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Review Article

Impact of the Central African Economic and Monetary Community's merchant shipping instruments on Cameroon's maritime legislation

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Abstract

The regulation of the shipping industry is deeply rooted in treaties or agreements-whether bilateral, multilateral, or of a global scope. Where such treaties emanate from a regional or sub-regional organization, however, it all depends on whether the organization in question is geared towards loose cooperation or formal integration. A loose cooperation-oriented organization such as the Gulf of Guinea Commission does not have treaty-making competence. On the other hand, a formal integration-oriented organization such as the Central African Economic and Monetary Community (known by its French acronym, CEMAC) usually develops instruments that tend to heavily impact the legislative framework of its member-states. The impact of the latter organization's Merchant Shipping Code regime on Cameroon can be seen from what the country has achieved in terms of modernizing its maritime legislation and providing solutions to the challenges inherent in its dual legal system. The CEMAC Merchant Shipping Code (hereinafter referred to as the 'Sub-regional Shipping Code') must also be perceived as a component of Cameroon's overall effort geared towards meeting international maritime legislative implementation and enforcement standards. However, the challenges confronting Cameroon at these various levels are huge, notably in light of the country's inability at this point to fit into the recent International Instruments Implementation (III) Code scheme, which happens to be the single most important implementation and enforcement tool put in place to date by the International Maritime Organization. Questions thus arise as to the adequacy of the Sub-regional Shipping Code regime in addressing these challenges. This article is an appraisal of the said regime in its perceived role as a vehicle for developing Cameroon's maritime legislation and addressing the related challenges inherent in the country's dual legal system. The methodology adopted is doctrinal in approach and involves a content analysis of primary and secondary data. The article concludes that regional cooperation is a crucial complementary means by which to achieve good maritime governance and recommends that Cameroon should work towards achieving an enhanced Sub-regional Shipping Code regime, as well as an improved status of ratification in respect of international maritime instruments, complemented precisely by meaningful relations with cooperation-oriented bodies, especially the Abuja Memorandum of Understanding on Port State Control.

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1. Introduction

Over the years, regional (and sub-regional) economic integration organizations have come to establish themselves as an important vector in terms of helping countries update and develop their maritime legislation. It is important to note that 'maritime legislation' and 'shipping legislation' mean "one and the same thing" (Mukherjee, 2002). In Europe, for instance, the European Union (EU) has developed strong maritime legislation applicable to its member countries. Similarly, CEMAC, of which Cameroon is a member, plays an important role in uplifting what may otherwise be seen as ill-adapted maritime legislation of its member states (Vanchiswar, 1996). It would be recalled that the other CEMAC member states are Gabon, Chad, Congo-Brazzaville, Equatorial Guinea, and the Central African Republic. Although CEMAC transport regulatory instruments are designed to help the organization's member states contribute towards achieving economic integration and development for the sub-region, such instruments should also be seen as a means by which these states can continue to assume their maritime legislative responsibilities (Ndze, 2019).

Maritime governance requires looking beyond the work of regional (and sub-regional) economic integration organizations. It is useful in this regard to distinguish between 'loose cooperation-oriented' regional organizations and 'regional integration' organizations. The former generally function alongside well-established international organizations such as the United Nations (UN) and the International Maritime Organization (IMO) and do not have treaty-making competence. However, they are known for working to encourage states in the implementation and enforcement of major international instruments at the regional level. 'Formal integration' organizations, it would be recalled, usually develop instruments that tend to heavily impact the legislative framework of their member states. However, maritime legislation draws from several other sources as well, notably international conventions. Since shipping is inherently international, it is vital for countries to ratify, effectively implement, and verifiably enforce at least most, if not all, the major maritime instruments adopted at the international level when such instruments enter into force. It would be recalled that a country may also become a party to a convention by acceptance, approval, or accession. In any event, most conventions specify what steps countries are required to take.

This article investigates ways in which improvements can be brought to Cameroon by the Sub-regional Shipping Code regime in order to help the country develop its maritime legislation in a manner that is benefitial to its domestic shipping stakeholders. Its objective is to demonstrate how the CEMAC transport and transit facilitation legislative package has helped Cameroon to modernize its maritime legislation and address the challenges inherent in the country's dual legal system, and how this newfound situation is reflected in the country's standing vis-à-vis international maritime implementation and enforcement standards. This raises the question as to the adequacy of the Sub-regional Shipping Code regime and the attendant need to harness the ingredients necessary to give the country a good standing in terms of maritime legislation. The assumption is that the said regime has dispensed with major obsolete and inconsistent elements epitomized by the Cameroon Merchant Shipping Code of 1962 (hereinafter referred to as the 'Cameroon Shipping Code') but, in order to achieve genuine maritime legislative development, Cameroon needs to have the capacity, ability, and willingness to respect IMO treaty implementation mechanisms and requirements, and also develop strategies and policies aimed at ensuring that domestic shipping interests are safeguarded in the legislative development drive.

The methodology adopted in the writing of this article is doctrinal in approach and involves a content analysis of primary and secondary data. As examples of primary data used, mention may be made of the Constitution of Cameroon, the Sub-regional Shipping Code, and so on, while examples of secondary data include textbooks and journals. The article dwells essentially on Cameroon-CEMAC legislative dynamics relative to shipping regulations. It begins with relevant contextual considerations concerning Cameroon and discusses the CEMAC organization in terms of

its impact on the country's maritime legislative development. The limits of such impact are underscored, and a strategic framework for maritime legislative development is also proposed.

2. Context

In order to better appreciate the extent to which the Sub-regional Shipping Code regime has impacted Cameroon's maritime legislation, it is useful to begin with a brief historical overview of Cameroon's constitution and legislation. This will cast some light on the country's legal system and also show how shipping was regulated historically, including the challenges faced before the advent of the Sub-regional Shipping Code. Furthermore, it is important to define the basis upon which this Code is applicable in Cameroon, and also to elaborate on the country's status of ratification in respect of international maritime conventions. A related consideration is the need to briefly introduce Cameroon's maritime administration.

2.1 Historical overview of Cameroon's constitution and legislation

Cameroon's legal system, like most in Africa, is a relic of the colonial era (Fombad, 2015). However, there is no intention here to be either too remote or detailed in approach; rather, the focus is to explain the origins of the country's dual legal system as a prelude to understanding its maritime regulatory and enforcement regime. The period under consideration dates to the start of the 'French and English rule' in Cameroon.

As far back as 1915, when World War I was still raging, the British and French had agreed to maintain a condominium until the collapse of German resistance in Cameroon. Based on Article 119 of the Treaty of Versailles of 28 June 1919, Germany renounced all rights over its overseas possessions (including Cameroon) in favor of the 'Principal Allied and Associated Powers'. An agreement was later reached on 4th March 1916, ending the condominium, and the zones of influence of France and Britain were clearly delineated. Britain acquired 2 non-contiguous strips of Cameroon territory bordering Nigeria, while France obtained the bulk of the country's land area and population, and it was obvious that Britain was primarily concerned with securing what it regarded as better boundaries for its vast territory of Nigeria (Rubin, 1971). On 6th March 1916, a line known as the "picot line" was adopted and served as the provisional boundary between the British and French spheres of Cameroon (Vine, 1971). The sphere under the British was named "British Cameroon", while that under France was called "*le Cameroun français*".

France and Britain jointly recommended to the Council of the League of Nations the conferment upon themselves of mandates to administer the territory of Cameroon, pursuant to Article 22 of the Covenant of the League of Nations. This was agreed to by a Franco-British joint declaration signed in London on 10th July 1919, also fixing the frontier line between the 2 Cameroons (League of Nations, 1922). The League of Nations confirmed the recommended mandates, and the terms of the mandates were defined by Acts done in London on 20th July 1922. Article 9 of the mandates agreement stipulated as follows:

> The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory…

It further provided that:

> The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate, with such modifications as may be required by local conditions…

Article 9, as quoted above, thus provided the basis for and marked the official beginning of the existence in Cameroon of 2 legal systems- the civil law (from France) and the common law (from the UK). These 2 legal systems have remained in Cameroon until today.

Two last points need to be addressed. The first concerns the trusteeship system that was later introduced under the UN, plus its impact on Cameroon's administration and legislation, while the

second is an explanation as to why Nigerian laws became applicable in British Cameroon. A clarification on these 2 points may be made as follows:

> With the demise of the League of Nations and the birth of the United Nations in 1946, [British Cameroon and 'le Cameroun français'] became trust territories of the UN, although they continued to be [respectively] under British and French administration.
>
> The mandate and the trusteeship agreements gave Britain and France powers of administration and legislation in Cameroon. Britain accordingly proceeded to administer her own sphere of Cameroon together with her territory of Nigeria. Laws which Britain had already introduced in Nigeria were extended to the British Cameroons. This is the reason for the application of British, Nigerian, and French laws in Cameroon (Anyangwe, 1987).

However, because of certain constitutional changes that took place in 1954 in Nigeria and British Cameroon, it is important to provide a few more details concerning the application of Nigerian laws in Cameroon. These changes bore partly on the regionalization of the judicial service and led to the establishment of new High Courts and Magistrates' Courts in the Southern Cameroons *as per* the Southern Cameroons High Court Laws (SCHCL), 1955. The axiom here is that the SCHCL provided for the enforcement of English laws in the Southern Cameroons. Section 11 of the SCHCL 1955 provided as follows:

> Subject to the provisions of any written law and in particular of this section and of sections 10, 15 and 27 of this law, the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 1st day of January, 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force with the jurisdiction of the court.

The words "for the time being in force" in section 11 gives the courts power to apply post-1900 statutes (Ngwafor, 1995). This view, valid though it may be, should be understood against the backdrop of subsequent political and constitutional changes that took place in Cameroon. It would be recalled that French-speaking Cameroon gained independence from France in January 1960, while British Cameroon gained independence from Britain in 1961, and the 2 sides joined together on 1st October 1961 to form the Federal Republic of Cameroon, with each side maintaining its own legal system (Ngwafor, 1995). This point is clearly buttressed by Article 47 of the Federal Constitution of 1961, which provided that:

> The legislation resulting from the laws and regulations applicable in the Federal State of Cameroon and in the Federated States on the day of entry into force of this constitution shall remain in force in all of their dispositions which are not contrary to the stipulation of this constitution, for as long as it is not amended by legislative or regulatory powers."

Furthermore, the 2 federated states became the United Republic of Cameroon through a constitutional referendum organized on 20th May 1972. Successive Constitutional amendments have consciously sanctioned the co-existence of the English and French legal systems in Cameroon since the reunification of the 2 portions of the country (Ngwafor, 1995). For purposes of clarity, and to draw the curtain on this point, it is useful to refer to Article 68 of the 1996 Constitution, (Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972), as amended, which provides as follows:

> The legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution, and as long as it is <u>not amended by subsequent laws and regulations</u> [emphasis added].

2.2 Cameroon's shipping regulation before the advent of the Sub-regional Shipping Code regime

Apart from being a flag state, Cameroon is a coastal, as well as a port state. Before the advent of the Sub-regional Shipping Code in 2001[2], the country's maritime sector was governed domestically by regulations set out in the Cameroon Shipping Code[3]. This was supported by a set of secondary legislation governing international and domestic operations. However, based on the country's constitutional history, as discussed in the preceding sub-section, the stated Code could be said to have been applicable only to the former East Cameroon. Further, relevant French-received legislation was also applicable to the former East Cameroon as well, while relevant English-received (and Nigerian) laws were applicable to the former West Cameroon. It is, thus, obvious that some of the country's maritime legislative challenges were inherent in the country's dual legal system. Meanwhile, it is useful to note that certain maritime issues (e.g., security) may be regulated, at least to some extent, within the context of a country's general legal framework, although it is always better for a country to have well-adapted legislation for the maritime domain.

Alongside having appropriate legislation is the crucial role of the regulatory bodies which implement, interpret, and enforce it. In that sense, maritime legislation is interrelated and interconnected with flag state implementation (FSI) and port state control (PSC). In the case of Cameroon, the regulatory body has traditionally been the Ministry of Transport, principally and specifically the Department of Maritime Affairs and Inland Waterways (DAMVN) under it[4]. As with any organization playing the role of maritime administration in any country, the DAMVN has the vital responsibility to ensure that Cameroon remains recognized globally for its safety activity, in terms of its search and rescue, survey and inspection, and other capabilities, while also providing the levels of customer service that the global maritime sector demands, and being commercially responsive to its needs. The point here is that countries need to have well-adapted maritime regulatory bodies.

- Cameroon's status of ratification in respect of international conventions

a) Status in respect of 'Safety, Security, and Ship-Port Interface Conventions' and related issues

It is important to begin by noting that the umbrella convention covering most, if not all, aspects of the law of the sea is the UN Convention on the Law of the Sea (UNCLOS), 1982[5]. This convention is generally considered to have passed into customary international law (Roach, 2014). It should also be recalled that IMO is the main specialized UN Organization charged with the progressive development of international maritime law. It is, thus, useful to take note of the following key IMO Conventions in matters of safety, security, and marine environmental protection: International Convention for the Safety of Life At Sea, 1974 (SOLAS 74), as amended[6]; International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73), as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997[7]; and International

[2] See Regulation 03/2001 UEAC 088-CM-06, replacing UDEAC Merchant Shipping Code.
[3] See Ordinance No. 62/DF/30 of 31 March 1962 relating to the Cameroon Merchant Shipping Code. A modern Shipping Code is the single most important document as far as commercial maritime transport is concerned. It provides guidance to national and visiting ships and caters for penalties in case of infringement. It also carries measures concerning the protection and preservation of the marine environment, health and safety, the investigation of marine casualties, etc.
[4] Based on information obtained from the archives of the Ministry of Transport, this Ministry has had different names at different times, although it has always had a Department in charge of Maritime Affairs. From 1961 to 1968 it was called 'Ministry of Transport, Mines and Post'; from 1968 to 1970 it was called 'Ministry of Transport and Post and Telecommunication'; and from 1991 to 1992 it was called 'Ministry of Public Works and Transport'. Apart from these periods, it has always been called Ministry of Transport.
[5] 1833 UNTS 397.
[6] 1184 UNTS 3.
[7] 1340 UNTS 1340 (p.61), 1341 (p.3).

Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW 78), as amended, including the 1995 and 2010 Manila Amendments[8]. As a matter of fact, these 3 conventions are the main determinants when it comes to international maritime governance issues. This is not to say, though, that other conventions are not important. Suffice it to note, therefore, that international maritime governance is guided by the 3 conventions listed above, plus other conventions, as well as international soft law instruments.

Concerning public international conventions relating to safety and security, as well as to ship-port interface, Cameroon is a party to the following: SOLAS 74, as amended[9]; Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72), as amended[10]; Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention)[11]; International Convention on Load Lines, 1966 (LL Convention)[12]; Convention on the International Maritime Satellite Organization, 1976 (INMARSAT)[13]; STCW 78, as amended, including the 1995 and 2010 Manila Amendments[14]; and the International Convention on Maritime Search and Rescue, 1979 (SAR 79)[15].

Meanwhile, it is hugely important to note that, although Cameroon is a party to SOLAS 74, as indicated in the preceding paragraph, the country has not yet ratified the following protocols to that vital safety instrument: Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978) (Done at London, 17 February 1978, Entry into force: 1st May 1981)[16]; and Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, (SOLAS PROT 1988) (Done at London, 11 November 1988; Entry into force: 3rd February 2000)[17]. Similarly, although a party to the LL Convention, Cameroon has not yet ratified the Protocol thereto (Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988))[18].

On another note, Cameroon is not yet a party to certain important safety, security, labor, and other instruments. These include: International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel, 1995 (STCW-F 95) (IMO, 2021); International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969)[19]; International Convention on Salvage, 1989 (Salvage Convention)[20]; Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi WRC 2007)[21]; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA 88), and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (and the 2005 Protocols)[22]; and Maritime Labour Convention, 2006 (MLC)[23].

b) Cameroon's status in respect of International Marine Pollution Conventions

The situation concerning international instruments relating to 'prevention of marine pollution' is as follows:

[8] 1361 UNTS 1361 (p.2), 1362 (p.2).
[9] 1184 UNTS 3.
[10] 1050 UNTS 1050 (p.16).
[11] 591 UNTS 591 (p.265).
[12] 640 UNTS 640 (p.133).
[13] 1143 UNTS 1143 (p.105).
[14] 1361 UNTS 1361 (p.2), 1362 (p.2).
[15] 1405 UNTS.
[16] 1184 UNTS 1185 (p.2).
[17] 1184 UNTS 3.
[18] 640 UNTS 133.
[19] 1291 UNTS 1291 (p.3).
[20] 1953 UNTS.
[21] (2007) 46 ILM 694.
[22] 1678 UNTS I-29004.
[23] 2952 UNTS.

1. Although Cameroon is a party to the Protocol of 1978 relating to MARPOL 73[24], the country is yet to ratify the Protocol of 1997 to amend MARPOL 73, as modified by MARPOL PROT 1997[25].

2. Cameroon is a party to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention Convention)[26]. However, it has not yet ratified the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended (Intervention Protocol 1973)[27].

3. Cameroon is a party to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 90)[28]. However, the country is still to ratify the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)[29].

4. There are certain international conventions on marine pollution prevention to which Cameroon is not yet a party but which, in the opinion of this writer, could be useful in terms of enhancing maritime governance in Cameroon. These are: Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention)[30] (and the 1996 London Protocol)[31], International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (HAFS Convention),[32] and International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM 2004)[33].

Meanwhile, as regards instruments covering liability and compensation in cases of oil pollution damage, the situation may be presented as follows:

1. Cameroon is currently a party to: Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 1992)[34]; Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976)[35]; Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992)[36]; and Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (IMO, 2021).

2. It is noteworthy that Cameroon used to be a party to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND 71). However, on 24 May 2002, the FUND 1971 Convention ceased to be in force for all states that were parties to it[37].

c) Cameroon's status in respect of Brussels/Geneva Conventions relating to Maritime Transport

The idea at this juncture is to state the major Brussels/Geneva Conventions to which Cameroon is fully a party, and also highlight some major conventions to which the country is not yet a party.

[24] See footnote 23, *supra*.
[25] *Ibid.*
[26] 970 UNTS 211.
[27] 1313 UNTS 4.
[28] 1891 UNTS 51.
[29] [2007] ATS 41.
[30] 1046 UNTS 120.
[31] [2006] ATS 11.
[32] [2008] ATS 15.
[33] IMO Doc. BMW/CONF/36.
[34] 1953 UNTS 330.
[35] 973 UNTS 973 (p.3).
[36] 1956 UNTS 255.
[37] 1110 UNTS 1110 (p.57).

1. Cameroon is fully a party to the following Brussels/Geneva Conventions relating to Maritime Transport: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading and Protocol of Signature "Hague Rules 1924"[38]; International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision and other Incidents of Navigation (Brussels, 10th May 1952)[39]; International Convention for the Unification of certain rules relating to Arrest of Sea-going Ships (Brussels, 10th May 1952)[40]; United Nations Convention on a Code of Conduct for Liner Conferences (Geneva, 6 April 1974)[41]; and United Nations Convention on the Carriage of goods by sea Hamburg, 31 March 1978 "Hamburg Rules"[42].

2. There are certain conventions relating to Bills of Lading, Ship Arrest and 'Maritime Liens and Mortgages' to which Cameroon is Not Yet a Party. These include: the Visby Protocol to the Hague Rules of 1924 adopted in 1968 (known as the Hague-Visby Rules), which entered into force on 23 June 1977[43]; International Convention on Arrest of Ships, 1999, which entered into force on 14 September 2011[44]; and International Convention on Maritime Liens and Mortgages, 1993, which entered into force on 6 September 2008[45].

It would be recalled, by the way, that the 1993 Geneva Convention on Maritime Liens and Mortgages seeks to give the concept of maritime liens and mortgages the place it deserves under modern maritime law. For instance, an important consideration under it is that seafarers are entitled to unique legal rights that are not available to land-based employees, their most important maritime law right being the maritime lien for wages. In that respect, it is safe to say that the convention was designed to address some of the major issues that were not contemplated under the 1926 Brussels Convention on the Unification of Rules Relating to Maritime Liens and Mortgages. What is germane here, though, is that Cameroon needs to become a party to the said 1993 convention as a first step towards being in a position to better address the important issues relating thereto.

- Challenges confronting Cameroon under the Cameroon Shipping Code regime

These challenges could be summarized as follows:

a) Obsolescence of the Cameroon Shipping Code, coupled with ineffectual and inconsistent amendments

The Cameroon Shipping Code, it would be recalled, entered into force on 31 March 1962. Given that the shipping industry evolves rather rapidly, it was only a matter of time before the Code would need to be updated in one form or another. A merchant shipping code generally has to be reflective of a country's status of ratification, at least to a large extent- either by itself or, as is usually the case, with the support of other pieces of domestic legislation. In other words, after a country has ratified a convention, it becomes incumbent upon the country to implement the convention- i.e., make the convention part of its national legislation, as evidenced by a code or some other form of domestic legislation. In that light, one may want to know what necessary steps were taken by Cameroon as years went by to ensure that the Cameroon Shipping Code regime reflected the country's status of ratification. A look at how certain amendments to the Code were made would be helpful in that regard. Some of the amendments were: Act No. 74/16 of 5 December 1974, fixing the Limit of the Territorial Waters of the United Republic of Cameroon at 50 nautical miles, repealing and replacing Article 5 of Ordinance No. 62/DF/30 of 31 March 1962 relating to the Cameroon Merchant Shipping Code (and Law No. 67/LF/25 of 3 November 1967)[46]; Law No.

[38] 1412 UNTS.
[39] 439 UNTS 233.
[40] 439 UNTS 439 (p.193).
[41] 13 ILM 910 (1974).
[42] 17 ILM 608-31 (1978).
[43] 1412 UNTS 127.
[44] 2801 UNTS Doc. A/CONF.188.6.
[45] 33 ILM 353.
[46] See, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CMR_1974_Act.pdf

2000-2 of April 2000, claiming 24 nautical miles for the country's contiguous zone; Law No. 2000-2 of April 2000, claiming a fishing zone/EEZ of 200 nautical miles[47]; and Law No. 2000-2 of April 2000, claiming continental shelf as provided for under UNCLOS 82[48].

If we take the case of Act No. 74/16 of 5 December 1974, fixing the Limit of the Territorial Waters of the United Republic of Cameroon at 50 nautical miles, suffice it to note that "50 nautical miles" was quite excessive under international law. At any rate, Cameroon could by that 1974 ACT be said to have "amended" its Shipping Code, or at least a provision of it, while at the same time failing to recognize the 12-mile limit for territorial waters respected by a majority of states based on international law at the time (Churchill & Lowe, 1999). To its credit, however, Cameroon corrected the situation after becoming a party to UNCLOS 82[49], by coming up with Law No. 2000-2 of April 2000, repealing the excessive 50 nautical miles claim and "accepting" 12 nautical miles for its territorial waters, as provided for under Article 3 of UNCLOS 82[50]. Nevertheless, the impression one gets is that the maritime legislative amendment process in Cameroon during the period before the Sub-regional Shipping Code regime was inconsistent and ineffectual.

b) Discrepancy and choice of law issues due to duality of Cameroon's legal system

Until the advent of the 1972 Constitution, Cameroon was a 2-state federation under the 1961 Constitution, comprising the French-speaking (civil law) Cameroonian state and the English-speaking (common law) Cameroonian state. This implied that each federated state had jurisdiction in certain specific areas, as allowed under the constitution. It is worth noting that this idea of each of the federated states (now former federated states) maintaining jurisdiction in certain defined circumstances has survived all constitutional amendments until this day. For instance, the 1996 Constitution (Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972) provides in its Article 68 that:

> The legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution and as long as it is not amended by subsequent laws and regulations.

For illustrative purposes, and in tune with the main theme of this article, reference could be made to Article 6 of the 1961 Constitution, which listed "subjects", among which were "[…] means of transport of federal concern (roads, railways, inland waterways, sea and air) and ports […]", and proceeded as follows:

> The Federated States may continue to legislate on the subjects listed in this Article and to run the corresponding administrative services until the Federal National Assembly or the President of the Federal Republic in its or his field shall have determined to exercise the jurisdiction by this Article conferred.

With regard to the English-speaking Federated State, it is important to note that the Southern Cameroons High Court Law of 1955, in its Section 11 had earlier stated that:

> […] the common law, the doctrines of equity, and the statutes of general application which were in force in England on the 1st day of January, 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force with the jurisdiction of the court.

It is worthwhile recalling at this juncture that the Cameroon Shipping Code was in force from 31 March 1962 until it was replaced by the Sub-regional Shipping Code in 2001. It could be argued in light of the foregoing discussion that the Cameroon Shipping Code was essentially a legal

[47] *Ibid*.
[48] *Ibid*.
[49] See: 1833 UNTS 397, *op. cit.*
[50] See, https://oceansbeyondpiracy.org/sites/default/files/Cameroon_Delimitation_of_Waters_Law_2000.pdf

instrument that was, strictly speaking, applicable only to the former French-speaking Cameroonian State while the former English-speaking Cameroonian State continued to rely only on received English and Nigerian laws concerning similar matters (Ngwafor, 1995). By the same token, any piece of national legislation that entered into force at any point in time after 1972 by way of an amendment or abrogation to the Cameroon Shipping Code had to be applicable to the entire Cameroonian State (both former federated states). That was clearly the case with the 2001 Sub-regional Shipping Code.

A related consideration is that the courts in the 2 former federated states probably had to grapple with 'choice of jurisdiction' issues during the Cameroon Shipping Code years. In that regard, suffice it to point out that, generally, under English law, the position concerning choice of jurisdiction was that the court retained jurisdiction to determine the plaintiff's claim on the merits. In cases where there was an exclusive jurisdiction clause which provided for determination of the dispute in a foreign court, the court had discretion to stay the action, unless strong cause why it should not do so was shown[51].

c) Translation problems of the Cameroon Shipping Code in the context of former Federal Cameroon

It is common knowledge that Cameroon is a bilingual country, with French and English as the official languages. Among other things, 'bilingualism' means ensuring that good standards are maintained for both the French and English languages, at least when it comes to official communication. Unfortunately, this is not always the case.

Although it has been argued in this article that the Cameroon Shipping Code was applicable only to the former French-speaking Cameroonian State, the Code of course equally concerned citizens of the former English-speaking Cameroonian State, as well as foreign stakeholders, depending on the case at hand. For instance, where a maritime matter occurred within the former French-speaking Cameroonian State, the Code would be applicable irrespective of the domicile of the parties concerned. An important correlation is that the said Code was a bilingual document intended to serve both French-speaking and English-speaking users. Unfortunately, one thing that stands out about the Code is that it was *not* precisely worded and can hardly be of authoritative assistance to non-French speaking persons. The following opening lines (French version, followed by the official English translation) of the Ordinance relating to the Code could serve in underscoring the point:

Le Président de la République fédérale,
Vu la Constitution de la République fédérale, et notamment son article 50,
ORDONNE:…
Article premier. - Champ d'Application.

The official English translation of the above lines reads as follows:

The President of the Federal Republic,
By virtue of the Constitution of the Federal Republic, and in particular of article 50 thereof,
ORDAINS: …
Article 1. - Field of Application.

[51] Per Lord Brandon, in *The El America*, (1981), 2 Lloyd's Rep. 199. For an understanding of the steps that have been proposed to be followed *seriatim* in settling the problem of choice of jurisdiction and related issues, see: Tetley, W., (2005), Jurisdiction Clauses and Forum Non Conveniens in the Carriage of Goods by Sea, The Hague: Kluwer Law International, pp. 6-7.

It is humbly submitted, *inter alia*, that the terms "ORDAINS" and "Field of Application" used in the Cameroon Shipping Code as indicated above could be replaced, respectively, with "HEREBY ORDERS AS FOLLOWS" and 'Scope of Application". It should be added, though, that the above illustration is only an integral part of this writer's research effort; it is not an attempt to discredit the otherwise excellent work done by the patriotic individuals who translated the said Code, perhaps under challenging circumstances.

d) FSI and PSC challenges confronting Cameroon before the advent of the Sub-regional Shipping Code regime

Nowadays, the single most important way to determine a country's performance in terms of Flag State Implementation (FSI) and Port State Control (PSC) is to refer to IMO indicators, such as the STCW White List and the International Instruments Implementation (III) Code. However, these are relatively recent tools. It would be recalled that the STCW White List was introduced in 1995, with one of the STCW Convention amendments, while the III Code saw the light of day in 2013. A country can only achieve good performance in terms of FSI and PSC if it meets 3 conditions. First, it must have a good status of ratification, which also includes being a party to the key maritime governance instruments. Secondly, conventions to which the country is a party should be effectively implemented- i.e., they should be made part of that country's domestic legislation. Thirdly, the country should be seen to be giving effect on the ground to the conventions it implemented, possibly with assistance obtained within the framework of IMO technical cooperation (e.g., in the context of IMO soft law instruments). However, because of the ill-adapted nature of the Cameroon Shipping Code, coupled with the inconsistent and ineffectual amendments that characterized the years it was in force, it is difficult to see how Cameroon could be considered to have been an exemplary IMO member state under the regime, in terms of FSI and PSC.

Finally, one other area where a country's performance in terms of FSI and PSC can be assessed concerns the category of ships called 'non-convention vessels'. A non-convention vessel is basically any cargo vessel below 500 gross tonnage (or passenger vessel with less than 200 passenger capacity) involved in international trade, or vessel of above 500 gross tonnage that sails only within national waters, or any vessel to which most IMO conventions do not apply. IMO member states may count on technical cooperation with the IMO to be able to develop legislation extending to their non-convention vessels. Such legislation usually takes into account regional considerations, since non-convention vessels sometimes sail regionally. However, it is apparent that Cameroon has always relied only on its general legal framework when it comes to regulating non-convention vessels.

2.3 Treaty implementation in Cameroon and basis for integral application of the Sub-regional Shipping Code

For the purposes of this article, there are 2 main methods by which a convention becomes part of the national law of a country- namely, the monist method and the dualist method. Basically, according to the monist view of international law, a convention becomes part of the national law automatically through the act of ratification or accession (Jacobs & Roberts, 1987). In some countries, however, the dualist concept is applicable and, as a consequence, the convention becomes part of the domestic law only after implementing legislation has been adopted (Mukherjee, 2002). Under the Cameroon Constitution of 1996, as amended in 2008 and 2011, the President negotiates treaties and international agreements and, after parliamentary authorization, ratifies them. As per Article 45 of the same Constitution, the ratified treaties and international agreements take precedence over national laws. However, ratification must be followed by publication.

In any event, notwithstanding the traditional distinction between monism and dualism and the consequent characterization of states as either 'monist' or 'dualist', it is safe to say that many countries have elements of both in their legal system and, therefore, practice both to varying

degrees. For example, Cameroon is seen to be a monist state in terms of the status of international instruments duly ratified by the government. However, with regard to the application of ratified treaties, Cameroon tends to be dualist and, as such, treaties only take effect through incorporation by national law (Ekwen, 2015).

As far as the Sub-regional Shipping Code is concerned, it is useful to recall that CEMAC is an integration-based economic organization, and the legal personality of such an organization may extend to a treaty-making competence, which enables the organization to tend to shape substantive international law. Regional integration has many facets, of which commercial (and shipping) interests may be one. A treaty establishing a regional integration organization needs to clearly indicate which specific legal instruments shall have a binding effect on member states. One of the legal instruments developed by CEMAC is the 'Regulation' and, according to Article 41(3) of the CEMAC treaty, "Regulations" are self-executing and directly applicable in all CEMAC member states. A related consideration is that an international instrument regulating a specific legal aspect supercedes a domestic instrument regulating the same aspect (Shaw, 1998). Equally relevant here is the principle of *pacta sunt servanda* under Article 27 of the Vienna Convention on the Law of Treaties, 1969[52]. It is, thus, easy to understand why the Sub-regional Shipping Code would have an abrogative effect on the Cameroon Shipping Code. It would be recalled that the 2001 Sub-regional Shipping Code saw the light of day thanks to Regulation No. 03/01-UDEAC 088-CM-06 replacing the UDEAC Merchant Shipping Code of 1994[53].

Certain CEMAC instruments, such as the Sub-regional Shipping Code, are integral to the domestic legislation of each of the organization's member states, although an important caveat here is that there may sometimes be some divergence in terms of objectives between CEMAC instruments that are "integral" to the domestic legislation of these states and "strictly domestic"[54] instruments, even if there must be no conflict between the two. For one thing, CEMAC's legal instruments are one of the means by which the organization seeks to achieve integration and economic development for the sub-region, while strictly domestic legal instruments may seek to achieve additional objectives such as projecting the country's image in positive light within the international maritime community. It is submitted that, while it may be normal for CEMAC to have an interest in ensuring that its member states are giving effect to the organization's legal instruments[55], each member state should in turn assume the added responsibility of making sure that the *ensemble* of its maritime legislation is of benefit to its domestic shipping stakeholders.

3. The CEMAC organization

Two main aspects are necessary in order to understand why CEMAC is a sub-regional economic integration organization with powers to harmonize the maritime laws of its member states. The first aspect concerns the history and policy objectives of the organization. This tells us where CEMAC came from and where it is going- i.e., what it seeks to achieve. The second aspect concerns CEMAC's legislation- how the organization develops its laws and the power of such laws. Needless to add, 'policy' and 'law' are inextricably linked, as the latter is a tool for implementing the former.

[52] 1155 UNTS 331.

[53] Other related Regulations include: Regulation No. 08/12-UEAC-088-CM-23 of 22 July 2012 to adopt the Revised CEMAC Merchant Shipping Code; Regulation No. 14/06-UEAC-160-CM-14 (March 11, 2006) to adopt a Program on the Regional Facilitation of Transport and Transit in CEMAC; the Regulation relating to the 2012 CEMAC Civil Aviation Code, etc.

[54] The following may be considered as "strictly domestic" sources of law: The Constitution; the Legislature; the Executive; the Judiciary and judicial precedent.

[55] In this connection, it is useful to note that, in 2005 the CEMAC Conference of Heads of State deemed it necessary to order an audit to highlight the reasons for CEMAC inefficiency or non-performance in terms of legislative implementation and enforcement by member states, a move that speaks for itself.

3.1 Background, institutional framework, and instruments

The discussion under this sub-heading will also include the nature and weight of CEMAC's legal instruments.

- Brief history and policy objectives

CEMAC owes its first origins to the Treaty of Brazzaville of 8 December 1964, signed by Cameroon, the Central African Republic, Congo, Gabon, and Chad (later joined by Equatorial Guinea in 1983), creating the Central African Customs and Economic Union- UDEAC (Gbetnkom, 1995). However, UDEAC itself succeeded the Equatorial Customs Union, or *Union douanière équatoriale* (UDE), created in 1959 (the latter can now be considered to be an outdated and obsolete arrangement) (Matons, 2014). The Treaty of N'Djamena established CEMAC on 16 March 1994, and the parties to CEMAC were the same as those to UDEAC and UDE.

So, in essence, UDEAC was replaced in 1994 by CEMAC. However, a number of UDEAC covenants, agreements, or regulations are still in place under their original UDEAC qualifications (Matons, 2014). Thus, for example, although the 2001 Sub-regional Shipping Code has now replaced the 1994 UDEAC Merchant Shipping Code, 2 major UDEAC sets of rules are still in effect, namely, the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport (Matons, 2014).

Meanwhile, in order to have a clear insight into CEMAC's policy objectives, it is necessary to consider such objectives relative to those of UDEAC, the organization it replaced. That is precisely what has been done for us in the following lines:

> Whereas UDEAC was based on cooperation between Partner States, CEMAC pursues an approach of integration. Its main policy objectives, not formulated in the instruments but only in separate declarations of intent, are the following:
>
> a) Reinforce the competitiveness of the economic and financial activities of the countries of CEMAC by harmonizing the legal framework (investment code, competition, regulation, etc.);
>
> b) Coordinate economic and budgetary policies to ensure coherence with the common monetary policy;
>
> c) Establish a common market, with total freedom of establishment, immigration, and free movement of goods and services;
>
> d) Coordinate sector policies, including trade and transport policies;
>
> e) Promote freedom of movement, residence, and establishment (Matons, 2014).

- Institutional framework and instruments

CEMAC has 8 executive branch institutions, namely: Conference of Heads of State, Council of Ministers, CEMAC Commission (which, by means of an addition to the treaty signed in N'Djamena, Chad, on 25 April 2007, replaced the Executive Secretariat), Ministerial Committee, Inter-State Committee, Central Bank, Banking Commission, and Development Financing Institution[56]. In addition, the CEMAC treaty established the Development Bank of Central African States. The Community Parliament is the legislative institution, while the Supreme Court, which includes the *Cour des comptes* (Court of Auditors), constitutes the organization's judicial body.

Details on the main organs of CEMAC are found in Article 3 of the treaty creating the organization. The main decision-making power is assigned to CEMAC's political leaders, gathered annually in what is referred to as the Conference of Heads of State. Further, the Council of Ministers ensures the direction of the Economic Union of Central Africa (UEAC) through the exercise of powers granted it by the governing Convention, namely the Convention relating to the Central African Economic Union, signed by the 6 CEMAC member states on 30 January 2009. The

[56] See, http://www.izf.net/mobile-cemac?language=en, *op.cit*.

Council of Ministers consists essentially of the Ministers in charge of Finance and Economic Affairs of the member states, and the number of Ministers of each member state delegation must not exceed 3.

Another important CEMAC organ is the Ministerial Committee (governing body of the Monetary Union of Central Africa (UMAC)). Its role is to examine the broad economic policies of each member state of the Community and ensure consistency with the common monetary policy; it is composed of 2 Ministers from each member state (including the one in charge of Finance, who heads the delegation). Meanwhile, there is also the CEMAC Commission, which plays the role of *rapporteur* at the Council of Ministers level, while the Bank of Central African States (BEAC) Governorate plays that same role at the Ministerial Committee level. Among other things, the CEMAC Commission and BEAC Governorate make decisions and formulate recommendations or opinions.

In terms of institutional instruments, it is important to note the following: Treaty establishing CEMAC (Treaty concluded in N'Djamena, Chad, on 6 February 1998, with an addition related to the institutional and legal system of the Community, and slightly revised in Yaounde, Cameroon, on 25 June 2008, to create the Community Parliament)[57]; Convention Governing UEAC; Convention Governing UMAC; Convention Governing the CEMAC Court of Justice; and Convention governing the Community Parliament (Convention adopted on 28 January 2004). The Community Parliament, which was commissioned in April 2010, has its headquarters in Malabo, Equatorial Guinea.

It would be useful at this juncture to understand the nature and weight of the various CEMAC legal instruments, namely regulations, directives, codes, etc. If one takes the case of CEMAC 'regulations' and 'framework regulations', for example, certain elements come to light. The Council of Ministers is responsible for adopting regulations, framework regulations, and directives, on the proposal of the President of the Commission, with a view to achieving the objectives of the Economic Union[58]. Based on the CEMAC treaty, regulations and framework regulations are of general application, but Article 41(3) of the said treaty makes a distinction between the two. Regulations are self-executing and directly applicable in all CEMAC member states, while only some of the elements of framework regulations are directly applicable.

Other CEMAC instruments include 'directives', 'decisions', 'recommendations', etc. A 'directive' is binding upon each member state with respect to the result to be achieved, but as far as the form it should take and the means of implementing it are concerned, competence lies with national bodies. Furthermore, CEMAC 'decisions' are binding in their entirety for the addressees to which they refer, while 'recommendations' and 'opinions' have no binding character[59].

3.2 The Sub-regional Shipping Code

The focus here is to briefly discuss the scope and content of the Sub-regional Shipping Code, and also to highlight its positive effects and limitations with respect to Cameroon's maritime legislative development.

- Scope and content of the Sub-regional Shipping Code

The Sub-regional Shipping Code is an integral part of the CEMAC transport and transit legislative package. A somewhat exhaustive list of other CEMAC legal instruments within the organization's transport and transit facilitation legislation may be provided under the following main headings: instruments relevant to the freedom of movement, instruments relevant to Customs, instruments relevant to conflicts of laws, instruments relevant to air transport in CEMAC, etc. (Matons, 2014).

[57] *Ibid*.
[58] *Ibid.*
[59] *Ibid.*

In order to have full knowledge of the Sub-regional Shipping Code regime in Cameroon, it is necessary to examine not only the 2001 version of the said Code, but also cast some light on the innovations brought by the 2012 version that replaced it. In essence, what the 2012 version did was introduce elements or provisions that were either inexistent in the 2001 version or overrule provisions of the 2001 version concerning a similar or related subject. To state it differently, certain provisions of the 2001 and 2012 versions are reconcilable. At any rate, a mere look at the volumes of the 2 Codes (the 2001 Code with 610 pages, and the 2012 Code with 800 pages) suggests profound differences in terms of scope and depth. Innovations brought by the 2012 CEMAC Merchant Shipping Code concern the following: carriage contract; ship arrest as a conservatory measure (*saisie conservatoire*); ship arrest as an executory measure (*saisie-exécution*); status of seafarers; the use of IMO soft law instruments; and Flag State Implementation (FSI) and Port State Control (PSC) responsibilities.

Based on Article 376 of the 2001 Sub-regional Shipping Code, the areas on which the Code rules include the following: applicability of the law to vessels; ship safety, classification, salvage and wrecks; marine environment and pollution; seamen; maritime transport, including charter parties, bills of lading, and other carriage contracts; shipping and forwarding agents, consignees of cargo, pilots, and stevedoring companies; and court and other procedures related to shipping. In terms of jurisdiction, its Article 1 is to the effect that the Code is applicable to:

> All ships registered in a CEMAC member state; crews and passengers on board, and to all persons, irrespective of their nationality, who, although not on board, have committed a breach of the provisions of this Code or its implementing regulations; foreign vessels in waters under the jurisdiction of a CEMAC member state, where provided for in reciprocal agreements between a member state and a third state or in accordance with international conventions in force; the crews and passengers of these foreign vessels, under the same conditions as in the preceding paragraph; seafarers who are nationals of a member state or who reside in a member state, regardless of the place of registration or chartering of the vessel on which they are employed; and floating platforms in waters under the national jurisdiction of a member state.

In addition, where expressly spelt out, certain provisions of Books IV, V, and VII of the Code also apply to fixed platforms in waters under the national jurisdiction of a member state (Matons 2014).

- Improvements and limits of Cameroon's maritime legislation under the Sub-regional Shipping Code regime

Before focusing on strictly maritime legislative considerations, it is useful to note that although the Sub-regional Shipping Code replaced the 1994 UDEAC Merchant Shipping Code, 2 major 'UDEAC'[60] sets of rules are still in effect today, namely, the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport of the same year. It is worthwhile noting at this juncture that, very soon after its creation, CEMAC issued a number of new regulations and codes to replace those issued by UDEAC. These were:

- The River Navigation Code (*Code de la navigation intérieure*) and the Hazardous Cargo Regulations (*Règlement de transport des marchandises dangereuses*) in 1999;
- The Civil Aviation Code (*Code de l'aviation civile*) in 2000;
- The Merchant Shipping Code (*Code communautaire de la marine marchande*) and the Road Traffic Code (*Code de la route*) in 2001 (Matons, 2014).

[60] As stated earlier, 'UDEAC' is the French acronym for 'Central African Customs and Economic Union'. This was the economic cooperation organization that preceded the CEMAC organization. The latter is, of course, an economic integration organization.

It would be recalled that a somewhat exhaustive list of other CEMAC legal instruments within the organization's transport and transit facilitation legislation may be provided under the following main headings: instruments relevant to the freedom of movement, instruments relevant to Customs, instruments relevant to conflicts of laws, instruments relevant to air transport, etc.

In light of the foregoing, it is obvious that CEMAC adopts an integrated approach to transport legislation (sea, road, rail, and air), which is quite consistent with the modern approach to transport studies. It follows that, among other things, the organization considers transport legislative development among its member states as a key piece in its economic integration drive. In any event, given that maritime legislation is the focus of this article, any appraisal of the Sub-regional Shipping Code regime in Cameroon will be limited to the maritime domain.

- Legislative certainty via removal of the confusion under the Cameroon Shipping Code regime

One of the points highlighted earlier in this article is that the Cameroon Shipping Code was an ill-adapted piece of legislation, and that efforts made by the government to amend it were rather ineffectual and ineffective. Moreover, there was discrepancy in the Code's applicability due to the workings of Cameroon's dual legal system.

Article 2 of the Regulation establishing the Sub-regional Shipping Code makes the Code applicable to the entire Cameroonian territory and abrogates and replaces the Cameroon Shipping Code. It provides as follows:

> *This Regulation, which repeals all previous provisions to the contrary, shall enter into force on the date of its signature and shall be published in the Official Bulletin of the Community*.

By mere virtue of its applicability to the entire Cameroonian territory, the Sub-regional Shipping Code has been able to bring some measure of clarity and certainty within the country's maritime legislative landscape. In fact, to the extent that the said sub-regional instrument has dispensed with the confusion epitomized by the Cameroon Shipping Code, it is often regarded as a welcome relief to the country's maritime community.

It is, however, useful to recall that no official English version of the said sub-regional Code exists to date, meaning the language aspect continues to pose major challenges for the English-speaking territory of the country.

a) Maritime legislative modernization via increased number of binding conventions

The Sub-regional Shipping Code makes reference to, and uses lines from, many maritime conventions, irrespective of whether its member states have ratified them or not. For instance, Articles 100 to 113 of the 2001 Sub-regional Shipping Code have to do with the liability regime of ship owners and are drawn from the Convention on the Limitation of Liability for Maritime Claims 1976, yet it would be recalled that Cameroon is not a party to the said London Convention, since the country has not followed standard international treaty implementation procedures in that regard (e.g., ratification, adherence, etc.). The 1976 London Convention is, thus, binding for Cameroon by virtue of the Sub-regional Shipping Code alone. Through this approach, the Sub-regional Shipping Code has been able to bring things to a point where more international maritime conventions are now applicable in Cameroon than they were under the Cameroon Shipping Code regime. This CEMAC approach to treaty implementation has its own advantages. For instance, when an international instrument becomes directly binding for CEMAC member states because the organization has implemented it, as evidenced by the presence of provisions of such instrument in the Sub-regional Shipping Code, that relieves these states of the legislative drafting burden, since drafting is usually one of the tasks associated with treaty implementation.

However, it is worth recalling that under standard international treaty procedures, states begin by taking a close look at the benefits, responsibilities and challenges associated with any

treaty before them in order to decide on whether or not to proceed with ratification and implementation (and subsequent enforcement). It is difficult to tell whether such caution is not sometimes sacrificed on the altar of the integration drive among CEMAC member states. The least one can say is that the approach used by CEMAC in rendering international instruments binding for its member states is susceptible to scrutiny. In any event, the approach does not seem to constitute a recipe for successful legislative implementation (and enforcement) outcomes.

b) Implications of the CEMAC Shipping Code regime for FSI and PSC in Cameroon

The Sub-regional Shipping Code, especially the revised 2012 version, does address FSI and PSC. These are covered notably under Title II of the Code, entitled "Safety (and Security) of Navigation". The Code talks of FSI issues as provided for under international law (SOLAS 74 (as amended) and related instruments such as 'Security Management Certificate', 'Safety Management Certificate', 'International Security Certificate', and so on; LL 66; etc.). However, what the Sub-regional Shipping Code actually does is restate FSI responsibilities as contained in the relevant international conventions, yet it is common knowledge that CEMAC does not have any FSI performance monitoring mechanism in place. In other words, it is only through IMO parameters that a CEMAC member state's FSI performance can be determined. In that light, what is germane here is that Cameroon has never featured under the STCW White List, neither has the country been able up to this point to fit into the III Code, which happens to be the single most important implementation and enforcement tool put in place to date by the IMO. Consequently, it is safe to say that the Sub-regional Shipping Code regime has had only minimal impact on Cameroon as far as FSI is concerned.

With respect to PSC responsibilities, what the Sub-regional Shipping Code does is restate some of the provisions of key IMO Resolutions on PSC, thereby transforming them into hard law provisions under the Code. So, the situation within the CEMAC sub-region is that, on the one hand, we have the IMO PSC inspection regime, based on IMO resolutions and the work of the Abuja Memorandum of Understanding (MoU), and on the other, we have the Sub-regional Shipping Code regime, with its PSC-related hard law. However, it is noteworthy that Cameroon is not yet a member of the Abuja MoU[61], and that CEMAC has no PSC inspections monitoring mechanism. It would be recalled that the best way to determine any given country's performance in terms of PSC inspections is to consult the statistics of the PSC MoU to which the country belongs. It follows that only the Abuja MoU can speak to Cameroon's performance in terms of PSC inspections, yet the country is not yet a member of that important body. Nevertheless, it is useful to remember that the Sub-regional Shipping Code itself indirectly acknowledges the pre-eminence of the Abuja MoU with respect to PSC inspections monitoring within the sub-region. Article 196 (1) of the said Code provides as follows:

> Inspections of foreign vessels in the ports of the member states - and where appropriate their detention by the competent maritime authority - shall be carried out in accordance with the standards and procedures prescribed by Resolution A 787 (19) of the International Maritime Organization (as amended), in accordance with the guidelines for Port State Control Officers performing inspections under the Maritime Labour Convention, 2006 and the Memorandum of Understanding on Port State Control.

In light of the foregoing, it would be safe to state that the Sub-regional Shipping Code regime has not been particularly helpful to Cameroon in terms of PSC inspections.

[61] See, http://abujamou.org/members-and-oberservers.html

4. Conclusions

This discussion had the focus of showing the manner and extent to which the CEMAC Merchant Shipping Code regime has helped Cameroon to modernize its maritime legislation and address the challenges inherent in the country's dual legal system, and how this newfound situation is reflected in the country's standing vis-à-vis international maritime implementation and enforcement standards. 'Maritime legislation' in the context of this study was understood to mean 'regulation' set out in the Cameroon and CEMAC Merchant Shipping Codes, coupled with the extensive and wide-ranging set of secondary legislation which governs international and domestic operations.

The CEMAC regime has, no doubt, had some positive impact on Cameroon's maritime legislative development. However, major challenges still remain, notably in light of Cameroon's inability to project itself on the positive side of IMO implementation and enforcement indicators. In any event, the said regime will only bring true success if Cameroon, acting in concert with the other CEMAC member states, can help the organization achieve economic integration and development for the sub-region without prejudice to the interests of the country's domestic shipping stakeholders. A step forward for Cameroon in that regard would be to avoid making CEMAC regulations a government affair only by ensuring greater private sector and general public involvement through effective and transparent communication about the potential benefits of these regulations, and also carrying out other actions, such as the provision of a good official English translation of all CEMAC Transport Codes to ensure their widespread and effective use.

On another note, several authoritative sources, notably UNCLOS 82 and IMO Resolution A.682(17) on regional cooperation, point to the crucial role of regional cooperation as a complementary means by which to achieve good maritime governance. Ultimately, what Cameroon needs in order to establish a good maritime governance culture is an enhanced CEMAC Merchant Shipping Code regime, as well as an improved status of ratification in respect of international maritime instruments, complemented by meaningful relations with cooperation-oriented bodies, especially the Abuja MoU on Port State Control. A related consideration is that, as the executive body responsible for carrying out Cameroon's shipping responsibilities, the Department of Maritime Affairs and Inland Waterways (DAMVN) will need to play a major role in Cameroon's maritime legislative development drive. For now, though, DAMVN is only a Department within the Ministry of Transport and may, thus, be ill-equipped in terms of authority and resources to do the job[62].

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