

## **Africa: A New Direction – Recent Initiatives by the Maritime Law Association of South Africa**

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### **Introduction**

South African maritime practitioners and academics have maintained a long relationship with the Comité Maritime International (**CMI**).

Throughout this period, the connection was fostered primarily by the Maritime Law Association of South Africa which has worked on projects initiated by the CMI. These relationships and efforts were strengthened by individual involvement in the various International Working Groups and Standing Committees and, collectively, through the completion of various CMI drafted questionnaires.

Unfortunately, only 4 other African states are recognised as members of the CMI. They are: Cameroon, Republic of Congo, Nigeria and Tanzania.

Over the last few years, it has become evident that more could be done to foster collaboration amongst other states throughout the African – particularly concerning cooperative efforts with authorities on CMI sponsored conventions where a more continental approach would be advantageous to the harmonisation of maritime laws across the Continent.

Having raised the potential benefits of a Pan-African approach to the work of the CMI at the Gothenburg Colloquium in May last year, and with the support of my compatriots Gavin Fitzmaurice and Patrick Holloway, the issue was debated at the South African MLA's AGM towards the end of 2024, and the decision was taken to form an Africa Committee whose purpose it was to promote maritime and transport law topics throughout the continent, drawing on all available networks.

At a recent Law of the Sea conference hosted by the University of Cape Town, which was attended by academics, practitioners and authorities from a wide range of legal backgrounds including from Africa, I was able, in my Keynote Address, to promote the Africa Committee and advocate for enhanced collaboration among practitioners, academics and authorities tasked with promoting maritime law across Africa. In particular,

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I made reference to the need for accession to and ratification of the Rotterdam Rules and the Judicial Sales Convention.

The committee was duly established in April this year and has convened twice thus far. It remains in its early stages of development.

We have established a core of individuals who share the Africa Committee's vision and purpose. In particular, our mandate includes the promotion of CMI initiatives such as the Rotterdam Rules—which already enjoy a some support among African states— and the Judicial Sales Convention – which has seen considerable support from the Continent and additional initiatives such as maritime arbitration and a convention akin to the CMR for goods transported by road among parties to the African Continental Free Trade Agreement. The vast majority of cargo movement in Africa is by road. The absence of any CMR-like framework poses considerable challenges to the insurability of road-borne freight and the allocation of liability for freight operators.

Notably, 54 of the 55 African Union recognised states are signatories to a Free Trade Agreement and 44 of those states have officially submitted instruments of ratification.

This Free Trade Agreement is said to be “the largest free trade pact in the world in terms of the number of signatories, promising to transform Africa into a modern, industrialized, cohesive, and influential player on the global stage.”

We also intend to leverage some of the approximately 40 regional organisations, particularly SADC<sup>2</sup>, COMESA<sup>3</sup>, ECCAS<sup>4</sup>, and ECOWAS<sup>5</sup>.

## **Rotterdam Rules**

With the African Union's push from customs uniformity and the apparent support that this is receiving from its member states, the time is opportune for the African Union to promote a modern regime that supports multi-

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<sup>2</sup> Southern African Development Community

<sup>3</sup> Common Market for Eastern and Southern Africa

<sup>4</sup> Economic Community of Central African States

<sup>5</sup> Economic Community of West African States

modal transport of goods involving a sea leg. The Hague, Hague-Visby and Hamburg Rules lack the multi-modal and carriage contract flexibility (ie electronic transport records) of the Rotterdam Rules.

African states have displayed inconsistent approaches to ratifying carriage conventions. The Hamburg Rules, for instance, remain the most popular and have been ratified by 19 African nations. Of course, ratification alone may not prove insufficient as very often the Convention needs to be enacted domestically (occasionally with amendments) – an example would be the South African approach to the Hague-Visby Rules – they form part of the Carriage of Goods by Sea Act without any prior ratification.

By contrast, Togo has not only ratified the Rotterdam Rules but has also enacted them such that they apply to all traffic involving a sea leg—regardless of whether a single carriage contract is involved.

Benin, Cameroon, and the Congo are the only other African states that have ratified the Rotterdam Rules. Cameroon and the Congo both have CMI-recognized maritime law associations, as do Nigeria, South Africa, and Tanzania—all of which function as significant maritime gateways for local and regional trade (including for several landlocked neighbours).

## **Judicial Sales**

The Africa Committee is also committed to encouraging African states unaffiliated with the Judicial Sales Convention to consider signing and ratifying. Burkina Faso, Cote d'Ivoire, Gabon, Ghana, Liberia, Libya, Sao Tome and Principe, Senegal, Sierra Leone, and Tanzania are signatories. Key states that we will target include South Africa, Namibia, Nigeria and Kenya.

One of the prime objects of the Africa Committee will be to assist lawyers and academics in helping the authorities in their understanding of any conventions – be it Rotterdam or Judicial Sales – which should speed up the signing and ratification processes.

## **The Way Ahead**

As I mentioned in Gothenburg, the CMI may wish to consider a specific policy specifically dedicated to promoting its work across Africa. In this regard, I propose the following recommendations:

1. Seeking out and including African representation of IWG's and Standing Committees; and
2. Supporting the work of the South African MLA's Africa Committee; and
3. Assisting in providing administrative support and speakers to an African Maritime Law Conference to be arranged by the South African MLA;

Finally, I encourage any stakeholders from across the African continent present to join this ambitious initiative and to collaborate with the Africa Committee in furthering pan-African maritime and transport law.