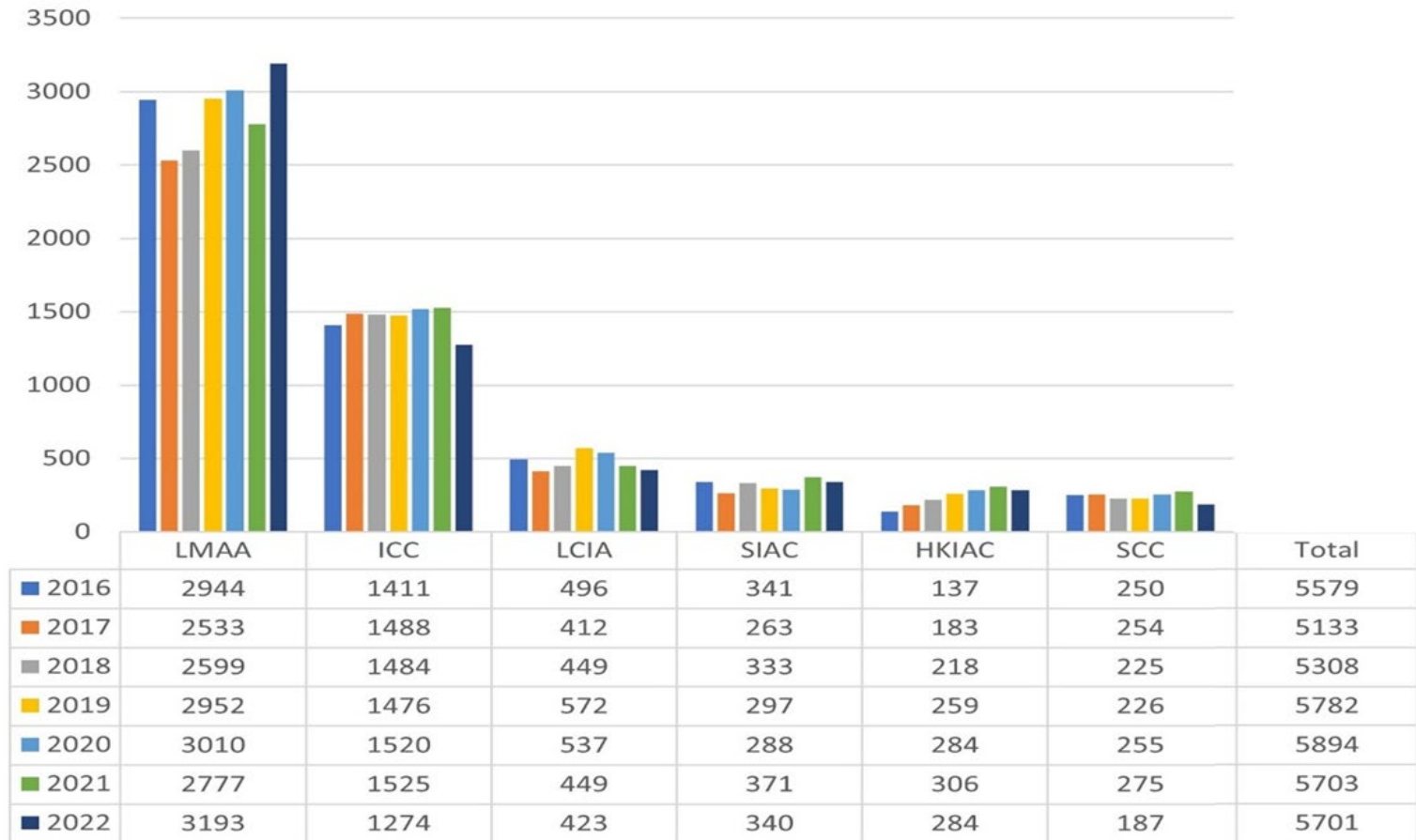
LMAA and major institutions: caseloads

Arbitration caseloads 2016 - 2022



LMAA and major institutions: appointments of arbitrators

Appointments of arbitrators 2016 - 2022



Misconception: the superiority of institutions

- Gary Born: ‘**Although there is room for debate**, most experienced international practitioners fairly decisively prefer the more structured, predictable character of institutional arbitration, and the benefits of institutional rules and appointment mechanisms, at least in the absence of unusual circumstances arguing for an *ad hoc* approach’ (‘International Commercial Arbitration’, **3rd Edition, 2021**, p192)
- Fn 1393: Coyle & Drahozal, *An Empirical Study of Dispute Resolution Clauses in International Supply Contracts*, 52 Vanderbilt Journal of Transnational Law 323 (2019) (90% of arbitration clauses in international supply contracts specify institutional arbitration)
- P328: ‘The sample consists of 157 international supply contracts collected from filings with the US Securities and Exchange Commission (SEC) from January 1, 2011 through December 31, 2015.’

What makes maritime arbitration different?

- The maritime arbitration environment
 - shipping is international by nature of business
 - risks of carriage by sea – numerous disputes
 - arbitration clauses in standard form contracts
 - security for claims (ship arrests), security for costs
 - lawyers are maritime first, arbitration second
- Parties and third parties
 - insurance: liability (P&I), costs (FDD), cargo
 - financing/banks: guarantees, mortgages
 - intermediaries: brokers, managers, claim consultants

What makes maritime arbitration different?

- Maritime v non-maritime commercial arbitration
 - volume of cases -> expertise, costs savings
 - non-lawyer arbitrators -> ditto
 - independent arbitrators -> fewer conflicts
 - full-time arbitrators -> ditto, expertise
 - repeat business -> exception in IBA Conflicts Guidelines
 - costs control: funders (insurers) monitoring proceedings
 - more documents only procedures
- Maritime arbitration community
 - close to the trades – Big Law and academia at a distance
 - cases, not conferences: omitted from surveys, task forces
 - trade press, not legal press: omitted from league tables

English law as a transnational code

- “For the English the characteristic commercial contract is a contract for the carriage of goods by sea.”
- “...the standard forms (our modern commercial codes, which achieve uniformity across national boundaries without any of the trauma and complexity of international conventions)...”

Lord Goff of Chieveley

LMAA arbitration: anchored in England

- In the absence of any agreement to the contrary, the parties to all arbitral proceedings to which these Terms apply agree:
 - (a) that the law applicable to their arbitration agreement is English and;
 - (b) that the seat of the arbitration is in England.

LMAA Terms, paragraph 6

LMAA: an association of arbitrators



- 34 Full Members:
 - former barristers, solicitors, shipbrokers, underwriters, ship operators, traders, engineers, master mariners
 - no competing activities
 - on average, each takes dozens of appointments every year
- 25 Aspiring Full Members:
 - next generation: candidates and potential candidates for Full Membership
- c800 Supporting Members
 - including SMs willing to accept appointments (eg barristers)

LMAA Advice on Ethics: Competence

3.1 To be competent an arbitrator should have:

- (a) sufficient knowledge and experience of the matters in dispute to enable him or her to understand them without requiring unduly long explanations, and
- (b) 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.

LMAA arbitration: no administration

- LMAA President will appoint an arbitrator but only if the LMAA Terms or Procedure have been incorporated in the arbitration agreement
- claimant sends notice of arbitration direct to respondent
- challenges to arbitrators are heard in court
- no supervision of fee agreements – costs budgeting
- no scrutiny of arbitrators' fees and expenses
- no scrutiny of awards – rights of appeal to court
- awards are collected direct from arbitrators upon payment of fees
- new cases aren't registered with LMAA – no monitoring, no intervention

LMAA: no administration but plenty of rules

- appointments accepted on LMAA Terms
- appointment fee in fixed published amount (£350)
- First Schedule: fees
 - right to resign for non-payment
 - booking fees for hearings
 - security for tribunal costs
- Second Schedule: procedure
- Fourth Schedule: checklist
- Sixth Schedule: guidelines for the conduct of virtual and semi-virtual hearings

Compare and contrast

- LCIA Arbitration Rules 2020, art 14.3

The parties and the Arbitral Tribunal shall make contact (whether by a hearing in person or virtually by conference call, videoconference or using other communications technology or exchange of correspondence) as soon as practicable but no later than 21 days from receipt of the Registrar's written notification of the formation of the Arbitral Tribunal.

- LMAA Terms 2021, Second Schedule, para 17:

Tribunals will not acknowledge receipt of correspondence despite any request to that effect unless there is particular reason to do so.

LMAA Small Claims Procedure (SCP)

- LMAA President can appoint sole arbitrator if parties don't agree on one to appoint
- fixed fee (£5k) for procedure
 - paid direct to arbitrator in advance
 - arbitrator may retain a portion of the fee if the case settles before an award has been written
- tight timetable for submissions and award
- word limits for submissions
- no witness statements, experts' reports only if permitted by arbitrator
- no disclosure

Case study: *A v B* [2018] EWHC 1370 (Comm)

- Asbatankvoy standard form c/p in Russian
- Part I, clause J: ‘Arbitration proceedings – London international arbitration court, in accordance with the laws of Great Britain’
- Part II, clause 24: ‘Arbitration. Any disagreements and disputes... arising out of the C/P are to be resolved by arbitration in [struck out: New York or] London, according to which of these places is provided for in Part I ... by a tribunal of three people, one appointed by the owners, one by the charterers, and one appointed by the two arbitrators elected in such a way’

Resources

- Clare Ambrose, Karen Maxwell, Michael Collett, *London Maritime Arbitration* (Informa, 4th edn 2017)
- Eva Litina, *Theory, Law and Practice of Maritime Arbitration* (Kluwer 2021)
- Miriam Goldby and Loukas Mistelis, eds, *The Role of Arbitration in Shipping Law* (Oxford, 2016)
- Jus Mundi, *Maritime Arbitration Report*, May 2022
- James Clanchy, *A Neglected Blueprint: The LMAA's Small Claims Procedure in Expedited International Arbitration: Policies, Rules, and Procedures* (H Verbist and A Anderson ed, Kluwer, June 2024)

Thank you

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