MARITIME DISPUTE RESOLUTION MECHANISMS AND THEIR DOWNSIDES*

Abstract

Since the dawn of humanity, the sea has been a source of sustenance, providing food and avenues of trade. The search for natural resources and wealth resulted in the establishment of the maritime industry. The maritime industry is globally recognized as one of the most economically viable industry capable of facilitating sustainable development thus, amicable settlement of maritime disputes is paramount to guarantee unhindered trade and commerce environment. The availability and exploitation of resources originating from the sea bed as well as the need to define the boundaries of national jurisdiction have resulted in an increase in coastal state's claims over adjacent maritime areas. Given the spate of activities within the sector, maritime disputes become inevitable. This work examined the various ways by which maritime disputes can be resolved and projected the downsides of each method of resolution. The objective of this study was to determine the most viable means of resolving maritime disputes. The methodology adopted in this research is doctrinal. It involves both library-based research and internet sourcing. Comparative analyses of all the available mechanisms for resolution of maritime disputes have been made and the work found that arbitration is the most viable function for the settlement of such disputes. Maritime arbitration remains the best way to resolve maritime disputes that arise, in part because of the often lower costs involved and the ability to mold the process to the needs of the parties involved. It offers more advantages than litigation and the other alternative dispute resolution processes (ADR). The research concludes that resolving maritime disputes through arbitration brings about an enhancement of stability in commercial and investment relations.

Keywords: Maritime Dispute, Settlement of Maritime Dispute, Mechanisms for Resolution of Maritime Dispute, Maritime Arbitration

1. Introduction

Disputes are inevitable in any societal context. Human beings are bound to disagree on and at almost every point in life, as long as they interact. In human relations therefore, disagreements and disputes are bound to occur[1]. Man has been described as a gregarious animal and thus disputes must occur in the course of co-existence and interactions in daily activities. The maritime sector is not left out. Dispute arises in it too. Just as there are varying types of transactions, so are myriad of parties involved in the maritime industry. These include ship owners, charterers, the crew, insurance companies, port administrators, dock workers, inspection agents, bankers, sellers and buyers. Thus the many contractual relationships generated thereby are potential sources of disputes in the sector.[2] Maritime disputes cover a wide range of areas such as charter parties, bills of lading, sale of ships, ship financing, ship building contracts and contracts of marine insurance. Such disputes usually span oceans and are international in nature[3]. Disputes under bills of lading are usually concerned with damage to or loss of cargo. Less frequently, disputes may be referred under memoranda of agreement for the sale of ships, such disputes usually concern delay in delivery, failure altogether to deliver, to take delivery or technical issues as to the condition of the ship on delivery. There are also contracts of affreighment, under which substantial exporter or importer may secure the agreement of a company for the supply of a number of ships to carry cargo over a period of time. In addition, there are disputes under ship building contracts (which generally concern the specification of the ship, delay in delivery or failure to take delivery) and those which arise under contracts for the repair of ships[4]. Such disputes are governed by universal principles of contract, commercial and maritime laws and the municipal laws of the relevant countries. Dispute Resolution as the name implies is the settling of conflicts. The course of settling disputes may involve litigation or any of the alternative dispute resolution mechanisms (ADR)[5] and arbitration. Maritime activities naturally generate conflicts which could be resolved through any of the above methods. This work will consider these various ways of resolving such disputes and their pitfalls.

2. Litigation

The most common formal mechanism for resolving disputes till recent times (but not necessarily the most effective) has been litigation. Litigation is the process of carrying on a law suit[6]. It has been defined as a legal

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[1] K Aina, 'The Multi-door Court House Concept: a Silent Revolution in Legal Practice' (June 2008) 6 (1) *NBLPJ*, 1

[2] A Rhodes-vivour, 'The Agreement to Arbitrate- a Primary Tool for the Resolution of Maritime Disputes' (2008) <http://www.drvlawplace.com/media/AGREEMENT- TO-ARBITRATE.pdf> accessed on 24th July, 2012

[3] A Rhodes-vivour, 'Arbitration in the Resolution of Maritime Disputes' *op cit*

[4] B Harris, *et.al*, 'London Maritime Arbitration' cited in A Rhodes-vivour, *Arbitration in the Resolution of Maritime Disputes op cit*

[5] Alternative Dispute Resolution

[6] A B A Gumel, 'Trends in the Adjudication of Maritime Cases: The Experience of a Trial Court Judge' (2003) 1 No 1 *NJML* 58.

action including all the proceedings therein. It means action, cause or matter in courts of law.[7] It therefore, involves machinery for the resolution of competing rights and liabilities of disputing parties through the regular courts. The history of litigation has been one of adversarial dispute resolution, of a win-lose process. With this process it is rare to understand the underlining motives behind conflicts. Substantively in Nigeria, maritime law falls within the exclusive legislative competence of the federal government and original jurisdiction to administer same is vested in the Federal High Court to the exclusion of all other courts[8]. The Constitution of the Federal Republic of Nigeria also provides thus:

> Notwithstanding anything to the contrary … the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cause and matter-
> g) any admiralty jurisdiction including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports' authorities for (Federal ports) and carriage by sea[9],

The Federal High Court also exercises jurisdiction with respect to criminal cases arising or pertaining to the above jurisdiction in civil cases and matters. The types of claims which may be heard and determined by the court are set out in the Admiralty Jurisdiction Act. The claims are classified as proprietary claims, maritime liens and general or statutory liens[10]. The filing of court process to commence a maritime action is governed by the provisions of the Admiralty Jurisdiction Act[11], the Admiralty Jurisdiction Procedural Rules (AJRP)[12] and Federal High Court Civil Procedure Rules[13]. However, enforcement of maritime claims via litigation in Nigeria is confronted with several limitations which make litigation undesirable.

Procedural Problems in Maritime Litigation

It is recognized that there are some merits in litigation, but it is also indisputable that this forum for dispute resolution, which the courts represent, is not without perceived flaws. It has been observed that '… the law suit is bipolar; litigation is organized as a contest between at least two individual interests to be decided on a winner-takes-all basis'[14]. Procedural problems in the way of litigants in their efforts to have expeditious disposal of their maritime matters are numerous. In Nigeria, however, litigations involving shippers and providers of shipping services have always been long drawn and, sometimes, inclusive, leaving either the plaintiff or the defendant and even both, on some occasions, feeling short-changed[15]. There are instances where vessels which have been arrested at the instance of a shipper are allowed to stay at anchor for unduly long time. At the time the matter is resolved, the ships may have become so dilapidated that they could be classified as scraps. Such is the convoluted process of admiralty litigation that many shippers have to abandon their maritime claims. It is worthy to note that the problems discussed herein are not peculiar to litigants alone but also extends to the courts. Some of these problems arise mainly in the application of the Rules which regulate the practice and procedure of admiralty matters. There is another problem in maritime litigation which is traceable to interlocutory applications. The ultimate effect of interlocutory applications is the unnecessary delays and frustration of litigants which our Rules[16] and practice in maritime matters occasion. This situation is illustrated by the case of *Maersk & anor v Adidide Investment Limited & anor*[17]in which interlocutory appeals alone proceeded up to Supreme Court with a final determination on the interlocutory issues after seven years. The substantive action was commenced in January, 1996. The appeals and counter appeals arising from the interlocutory decisions of the trial court and the Court of Appeal ended at the Supreme Court in April 2003.

Litigation by its nature is a cause for anxiety to those concerned with it whether as lawyers or as parties. This is primarily because of the uncertainties on the outcome of litigation. In addition to the general uncertainty on the outcome are worries on the cost of protracted litigation, the consequences of a judgment against a party and the reliability of witnesses[18]. The expenses, inconvenience and delay associated with litigation can be disproportionate to the amount in dispute. Moreover, Litigation is unlikely to preserve the business relationship. Its end product is

[7]G C Nwakoby & F Anyogu, 'Institutionalizing Alternative Dispute Resolution Mechanism in the Nigerian Legal System' (2004) 4 No. 1 *UNIZIK LJ*, 147.
[8] Federal High Court Act Cap F12 Laws of the Federation of Nigeria 2004, s. 7 (1) (g)
[9] The Constitution of the Federal Republic of Nigeria 1999 (as Amended) s. 251 (1) (g)
[10] Admiralty Jurisdiction Act Cap A15 Laws of the Federation of Nigeria 2004, s. 2
[11] 2004
[12] Admiralty Jurisdiction Procedural Rules 2011
[13] Federal High Court (Civil Procedure) Rules 2009
[14] A Chayes, 'The Role of Judge in Public Law Litigation' (1989) *Harvard Law Review*, 128
[15]L Adedeji, 'Dispute Resolution and the Practice of Arbitration' <http://www.thelawyerschronicles.com/index.php?option=com> accessed on 12th November, 2012
[16] Admiralty Jurisdiction Procedural Rules, Or. 16 r. 2 & 3
[17] (2002) I S C C vol. II 157
[18] F Ajogwu, *Commercial Arbitration in Nigeria: Law & Practice* (Lagos: Centre for Commercial Law Development, 2009) p. 1

rancour and enmity. What ought to resolve a dispute and put the parties together will only turn out to make them perpetual enemies worse than they were before the court proceeding. The parties cannot select their judges and they have no control over the court proceedings. Most times, the judges have little or no experience in maritime law or the maritime industry, which in turn may lead to an unsatisfactory result. Finally, the cost and delay associated with an appeal is nothing to write home about. Years may elapse before a dispute is finally brought to trial and taken through appeal. Those years translate into significant fees and costs.[19] It is obvious that litigation is not the best option for resolving a maritime dispute.

3. Alternative Dispute Resolution Process (ADR)

There are various means by which disputes can be resolved other than litigation and the law allows for such means of settlement of dispute.[20] It has long been a principle of public policy to encourage and promote the out-of-court settlement of disputes. Indeed, this policy is by no means confined to Nigeria and is reflected in the approach to settlement of disputes taken in many diverse jurisdictions throughout the world. Public policy is clear from many authorities that parties should be encouraged as far as possible to settle their disputes without reference to litigation. It is interesting to note that the 1999 Constitution has recognized ADR in her foreign policy objectives as a means of settlement of disputes[21]. According to the Constitution: The foreign policy objectives shall be- (d) 'Respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication'[22] The acronym (ADR) is a term that covers a wide spectrum of alternatives to litigation, spanning negotiation, mediation, conciliation, valuations, certifications and hybrids of these. It is a process involving a neutral third party assisting parties for the purpose of resolving a dispute. The mode of settlement of dispute between two or more parties out- of- court is a method referred to as Alternative Dispute Resolution. The ever expanding global economy has necessitated the adoption of this expeditious, flexible and responsive process. ADR comprise of (but not limited to) these methods which shall be x-rayed *seriatim.*

Negotiation

This is usually the first step in most ADR. Negotiation is certainly one of the oldest forms of Alternative Dispute Resolution processes. It consists of a 'quid pro quo' of a sort, that is, giving up something in order to get something else in return[23]. It involves discussions or dealings about a matter, with a view to reconciling differences and establishing areas of agreement, settlement or compromise that would be mutually beneficial to the parties or that would satisfy the aspiration of each party to the negotiation. Compromise here implies flexibility on both sides and derives from a genuine desire on the part of the parties to reach an agreement.[24] The strength of this mechanism lies in the opportunity it offers to disputing parties to resolve their differences on their own initiative and volition without extraneous promptings or impositions from third parties, including court.[25] Here the parties appreciate their different positions and proclivities in relation to the issue in controversy and mutually resolve to find a lasting settlement which would reconcile their distinctive positions. In this way, third party prejudices are completely eschewed.[26] The decisions arrived at in a negotiation does not bind the parties, unless they agree to be bound by it[27]. This is a general feature of every ADR process. Myriads of disputes are daily negotiated. In maritime dispute, negotiation is not a proper tool to use in resolving it. Negotiation is merely a method to resolve a dispute, but it does not guarantee the settlement of a dispute. It is quite possible for negotiations to become ineffective if the parties' positions are far apart and there are no common interests to bridge the gap[28]. The failure to compromise by negotiations is attributable to the fact that maritime zone has a psychological importance for nations that is quite out of proportion to its intrinsic value, strategic or economic. Where neither party is willing to compromise the negotiation will reach an impasse. China and Japan tried to settle their maritime boundary dispute in East of China Sea by negotiations, but they failed after nine rounds of talks because they found their views were so different and uncompromising. When negotiation fails and ends a war may break out if no other quick step is taken to resolve the dispute. In most cases without a binding decision, on maritime dispute, it may trigger a war. Negotiations are political in nature and often submitting to intervening pressures from some other interests groups. Sometimes such influential pressures may obstruct negotiations or even make negotiations impracticable for parties. In such case, the involvement of third party may relieve the government of direct responsibility and accountability for compromise and this makes compromise impossible. In nut shell negotiation is not an entirely

[19] M Raia, 'Resolving Maritime Dispute' *Pacific Maritime Magazine*' 2010, p. 12

[20] Federal High Court (Civil Procedure) Rules 2009, Or. 18 r. 1 (1) provides "when a matter comes before the court for the first time, the judge shall in circumstances where it is appropriate, grant to the parties, not more than thirty (30) days within which parties may explore possibilities for settlement of the dispute".

[21] P Obiora, 'Alternative Dispute Resolution and the Nigerian Judiciary' (2010) *CBJ*, 47

[22] Constitution of the Federal Republic of Nigeria, *op cit*, s. 19 (d)

[23] G C Nwakoby & F Anyogu, *op cit*, p.149

[24] M A Ajomo, 'Alternative Dispute Resolution' (1996) *CLEANJ*, p. 4

[25] C A Obiozor, *Nigerian Arbitration Jurisprudence* (Onitsha: Allied Press & Co, 2010) p. 53

[26] C A Obiozor, *Nigerian Arbitration Jurisprudence op cit,* p. 53

[27] C E Ibe, 'An Overview of Alternative Dispute Resolution Methods' (2004) 4 No 1 *UNIZIK LJ*, 215

[28] J G Merrills, *International Dispute Settlement* (5th edn, Cambridge: Cambridge University Press, 2011) p. 22

satisfactory way of securing an expeditious and final solution to maritime disputes. Thus to guarantee peaceful settlement of maritime dispute negotiation should not be regarded as the best method.

Mediation

This is another ADR process and the most common form of it. Mediation is defined as a flexible process conducted confidentially, in which a neutral person known as the mediator actively assist parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.[29] It is an informal and private mechanism by which a dispassionate third party in whom the parties to dispute repose confidence and trust, and who is known and called the 'mediator' intervenes in a dispute by taking steps to promote an amicable resolution of the dispute by the parties themselves[30]. A mediator is a person who is trusted and accepted by both parties to a dispute[31]. The role of the mediator is to assist the parties to reach an agreed settlement of the dispute. He does not suggest or offer any compromise solution to the dispute. The technique used by him is one of persuasion. He is not a decision maker. The procedure he adopts to achieve this is to meet each party privately, so as to understand that party's own side of the story. Thereafter he tries to bring both parties together so that they may themselves work out a compromise solution to the dispute. He does not himself suggest a solution to the parties and cannot compel them to reach a settlement.[32] It is a non-binding procedure.

Conciliation

This is another dispute resolution mechanism under ADR. It entails settlement of dispute in an amiable and less rancorous manner[33]. In this method, the conciliator usually is a trusted and respected friend of the parties in dispute. He is a neutral person connected merely with proposing to the parties, terms of settlement decided by him[34]. In most cases the conciliator goes on meeting the parties, seeking to know whether they are willing to settle their dispute amicably. This settlement is reached by consensus. Where the conciliator is notified of the pending dispute, first of all, he enquires from the parties whether they are prepared to settle the dispute amicably. If the response is positive, he meets the parties separately in order to understand what the dispute is about from the account of each party. This is seen as the preliminary stage. Thereafter, he arranges a joint meeting, where he listens to the parties as each presents his case. He listens carefully; asks questions and draws out the various issues raised by parties. After the joint session, he meets with each party privately, with a view to discussing the matter in confidence and finding out the point beyond which the party is not prepared to go. In other words, he seeks to find out the party's bottom line.[35] It is consequent upon this, that he formulates his solution to the dispute, presents the same to the parties in the form of a suggestion. The idea is to midwife an amicable and fair resolution of the dispute.[36] The parties are free to reject or accept the drawn up proposal. It must be borne in mind that the conciliator's proposed solution is actually a mere proposal which may or may not be accepted by the parties. However, if the parties accept it, it becomes binding on them but where either of the parties rejects it, the settlement fails.

Short Comings of ADR

Having looked at the ADR processes though not exhaustively; it is glaring that ADR has come to stay. The rising popularity of ADR can be explained by the increasing caseload of traditional courts. It is a credit to ADR that it saves time and monetary expenses. It is a more flexible procedure. It gives parties control over the procedure. It is preferred for its confidentiality. It avoids acrimony and reduces hostility and antagonism. ADR saves relationships and encourages a continued cordiality between the parties.

Notwithstanding all these credit to ADR, it has its own downsides. They are as follows:

1. One unique feature of all ADR processes is their non-binding effect. This feature is the ADR peccadillo. As parties can abandon the process mid-stream and go back to litigation or allow it to end and still go back to litigation. If this happens, the entire exercise becomes wastage of time and resources. Its advantages of time saving and cost effectiveness will no longer be achieved. This is because the cost of starting off the process and later litigating may exceed the potential cost of pursuing litigation at the first instance.
2. Again the issue of *res judicata* cannot apply under ADR processes. The decision emanating from the process cannot be tendered before the court. A court also cannot stay proceedings to refer the parties back to the ADR process. Once a party proves that he did not consent or accept the decision, the whole proceedings will be rejected and jettisoned.

[29] K Aina, 'The Multi-Door Court House Concept: A Silent Revolution in Legal Practice' (2006) 6 (1) *NBLPJ*, p. 3
[30] C A Obiozor, *Nigerian Arbitration Jurisprudence op cit,* p. 49
[31] *Ibid*
[32] G Ezejiofor, *The Law of Arbitration in Nigeria* (Lagos: Longman Nig Plc, 1997) p. 93
[33] C A Obiozor, *Nigerian Arbitration Jurisprudence op cit,* p. 55
[34] *Ibid*
[35] G Ezejiofor, *The Law of Arbitration in Nigeria, op cit*, p. 7
[36] C A Obiozor, *Nigerian Arbitration Jurisprudence*, *op cit,* p. 57

3. No recourse to appeal – ADR processes make no room for appeal and unless the parties reject the decision, it may be difficult to review a bad decision where the parties accept the decision.
4. ADR processes do not provide legal precedents – Decisions in previous proceedings are not binding in subsequent or similar proceedings. No decision is also recorded for publication except with consent of the parties.
5. Parties lack confidence in it and most people treat it with levity.
6. ADR processes are prone to bias. As the negotiator, mediator or conciliator must be someone known by both parties and most times chosen by them, he can easily be influenced or swayed. He may have soft spot for a particular party than he had for the other and this will surely affect his decision.

It is submitted that the ADR processes discussed above are not best options in resolving maritime disputes. Cases where they have been used, they were not adequate enough to resolve the maritime dispute.

4. Arbitration and Settlement of Maritime Disputes

Arbitration is a non- judicial legal technique for resolving dispute by referring them to a third party for a binding decision called 'award'. It is a process in which a neutral third party, after listening to evidence and arguments from the parties in relatively informal hearing makes a binding decision resolving the dispute[37]. To Orojo and Ajomo, arbitration is seen as 'the procedure for settlement of disputes, under which the parties agree to be bound by the decision of an arbitrator whose decision is, in general, final and legally binding on both parties'[38]. As between states, arbitration is undoubtedly a popular, flexible and practical method of settling disputes. International disputes often proceed to arbitration when diplomacy has failed to resolve the disagreement. Many maritime contracts contain an arbitration clause requiring the parties to arbitrate any dispute arising under the contract[39]. The peculiarities of shipping are clearly apparent. There is often a foreign element, although there could of course be contractual or non contractual disputes arising from activities in coastal waters and other navigable waters adjacent to the sea in which maritime activities take place. Cabotage disputes can be arbitrated instead of recourse to litigation.[40] It is no wonder arbitration has been very appealing to the maritime industry. It may be contractually agreed by the parties in advance of the dispute or ordered by a court in a pending law suit or initiated voluntarily after the dispute has arisen. The Act defines it as a commercial arbitration whether or not administered by a permanent arbitral institution[41]. Two major under-currents have inspired global growth of arbitration. The first relates to dissatisfaction with the costs, delays and uncertain outcomes of the litigation systems; the second traces to a deeper social transformation involving the search for systems, which can adequately match the speed, responsiveness, customer orientation and globalization of business and technological change. Arbitration thrives more in commercial transactions and admiralty matters take pre- eminent place in commercial transactions. A number of maritime disputes have been resolved through arbitration over the years. Some were resolved by the Permanent Court of Arbitration (PCA)[42] and some resolved by arbitrators chosen by disputing parties. These include the arbitration between (France/ Mexico)[43], Rann of Kutch (India/ Parkistan)[44] and Beagle Channel (Argentina/Chile)[45] cases. One peculiar challenge of this work is that most maritime disputes resolved under arbitration forum were not resolved in Nigeria.

This work shall look at the Eritrea- Yemen maritime dispute which went to arbitration. The dispute was over the location of disputed islands, islets, locks and low tide elevations in the Southern Red Sea, partly along the shipping lanes connecting strategically Babel Mandeb on the Southern part to the Suez Canal[46]. It raised concern about a

[37]O T Ibironke, *Contract Law and Arbitration for Construction Works* (1st edn, Timlab: Technical Books, 2004) p. 58

[38] J O Orojo & M O Ajomo, *The Law and Practice of Arbitration and Conciliation in Nigeria*, *op cit*, p. 3

[39] O U Aimhanosi, 'A Comparative Legal Analysis of the Role of Arbitration in Maritime Dispute Resolution' <http://www.lib.iium.edu.my/mom2/cm/content/view/viewgsp?key> accessed on 16th February, 2013

[40] D L Buffy, 'Dispute Resolution on the High Sea: Aspects of Maritime Arbitration' (2002) 8 *Ocean & Coastal Law Journal*, p. 71

[41] Arbitration and Conciliation Act 2004, s. 57

[42] Maritime Boundary Dispute between the People's Republic of Bangladesh and the Republic of the Union of Myanmar in the Bay of Bengal 2012. Prior to the institution of the arbitral proceedings by Bangladesh at the Permanent Court of Arbitration, negotiations on the delimitation of the maritime boundary were held between the two countries from 1974 to 2010. Eight round of talks took place between 1974 to 1986 and six rounds between 2008 to 2010 but none of the negotiations resolved the dispute. In 2010, Bangladesh initiated arbitration proceedings which put the dispute to rest in 2012; Also in Barbados/Trinidad and Tobago maritime dispute, the parties had carried out discussions and formal negotiations on the use of resources and questions of delimitation since late 1970's and in July 2000 respectively. Despite these efforts, however, the parties failed to reach agreement. It was the award rendered by the tribunal (Permanent Court of Arbitration) that resolved the dispute amicably; Guyana and Suriname arbitration of 2007.

[43]1932

[44]1968

[45]1977

[46]B Kwiatkowska, 'The Eritrea / Yemen Arbitration: Landmark Progress in the Acquisition of Territorial Sovereignty and Equitable Maritime Boundary Delimitation' <http://www.peaceplaacelibrary.nl/plinked/index.php > accessed on 13th May 2014

possible threat to international navigation. The hostilities which grew in December 1995 with Eritrea forces occupying greater Hanish Island and Yemen forces occupying Zugar threatened to become an Arab/African conflict. Since May 1998, the Eritrea/Yemen maritime dispute has been paralleled by military clashes over the Yemen/Saudi Arabian land and sea borders and protracted Eritrean/Ethiopian border crises[47]. This dispute was resolved under the forum of arbitration. In conformity with the arbitration agreement of October 3rd 1996 of the parties, Eritrea appointed two arbitrators and Yemen appointed two, then the four arbitrators appointed by the parties appointed the fifth arbitrator. The arbitration agreement was between the government of the state of Eritrea and the government of the Republic of Yemen[48]. The place of arbitration was London as stipulated in article 2 of their agreement. Eritrea and Yemen requested the tribunal to decide issues of territorial sovereignty in accordance with the principles, rules and practices of international law applicable to the matter, and on the basis, in particular of historic titles as well as to decide the scope of the dispute on the basis of the respective positions of the parties. The tribunal is also to decide the delimitation of the Red Sea between the two parties. The tribunal rendered two awards. The first award addressed the territorial sovereignty and the scope of the dispute while the second award addressed the maritime delimitation. The tribunal awarded critical Island groups to Yemen and stated that 'in the exercise of its sovereignty over these islands, Yemen shall ensure that the traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of the lives and livelihoods of this poor and industrious order of men[49].' In the award the tribunal held that, the islands, islets, rocks and low tide elevations of the Zuquar- Hanish group close to North, East and South of Hanish, Zuquar are subject to the territorial sovereignty of Yemen while the South and West islands, islets, rocks and low tide elevations forming the mohabbakah islands including Sayal islets, Harbi islet, flat islets were subject to the territorial sovereignty of Eritrea[50]. The second award delimited the Red Sea boundary between the two states. The tribunal effected the delimitation of the international maritime boundary between the states by means of a single all purpose boundary between their territorial seas, Exclusive Economic Zone and the Continental Shelves. A single equidistant (median) line was drawn by the tribunal after careful consideration of all the cogent and skillful arguments advanced by the parties. The tribunal also held that the nationals of one country are entitled to sell on equal terms and without and discrimination in the ports of the other and within the fishing markets of themselves. Although this dispute was not arbitrated in Nigeria, the decision would not have been different if the arbitration was conducted in Nigeria. This is because the procedure followed in the arbitration is the same as any arbitral proceedings conducted in Nigeria. For instance, the existence of arbitration agreement which conferred jurisdiction on the arbitrators is applicable in Nigeria. In Nigeria, also parties appoint their arbitrators and choose the applicable law just the way it was done in this case.

The notable role arbitration played in resolving this maritime dispute is that it paved way for the harmonious relationship between the two states. It achieved this by stating that Yemen in exercising its sovereignty shall ensure that the traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of the lives and livelihoods of both states. It also opened a new window of opportunity for consolidation of peace and stability in the region and created a zone of peace, development and mutual benefit. This was achieved in its decision that the nationals of either country are entitled to sell on equal terms without any discrimination in the ports of the other. Thus it established continuous commercial and investment relationship. In a nut shell, the two Eritrea/Yemen arbitral awards unanimously resolved the disputed territorial sovereignty over the Red Sea Islands and the delimitation of the international maritime boundary, to the satisfaction of both parties and to the benefit of the consolidation of peace and security in one of the strategically most sensitive regions of the world. The Eritrea/Yemen maritime delimitation is a land mark decision substantiating the mutually reinforcing relationship between the disputing parties.

5. Advantages of Arbitration over other Mechanisms

To portray the advantage arbitration has over other methods of dispute resolution, Peter Lovenheim[51] states thus:

> If your dispute is with someone with whom you need or want to have a long term relationship with, for example a business customer, a neighbour, family member or a friend, an official finding of faults or guilt not to mention all the nasty things your lawyer said to prove it – it can easily destroy whatever might have been left of the relationship… hitherto, arbitration has been the only alternative to resolution of disputes other than litigation, particularly in such specialist fields as maritime and commodity disputes.

[47] *Ibid*

[48] B Kwiatkowska, 'The Eritrea / Yemen Arbitration: Landmark Progress in the Acquisition of Territorial Sovereignty and Equitable Maritime Boundary Delimitation' *op cit*

[49] I V Karaman, *Dispute Resolution in the Sea* (Netherlands: IDC Publishers, 2012) p. 56

[50] *Ibid* p. 58

[51] Lovenheim, 'Mediate: Don't Litigate' cited in J C Anishere, *Essays in Admiralty: An Introduction to Legal Issues in Shipping from a West African Perspective* (England: Petrospot Ltd, 2012) p. 164

Arbitration has continued to maintain the lead as the preferred mechanism for the resolution of domestic and international disputes in the world. The main practical reasons for choosing arbitration as the favoured dispute settlement mechanism with regard to maritime disputes are as follows;

(a) Arbitration offers more space for cultural accommodation. Because arbitration allows arbitrating parties to choose their arbitrators, they may choose the arbitrators who possess better knowledge of their cultures. When parties to arbitration come from diverse cultural environments, the arbitrators' understanding of the cultural psychology of the parties to the arbitration process is very important. The cultural understanding may help the arbitrators to arrange the arbitration in accordance with the parties' cultural inclinations. This feature looks more suitable for resolving such highly emotional disputes as maritime disputes.

(b) Arbitration focuses on the resolution of the underlying problem which leads to the dispute, rather than merely the defeat of one's opponent. The emphasis on resolution, not battle, also contributes to the benign relationship between the arguing parties. As a result, arbitration being fact driven and fact oriented is better able to resolve the emotional issues while taking into account of long term harmonious relationship. This is very important for settlement of maritime disputes.

(c) International arbitration is traditionally considered as more yielding to sovereignty than litigation before national courts because adjudication has less flexible procedure than arbitration. In arbitration the parties may limit the range of decisions because it is open for the tribunal to reach and maintain a measure of control over stages of the process. Arbitral tribunals have tended to accept and comply with such limitations. This feature makes arbitration more attractive to states that, on one hand, yearn for settling their maritime disputes through legal methods, on the other hand, are reluctant to give up all their control of settlement procedure. For example, the parties are allowed to desire that the arbitration shall be held in private and the award shall remain unpublished. Secrecy is a very important issue in settling the emotional maritime disputes.

(d) In arbitration, the autonomy of the parties can also render intervention by third states virtually impossible.

(e) Arbitration can be regarded as a shift from the power- oriented system towards the law oriented system. It is called 'an attempt to bring the rule of law into international relational relations and to replace the use of force with the routine of litigation

(f) There is need to have a legally binding and compulsory dispute settlement mechanism between the relevant parties which the other ADR processes discussed earlier cannot offer. Their decisions are never binding on the parties except where the parties accept it but arbitration is an ADR process whose arbitral award is binding on the parties.

(g) The high points of arbitration over other mechanisms include its informality, speed, comparatively reduced cost and the involvement of the parties in choosing the arbitrator. All these are lacking in litigation.

(h) Also available to a great extent is the opportunity of having in advance a clear and definitive agreement as to the rules that will govern the arbitral proceedings. It gives the parties autonomy in all ramifications to choose the rules. This is not so with litigation where the parties have no say in the rules that will apply.

(i) Arbitration is highly recommended where confidentiality must be preserved, where the parties wish to avoid the time, expense and publicity of a court trial and where specialized expertise of the tribunal will assist the parties in resolving their dispute. Litigation cannot do without publicity. The trial is done openly and the judgements are published in law reports.

(j) At the international level, arbitration provides an attractive option because it provides a mechanism to settle disputes without parties having to be subjected to the jurisdiction of courts other than those of their own choice. Also the arbitral proceedings could be altered to take into account diverse legal systems and practices attendant to international trade. This is not obtainable in other mechanisms.

(k) Arbitration is particularly useful in technical cases, or those involving specialized knowledge, such as maritime disputes. Most importantly, parties can choose their own arbitrators who are knowledgeable in the subject matter of dispute unlike the court system, where cases are assigned to judges and they may not be knowledgeable in the subject matter of dispute.

(l) In arbitration, parties can agree on the location and schedule for the hearing, the manner of obtaining and using evidence, the use of live testimony or declarations, the confidentiality of proprietary information, the identity and number of arbitrators and the scope of issues to be arbitrated. But in litigation, everything is regimented. The law determines where the place of hearing will be and virtually everything.

6. Conclusion

Since maritime sector serves as one of the most viable alternative sources of national income in Nigeria, there is need to install a well-structured dispute settlement system. Considering the overwhelming benefits of arbitration over other means of settling maritime disputes, arbitration becomes the best to be considered due to its enforceability which makes its suitable for commercial disputes like maritime disputes. This work recommends an increased public sensitization and adoption of a standardized national arbitration clause in all maritime contracts involving Nigerians as this will also go a long way in the protection of local content in maritime arbitrations in Nigeria.