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The role of Arbitration in Inland Navigation



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Structure of the presentation:

- Introduction: What is Arbitration?
- The role of arbitration in maritime Law
- Litigation vs. Arbitration in Inland Navigation
- Conclusion

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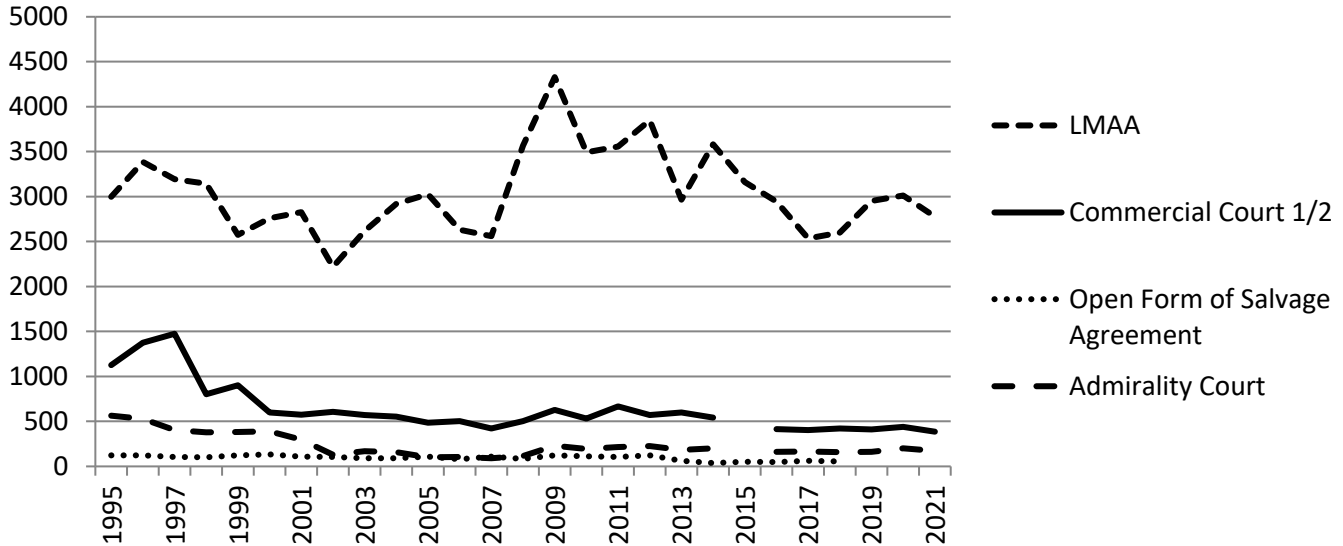
What is arbitration?

- Dispute resolution tool
- to which the parties agree
- to resolve any dispute before a non-state court
- which issues an arbitral award that is binding on the parties
- and can be recognized and enforced by state courts.

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Maritime Cases in Great Britain



Sources:

Commercial Court/Admiralty Court:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080094/civil-Justice-stats-main-tables-Jan-Mar.ods

LMAA: <https://lmaa.london/wp-content/uploads/2022/03/Statistics-up-to-2021-for-website.pdf>

LOF: <https://www.lloyds.com/resources-and-services/lloyds-agency/salvage-arbitration-branch/lof-statistics>

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Arbitration vs. Litigation - frequently discussed aspects:

- Duration of proceedings
- Confidentiality of the procedure
- Applicable Law
- Costs

Average duration of proceedings

State Courts in Germany:

1st Instance: 8-14 months

2nd Instance: 18-21 months (LG);
26-30 months (OLG)

Average duration of contract enforcement overall according to the World Bank Doing Business Report 2019:

Germany:	499 Days
Belgium:	505 Days
France:	447 Days
Netherlands:	514 Days
UK:	437 Days

Courts of Arbitration:

In inland waterway arbitration:
No information or no
experience.

In commercial arbitration:
ICC: 9 months (270 days)
DIS: 9 months (270 days)

Source: <https://data.worldbank.org/indicator/IC.LGL.DURS>

Confidentiality

State courts in Germany:

Principle: publicity of the procedure, § 169 GVG

But: exceptions possible § 172 No. 2 GVG for the protection of trade secrets

Publication of decisions always possible

Confidentiality is more of a US problem

Courts of Arbitration:

Principle: No public proceedings

Publication of decisions:
UNUM (formerly: TAMARA):
opt out

Shipping exchange Duisburg:
opt out
(Opt out: publication if neither party objects.)

Applicable Law

State courts in Germany:

IPL → Rome regulations

Principle: choice of law by the parties

→ Art. 3 Rome I VO

(Contracts of Carriage: Art. 5 Rome I)

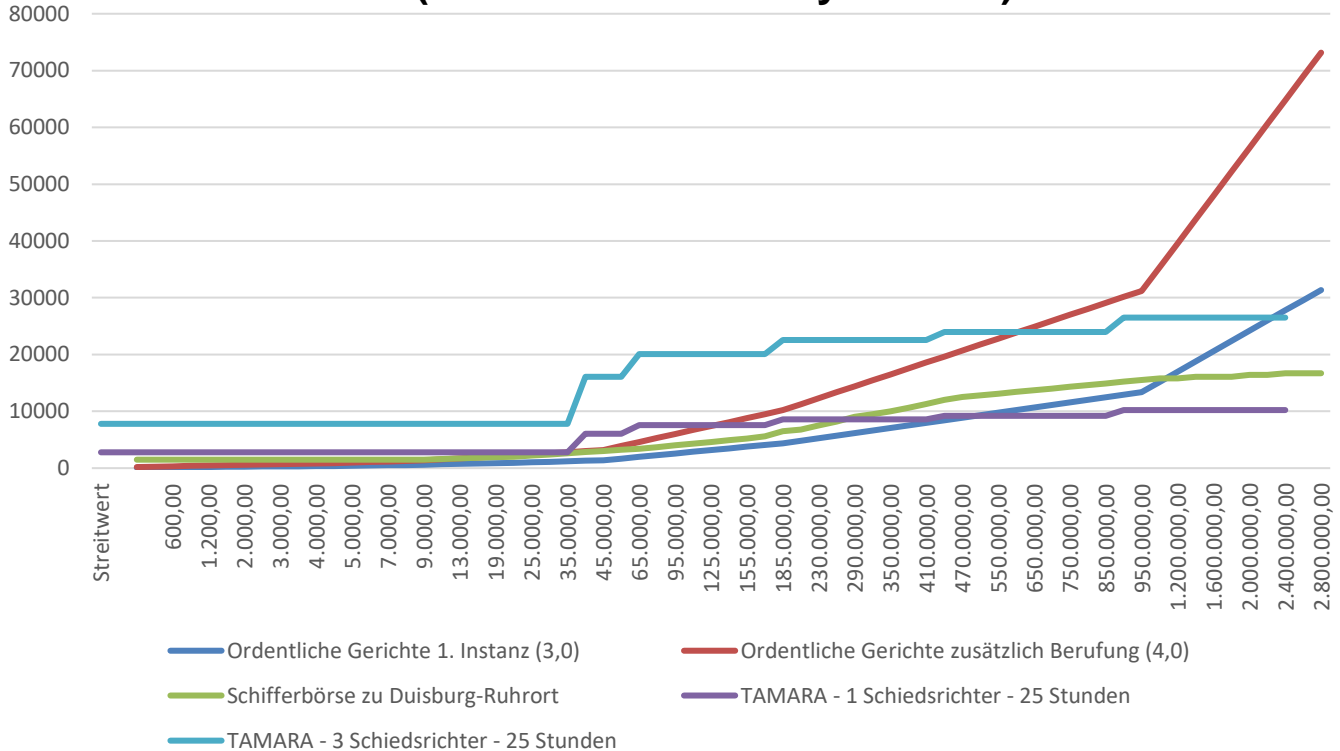
In the absence of a choice of law: Art.
4 Rome I

Courts of Arbitration:

Regularly free choice of law and
procedure possible.

Non-state law can also be chosen,
or no law at all, but a decision
based on equity can be agreed,
Section 1051 (3) ZPO

Costs (Court Fees w/o lawyers fees)



Costs (w/o Lawyers Fees)

Break-even point for claims:

State court Germany 1st instance compared to

Shipping Exchange Duisburg-Ruhrort: € 1,400,000

UNUM 1 arbitrator 15 hours: € 320,000

UNUM 1 arbitrator 25 h: € 500,000

UNUM 1 arbitrator 35 h: € 900,000

UNUM 3 arbitrators 15 hours: € 1,400,000

UNUM 3 arbitrators 25 h: € 2,600,000

UNUM 3 arbitrators 35 h: € 3,600,000

Result:

- **No clear advantages or disadvantages can be named**
- **it depends on the specific case and the needs of the parties.**

Prerequisites for successful arbitration:

It must be better than state courts, i.e.

- Quicker
- Cheaper
- More flexible

But it must also guarantee legal certainty and justice.

Reasons for success of arbitration in maritime law (and less need for arbitration in inland waterway transport):

- Better lobby in maritime organizations (arbitration is automatically agreed in most BIMCO forms)
- Less problematic legal setting in inland navigation (no fragmentation like in maritime law)
- Well functioning state courts in inland waterway transport
- International appellate bodies → CCNR Chamber of Appeal

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