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YEARBOOK 2024 ANNUAIRE



YEARBOOK

2024

ANNUAIRE



JULIAN CLARK
(1963 - 2024)



President's Memorial Speech at the Gothenburg Colloquium

Dear Colleagues,

Re: **Julian Clark**

Just a year ago, at the Montreal Colloquium, Julian Clark not only rocked the stage until the early hours of the morning together with the “Seven Seas” band but also chaired an excellent and dynamic panel on “Cyber Threat in the Maritime Sector”, entitled “A Storm on the Horizon”. It is with deep regret that we now talk of his premature passing at just 60 years old.

Julian was a passionate maritime lawyer, qualified as both a solicitor and a barrister. Originally from Sheffield, he started his career in the FDD Department of what was then the North of England (now part of the NorthStandard). He then moved on to Clifford Chance, made partner at HFW, was one of the founding partners of CJC, joined Hill Dickinson as Global Head of Shipping, Senior Partner at Ince & Co – and finally the Gard as a legal advisor. He authored numerous articles and also wrote a chapter on Exclusion of Liability that featured in *The Carriage of Goods by Sea Under the Rotterdam Rules*, edited by Professor Rhidian Thomas. He was the Chair of the International Working Group on Cybercrime in Shipping.

His legal career was interlaced throughout with his great passion for music. He took time out on so many occasions to sing on cruise ships and to lead various bands such as Crocodile Thong, Dr Funkenstein & the

Chapel of Soul and, more recently Love Street. He wrote a song aimed at raising money for Ukrainian seafarers. His latest album, the Alchemist's Daughter, was released just a few weeks before his passing. Proceeds will go to Prostate Cancer UK and Stella Maris. He was a fervent supporter of the charity Stella Maris and seafarers' rights.

Julian was also a fantastic story-teller. He loved sharing his life experiences with colleagues and clients alike. He was hugely inspirational and mentored numerous young lawyers. Above all, he lived every aspect of life to the fullest, whether he was singing at a festival, writing an article or arguing a legal point, he did it with the utmost passion.

ANN FENECH
President of CMI

JACQUES LIBOUTON
(1946 - 2024)



Those who had the privilege of knowing him during his remarkable career will undoubtedly remember their first encounter with Jacques Libouton, who passed away on 11 February 2024 at the age of 77.

Born into a family of lawyers, Jacques Libouton obtained his law degree from the Université Libre de Bruxelles in 1969, was admitted to the Brussels Bar, and naturally joined his father's practice, Maurice Libouton, with whom he became a partner in 1975. He left the family firm in 1985 to join Van Ryn, Van Ommeslaghe, Van Beirs, Faurès, and Flagey. Later, in 1993, alongside Philippe Gérard and other distinguished lawyers, he co-founded the law firm Gérard & Associés.

Jacques Libouton was primarily recognised as an expert in transport, shipping, and insurance law, fields in which he possessed encyclopaedic knowledge. Above all, he was a practitioner who litigated in both national languages before all the courts of the land. Listening to him argue a case was always a pleasure. With sharp brilliance and often a touch of humour, he debated the most complex cases in elegant language and presented intricate legal questions in a readily comprehensible manner. Clients could rely on his unwavering commitment and his remarkably clear perspective on matters.

Moreover, one cannot recall him without mentioning those he trained and profoundly influenced, to the extent that one could speak of a 'Libouton generation' at the Brussels Bar.

Jacques Libouton was also actively involved in professional bodies. He was a member of the Brussels Bar Council from 1989 to 1992 and played a significant role in the International Association of Lawyers, where he served as deputy treasurer in 1979 and later as financial director. He was a member of the board of directors of the Albert Lilar Foundation and, since 1995, a titular member of the CMI.

In addition to his legal practice, Jacques Libouton was a prolific academic. From 1982 onwards, he was responsible for the 'Chartering and Maritime Transport' course at the Université Libre de Bruxelles, directed the specialised studies programme in air and maritime law at the same university from 1996 to 2003, and served as deputy director of its postgraduate Master's programme in economic law, in charge of the 'Transport Law' section, from 2003 to 2012. His extensive list of scientific publications, including jurisprudence overviews, numerous articles, and case notes, is impressive.

We must also remember the man Jacques Libouton was: his sense of ethics, integrity, diplomatic finesse, optimism, kindness, readiness to listen, insight, and zest for life.

Viviane, his wife, survives him along with their three children, Alexandre, Denis, and Max, and six grandchildren.

His candid smile, cordial handshake, and sparkling eyes will be remembered by all who knew him.

BÜLENT SÖZER
(1941 - 2024)



The CMI has lost a good friend in Prof Dr Bülent Sözer

The CMI family will be greatly saddened to hear of the recent passing of Prof Dr Iur Bülent Sözer.

A notice of his passing and a short obituary may be found at his most recent academic home, the Institute of International Shipping & Trade Law of Swansea University (<https://iist.blog/2023/12>).

Bülent made many significant contributions to the work and fellowship of the CMI. As the then CMI Secretary-General I had the pleasure of working closely with him in organising the Istanbul Colloquium in 2015. Bulent co-chaired the Turkish organising committee with Samin Uman. I can say that it was largely because of Bülent's optimism and enthusiasm that we went ahead with the Colloquium in the face of the then very recent emergence of ISIS on the world's stage. The Colloquium was described by CMI President Stuart Hetherington at the Istanbul Assembly as "a stunning success" – credit largely due to Bülent.

For the past decade Bülent has been a staunch supporter of the yCMI Essay Prize, and on three occasions (undoubtedly beyond the reasonable call of CMI duty) he happily agreed to act as one of three judges. His opinions were unfalteringly fair and thorough. Being a generous minded soul, he was happy to give high marks to reward good efforts, but did not shy away from knocking submissions he considered below standard.

CMI members will miss his regular attendance and at times spirited contributions at CMI international events. In addition to his yCMI Essay work, his most recent contribution to the CMI has been as a member of the Maritime Autonomous Surface Ships and Vessel Nomenclature International Working Groups. He was immensely proud to have his last

book published in September last year: *Unmanned Ships and the Law* [Informa, 2023] is a fitting tribute to a practice and academic life well spent.

I was privileged to be referred to by Bülent, in his characteristic expansive and ebullient style, as his venerable and esteemed friend. Sadly I was not able to travel to Piri Reis University to celebrate with him the award to him of an Honorary Doctorate in October 2021. That honour recognised his half century of teaching and writing in shipping law – he once told me that his teaching career started in March 1972 when he was dropped into the deep end by his Dean to teach carriage of goods by sea. “Fifty years in the pulpit” he told me proudly. The many students who benefitted from his passion for teaching and for his subject will no doubt join us in lamenting the passing of a good man, and a great character.

JOHN HARE
*Past Secretary-General
Comité Maritime International*

LIONEL TRICOT
(1921 - 2024)



Maître Lionel Tricot passed away at the impressive age of 103.

Four years ago, the Belgian Maritime Law Association organized a reception at the occasion of Me. Tricot's 100th birthday which coincided with the 125th anniversary of the Belgian Maritime Law Association. No one was more suited than Lionel Tricot to give a speech on the glorious history of our association. We were all flabbergasted: he stood up, walked to the rostrum and held a clear and well-structured speech without any written preparation and without any hesitation. Both his voice and his speech were vigorous and crystal clear. Just a couple of months earlier, he had speeched similarly at the occasion of the celebrative event organized at the occasion of his 80 years membership of the Antwerp bar.

Lionel was a maritime lawyer of outstanding quality, professor maritime law at amongst others the University of Leuven, president of the Belgian Maritime Law Association, editor of law review *Jurisprudence du Port d'Anvers*, member of various international working groups of the CMI, titular member of the CMI, signor of maritime treaties on behalf of the Holy Sea and many things more. He will forever be remembered in the history of maritime law. The number of Me. Tricot's merits is too long to be listed here.

In court he was a formidable opponent with an unbeatable talent in eloquence. He always formulated his arguments with the greatest politeness possible but in an irrefutable manner. He was the living proof that an excellent lawyer, dedicated to his client's interests, could at the same time be a correct and courteous adversary.

Those surviving Me. Tricot will remember him as a lawyer of impressive authority and seniority, a monument of the maritime bar.

Nevertheless, he will equally be remembered for his respectful and dignified treatment of lawyers so much younger than him and whom he treated as his equals.

We will remember Lionel Tricot for what he was, for what he said, what he did, and, not in the least, the respect he commanded and the respect he gave us.

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PART I

**Organization of
the CMI**

CONSTITUTION

COMITÉ MARITIME INTERNATIONAL ARTICLES OF ASSOCIATION¹

2022

PART I – GENERAL

Article 1 Name and Object

The name of this organisation is “Comité Maritime International”, which may be abbreviated to “CMI”. The name of the organisation may be used in full or in its abbreviated form. It is a non-governmental not-for-profit international organisation established in Antwerp in 1897 for an unlimited duration, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of national associations of maritime law and shall co-operate with other international organisations. The CMI shall promote research, education and discussion in the field of maritime law. It can achieve its goal through the following activities:

- organising of seminars and conferences as a platform for academic discussions;
- encouraging the cooperation regarding research and education;
- organising new activities of research and education;
- providing – upon request or on its own initiative – advice and recommendations to intergovernmental organisations, other international bodies or institutions, governments, parliaments, political parties, judicial authorities, legal professions, etc.
- publishing articles, books, reviews, reports, brochures and other informative documents related to the activities of the CMI, both printed and electronical versions.

The CMI can in general develop any and all activities that contribute directly or indirectly to the achievement of the aforementioned non-profitable goals, including commercial and profitable activities within the limits of what is allowed by law and of which the proceeds shall be destined at all times for the achievement of the non-profitable goals of the CMI. The CMI can amongst others cooperate with, grant loans to, invest

¹ Please be advised that the amendment of art. 1 of the Articles of Association have been approved at the General Assembly of October 21 2022, under the condition precedent of approval by the Belgian King as imposed by Belgian law. The application for this approval has been filed by the CMI but it is not yet known when the approval by the King will be granted. Until that moment, the amendment of art. 1 is not yet final.

in the capital of, or in whatever way, participate directly or indirectly in other legal incorporated bodies, associations and companies of private or public nature, governed by Belgian or foreign law.

- Establishing committees, international subcommittees, working groups, divisions or establishments within the CMI.

Article 2

Existence and Statutory Seat

The CMI is incorporated in Belgium as an *Association internationale sans but lucratif* (AISBL) / *Internationale Vereniging zonder Winstoogmerk* (IVZW) under the Belgian Act of 27 June 1921 as later amended. It has been granted juridical personality by Royal Decree of 9 November 2003. It shall at all times consist of at least 2 Member Associations. Its statutory seat is located in the Flemish Region (Vlaams Gewest). Within the Flemish Region (Vlaams Gewest), the statutory seat can be changed by decision of the Executive Council without amending the Articles of association. The actual statutory seat is located at Ernest Van Dijckkaai 8, 2000 Antwerp. Every change of the statutory seat shall be published in the annexes of the Belgian State Gazette.

PART II – MEMBERSHIP AND LIABILITY OF MEMBERS

Article 3

Member Associations

- (a) Subject to Article 28, the voting Members of the CMI are national (or multinational) Associations of Maritime Law elected to membership by the General Assembly, further “Member Associations”, the object of which Associations must conform to that of the CMI and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.
- (b) Where in a State there is no national Association of Maritime Law in existence, and an organisation in that State applies for membership of the CMI, the General Assembly may accept such organisation as a Member of the CMI if it is satisfied that the object of such organisation, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in these Articles of association to Member Associations, it will be deemed to include any organisation admitted as a Member pursuant to this Article.
- (c) Only one organisation in each State shall be eligible for membership, unless the General Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.

Constitution

- (d) Where a Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the CMI.
- (e) Member Associations of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.
- (f) Member Associations are entitled to attend and vote, each with only one vote, at General Assemblies.

Article 4

Titulary Members

Individual members of Member Associations may be elected by the General Assembly as Titulary Members of the CMI upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the General Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the CMI and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members presently or formerly belonging to an Association which is no longer a member of the CMI may remain individual Titulary Members at large pending the formation of a new Member Association in their State.

Titulary Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 5

Provisional Members

Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the CMI may upon the proposal of the Executive Council be elected as Provisional Members by the General Assembly. A primary objective of Provisional Membership is to facilitate the organisation and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the General Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State where there is no Member Association. Provisional Members of the CMI are identified in

a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 6 **Members *Honoris Causa***

The General Assembly may elect to Membership *honoris causa* any individual person who has rendered exceptional service to the CMI or in the attainment of its object, with all of the rights and privileges of a Titulary Member. Members *honoris causa* shall not be attributed to any Member Association or State, but shall be individual members of the CMI as a whole.

Members *honoris causa* of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 7 **Consultative Members**

International organisations which are interested in the object of the CMI may be elected by the General Assembly as Consultative Members. Consultative Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

Article 8 **Expulsion of Members**

- (a) Members may be expelled from the CMI by reason of:
 - (i) default in payment of subscriptions;
 - (ii) conduct obstructive to the object of the CMI; or
 - (iii) conduct likely to bring the CMI or its work into disrepute.
- (b) (i) A motion to expel a Member may be made by:
 - a) any Member Association or Titulary Member of the CMI; or
 - b) the Executive Council.
 - (ii) Such motion shall be made in writing and shall set forth the reason(s) for the motion.
 - (iii) Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.
- (c) A motion to expel made under Article 8(b)(i)(a) shall be forwarded to the Executive Council for first consideration.
 - (i) If such motion is approved by the Executive Council, it shall be forwarded to the General Assembly for consideration pursuant to Article 11(b).
 - (ii) If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the General Assembly by the Member Association or Titulary Member at its meeting next following the meeting of the Executive Council at which the motion was considered.

Constitution

- (d) A motion to expel shall not be debated in or acted upon by the General Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding General Assembly.
- (e) (i) The Member in question may offer a written response to the motion to expel, and/or may address the General Assembly for a reasonable period in debate upon the motion.
- (ii) In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), actual payment in full of all arrears currently owed by the Member in question shall constitute a complete defence to the motion, and upon acknowledgment of payment by the Treasurer the motion shall be deemed withdrawn.
- (f) (i) In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), expulsion shall require the affirmative vote of a simple majority of the Member Associations present, entitled to vote, and voting.
- (ii) In the case of a motion to expel which is based upon Article 8(a)(ii) and (iii), expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.

Article 9

Limitation of Liability of Members

The liability of Members for obligations of the CMI shall be limited to the amounts of their subscriptions paid or currently due and payable to the CMI.

PART III – GENERAL ASSEMBLY

Article 10

Composition of the General Assembly

The General Assembly shall consist of the Member Associations, the members of the Executive Council and the Immediate Past President.

The President shall preside all General Assemblies, and shall be accompanied by the persons designated by the Executive Council to assist in the efficient handling of the business before the General Assembly.

When approved by the Executive Council, the President may invite other classes of Members and Observers to attend all or parts of the meetings, including the General Assembly. However, the other classes of Members or Observers shall not be part of the composition of the General Assembly.

Article 11

Functions of the General Assembly

The functions of the General Assembly are:

- (a) To elect the Councillors of the CMI;
- (b) To elect Members of and to suspend or expel Members from the CMI;
- (c) To fix the amounts of subscriptions payable by Members to the CMI;
- (d) To elect auditors;
- (e) To consider and, if thought fit, approve the accounts and the budget;
- (f) To consider reports of the Executive Council and to take decisions on the activities of the CMI, including the location for the holding of meetings, and in particular, meetings of the General Assembly;
- (g) To approve the convening of, and ultimately approve resolutions adopted by, International Conferences;
- (h) To adopt Rules of Procedure not inconsistent with the provisions of this Articles of association and make such additional Rules of Procedure as may be necessary when so doing to take account of any transitional issues that arise; and
- (i) To amend the Articles of association pursuant to Article 14.

Article 12

Meetings and Quorum of the General Assembly

The annual General Assembly shall meet at a time and place determined by the Executive Council in conformity with the requirements of Belgian law. A General Assembly can also be organised by means of a telephone or video conference or via any other means of telecommunication that guarantees an effective and simultaneous deliberation between all the participants. The General Assembly shall also meet at any other time, with a fixed agenda, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks' notice shall be given of such meetings.

Unless otherwise provided elsewhere in the present Articles of association, any General Assembly shall be validly constituted if at least five Member Associations are present.

Article 13

Agenda and Voting of the General Assembly

Matters to be dealt with by the General Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to the Articles of association, provided no Member Association represented in the General Assembly objects to such procedure.

Members *honoris causa* and Titulary, Provisional and Consultative Members shall enjoy the rights of presence and voice, but only Member Associations who are not in arrears of payment of their subscription, shall have the right to vote.

Constitution

Each Member Association present at the General Assembly and entitled to vote shall have one vote. The vote of a Member Association shall be cast by its President, or by another of its members duly authorised by that Member Association.

The right to vote by proxy is excluded.

Unless otherwise provided in the Articles of association and subject to Article 8(f)(ii) and Article 14, all decisions of the General Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to any Rules of Procedure adopted pursuant to Article 11(h) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

If it is provided in the convocation to the General Assembly, the members can be granted the right to vote via electronic way or in writing on all or some of the matters set out in the agenda, prior to the time that the General Assembly is held. These prior votes will be taken into account for the calculation of the quorum and the majority required for the relevant General Assembly. If the convocation provides that the right to vote via electronic way or in writing prior to the General Assembly only applies for a limited number of matters on the agenda, the prior votes shall only be taken into account for the calculation of the quorum and the majority required for these limited number of matters. The CMI shall verify the identity and the right to vote of members who make use of the right of prior voting. Those members shall act in accordance with the identification procedure imposed by the Executive Council.

Article 14

Amendments to the Articles of association

Amendments to the Articles of association shall be made in writing and shall be transmitted to all National Associations at least six weeks prior to the meeting of the General Assembly at which the proposed amendments will be considered.

Amendments to the Articles of association shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. Their effectiveness and entry into force shall be subject to Belgian law.

PART IV – COUNCILLORS

Article 15

Designation

The Executive Council is the governing body of the CMI. It shall consist of a maximum of 14 Councillors who shall be elected by the General Assembly. The Executive Council shall include the following:

- (a) The President,
- (b) Two Vice-Presidents,
- (c) The Secretary-General,

- (d) The Treasurer (and Head Office Councillor) (hereafter “The Treasurer”),
- (e) The Administrator (if an individual), and
- (f) Up to eight Executive Councillors.

Article 16

President

The President of the CMI shall preside over the General Assembly, the Executive Council, and the International Conferences convened by the CMI. He or she shall be an *ex-officio* member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he or she shall carry out the decisions of the General Assembly and of the Executive Council, supervise the work of the International Sub-Committees and Working Groups, and represent the CMI externally.

The President shall have authority to conclude and execute agreements on behalf of the CMI, and to delegate this authority to other Councillors of the CMI.

The President shall have authority to institute legal action in the name and on behalf of the CMI, and to delegate such authority to other Councillors of the CMI. In case of the impeachment of the President or other circumstances in which the President is prevented from acting and urgent measures are required, five Councillors together may decide to institute such legal action provided notice is given to the other members of the Executive Council. The five Councillors taking such decision shall not take any further measures by themselves unless required by the urgency of the situation.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the CMI.

The President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

Article 17

Vice-Presidents

There shall be two Vice-Presidents of the CMI, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as Councillors of the CMI, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

Article 18

Secretary-General

The Secretary-General shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

Constitution

The Secretary-General shall have particular responsibility for organisation of the intellectual and social content, and all non-administrative preparations for International Conferences, Colloquia, Symposia and Seminars convened by the CMI.

The Secretary-General shall liaise with appropriate international bodies, especially Consultative Members of the CMI and may represent the CMI at any forum when so requested by the President or the Executive Council.

The Secretary-General shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms.

Article 19 **Treasurer**

The Treasurer shall undertake and be responsible for the tasks and duties assigned to him/her from time to time by the President or the Executive Council.

In particular, the Treasurer shall:

- (a) be responsible for the funds of the CMI, and shall collect and disburse, or authorise disbursement of, funds as directed by the Executive Council, in accordance with protocols prescribed from time to time by the Executive Council;
- (b) maintain adequate accounting records for the CMI;
- (c) prepare the annual accounts for the preceding accounting year in accordance with current Accounting Standards imposed by Belgian law, and shall prepare proposed budgets for the current and next succeeding accounting years;
- (d) submit the draft annual accounts and the proposed budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions, present them for review by the Executive Council, in view of their approval by the General Assembly in conformity with the requirements of Belgian law.
- (e) at the request of the Executive Council, open such bank accounts and other financial facilities, such as credit cards, as are necessary to facilitate the financial operations of the CMI, and take all steps necessary to manage the finances of the CMI including arranging the deposit of funds and payment of accounts.

In his/her capacity as Head Office Councillor, the Treasurer shall be:

- (f) the line manager of the Administrative Assistant in Antwerp in relation to his/her office duties and in general to oversee the day by day business of the Secretariat of the CMI.
- (g) authorised to give, and be responsible for, all formal and informal notifications of amendments to the Articles of association of the CMI; official notifications of the appointment and termination of Councillors of the Executive Council; and all other notifications required by the laws of Belgium from time to time. And in this regard, the Treasurer shall appoint and liaise with a practising Belgian lawyer to ensure compliance with all formal and legislative prerequisites in

relation to the Executive Council, the General Assembly, and the CMI in general.

The Treasurer shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms.

Article 20 **Administrator**

The Administrator shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Administrator shall have particular responsibility for the formal administrative preparations for meetings of the CMI, and to that end, shall:

- (a) give official notice of all meetings of the General Assembly and the Executive Council, of International Conferences, Symposia, Colloquia and Seminars, and of all meetings of Committees, International Sub-Committees and Working Groups;
- (b) circulate the agendas, minutes and reports of such meetings;
- (c) make all necessary administrative arrangements for such meetings (such as the liaison with the host Maritime Law Association for the booking of venues and associated social activities);
- (d) take such actions, either directly or by appropriate delegation, as are necessary to give effect to administrative decisions of the General Assembly, the Executive Council, and the President;
- (e) circulate such reports and/or documents as may be requested by the President, the Secretary-General or the Treasurer, or as may be approved by the Executive Council; and
- (f) keep current and ensure publication of the lists of Members pursuant to Articles 3, 4, 5, 6 and 7.

The Administrator may represent the CMI at any forum when so requested by the President or the Executive Council.

The Administrator may be an individual or a body having juridical personality. If a body having juridical personality, the Administrator shall be represented on the Executive Council by one natural individual person. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the CMI.

The Administrator, if an individual, shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the General Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

PART V – EXECUTIVE COUNCIL

Article 21

Composition, criteria for election and terms of office of the Executive Council

The Executive Council shall comprise the Councillors of the CMI as described in Article 15.

The Executive Councillors shall be elected by the General Assembly upon individual merit, also having due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each elected Councillor shall be elected to his or her specific office in the Executive Council for a term of three years and shall be eligible for re-election for one additional term to each such office, except that (as provided in Articles 18, 19 and 20) there shall be no such limit on the number of re-elections of the Secretary-General, Administrator or Treasurer.

Article 22

Functions of the Executive Council

The functions of the Executive Council are:

- (a) To receive and review reports concerning contact with:
 - (i) The Member Associations,
 - (ii) The CMI Charitable Trust, and
 - (iii) International organisations;
- (b) To review documents and/or studies intended for:
 - (i) The General Assembly,
 - (ii) The Member Associations, relating to the work of the CMI or otherwise advising them of developments, and
 - (iii) International organisations, informing them of the views of the CMI on relevant subjects;
- (c) To initiate new work within the object of the CMI, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairs, Deputy Chairs and Rapporteurs for such bodies, and to supervise their work; reports of such Committees, Sub-Committees and Working Groups shall be submitted to the Executive Council and/or the General Assembly as requested by the President;
- (d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further achieve the object of the CMI; reports of such persons shall be submitted to the Executive Council and/or the General Assembly as requested by the President;
- (e) To encourage and facilitate the recruitment of new members of the CMI;
- (f) To oversee the finances of the CMI and to appoint an Audit Committee;
- (g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;

- (h) To nominate, for election by the General Assembly, an independent auditor for the annual financial statements prepared by the Treasurer and/or the accounts of the CMI, and to make interim appointments of an accountant or an auditor if necessary;
- (i) To review and approve proposals for publications of the CMI;
- (j) To set the dates and places of its own meetings and, subject to Article 11, of the meetings of the General Assembly, and of Seminars, Symposia and Colloquia convened by the CMI;
- (k) To propose the agenda of meetings of the General Assembly and of International Conferences, and to decide its own agenda and those of Seminars, Symposia and Colloquia convened by the CMI;
- (l) To carry into effect the decisions of the General Assembly;
- (m) To report to the General Assembly on the work done and on the initiatives adopted.
- (n) To pay an honorarium to the Secretary-General, Administrator and Treasurer if it considers it appropriate to do so.

Article 23

Meetings and Quorum of the Executive Council

The Executive Council shall meet at least twice annually; it may when necessary meet by electronic means, a telephone or video conference or via any other means of telecommunication guaranteeing at the same time a proper deliberation, but shall meet in person at least once annually unless prevented by circumstances beyond its control.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are fully informed and a majority respond affirmatively in writing.

Any actions taken without a meeting shall be ratified when the Executive Council next meets. At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Councillors, shall constitute a lawful quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

Article 24

Immediate Past President

The Immediate Past President of the CMI shall have the option to attend all meetings of the Executive Council, and at his or her discretion shall advise the President and the Executive Council. His or her expenses in so attending shall be met in the same way as those of the Executive Council.

PART VI – NOMINATING PROCEDURES

Article 25 Nominating Committee

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the CMI.

The Nominating Committee shall consist of:

- (a) A Chair, who shall have a casting vote where the votes are otherwise equally divided, and who shall be appointed by the Executive Council;
- (b) The President and Immediate Past President of the CMI (provided that a Past President may resign from the Nominating Committee at any time upon giving written notice to the President);
- (c) Two members proposed by Member Associations through the procedures of the Nominating Committee, *mutatis mutandis*, and thereafter nominated by the Nominating Committee for election by the General Assembly;
- (d) One further member appointed by the Executive Council.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he or she is a candidate.

All members of the Nominating Committee other than the President and Immediate Past President (who respectively shall hold office *ex officio*) shall hold office for a term of three years and shall be eligible for re-appointment or re-election for one additional term.

Article 26 Nomination Procedures

On behalf of the Nominating Committee, the Chair shall determine first:

- (a) whether any Councillors eligible for re-election are available to serve for an additional term in which event he or she shall obtain a statement from such Councillors as to the contributions they have made to the Executive Council or the Nominating Committee during their term(s);
- (b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as a Councillor, or, where applicable, to serve on the Nominating Committee.

The Chair shall then notify the Member Associations and seek their views concerning the candidates for nomination. The Nominating Committee shall then make nominations taking such views into account.

Following the decisions of the Nominating Committee, the Chair shall forward its nominations to the Administrator in ample time for distribution not less than six weeks before the meeting of the General Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations

are forwarded to the Administrator in writing not less than 15 working days before the meeting of the General Assembly at which nominees are to be elected. In the absence of any such nominations from Member Associations, the only nominations for election by the General Assembly shall be the nominations of the Nominating Committee.

The Executive Council may make nominations to the Nominating Committee for election by the General Assembly to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the Chair of the Nominating Committee at least fourteen weeks before the meeting of the General Assembly at which nominees are to be elected.

PART VII - INTERNATIONAL CONFERENCES

Article 27

Composition and Voting

The CMI shall meet in International Conferences at places approved by the General Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda approved by the Executive Council.

The International Conference shall be composed of all Members of the CMI and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by its delegates present and by Titulary Members present who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in an International Conference; no other Member and no Councillor of the CMI shall have the right to vote in such capacity. The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

Clerical mistakes, or errors arising from an accidental mistake, omission or oversight, or an amendment to provide for any matter which should have been but was not dealt with at an International Conference can be corrected by a resolution at a subsequent General Assembly meeting.

PART VIII - FINANCE

Article 28 **Arrears of Subscriptions**

A Member Association remaining in arrears of payment of its subscription for more than one year from the end of the accounting year for which the subscription is due shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay subscriptions and who remain in arrears of payment for two or more years from the end of the accounting year for which the subscription is due shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Failure to make full payment of subscriptions owed for three or more accounting years shall be sufficient cause for expulsion of the Member in default. A Member expelled by the General Assembly solely for failure to make payment of subscriptions may be reinstated by vote of the Executive Council following payment of arrears, subject to ratification by the General Assembly. The General Assembly may authorise the President and/or Treasurer to negotiate the amount and payment of arrears with Members in default, subject to approval of any such agreement by the Executive Council.

Subscriptions received from a Member in default shall, unless otherwise provided in a negotiated and approved agreement, be applied to reduce arrears in chronological order, beginning with the earliest accounting year of default.

Article 29 **Fees and Expenses**

The Secretary-General, Administrator and Treasurer shall receive such *honoraria* as may be determined by the Executive Council and the accountants/auditors shall receive such fee as may be approved by the Executive Council.

Members of the Executive Council, the Immediate Past President, and Chairs of Standing Committees, Chairs and Rapporteurs of International Sub-Committees and Working Groups, when travelling on behalf of the CMI, shall be entitled to reimbursement of travelling expenses, as directed by the President or the Executive Council.

The President or the Executive Council may also authorise the reimbursement of other expenses incurred on behalf of the CMI.

Article 30 **Accounting year**

The accounting year of the CMI shall terminate on April 30 each year, unless otherwise determined in conformity with the requirements of Belgian law

PART IX – FINAL PROVISIONS

Article 31 Liability

The CMI shall not be liable for the acts or omissions of its Members. The liability of the CMI shall be limited to its assets.

Article 32 Languages

1. The official language of the CMI shall be Dutch. The formal working languages of the CMI however shall be English and French. The use of other languages is permitted under the condition that the Member, using such other language, shall provide a translation, by preference simultaneous translation, in a working language.
2. The official Dutch language shall prevail in case of a conflict with other languages. In the absence of a document in the official Dutch language, the English and French working languages shall prevail.

Article 33 Dissolution and Procedure for Liquidation

The General Assembly may, upon written motion received by the Administrator not less than six months prior to the meeting of the General Assembly at which the motion is debated, vote to dissolve the CMI. At such meeting a quorum of not less than one-half of the Member Associations entitled to vote have to be present in order to take a vote on the proposed dissolution. Dissolution shall require the affirmative vote of a three-fourths majority of all Member Associations present, entitled to vote, and voting. Upon a vote in favour of dissolution, liquidation shall take place in accordance with the laws of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the net assets of the CMI, if any, shall devolve to the CMI Charitable Trust, a registered charity established under the laws of the United Kingdom.

Article 34 Governing Law

Any issue not resolved by reference to the Articles of association shall be resolved by reference to Belgian law.

Article 35 Entry into Force

The Articles of association shall enter into force on the tenth day following its publication in the *Annexes du Moniteur belge*.

RULES OF PROCEDURE

1996, as amended 2017

Rule 1 Right of Presence

In the Assembly, only Members of the Comité Maritime International as defined in Article 3(a) of the Constitution, members of the Executive Council as provided in Article 10, the Immediate Past President and Observers invited pursuant to Article 10 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 15, the Immediate Past President and Observers invited pursuant to Article 27 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings.

Rule 2 Right of Voice

Only Members of the Comité Maritime International as defined in Article 3 of the Constitution, members of the Executive Council and the Immediate Past President may speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

Rule 3 Points of Order

During the debate of any proposal or motion any Member or Officer of the Comité Maritime International having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

Rule 4

Voting

For the purpose of application of Article 13 of the Constitution, the phrase “Member Association present, entitled to vote, and voting” shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 14 or 28, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI Yearbook.

If a vote is equally divided, the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the nomination(s) of the Nominating Committee pursuant to Article 26, then the candidate(s) nominated by the Nominating Committee may be declared by the President to be elected to that office by acclamation. If the Nominating Committee nominates more candidates than there are vacancies for any office, then the Assembly shall conduct an election in accordance with the procedures of this Rule.

Rule 5

Amendments to Proposals

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

Rule 6

Secretary and Minutes

The Secretary-General or, in his absence, an Officer of the Comité Maritime International appointed by the President, shall act as secretary and shall take note of the proceedings and prepare minutes of Assembly meetings. Minutes of the Assembly shall be published on the CMI website (where practical) in the two official languages of the CMI, English and French, and in the CMI News Letter and/or otherwise distributed in writing to Member Associations.

Rule 7 **Amendment of these Rules**

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations at least six weeks before the annual meeting of the Assembly at which the proposed amendments will be considered.

Rule 8 **Application and Prevailing Authority**

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the Comité Maritime International.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail. Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

Rule 9 **Carry-over of terms when electoral process is changed**

Where the Assembly amends the Constitution by changing the manner in which the members of a Committee or body of the Comité Maritime International are to be elected, the Assembly may by resolution agree to permit the terms of office of members of such Committee or body, who were elected under the previous process specified under this Constitution, to be extended until the next Assembly meeting, and for such persons to carry out their functions on that Committee or body until their terms expire at the subsequent Assembly meeting.

A. GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY MEMBERS 2024

No person shall be proposed for election as a Titulary Member of the CMI without supporting documentation establishing in detail the qualifications of the candidate in accordance with Article 4 (formerly Article 3(1)(c)) of the Constitution, which reads as follows:

“Individual members of Member Associations may be elected by the Assembly as Titulary Members of the CMI upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the CMI or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members presently or formerly belonging to an Association which is no longer a member of the CMI may remain individual Titulary Members at large pending the formation of a new Member Association in their State. Titulary Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.”

Contributions of the candidates to the work of the CMI may include:

- (i) active participation as a voting delegate to two or more International Conferences or General Assemblies of the CMI,
- (ii) service on a CMI Working Group or International Sub-Committee,
- (iii) delivery of a paper at a seminar or colloquium conducted by the CMI, or
- (iv) other comparable activities which have made a direct contribution to the CMI's work.

Contributions in furtherance of international uniformity of maritime law is a general criterion and includes services rendered to another international organization as well as published writing that promotes uniformity of maritime law. This would include active participation in the furtherance of a CMI initiative, such as involvement in the negotiation stages or as part of a diplomatic delegation to an international conference convened with a view to adopting a treaty or instrument promoted by the CMI.

Services rendered to or work within a Member Association must be clearly shown to have made a significant contribution to work undertaken

Guidelines for Proposing the Election of Titulary and Provisional Members

by the CMI or to the furtherance of international uniformity of maritime law.

Applications from National Maritime Law Associations should explain in detail the role of the proposed candidate for Titulary Membership with the above criteria in mind.

Applications for Titulary Membership from National Maritime Law Associations should be submitted to the Secretary-General and the Administrator for the submission to the CMI Executive Council not less than ninety (90) days prior to the meeting of the Assembly at which the proposal will be considered, in order to enable the Executive Council to conduct a full review. Any application which is submitted after this date will be deferred to the following Assembly meeting.

B. GUIDELINES FOR PROPOSING THE ELECTION OF PROVISIONAL MEMBERS

Candidates for Provisional Membership must not merely express an interest in the object of the CMI, but must have demonstrated such interest by relevant published writings, by activity promoting uniformity of maritime law and/or related commercial practice, or by presenting a plan for the organization and establishment of a new Member Association.

Every three years, not less than sixty (60) days prior to the meeting of the Assembly, each Provisional Member shall be required to submit a concise report to the Secretary-General of the CMI concerning the activities organized or undertaken by that Provisional Member during the reporting period in pursuance of the object of the Comité Maritime International.

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PART II

The Work of the CMI

**STANDING COMMITTEES
HALF-YEARLY AND YEARLY REPORTS**

CARRIAGE OF GOODS BY SEA

YEARLY REPORT

TOMOTAKA FUJITA, *Chair*

1. Current Status of the Rotterdam Rules

First, Standing Committee on Carriage of Goods reluctantly has to report that there has been no progress in the adoption of the Rotterdam Rules. Twenty-five States have signed, and five have ratified. Although some European countries were reported to have completed their preparation for domestic implementation, it is not certain if and when they will ultimately ratify the convention.

2. National Legislations for Enabling “Electronic Bills of Lading”

Standing Committee is investigating the national legislation for electronic bills of lading since number of states seem to look for the solution on domestic level. In addition to a few countries such as Singapore and the U.K., it was reported that number of states are preparing for a legislation that enables the use of electronic bills of lading. For example, Japanese government decided the substance of new legislation for the purpose and plan to submit it to the legislator in 2025. The Committee circulated the questionnaire in August, 2022. 12 national MLAs have sent us their replies which are on CMI website. We are really grateful for their input which is really valuable.

Standing Committee hopes it can receive further replies from the MLAs so that it can make a decision what CMI can do. One possible are for further work is a possible the choice of law rules for electronic bills of lading which has not been well established. If domestic legislations for electronic bills of lading further spread, the importance of choice of law rules will be increased.

UNIDROIT approved “Principles on Digital Assets and Private Law” in May 2023 which includes the choice of law rules but many aspects of choice of law relating to the electronic bills of lading are not addressed.

RATIFICATION OF THE ROTTERDAM RULES

YEARLY REPORT

STUART HETHERINGTON, *Chair*

In late 2023 and early 2024 the principal focus of the work of the Standing Committee turned towards preparations for the Gothenburg Colloquium in May 2024, at which the forthcoming Centenary (August 2024) of the Hague Rules was to be recognised with some prominence. In addition the Committee started to focus more on the EU and Gertjan Van der Ziel and Frans van Zoelen were invited to join the Standing Committee in order to encompass the work that they were doing at the request of the Dutch MLA to open discussions with the EU in order to see whether there was any prospect of the EU throwing its weight behind more ratifications within that geographical region.

A number of Standing Committee meetings took place in late 2023 and early 2024 in which those endeavours were further discussed and preparations made for the Gothenburg Colloquium which the Standing Committee (with the support of the Executive Council) felt would provide an excellent opportunity to seek to make presentations identifying the strengths of the Rotterdam Rules compared with the Hague Rules in both its original form and its Hague Visby amendments. To that end the Colloquium was delighted that Michael Sturley had been requested to present the Francesco Berlingieri memorial lecture and would talk about the history of governmental reform in this area of the law. It was then decided that speakers nominated by the Standing Committee would occupy the rest of the first morning of the Colloquium in discussing different aspects of the Hague Rules and Rotterdam Rules reforms. Accordingly, presentations were made by the Chair, Alexander Von Ziegler and Miriam Goldby on different aspects of the Rules, and additional papers were also presented by Tomotaka Fujita, Andrew Robinson, Eric Rosaeg and Manuel Alba, all of whose presentations are included within the Yearbook. Gertjan Van der Ziel who had given an update on developments with the EU to the Standing Committee, which had met on the Wednesday prior to the Colloquium commencing, also gave a short address at the conclusion of the formal sessions in the Colloquium on this topic. As the Chair reported to the Assembly Meeting at the end of the Colloquium a Booklet is to be published of all those papers together with a

few additional papers which might assist MLAs in discussing the possibility of ratification within their own countries and making presentations of those materials to their government personnel.

Since the meeting in Gothenburg further discussions have taken place between Gertjan Van der Ziel and EU government personnel and these will be reported on at subsequent CMI meetings.

There have been a number of significant developments in the second half of 2024.

The Booklet

In August, thanks to Peter Laurijssen's great work and the efforts of the presenters of papers in Gothenburg, the Booklet (containing the Michael Sturley Berlingieri Lecture, the Rotterdam Rules Convention, the papers that were presented and additional materials that it was considered would be helpful to MLAs in selling the message to their governments) was sent to the Standing Committee, EXCO, relevant Consultative Members of CMI and the MLAs.

As well as being available electronically on the CMI website it is hoped that these hard copies can be presented to government officials and relevant stakeholders by MLAs.

Developments in the EU

Gertjan van der Ziel and Frans van Zoelen have had meetings following the Colloquium:

Firstly, they met the Transportation leadership at DG Just and DG Move at the EU Commission.

Secondly, they met with representatives of the European Shippers Council (ESC), which associates with a number of different international associations. They have a general assembly meeting on 19 November 2024 of the Global Shippers' Alliance, which is a cooperative body between the ESC, the Asian Shippers Alliance (ASA) and the American Association of Exporters and Importers (AAEI) in Brussels.

Gertjan is hopeful that EU National MLAs will contact, in due course, their national shippers' organisations seeking in particular political support for the involvement and action by the EU Commission (and, likewise non European MLAs their State governments around the world.) Another similar organisation is the Global Shippers Forum which CMI is in contact with.

Thirdly, Gertjan and Frans also met with staff of the European Community Ship Owners Association (ECSA).

On 15 July 2024 the Spanish Maritime Authorities sent a letter to the EU supportive of the ratification of the Rotterdam Rules which could provide a template for such letters from other governments and MLAs might like to make such a letter available to their own governments.

The European Transport Law published an edition on the Centenary of the Hague Rules, in a special issue of which includes articles by Michael Sturley, Philippe Delebecque, Norman Martinez, Frank Stevens and Stuart Hetherington.

Meetings

The Standing Committee has held a couple of Zoom meetings to discuss these matters, and has been joined by two new members: Manuel Alba and Philippe Delebecque

The most recent meetings have discussed the form of a Questionnaire to send to MLAs and the programme for the Tokyo Conference. It has been decided to request MLAs to prepare reports to be given at an Open meeting of the Standing Committee, on the day before the formal opening of the Conference, and at a shorter session during the Conference, on their activities in relation to seeking to persuade their governments to ratify the Rotterdam Rules.

Future meetings of the Standing Committee will seek reports from members of the Committee on developments in their region and on-going preparations for the Tokyo Conference.

GENERAL AVERAGE

HALF - YEARLY REPORT (JANUARY – JUNE)

JÖRN GRÖNINGER, *Chair*

The SC considered mainly two topical areas:

1. *Carbon levies*

With the beginning of this year the EU extended their Emission Trading System (ETS) to shipping. This means that for greenhouse gases emitted by commercial vessels allowances must be surrendered to the respective national authorities; this is calculated on the basis of fuel (bunkers) consumed which must be closely monitored on board and reported.

In principle this means an additional cost factor for shipowners or operators, but it might have other impacts on general average. The questions raised included:

- if it affects the contributory value of bunkers,
- which parties have to deal with it (shipowner, time charterer), and
- how it might impact on the G/A procedure (additional complication, delay due to time limits for surrendering the allowances).

After discussion it was concluded that this matter should be left to the average adjusting and insurance communities to develop. A uniform handling might be desirable, but for CMI the only way to achieve this would be a respective regulation in the York-Antwerp Rules; the SC believes there is no appetite for a change of the rules at this stage. It may be of interest that a working group within AMD, the international association of average adjusters, is currently looking into this.

2. *Objections raised in respect of CMI security forms*

As an appendix to the Guidelines on General Average, the CMI Assembly in October 2022 confirmed standard G/A security forms which had previously been approved by IUMI and ICS as well. Once published on the website adjusters started to use them / to recommend their use, but (not completely unexpectedly) they met with resistance from various firms representing cargo interests (mostly underwriters). The major issues up to now have been:

a) Consultation

Complaints are made that the preparatory consultations did not involve the correct parties on the cargo side (although IUMI does (and has traditionally done so in the

past discussions) speak with a strongly cargo minded voice, and any of the law firms regularly involved with cargo could have voiced their views in their NMLAs).

b) Payment on account clause

The forms contain a clause providing that the signing party agrees “*to make prompt payment(s) on account (...) as may be properly and legally due (...) as soon as the same may be recommended by the Adjuster.*” The clause further clarifies that such payment is without prejudice to final determination of liabilities, and it grants the right to “*reasonable counter-security in like amount prior to payment*”. Both the obligation itself as well as the – allegedly insufficient – quantum of the counter guarantee are being objected.

c) Notification of expenses

The forms contain a clause saying that the average adjuster “should be notified” within three months from the adjustment if the signing party intends to contest its liability. It is not formulated as a strict obligation but nevertheless apparently unwanted by some.

The Standing Committee discussed the topics in various e-mail exchanges and one online meeting in the first half of 2024; another meeting is scheduled in September. The issues are also taken into ICS and IUMI again through their representatives in the SC.

The objections raised against the standard security forms were discussed within the SC and at IUMI; there is consensus that the issues do not warrant any changes to the forms as published.

MARINE INSURANCE

I. YEARLY REPORT

JOSEPH GRASSO, *Chair*

When the SC on Marine Insurance met in Gothenburg on May 22, 2024, two topics were discussed:

Review of the Newsletter

This project attracted much attention and support. The idea underlying the Newsletter was welcomed, the only reservation related to the frequency of its publication and the mode of communication with members of the CMI. In response to an indication by the chairman of the present intention, the clear view of the meeting was to favor a rolling system with cases included in an electronic source as they became available to the SC. This would make the cases immediately available to the membership, and as such would be a useful and timely tool of reference. There was also support for a procedure which would give notice to members when new cases were added.

The SC is considering these issues; but in the meantime would like to have the attached inaugural newsletter posted on the CMI website.

Insurance issues relating to Mass

Following an introduction to the subject by the chairman there followed a broad and discursive discussion of the topic. It was clear that the speculative nature of the topic and the different degrees of autonomy that might exist rendered it difficult to be precise on the question of the insurance of MASS. Nonetheless there was discussion of regulatory questions, division of risk; and Nick Shaw emphasized the importance of the views of the reinsurance markets in determining the ultimate approach of the International Group.

The meeting attendees asked to be informed of the role of the SC in addressing this question. The chairman indicated that it was his understanding that the role of the SC was to support the deliberation of the SC on MASS (as had been the case at Gothenburg) and possibly to undertake particular projects relevant to the wider question relating to the insurance of MASS. A member of the SC had already raised a possible role for 'product liability'.

These matters will continue to be considered by the SC.

II. LETTER TO THE EXECUTIVE COUNCIL

October 4, 2024

Executive Council of the CMI

Re: International Union of Marine Insurers (IUMI) – 150th Anniversary Conference in Berlin, 15-18 September 2024

Dear ExCo Members:

As the recently appointed representative of the CMI as an IUMI Affiliate, I am writing to briefly summarize the 150th anniversary conference of IUMI concluded in Berlin last month. During the conference, IUMI published a series of daily press releases. Here is a recap of them, with links to the full articles:

“Times Are Changing For Marine Insurance, Says IUMI President, Frédéric Denèfle”.

“Positive Development Across All Marine Insurance Lines of Business Continued in 2023, Reports IUMI”.

“Positivity and Uncertainty on the Cards for Ocean Hull Underwriters, Reports IUMI”.

“IUMI Looks to The Future of Marine Insurance at Its 150th Anniversary Conference in Berlin, Germany”.

“Maritime Safety and Security Top of Agenda for IUMI”.

“Inland Hull, Fishing Vessel and Yacht Insurers Hit “Reset” But Where To from Here?, Asks IUMI”.

“Energy Underwriting Is Changing to Reflect Society’s Transition to a Cleaner Future, Says IUMI”.

“Loss Prevention Must Be a Prerequisite to Achieving Climate Change Goals, Argues IUMI”.

“IUMI Reports Sustained Improvement for Cargo Insurance Market”.

In short, the Conference was very successful and informative, and marine insurers remain prepared to cooperate with CMI and its other affiliate members to promote uniformity of maritime law and safety of maritime transport.

In that regard, there was also (for the first time) a private lunch for all Affiliates hosted by the IUMI ExCo on the last day of the conference. That provided an opportunity for an exchange of ideas. For my part, I indicated that the CMI would like to keep closely in touch with IUMI, and that the CMI SC on Marine Insurance remains a resource for support to the ocean marine insurance industry.

Please let me know if you have any questions or if I can provide further information. I would also like to extend my thanks again to ExCo for appointing me as the CMY representative to IUMI, as well as to Dieter Schwampe for his past exemplary service.

Sincerely,
Joseph G. Grasso

CMI YOUNG LAWYERS

HALF-YEARLY REPORT (JANUARY – JUNE)

IOANNIS TIMAGENIS, *Chair*

- **yCMI Standing Committee – New Members**

Our Committee was further renewed and reinforced with the addition of two new members, following recent approval from the CMI ExCo:

- **Filippo Cassola**, Legal Counsel at ADVANT Nctm (*Italy*): <https://www.advant-nctm.com/en/professional/cv-professional/filippo-cassola>
- **Ryoichi Kasahara**, Lawyer at Abe & Sakata Legal Professional Corporation (*Japan*): <https://abesakata.com/en/about>

- **yCMI's Presence at the CMI Colloquium in Gothenburg**

a) Academic Event

Our SC organised an academic session, successfully held on **Friday, 24th of May**, on the subject: “*The implication of the Red Sea Crisis on Shipping and Global Trade*”. More details can be found here: <https://cmi24.confetti.events/#programme--712201>

b) Social Event

In collaboration with a local colleague, Ms. Lina von Schedvin, the yCMI Steering Committee organised a social event (dinner and drinks) that took place at *Restaurant Atelier Hotel Pigalle in Gothenburg* on **Wednesday, 22nd May**, immediately following the main event Welcome Reception. The event was a great success, with over 45 young maritime lawyers in attendance. It provided an excellent opportunity for our committee to promote yCMI's philosophy and initiatives while attracting potential new members.

Following the CMI Colloquium in Gothenburg, several young maritime lawyers expressed interest in participating in future yCMI events and initiatives. The event was fully sponsored by Blank Rome and Timagenis Law Firm (on a 50-50 basis).

- **yCMI's Participation in International Working Groups**

Following discussions with the Co-Chair of the MORU IWG, Mr. Alexander Severance, regarding the CMI Colloquium in Gothenburg, a proposal was made to both the MORU and MASS IWGs to include a yCMI Steering Committee member in their Working Groups for future initiatives. Both IWGs warmly accepted the proposal. As a result, Ms. Morgane Roussel has joined the MASS IWG. As for the MORU IWG, our Steering Committee is still in the process of confirming the nomination internally.

- **Next Steps**

The immediate next step is to have a meeting with all the current members of the yCMI Steering Committee primarily to discuss potential additions/new members and to discuss the yCMI event at Tokyo following the guidance of ExCo and the Japanese Maritime Law Association.

LIABILITY OF CLASSIFICATION SOCIETIES

YEARLY REPORT

LUC GRELLET, *Chair*

The SC on classification societies was created in 1992. The aim of its works, headed, at the time, by Frank Wiswall, was to afford protection to classification societies in their contractual activities.

Considering that “what the societies do, and how and on which behalf they do it” is not known by the general public, the Group formulated “Principles of conduct for classification societies setting forth standards which may be applied to measure the conduct for a classification society” with respect to statutory as well as classification.

In order to provide some protection to classification societies, the Group also produced Model clauses for inclusion (i) in agreements between the societies and Governments and (ii) in the Rules of the societies which contain the terms of the agreements between the societies and the shipowners.

The Group encourages classification societies, in the framework of their statutory activities, to insert in their agreements with Governments clauses ensuring, *inter alia*, that the society (i) “acts solely as the agent of the Administration under whose authority or upon whose behalf it performs such work” and (ii) is entitled to the same defenses, including but not limited to any immunity or limitation of liability, as would be available to the Administration own personnel if they had themselves performed the work or certification in question.”

The Model clause for inclusion in the Rules of class societies affirms a major principle which is not always known that class societies certify the classification of a ship by reference to Rules “but not the condition of the ship which is the non-delegable responsibility of the shipowner.”

Also, it introduces a clause providing “some limitation of civil liability of the classification societies.” The debate within the Group (which was attended by representatives of IACS and ICS) has not focused on the principle of a limitation but “on the appropriate level of limitation.” The basing of limitation “upon tonnage of the ship”, as in the Limitation Convention, was not accepted by IACS which proposed a clause basing the limitation of liability “upon a multiple of the fee charged by the class society.”

Direct negotiations on this issue took place between IACS and ICS from 1997 and 1999. They failed.

An attempt to resume and complete the work was proposed in Hamburg in 2014 at John Hare's initiative. The mandate given to the Group, headed by Karl Gombrii, was to investigate if any progress could be made within the industry on the level of limitation.

IACS informed Karl Gombrii that it would be interested but ICS declined the offer. Therefore, Karl Gombrii informed the Assembly in London in 2018 that, in the circumstances, there was no scope for further work of the SC.

In the end, neither the Principles of conduct nor the Model clauses have been applied. However, they remain as a most valuable and comprehensive analysis of the work of classification societies.

In 2018, in London, the writer proposed that the work of the SC should nevertheless continue with a new mandate concerning the tort or non-contractual liability of classification societies.

The work of the SC since 1992 had essentially concerned the contractual relationships between classification societies and shipowners/Governments. The question of the tort liability of classification societies to third parties had been disregarded although, in his address to the Assembly in 2014, John Hare pointed out "a singular lack of consistency of approach in the world's courts" which "leaves the liability of classification societies in a great state of uncertainty."

The difference between common law and civil law on this issue is particularly relevant and the question was therefore to know if a better understanding of the reasoning of the courts in the countries in which the tort liability of class societies had been judged, could help "to fill the hole in the law."

The Assembly accepted to give the SC the required new mandate.

In the usual way a questionnaire has been prepared by the SC and sent to all NMLA's.

The members of the SC were well aware that only few decisions have been rendered on this topic worldwide but were nevertheless surprised to receive only 11 answers. In spite of reminders, UK, Germany, Canada, Japan, the Netherland, Malta, Singapore, China, Belgian, Sweeden etc... have not replied.

It is surprising because, the purpose of the questionnaire simply was to know the content of the domestic court decisions in each country, if any, on this subject matter. The SC 's approach is not academic. The material on which the SC wants to work is constituted by court decisions and such decisions exist, namely, in the UK and in Germany and they are interesting.

The German concept of "contract with protective effect on third parties" requires attention, although, such protection was refused by the Court of Appeal of Hamburg in 1990 to the buyer of a second-hand vessel. Like in English law, the financial interests of third parties are not protected in Germany and there are a number of similarities between English and German law (namely the concept of duty of care in pure economic loss cases, although it has not the same meaning in these countries) that the absence of response to the questionnaire renders difficult to explore.

Classification Societies

Anyhow, the answers to the questionnaire, so far received, show that it is an illusion to pretend create a uniform regime governing the third parties' actions against classification societies, although it has never been the SC's intention.

The common law concepts of 'duty of care', 'proximity', 'reliance' are foreign to the tort regime in Latin countries. However, lessons may be drawn from the protection afforded to class societies by common law jurisdictions, as recently shown by the very interesting decision of the Italian courts in the "Redwood" case.

Sued by the charterer of this vessel, Lloyds' Register based its defense on the common law principle of "reliance". Its argument that has been admitted by the court of appeal of Genoa and the Cour de Cassation in Rome, was that the charterer's action against this classification society should fail because it had not relied on the litigious certificate of class prior to chartering the vessel. This decision is inconsistent with tort law principles in Latin countries, at least in France, according to which a fault of the society normally engages the liability of the society towards any third parties provided the proved fault has directly caused the damage. This Italian case would need more consideration, and the Group will do it, but it opens areas of reflection on the comparisons that may be made between the solutions given in different jurisdictions to the same issues.

The methodology adopted by the questionnaire was to ask NMLA's to answer key questions that are raised in most cases against classification societies. Indeed, some questions of the Questionnaire are more important than others.

Considering that, in most disputes that have arisen following major accidents, the shipowner and the classification society are co-defendants and that a joint and several liability is searched by plaintiffs, it is necessary to determine with accuracy their respective liability. Hence, Question 7 of the questionnaire asks if the certificate of class is considered, or not, as a certificate of seaworthiness.

For Greece, Italy, Norway, The United States and France, a class certificate does not prove/guarantee seaworthiness which is the sole responsibility of the shipowners and cannot be delegated.

Question 8 concerns the importance of the Rules in the reasoning of courts before which proceedings, in tort, have been brought against a classification society.

US Courts correctly understand and describe the functions of a classification society, the business of which "is to set standards for the quality and integrity of vessels and to perform surveys to determine whether the vessel is in compliance with the classification societies rules and regulation." (Holland America v. Wartsila – United States court of Seattle 9 December 2004.)

But compliance with the rules is not, for the US Courts, the only criteria. It is preceded by the concept of reliance. In *Otto Candies v. NKK*, the US court of appeals 5th circuit held: "Thus, Otto Candies must establish that NKK provided the class certificate to Diamond and knew that Diamond intended it for Otto Candies guidance and benefit."

The only country which, today, considers that the failure to respect the rules engages the liability of a classification society is France. On 12 November

2020, the Cour de Cassation held in the “Junior M” that the decision of a court of appeal which held a classification society, jointly and severally liable with the owner, for the damage caused to the cargo without mentioning the rules on which it had relied, nor its content, must be dismissed.

Questions 5 and 11 of the Questionnaire are also important and raise the highly difficult issues of the scope of tort liability.

The scope is:

- broad, in Latin countries (assuming the Redwood decision is an exception). It follows that it is imperative properly to assess/understand what is a fault engaging the liability of a class society so as to limit the possibilities to engage its liability. Hence, the importance to prove (i) the lack of causation, (ii) the compliance with the rules to avoid a joint and several liability with the owner.
- narrow, in common law jurisdictions. The question to know if a duty of care is owed, or not, by the class society, reduces the scope of liability. But it is only true in pure economic loss cases which have been widely commented in law reviews, contrary to personal injury or death cases.

Question 11 asked if the principles governing claims brought by victims or dependants against a classification society following the sinking of a passenger ship were the same as those applied in pure economic loss cases and if not, what were they?

NMLA’s of common law countries are urgently required to answer this question as it is hard to believe that no decision has been rendered by common law courts on this issue.

These questions will be investigating further by the SC when additional information/documentation are provided by NMLA’s.

It is worth mentioning to conclude this interim report, that the writer attended, at IACS’ request, on 28 March, a meeting of its legal committee. Most of its members attended it. They wanted to know what was exactly the object of the CMI SC on class society.

I explained the history and present mandate of the Group.

Their real concern (particularly Lloyds’ Register and ABS) was to know if, behind our present works and our desire to better understand the tort liability regime of classification societies worldwide, there was a hidden intention to propose some regulations or legislations concerning the tort liability of classification societies.

My answer was that it is not at all the SC’s intention and that it appears to me impossible to achieve this anyway, considering the differences between the regimes.

I added however that IACS had taken an important part to the works of the SC when it was chaired by Frank Wiswall and that their contribution to the present works of the Group would be very helpful, namely because they have resources to which we have no access. We would, therefore, be most happy to examine to examine and discuss them.

The differences between the common and Latin regimes were thereafter discussed.

IACS will let me know if they are prepared to cooperate and how in the near future.

CMI ARCHIVES

YEARLY REPORT

DR. ROSALIE BALKIN, AO, *Secretary-General*

EVELIEN PEETERS, *Head Office Manager*

The search for a suitable new home for CMI's archival documentation began some years ago when it became evident that CMI's Headquarters in Antwerp had insufficient suitable accommodation to continue with this function. This documentation, some of which was very old and fragile, comprised around 100 boxes. Some of the boxes were kept in CMI Headquarters but the bulk were being housed in two warehouses in locations near Antwerp.

Then, quite fortuitously, in April 2023, an unsolicited email arrived from Liberas offering to be the official host of CMI's historic collection. As explained by the author of that e-mail, Bruno van Verdegheem, the offer stemmed from an instruction from the Belgium Government to Liberas to trace, collect and safeguard Belgium heritage for future generations; the CMI archives were regarded as forming an integral part of this heritage.

On 11 March 2024, CMI's Management Committee, which was meeting in Antwerp, took advantage of an offer (unfortunately without the President) to visit the Liberas premises in Ghent where the CMI archives would be stored if CMI accepted the offer. This visit afforded the Committee an opportunity to seek further information requested by EXCO, including whether Liberas was a private institution, a company or an arm of the Belgium Government (and so could be trusted with CMI's archives); its constitution; its source of finance; whether it operated on a standard form contract; and what would happen if the Belgium Government were to withdraw its support from Liberas.

The Management Committee Members were impressed with the premises and resources that Liberas had to offer, and were also satisfied with Liberas's replies to all the questions posed by EXCO and recommended to EXCO that CMI should accept Liberas's offer to house the CMI archives. The Secretary-General with the assistance of John O'Connor, one of CMI's Vice-Presidents, redrafted the standard form contract provided by Liberas to

better suit CMI's concerns. Among the clauses reflected in the contract are:

- the service provided by Liberas was free of charge to CMI
- Liberas had storage capacity for both paper and digital archival
- Liberas would at their expense undertake the digitalization of CMI paper
-
- documents'(which would assist in the preservation of very old and very fragile CMI documents)
- Liberas would store fragile CMI documents in special rooms set aside for their preservation
- Liberas was not offering warehouse facilities in the sense that they would limit storage of any particular document to no more than two copies
- CMI would retain full ownership and copyright of all archival material so CMI, not Liberas, would decide who could access the collection at any point in time
- Liberas holds exhibitions from time to time so CMI could, if it wished to do so, put all or part of its archival collection on public display) again at no cost to CMI)

The contract with Liberas has been signed by the President on behalf on CMI and by the Director on behalf of Liberas and action is currently underway to transfer CMI's archival collection to Liberas for safekeeping.

CMI PUBLICATIONS AND SOCIAL MEDIA COMMITTEE

YEARLY REPORT

MASSIMILIANO MUSI, *Chair*

Yearbook

In order to efficiently collect and organize all the materials for the Yearbook 2024, a shared folder has been created, particularly implemented and improved compared to the one for 2023.

By June 30, 2024, all speakers of the Gothenburg Colloquium have been contacted, in order to receive the materials intended to be published in Part II of the Yearbook. In this regard, it was decided to prioritize the publication of the texts of the speeches, but, where not available, to use the PowerPoint presentations. If both are submitted, only the speech text will be published. Additionally, in line with tradition, for the Young CMI Prize, only the winner's speech or a summary of their paper will be published.

In parallel, the members of the Committee have collected the six-monthly reports of the Standing Committees and International Working Groups, systematically uploading all those received to the shared folder and continuing to encourage their submission by those IWGs and SCs that have not yet done so.

Part III, relating to the Status of Conventions, has also been properly updated.

Finally, a number of items are being discussed for the future. One of the things that could be better organized is constantly updating NMLAs' details, such as officers, address, etc. Therefore, it could be very useful to have someone develop a sort of "intranet page" that NMLAs can access via a password and where they can update their own data. This would make updating Part I much easier, having a direct extract implemented in the Yearbook.

LinkedIn

Both the CMI's LinkedIn Public Page and Private Group have been actively managed, ensuring they are regularly updated. The relevant posts from Consultative members and other significant content to CMI have been consistently shared.

This year, a new initiative was introduced: summarizing key points from each session during the CMI Colloquium and featuring them on LinkedIn and subsequently the Newsletter. This strategy not only highlighted the work of the SCs and IWGs, but also promoted the Colloquium itself.

Promotional activity on social media is also being carried out in the lead-up to the Tokyo Colloquium.

It's worth highlighting that overall, there has been a significant increase in viewership, engagement, and followers of the LinkedIn Public Page and the Private Group and that all the activity and impressions reported are entirely organic, with no paid sponsorships involved.

Newsletter

The Newsletter 1/2024 was successfully sent out on July 1st: in its preparation, care was taken to ensure that all MLAs' submissions were well-represented, and that the activities of the SCs and IWGs and administrative events were prominently featured.

The Newsletter 2/2024 was published on December 24th. In addition to the numerous contributions provided by MLAs and the coverage of SC and IWG activities and administrative updates, this edition featured an exclusive in-person interview with one of the long-standing Consultative Members – IMLI. Each edition of the Newsletter continues to generate increasing traffic.

According to Mailchimp analytics report it was sent to 1,195 recipients and up until the 7th of January (2 weeks after its issue) recorded 1,400 total opens.

Website

Updating the CMI website is an ongoing effort, which is done by frequently uploading news. In addition, SCs and IWGs chairpersons will be contacted regularly to make the work pages more attractive and engaging.

AUDIT COMMITTEE

REPORT FOR THE FINANCIAL YEAR 2023-2024

MÅNS JACOBSSON, *Chair*

Introduction

The CMI Audit Committee is composed as follows:

Måns Jacobsson, Chairman
Peter J. Cullen, member
Luc Grellet, member
Andrew D. Taylor, member
Ann Fenech, member ex-officio

On 17 July 2024 the Audit Committee members received from the Treasurer, Mr. Frank Stevens, a draft of the Treasurer's Report and drafts of the CMI accounts for the financial year 2023–2024, i.e. Income and Expenditure Account, Balance Sheet, Cash Flow Statement and Notes to the Financial Statements. The Committee discussed these documents at a conference held virtually on 7 August 2024, at which the Treasurer took part. The discussion resulted in minor amendments to the Treasurer's Report and the financial documents. As a result of written observations by the Committee members the Treasurer prepared and distributed to the Committee members on 22 August 2024 revised versions of these documents.

The accounts were audited by the CMI's External Auditors, NV Vandelanotte, with registered office at President Kennedypark 1a, 8500 Kortrijk (Belgium), represented by Mr. Kris Meuldermans. The resulting Auditor's Report on the financial statements of the CMI for the financial year 2023–2024 will be sent to the CMI Administrator for distribution.

Following the Audit Committee's virtual conference, the Chairman interviewed the External Auditor by telephone on 19 August 2024 and reported that discussion to the Committee. The Committee then discussed and approved its Report by exchange of emails.

The Audit Committee has noted that, in accordance with the decision taken by the CMI Assembly in Antwerp in October 2022 and the ensuing amendments to the CMI Articles of Association, the CMI accounting year,

which previously had coincided with the calendar year, had been changed to run from 1 May to 30 April and that the accounting year for 2023-2024 consequently covered a period from 1 May 2023 to 30 April 2024.

The External Audit

As first mentioned in the Audit Committee's Report relating to the financial year 2017, the wording of the External Auditor's Report for that financial year was different from the wording in the Auditor's Reports for previous years. The new wording, which was used so as to comply with amendments of the applicable Belgian legislation, seemed to indicate that the audit had been less extensive for the financial year 2017 than for previous financial years. The Chairman of the Audit Committee raised this issue with the External Auditor who stated that,

as regards the CMI, in practice the same audit work had been carried out for the 2017 financial year as for previous years. He has confirmed that this is the case also as regards the audit for the 2023–2024 financial year.

In the light of the External Auditor's explanations, the Audit Committee considers that the audit carried out in respect of the financial year 2023–2024 is adequate in view of the nature of the CMI as a not for profit organisation and the extent of its operations.

The Chairman's discussion with the External Auditor

As mentioned above, the Chairman had a comprehensive discussion with the External Auditor, Mr. Kris Meuldermans. The discussion focused on the scope and findings of the audit, the treatment of income and expenditures and the factors that had an impact on the results.

General

The External Auditor stated that there were no omissions and that the figures for all assets and all expenses were 100 % reliable. He confirmed that everything was presented accurately.

The External Auditor referred to the fact that in 2022 the Covid-19 pandemic had come to an end and that the CMI had during the financial year 2022-2023 resumed its normal level of activities. He characterized the 2023–2024 as a normal year as regards the operating expenses of the CMI.

Comparison with previous years

The External Auditor confirmed that he had compared the cash flow as well as income and expenditure of 2023-2024 with the corresponding figures in the 2020 and 2021 accounts. He mentioned that the CMI's ordinary operating expenses in the financial years of 12 months before the outbreak of the Covid–19 pandemic had been stable, whereas the operating expenses for the financial year 2022-2023 had covered a period of 16 months and consequently had been higher.

The fact that no event had taken place in 2020 and 2021 had resulted in the expenses relating to the Executive Council for these years being

Audit Committee

significantly lower than in “normal” years, whereas these expenses had returned to normal in the financial years 2022–2023 and 2023–2024. He also mentioned that since results of events such as Conferences and Colloquia vary from one event to another, it was difficult to compare the costs of the previous such events held in 2018 and 2019 with those of the 2023 event in Canada.

Provisions and write-offs

The External Auditor was satisfied with the valuation of the provisions for accounts receivable and other expenses. As regards the outstanding subscriptions from National Maritime Law Associations, he stated that past experience had provided fairly reliable guidelines for determining what provisions should be made for unpaid subscriptions.

Soundness and stability of CMI assets

The External Auditor confirmed that the CMI funds were placed in investments appropriate to an organisation such as the CMI.

He stated that the prevailing low interest rates had resulted in the yield on the CMI investments in 2023–2024 being very low. However, this would not have a significant impact on the CMI’s financial position. He pointed out that when the present investments mature, new investments would probably give a higher yield, and that currently a positive return of 3% before tax deduction could be expected.

The External Auditor expressed great confidence in the soundness and stability of the CMI’s assets and the reliability of their valuation in the Balance Sheet. He drew attention to the fact that nearly all assets were cash or low risk investments in government-guaranteed accounts. He had examined bank statements to determine the accuracy of the reporting and received confirmation of the existence of the accounts. He stated that accordingly the CMI’s assets were not subject to market risks (except for inflation) and were accurately valued, reported and managed. He mentioned that the funds were spread over several banks, and that in Belgium bank deposits up to €100,000 per bank were guaranteed by the state.

He also expressed the view that everything concerning the CMI’s assets was reliable and transparent.

Reserves in relation to cost structure

As a result of the low operational costs of the CMI, the predictable costs structure and the very low number of liabilities, the External Auditor considered that the level of reserves was more than adequate for an organisation such as the CMI.

Scope and findings of the Audit

The External Auditor commented that the CMI had no outstanding or overdue liabilities and that bills were paid on time and without disputes. He expressed his confidence in the soundness of the accounts, due to the

fact that the small structure of the CMI and the low limited operating costs had enabled him to carry out a full independent audit, without simply relying on the figures presented in the accounts; he had reviewed in full receivables and payables and had examined closely the cash position as well as all incoming invoices and expenditures. He expressed the view that the CMI's bookkeeping gave all relevant details and was well prepared, that the accounts reflected good accounting practice and that the accounts gave a fair view of the CMI's financial position on 30 April 2024.

Co-operation with the Treasurer

Although it could go without saying, the External Auditor reported that, as in all previous years, he had excellent co-operation from the Treasurer in all respects.

Audit Committee's examination

Impact of the change of accounting year on subscriptions

The Audit Committee has noted that the invoices relating to the subscriptions of National Maritime Law Associations which had been issued early in 2023 had covered the old reporting year of 12 months (i.e. 1 January–31 December 2022) and that the Executive Council had decided not to charge subscriptions for the first four months of 2023, but only for the new reporting year of 1 May 2023–30 April 2024. The Audit Committee considers that this was an appropriate decision in the circumstances, notwithstanding it had resulted in a deficit for the reporting year 2022–2023.

The accounts

The Audit Committee examined the accounts in detail, with the Treasurer providing explanations as required.

A discussion of the income and expenditures and a comparison of the results of the 2023-2024 financial year with those of the previous financial year can be found in the Treasurer's Report to the Executive Council and will not be repeated here.

The Audit Committee has noted that the provisions for unpaid subscriptions of the National Maritime Law Associations were increased in the Balance Sheet by a total of €2,000 for four Associations but decreased by €2,500 for one Association, resulting in a net decrease of these provisions by €500.

It should be recalled that a new structure had been introduced in the 2015 accounts, to the effect that special events (such as seminars and colloquia) are accounted for in the Income and Expenditure Account separately from the operating income and expenditures, resulting in increased transparency. It was recalled the CMI Conference originally scheduled to be held in Tokyo in 2020 had, due to the Covid-19 pandemic, been postponed first to 2021 and then to 2022 and will not be held until in 2025. As a result, there were no income or expenditures for the financial year 2021 under the heading *Event result*. However, the pandemic having ended, Conferences were held

Audit Committee

in Antwerp in October 2022, in Montreal in June 2023 and in Gothenburg in May 2024, and the Montreal Conference is accounted for under *Event result* in the accounts for the financial year 2023–2024.

In its 2022 report, the Audit Committee had noted the loan of CDN\$ 10,684 granted to the Canadian Maritime Law Association to cover the amount paid as a security deposit advance to the hotel where the CMI Conference in Canada was to be held. That Conference was first scheduled to take place in 2021 but, at the request of the CMI, had been postponed to 2023. The Audit Committee referred to the fact that the CMI does not normally grant loans to Maritime Law Associations. In that report the Committee stated that, in view of the special circumstances, it accepted the reasons for the CMI granting this loan. The Committee maintains this view.

The Audit Committee has noted that the loan to the Canadian Maritime Law Association was repayable, interest free, by 30 June 2023 or, at the Association's option, later with an interest of 5 % per annum from that date. The Committee has been informed that in May 2024 the Canadian Association repaid an amount of €7,019 which corresponds to the capital of the loan and part of the interest and that discussions were ongoing concerning the calculation of the interest accrued.

Reserves

Following an extensive report to the Executive Council and to the Assembly at its session in Buenos Aires in 2010, it was the policy of the CMI to reduce the reserves of the organisation which had been built up over a number of years. Since 2013 the objective has been to have a largely break-even result, which was achieved for the financial years 2014–2018. There were small surpluses for the financial years 2014, 2015 and 2017 of €10,320, €23,580 and €34,978, respectively, whereas for the financial years 2016, 2018 and 2019 there were deficits of €23,595, €4,074 and €68,687 respectively. The financial years in which no CMI event took place due to the pandemic, i.e. 2020 and 2021, surpluses of €61,902 and €78,209, respectively, were unexpectedly recorded. A deficit of €56,118 was recorded for the financial year 2022–2023.

The financial statements for the 2023–2024 financial year show a further deficit of €42,781, reducing the reserves of the CMI to €631,986. The Committee understands that, unless it were possible to increase the income or reduce the expenditures of the CMI, there will be a significant deficit for the financial year 2024–2025.

The worldwide crisis caused by the rapid global spread of the Covid–19 virus resulted in the repeated postponement of the CMI events originally scheduled to take place in 2020 and 2021. The crisis led to closed borders and grounded airlines. The experience gained from this crisis confirms the importance of the CMI continuing to hold sufficient reserves to enable it to cover the financial consequences for the organisation resulting from unforeseen events.

In the Audit Committee's opinion, it is not advisable to run an organisation of the type of the CMI with a deficit year after year and that the present rate at

which the reserves are being eroded is unsustainable. The Committee invites, therefore, the Executive Council to propose to the Assembly measures that could be taken to return the organisation to having as a general objective a largely a yearly break-even result.

Investments

A list of the CMI's investments as at 30 April 2024 is set out in the Treasurer's Report.

The Audit Committee recalled that the Executive Council had in November 2014 adopted Guidelines for the CMI's Investment Policy and that the Council had in May 2020 revised these Guidelines, taking into account the prevailing conditions in the financial markets, without compromising the main principle laid down in the Guidelines, namely not exposing the CMI investments to undue risks. The Guidelines as amended are reproduced at the CMI website under Governance, Constitution, Rules and Guidelines.

Recommendation

The Audit Committee is pleased to recommend to the Executive Council of the CMI as follows:

- that the CMI accounts for the financial year 2023–2024 as presented to the Audit Committee be approved for submission to and adoption by the 2024 CMI Assembly, together with the External Auditor's Report;
- that NV Vandelanotte be nominated as External Auditors for the CMI for the financial year 2024–2025.

NOMINATING COMMITTEE

YEARLY REPORT

GIORGIO BERLINGIERI, *Chair*

At the CMI General Assembly on 24 May 2024 in Gothenburg elections took place to fill a number of vacancies.

On 4 January 2024 the Nominating Committee therefore wrote to the Presidents of Member Associations, informing that elections were to be held regarding the nomination of a Vice President and three Executive Councillors.

As contemplated by art. 26 of the CMI Constitution, the Nominating Committee inquired whether Member Associations were wishing to propose candidates for possible nomination.

On 16 February 2024 the Nominating Committee wrote again to the Presidents of Member Associations reporting on the candidacies received for the vacant positions and seeking the views of Member Associations concerning the candidates for nomination.

On 3 April 2024 the Nominating Committee issued its Report, summarizing the nomination procedures and the activities performed to fill the vacancies, listing the Member Associations which made communications, informing on the votes received by the various candidates and making the relating nominations.

The Report of the Nominating Committee was included in the CMI Assembly documents (Agenda Item 13) and at the Assembly in Gothenburg on 24 May 2024 the Chair of the Nominating Committee reported on the activities performed and proposed for a vote to be asked as per nominations made by the Nominating Committee.

The candidates nominated by the Nominating Committee: Alexander Von Ziegler, as Vice President, Peter Laurijssen, Bernardo Mendes Vianna and Edmund Sweetman, as Executive Councillors, were declared by the President of the CMI to be elected by acclamation.

In Autumn/Winter 2024 the Nominating Committee met again to plan the activities and the nomination procedures regarding elections to take place at the CMI 2025 General Assembly to take place in the occasion of the CMI Conference in Tokyo from 13 to 17 May 2025.

CHARITABLE TRUST

YEARLY REPORT

TOM BIRCH REYNARDSON, *Chair*

The CMI Charitable Trust was set up in 1985 on the initiative of Francesco Berlingieri and Bill Birch Reynardson with the active support of other Vice-Presidents and Exco. Funds were collected from maritime lawyers and law firms around the world, and from P and I Clubs, the marine insurance industry and other industry bodies.

The trust instrument provides that funds shall be applied to the following charitable purposes:

- (a) The advancement of legal education for the public benefit;
- (b) The advancement and promotion of research and study in the fields of comparative law and international marine and commercial law.

Currently, the trustees of the Charitable Trust are as follows:

Tom Birch Reynardson
Paula Backden
Giorgio Berlingieri
Benoit Goemans
Stuart Hetherington
Andrew Taylor
Alexander von Ziegler

Our current capital is in the region of £650,000, and our income is in the region of £25,000 per annum.

Currently, other than our administrative expenses, we make the following grants:

- We pay for travel expenses of CMI Lecturers to IMLI in Malta;
- We make an annual contribution to the IMLI Library Fund;
- We pay for the winner of the IMLI Prize for the best IMLI Student to attend a CMI Conference or Colloquium
- We pay for the winner of the CMI Essay Prize to attend a CMI Conference or Colloquium
- In the past we have paid for a CMI Research fellow to research matters of importance to the CMI, and we have subsidised travel costs for CMI personnel to travel on CMI business.

The Future

The Trustees of the CMI Charitable Trust have been considering how they might make more of an impact. We are aware, for example, that IMLI would much like the Trust to support an IMLI Research fellowship.

Likewise, on occasions excellent lecturers who the CMI would like to come to conferences have considerable difficulty in raising the funds to come and could benefit from a grant from the CMI Charitable Trust.

Currently, the Charitable Trust does not have sufficient income to make such donations. It seems to the trustees that the CMI Charitable Trust has an important role to play in advancing the objectives of the CMI, and if we can do more to encourage those objectives we should do so.

Accordingly, the trustees resolved at their meeting in Gothenburg to consider ways in which the trust might ask current and past members of the CMI and those who come to these CMI events to contribute to the CMI Charitable Trust in order to further its objectives.

A small sub-committee has been established to take this forward, and we are in the process of obtaining contact details of those who might be able to contribute to a fund.

**INTERNATIONAL WORKING GROUPS
HALF-YEARLY, YEARLY REPORTS AND
WORKING PAPERS**

PIRACY, MARITIME VIOLENCE AND FRAUDULENT ACTIVITIES

YEARLY REPORT

RICHARD NEYLON, *Chair*

The IWG on Acts of Piracy, Maritime Violence and Fraudulent Activity had a productive meeting at the CMI Colloquium in Gothenburg in May 2024. The aim of the meeting was, firstly, an opportunity for the new IWG members to familiarise themselves with each member's work and fields of practice. Secondly, the IWG considered future work streams.

Notably, the remit of the IWG has expanded beyond Piracy and Maritime Violence to encompass Fraudulent Activity. Michelle Wiese Bockmann and Dr Ian Ralby are new IWG members with particular expertise in this area. They provided valuable insight into the issues of the dark fleet and deceptive shipping practices. There is a general consensus in the IWG that more guidance and clarity on the law and gaps in the law should be a focus of the work streams.

Further, the IWG seeks to place the welfare and rights of seafarers at the core of the work streams. Ultimately, seafarers are normally the victims (whether intended or unintended) of piracy, maritime violence and welfare breaches on unregistered or dark fleet vessels. The addition of Lene-Camilla Nordlie (Head of People Claims, Gard) to the IWG brings experience and expertise in the area of risks to crew and people at sea. The IWG can make real impact in highlighting concerns for seafarers and proposing changes that can improve their welfare.

The proposed work streams for 2024 and 2025 are set out below.

- **Assess value of the CMI “recognising” the Geneva Declaration on Human Rights at Sea.** The Geneva Declaration on Human Rights at Sea gives practical guidance to nation states on how to ensure that human rights abuses at sea are detected, remedied, and ultimately ended. We propose that the IWG reviews and assesses the Declaration with a view to potentially recommending to the Executive Committee that CMI formally recognises it. The Declaration can be “adopted” by

States, but also “recognised” by corporations and organisations. The Declaration ties in with the IWG’s work on developing best practice guidance on the treatment of victims during a detention. HFW provided legal support and drafting services for the development of the Declaration. As a first step, we propose circulating a copy of the Declaration with guidance to the national maritime organisations for review and consideration.

- **Best practice guidance on the treatment of victims during a detention or following a major casualty (such as a hijacking).** There is increasing concern about how crews are treated by authorities in detention cases and post-casualty. The IWG notes that the IMO Legal Committee guidelines on the fair treatment of seafarers detained on suspicion of committing crimes are being finalised but to our knowledge have not yet been published. The IWG also notes IMO’s guidelines on fair treatment of seafarers in the event of a maritime accident (adopted in 2006). The IWG proposes to consider whether there is also utility in separate best practice guidance for vessel detention cases and cases (such as hijackings) where, for whatever reason, the crew are sometimes not seen as victims but as complicit in the incident. EMEA\164069047-1
- **A position statement addressing the issues and concerns arising from fraudulent vessel registration.** This is in light of the IMO Legal Committee’s proposal to develop a database for flag States and port States to share information on fraudulent registration (as summarised here from IMO LEG110 in March 2023). The propensity of well-established Ship Registries to accommodate vessels which look to be part of the “dark fleet” or exhibit other problematic characteristics is a growing cause of concern. Deceptive practices such as AIS manipulation may not only be used to evade sanctions but may spread to attempts to evade international and regional emissions regulations. This work stream would consider possible measures that could help minimise or avert fraudulent registration. For example, the use of minimum insurance criteria and port state control. Further the IWG is considering the coastal states’ rights and tools under existing international law to investigate vessels in transit through their EEZ and territorial sea, such as using MARPOL.

The IWG is focusing on developing these work streams and preparing for the Tokyo Conference in May 2025.

DECARBONIZATION

YEARLY REPORT

HARIS ZOGRAFAKIS, *Chair*

Decarbonisation is one of the most significant challenges of our era. The maritime industry has increasingly become aware of the role it's called upon to play, mostly as a result of the regulatory initiatives of the International Maritime Organisation and the European Union. However, the legal and contractual issues that arise, i.e., private law aspects as opposed to regulatory aspects, have not attracted sufficient attention yet.

The international community of maritime lawyers clearly has an important role to play in decarbonisation. In these circumstances, the Comité Maritime International created an International Working Group on Maritime Decarbonisation in July 2023, appointing Mr Haris Zografakis as Chair. The steering committee consists of Mr Haris Zografakis, Dr Jolien Kruit, Prof. Charles Debattista and Mr Neil Henderson.

The IWG's activities are split in three separate, but related, workstreams: "Green Fuels" (on issues of civil liability for non-hydrocarbon fuels), "Green Contracts" (an outline of some contractual adaptations that decarbonisation may require) and "Green Vessels" (introducing definitions as to "readiness" of ships to consume new fuels).

The work of the IWG was presented at the CMI Colloquium in Gothenburg in May 2024 and is summarised in three Discussion Papers ("The Gothenburg Decarbonisation Discussion Papers"), in each of the workstreams – see below.

The co-authors of the Gothenburg Decarbonisation Discussion Papers were (in alphabetical order):

Helen Barden, UK (England)
Mark Broekhuisen, The Netherlands
Alexandra Couvadelli, UK (England) and Greece
Charles Debattista, UK (England)
Daniel-Luc Farrugia, Malta
Nick Gaskell, Australia
Neil Henderson, UK (England)
Jolien Kruit, The Netherlands
Chul-Won Lee, Korea
Hannah Mosmans, The Netherlands

Niko Oertel, The Netherlands and Germany
Andrew Rigden Green, UK (England) and Hong Kong
Shohei Tezuka, Japan
Henry Zhu, China
Haris Zografakis, UK (England)

The Gothenburg Decarbonisation Discussion Papers represent the first phase of the IWG's work. The second phase will include more detailed analysis, involving – as and where appropriate – associations and organisations that can work with the CMI to address the issues identified.

The Gothenburg Decarbonisation Discussion Papers
Note from the Chair

CMI IWG Chair Note July 2024 (see below page 483)

<https://comitemaritime.org/wp-content/uploads/2024/07/CMI-IWG-Chair-Note-July-2024-1-1.pdf>

The Gothenburg Decarbonisation Discussion Papers

Green Fuels Discussion Paper (see below page 513)

<https://comitemaritime.org/wp-content/uploads/2024/07/Gothenburg-discussion-paper-Green-Fuels-1.pdf>

The Gothenburg Decarbonisation Discussion Papers

Green Contracts Discussion Paper (see below page 531)

<https://comitemaritime.org/wp-content/uploads/2024/07/Gothenburg-discussion-paper-Green-Contracts-1.pdf>

The Gothenburg Decarbonisation Discussion Papers

Green Vessels Discussion Paper (see below page 486)

<https://comitemaritime.org/wp-content/uploads/2024/07/Gothenburg-discussion-paper-Green-Vessels.pdf>

MARITIME AUTONOMOUS SURFACE SHIPS (MASS)

YEARLY REPORT

TOM BIRCH REYNARDSON, *Chair*

The IWG on MASS submitted its paper on Liability to the IMO Legal Committee in March. This was much appreciated by the Legal Committee and the member states.

At the Gothenburg Colloquium the IWG had a very successful open IWG meeting when we had some excellent presentations from:

- Oystein Engelhardsten of DNV, who was able to simplify for us the complexities of what is occurring from a technological point of view in the MASS world,
- Edmund Greiner of FRUGRO who demonstrated how MASS work in practice and was able to highlight some practical issues with which he was confronted,
- our 2 stalwart academic members, Frank Stevens of the Erasmus School of Law in Rotterdam and Henrik Ringbom of the Abo Academy at the University of Finland who discussed various aspects of liability,
- and 4 excellent academics,
 - Melis Ozdel of UCL on Carriage of Goods,
 - Rhidian Thomas of Swansea on Insurance,
 - Cecilia Severoni of the university of Udine on Salvage, and
 - Ayoub Tailoussane of the University of Oslo who delivered a fascinating analysis of the MASS situation in relation to COLREGS.

For the Colloquium presentations we were fortunate in having some excellent and extremely informative presentations given by the following:

- Dorota Lost Simienska of the IMO on MASS developments at IMO,
- Henrik Ringbom again,
- Robert Veal of Winter and Co on Product Liability and
- Tim Howse of Gard on insurance aspects.

At the closed session of the IWG it was agreed that the work going forward to the CMI Conference in Tokyo should focus on (1) the establishment of Remote Operation Centres in States other than the Flag States; (2) exploring

the potential impact of MASS on the Collision Convention, and (3) monitoring the draft non-mandatory MASS Code being produced by IMO in particular with regard to any liability issues.

In so far as (1) is concerned, a document is being drafted to be sent to Flag and

Coastal States requesting feedback. Insofar as (3) is concerned, a meeting between the IWG on MASS and the IWG on Collision is taking place shortly. In relation to (2), it is unlikely that the MSC at IMO will produce a draft non-mandatory code before the end of this year, but this is of course being monitored.

In so far as (1) is concerned, a sub-group of the IWG prepared a Scoping Exercise on the Regulatory Oversight of Remote Operating Centres for MASS and this has been sent to about 16 Flag and Coastal States. Most of the recipients of the Scoping Exercise have responded, and once a full complement has been received the sub-group will work on a summary to be considered by the IWG.

Insofar as Collision is concerned, a joint sub-group of the MASS and Collision IWG's has been formed and at a recent meeting of joint sub-group the agenda was agreed. Further meetings will take place in January and leading up to the Tokyo Conference.

The IWG is continuing to monitor IMO's development of the Draft non – mandatory Code on MASS.

Meanwhile preparations are being made for what will be a very interesting and successful conference in Tokyo.

FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

YEARLY REPORT

VALERIA EBOLI, *Chair*

The activities of the IWG were resumed at the beginning of the year. All its former members were contacted to check their availability to remain part of it. A new member was added, one asked to be substituted by a colleague.

The program of the activities started from the needs of the International Maritime Organization and the priorities of its Legal SC.

The IWG, represented by its Chair, participated in the 111th session of the IMO Legal Committee, which took place from Monday, 22 April to Friday, 26 April 2024, whose agenda included the fair treatment of seafarers (FTS).

In particular, the core business was the topic of Fair treatment of seafarers detained on suspicion of committing crimes. A Working group was set up to write some draft guidelines on this during the IMO LEG 111th session. The CMI, though its representative, actively participated in it and contributed to drafting the guidelines. Then, the draft guidelines were submitted for refinement to the joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG).

A meeting of such JTWG took place in Geneva from 26th to 28th November 2024 and the IWG, represented by its Chair, attended it as well. The final text of the Guidelines, now renamed "*Guidelines on fair treatment of seafarers detained in connection with alleged crimes*" was approved in the evening of the last day after long and fruitful discussions. The Guidelines are supposed to be a useful tool to ensure the protection of seafarers detained in connection of an alleged crime in a jurisdiction other than that of the flag State or States of which are nationals, residents or otherwise domiciled.

As regards the IWG, it was suggested to rename it as "Fair Treatment of Seafarers", deleting the words "in case of maritime accident", since its scope of action is wider.

Further activities of the IWG will mainly follow the topics on the agenda of the IMO LEG.

FAIR TREATMENT OF SEAFARERS SUBCOMMITTEE ON MARITIME LAW AND REFUGEE MIGRATION AT SEA

YEARLY REPORT

VALERIA EBOLI, *Chair*

The Sub-Committee has been working on some questionnaires aimed at collecting information on the relevant national practice of the States about refugees and maritime law.

Following the first Questionnaires sent to the NMLAs, a few replies were received and were presented in the framework of the SC meeting during the Antwerp CMI Conference of October 2022. The SC considered insufficient the information gathered and prepared a new updated questionnaire, that takes into account also the new challenges related to the flows caused by ongoing armed conflicts. The aim is to collect additional information about the eventual practice in relation to topics such as the compensation for merchant vessels conducting government-directed rescues during a mass migration, in order to identify and share good practices. So a new questionnaire, approved by the ExCo, was submitted to the NMLAs to gather additional information, analyse them and also provide a comprehensive report during the Tokyo Conference.

NEGOTIABLE CARGO DOCUMENTS

YEARLY REPORT

STUART HETHERINGTON, *Chair*

This International Working Group (IWG) of the CMI was set up to support participation by the CMI as Observer Organisation in the work of UNCITRAL Working Group VI (WG) currently working on a Draft Instrument on Negotiable Cargo Documents (NCDs). The Draft Instrument is intended to provide a legal framework for the recognition and use of a document of title to goods for non-maritime trades. CMI's participation is focused on advising the WG on the law and practice of bills of lading, which are internationally recognised as documents of title to goods. The CMI is also seeking to ensure that the scope of application of the Draft Instrument is clear, and that potentially disruptive inroads into bill of lading law are avoided, as well as ensuring that the WG considers and seeks to minimise potential overlaps between the Draft Instrument and the Rotterdam Rules 2008. The CMI is grateful to Miriam Goldby for representing the CMI at the WG's deliberations.

At the conclusion of the 44th Session of the UNCITRAL WG's meeting (in May 2024) it became clear that Draft Article 1.2 of the Draft Instrument may not be sufficient to clarify and put beyond doubt that the Draft Instrument is not intended to disrupt the law relating to maritime transport documents. To that end in August 2024 CMI submitted a proposal to the UNCITRAL WG for discussion at its December meeting. As a result of discussions with some delegations between its submission and the commencement of the meeting on 9 December 2024, a re-worked proposal was submitted by CMI to UNCITRAL and circulated to delegates, which is reproduced below. Due to time constraints the proposal was not officially discussed in the December 2024 session and will remain for consideration during the next UNCITRAL meeting in March 2025.

Informal discussions with delegates present at the December meeting did however take place and it is clear that a number of delegations do not appreciate the need for such a restriction. One argument made was that for as long as the Rotterdam Rules remain inapplicable, the Draft Instrument could secure recognition of the negotiability of multimodal transport documents whether or not they include a sea leg. Delegates also emphasised that the application of the Draft Instrument is anyway subject to the parties' consent to its application.

The IWG remains convinced that the CMI's proposal (or some modification of it) is necessary and will avoid complex conflicts with established and undisputed principles of how transport documents issued under the contracts of carriage are operating today in international trade and trade finance. The IWG proposes to have further discussions over the next few weeks with stakeholder organisations present as observers in UNCITRAL WG VI in that regard, with a view to seeking to arrive at a joint proposal, that might assist in persuading the WG as a whole of the need to make it clear that none of the provisions in the Draft Instrument are intended to intrude onto well established and understood preexisting practices and conventions reflecting such practices in maritime trade.

The importance of the exclusion of the Sea Waybills and, even more so, Bills of Lading from the Draft Instrument is evidenced by a number of draft provisions which in themselves could be regarded as acceptable, if applied in a non-marine context, but would be disruptive if applied within the traditional maritime documentary world. For example, the Draft Instrument in its current draft would:

- be operating in conjunction with the Hague Rules (as evidencing the transport contract) but create some conflicts between the provisions of both Conventions (such as the right of the shipper to request a Bill of Lading, that remains a mandatory feature under the Hague Rules and all other maritime transport Conventions).
- allow the establishment and the co-existence of a NCD (i.e. a separate negotiable document) alongside a non-negotiable transport document (such as the Sea Waybill), a principle that had to be provided to meet the obstacles created by some land-based Transport Conventions, creating a complexity that should not be encouraged in the maritime transport sector.
- allow a NCD to not refer to a contract of carriage (at all) and make no reference to any contractual terms governing the contract of carriage that the NCD covers. This would go further than the charterparty bill of lading, that refers to a charterparty.
- forbid a Carrier under the NCD who is operating as House carrier to enter into master contracts generating (for him as a shipper) a negotiable bill of lading issued by such Master carrier. This is quite contrary to the House - Master bill of lading practice in maritime transportation.
- potentially overlap with the much more detailed provisions of the Rotterdam Rules (should the latter come into force) on transport documents, their transfer, the rights of control and their functions in relation to the delivery of the cargo.

The December meeting was the first meeting in which an observer of the maritime industry (IGP&I) was represented. Whenever the need arose, the CMI representative present in the meeting took the floor to explain bill of lading practice and to ensure that it was taken into account in the WG's deliberations.

The intention is to complete the NCD project at the next UNCITRAL WG meeting in New York in March 2025, so that the Draft Instrument can

be adopted by the UNCITRAL Commission in June 2025, although it is not certain that this deadline will be met. All CMI MLAs are encouraged to engage with their governmental delegations at UNCITRAL to discuss with them the importance of the principle that the well-established Bill of Lading practice is not affected by the Draft Instrument. The IWG believes that avoiding this disruption would be beneficial to the actual purpose of the Draft Instrument (that CMI fully supports), namely, to recognise and set out a framework for the use of a *new* document of title for non-marine trades.

CMI reworked proposal for UNCITRAL WG VI

December 2024

Our proposal and potential alternative wording

The CMI submitted a drafting proposal to UNCITRAL which was published on the UNCITRAL WG VI webpage as document A/CN.9/WG.VI/WP.108.

The CMI recognises that this proposal has raised some concerns. In particular concerns have been expressed by the International Federation of Freight Forwarders (FIATA) whose response to the CMI proposal was published on the UNCITRAL WG VI webpage as A/CN.9/WG.VI/WP.109. However, this response does not quite capture the purposes of the CMI's proposal. The CMI was not simply wishing to avoid unresolved conflicts among international Conventions. The purpose was primarily to avoid disruption of established normative frameworks governing the use of maritime transport documents, in particular negotiable bills of lading.

The CMI's proposal is intended to ensure that the existing bill of lading practice remains outside of the scope of the NCD Convention because laws and practices relating to bills of lading are of long standing and well established. Superimposing new rules through a legal instrument which was originally intended to recognise a new document of title previously not provided for in law is bound to be disruptive and create myriad uncertainties. The NCD Draft Instrument's purpose was to address the lack of a recognised document of title covering non-marine cargoes, the transport of which is regulated by Conventions such as COTIF, and to create a document of title, whether in paper or electronic form, that could produce similar effects compared to the established bill of lading practice. If it had been envisaged to include bills of lading in this Draft Instrument, this should have been made clear from the outset so that stakeholders used to dealing with maritime transport documents in their contractual relations (i.e. shipowners, traders, banks, and marine insurers) could have taken note and provided input. To refrain from clearly providing for an exclusion of maritime transport documents from the scope of the NCD Draft Instrument would cause unnecessary and unjustified disruption of a well-established, well-regulated and well-understood field of practice.

The CMI does however appreciate that multimodal transport documents (MTDs) such as the FIATA bill of lading (FBL), even ones that include a sea leg, are not uniformly recognised across the world as negotiable, and

in respect of such documents the NCD Draft Instrument provides a useful basis for such recognition. Of course, if the Rotterdam Rules, a carefully drafted and detailed modern International Convention adopted in 2008 by UNCITRAL which covers also multimodal transport were to come into force, this would no longer be an issue with respect to such MTDs, however the CMI acknowledges that this is not the case yet.

In light of these concerns, the CMI proposes the following re-working of the original proposal:

Article 1(4)

“This Convention shall not apply in respect of any maritime transport document, or a document issued pursuant to a transport contract to which the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) applies.”

This new wording leaves the door open to applying the NCD Convention to FBLs that are not considered “maritime transport documents” under applicable law, at least unless and until the RR come into force. In order for this alternative wording to work, it would need to be accompanied by a paramount clause in MTDs providing in substance as follows:

Paramount Clause

“In all situations where this document would not otherwise be recognised as a document of title under the applicable law it should be treated as a negotiable cargo document under the UN Negotiable Cargo Documents Convention 2025.”

Why the proposed provision (together with the proposed paramount clause in the case of a multimodal transport document (MTD)) is needed

The following scenarios show why omitting the provision that is being proposed by the CMI from the Draft Instrument might be problematic. The scenarios set out situations where the issuance of a NCD in accordance with the Draft Instrument as it is now would cause uncertainty which may lead to reduced acceptability of the eventual NCD Convention to States and of NCDs to stakeholders. In each case, the new Article 1(4) proposed above together with, in the case of MTDs, the proposed paramount clause, would address these uncertainties. Scenario 1 involves a MTD covering door-to-door transport that includes a sea leg. Scenarios 2, 3 and 4 involve the issue of non-negotiable maritime transport documents alongside NCDs as currently permitted by the draft instrument.

SCENARIO 1

A FBL that includes a sea leg is issued with preprinted text that includes a reference to the NCD Convention, covering transport from a contracting State to destination. The governing law (by a choice of law clause or by applicable conflict of law rules) is the law of a non-contracting State, a law that has a robust bill of lading legislation and applies the Hague-Visby Rules

(HVR). FBLs that include a sea leg fall within the definition of “bill of lading” under this law and are treated as documents of title. Is this document a bill of lading or a NCD? If it is the former, the holder has acquired the usual rights of a bill of lading holder. If it is the latter, it may not be considered a document of title at all under the applicable laws chosen by the competent court, in which case no rights will have passed by its transfer.

SCENARIO 2

A bank has financed an international sale of goods and wishes to take a pledge in the goods. A NCD issued in accordance with the NCD instrument Article 3(3) is presented to the bank alongside a straight (non-negotiable) bill of lading. The goods were loaded and the bill of lading issued in a State that is not a party to the NCD Convention, but the goods are destined for and the NCD was issued in a State that is. The law chosen to govern the contract of carriage is the law of a State which is not party to the NCD Convention. It is unclear whether the bank can obtain a pledge in the goods by accepting this presentation and becoming a holder of this NCD. This uncertainty would not have arisen had the carrier issued a negotiable bill of lading rather than issuing a straight bill with subsequent issue of a NCD to address lack of negotiability.

SCENARIO 3

A NCD is issued in a State which is not a party to the NCD Convention alongside a sea waybill the terms of which choose as governing law the law of a contracting State. The goods are destined for a contracting State. The NCD contains a reference to the NCD Convention. A bank based in a non-contracting State becomes the holder of the NCD and wishes to enforce its rights over the goods in the local courts. The local law contains a conflict of laws rule which provides that the status of a document of title is determined by the law of the place of issue. Can the bank enforce its rights? There is a high chance that it will not be able to do so, whereas it would have been able to, had a bill of lading been issued.

SCENARIO 4

Following the issue of a non-negotiable maritime transport document, a NCD is issued to cover maritime cargo. However, at a later stage the shipper requests (in good or bad faith) from the carrier the issue of a “shipped” bill of lading in accordance with its mandatorily applicable rights provided for by all the international Conventions on the Carriage of Goods by Sea (Hague (Visby) Rules, Hamburg Rules, Rotterdam Rules). Would the carrier be able to resist such lawful request bearing in mind that it had already issued a NCD or is it forced also to issue a bill of lading to ensure compliance with said Conventions? If it is required to issue a bill of lading, will the shipper have to surrender the NCD issued previously to avoid duplication of the carrier’s liability? Under what legal provision would the shipper be obliged to do so?

RATIFICATION OF JUDICIAL SALE OF SHIPS CONVENTION

YEARLY REPORT

ANN FENECH, *Co-Chair*

Introduction

Activity in relation to our project on the Convention on the International Effects of Judicial Sales of Ships has not let up since the Gothenburg Conference in May 2024.

As we are all aware the entire thrust of this project now is to ensure as many signatories as possible and as many early ratifications as possible with a view to ensuring that the Convention comes into force shortly.

With this in mind every possible opportunity to speak about the Convention has been taken up with the main event of course being the 2nd signing ceremony held in Malta on the 19th June.

We can report as follows:

- On the 17th June I was invited to address the International Seminar celebrating the 35th Anniversary of the setting up of the International Maritime Law Institute in Malta. The thrust of my address was on the need to have as many countries signing and ratifying the Convention as possible.
- The much anticipated “2nd signing ceremony” of the Convention on the International effects of judicial sales of ships took place in Malta on the 19th of June 2024 at the magnificent Verdala castle under the patronage of Her Excellency the President of Malta. It was organised by the Ministry of Foreign Affairs in conjunction with UNCITRAL and the CMI.

The fact that we were able to have a 2nd signing ceremony at all was quite extraordinary. Many believe that this was the first time that a signing ceremony was held as per normal, in our case in Beijing, only to have a 2nd signing ceremony in another country later.

The scope of the event in Malta was to have a very high level gathering consisting predominantly of Ambassadors and State representatives. We had seven new countries signing the convention – Malta, Italy, Spain, Croatia, Cyprus, Antigua and Barbuda and Cote D’Ivoire. Key note speeches were delivered by three Maltese ministers of State,

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by myself, by Jose Angelo Estrella Faria Principal Legal Officer UNCITRAL, Dorota Lost Sieminska Director Legal Affairs IMO, and by Mr. Richard Sonnenschein Director for Justice Policies, DG Justice & Consumers European Commission. The ceremony was officiated by Mr. David Nanopoulos, Chief of the Treaty Section Office of Legal Affairs at the UN who physically brought the Treaty Book to Malta. This event cemented the excellent relationship between the CMI, the IMO and UNCITRAL and underlined the key role of the CMI in bringing all these international organisations together for the purposes of the unification of international maritime law.

The run up to the ceremony was challenging assisting the Maltese Ministry of Foreign Affairs with the organisation of the event as well as being the liaison between the Ministry and UNCITRAL and the IMO and the EU Commission.

I wish to thank in particular Eduardo Albors, Petar Kragic and Peter Laurijssen who worked tirelessly to ensure that their governments and others committed to signing the convention.

Peter Laurijssen ensured that we had enough of the Judicial Sales Hand books to present to the attendees. They were much appreciated and one could tell that it was very useful to delegates to have all the materials gathered in one publication.

On the eve of the signing my husband and I hosted a dinner at our house for all the foreign delegates with our compliments which was much appreciated.

- Going forward we now need to focus on ratification and the IWG is working on encouraging as many countries as possible to move to this next phase. EU Member states need to await the EU Council decision to permit them to ratify and we are having regular on going discussions with the European Union to ensure that this takes place as soon as possible. Mr. Sonnenschein pledged the concerted efforts of the EU in order to ensure that this occurs promptly.
- In order to keep up the momentum I have had numerous meetings and exchanges with Angel Sears DeBono to discuss the next steps associated with the ratification of the Convention by EU Member States.

She advised that once all the Commissioners have been put into place by Mrs. Von der Leyen work will start in earnest to have the Commission make the necessary proposals to the Council. She expressed optimism that the process could be finalised in the first quarter of 2025. Once that occurs then EU Member states would be free to ratify the Convention.

- In July 2024, Peter Laurijssen published an article on the Beijing Convention particularly on the certificate of judicial sale in the Argentinian on line law library eDial
- In the meantime other countries have taken a great interest in signing the Convention. Libya and Dominican Republic signed the Convention during the Treaty Event held at the United Nations between the 24th and the 27th of September. We used our social media to promote this event encouraging countries to make use of this opportunity to sign the

Convention on Judicial sales.

- Currently the convention has been signed by 29 states and ratified by 1. The signatory states are: China, Burkina Faso, Comoros, El Salvador, Kiribati, Grenada, Honduras, Liberia, Sao Tome and Principe, Saud Arabia, Senegal, Sierra Leone, Singapore, Switzerland, Syria, Equador, Tanzania, Belgium, Luxembourg, Malta, Spain, Italy, Croatia, Cyprus, Cote D'Ivoire, Antigua and Barbuda, Libya and Domenican Republic. El Salvador has ratified the Convention.
- I have been invited by the Jamaican representative at the IMO to give a series of lectures to the Jamaican Judiciary and Jamaican shipping lawyers on the purpose of the Convention. I have accepted this invitation and will be going to Jamaica at the end of January 2025.
- I have also been invited by the authorities in Antigua and Barbuda to give a series of presentations to the authorities in Antigua and Barbuda on the Convention and its implimentation.
- On the 1st August I had the privilege of addressing an International Maritime Law Seminar organised by the Colombbian Maritime Law Association (ACOLDEMAR COLOMBIA) in Cartagena where I spoke about the Convention on the International Effects of Judicial Sales of Ships. I addressed the conference remotely.
- On the 26th September I had a meeting in London during World Maritime Day at the IMO with Jan de Boer from the legal section. The legal section at the IMO is responsible for putting together the additional module on the GISIS platform which will accommodate the notices of judicial sale and the certificates of judicial sale. The modules will have to be ready in time for the coming into force of the Convention. He advised that the IMO special module to accommodate the certificates of judicial sales and the notices of judicial sales is in the process of being created following finalisation discussions with UNCITRAL to be able to test run the module on the GISIS platform.
- On the 25th of September a joint event on the Convention was held between the Panamanian Maritime law Association and the National Bar Association at which Jose Angelo Estrella Faria UNCITRAL, Principal legal Officer and Head, Legislative Brance International Trade Law Division, was asked to speak on the Convention. It is anticipated that Panama will sign the Convention shortly.
- On the 27th of September an event was organised by the Externado University in Columbia at which Jose Angelo Estrella Faria was asked to speak on the Convention and the importance of its ratification by South American countries.
- On Monday 30th September I addressed the International IIDM Conference in Brazil on the importance of South American Countries ratifying the Judicial Sales Convention and brought them up to date with the latest information regarding the ratification process.
- In the meantime I have been informed by Stuart Hetherington that Mr. Justice Steven Rares has been very active in getting the Admiralty Rules Committee which he chairs and on which Stuart Hetherington is still on, started on drafting new Rules for their national Admiralty

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jurisdiction to take account of the Judicial Sales requirements for Notice and Certificates and he is going to do the first draft.

- In October the Belgian Maritime Law Association, the Belgian Directorate General of Shipping and the Royal Belgian Shipowners Association jointly organised a seminar on the Convention addressed by the persons from DG Shipping, Chamber of our Bailiffs, Antwerp Bar, the Shipping Registry and the Ship Owners Association.
- Finally on the 9th December 2024 the latest edition of the *Le Droit Maritime* was published and I was invited to write a piece on “Informal insights into the negotiation process of the Convention on the International Convention on Judicial Sales of Ships and future progress”.
- In the meantime, the IWG has been meeting regularly to discuss how we can progress the ratification process. This group has long recognised the absolute need for the CMI to remain actively promoting a Convention well after its adoption and not to stop in its endeavours until the Convention comes into force.
- In conclusion I would like to thank all the members of our IWG for their hard work during this period.

REVISION OF 1910 COLLISION CONVENTION AND RELATED INSTRUMENTS

YEARLY REPORT

JOHN O'CONNOR, *Chair*

KLAUS RAMMING, *Rapporteur*

It is a pleasure to report on the ongoing work in the Review of the Collision Conventions International Working Group (IWG).

The IWG first met at the CMI Antwerp colloquium in October 2022 and met again in face-to-face meetings at the Montreal colloquium in 2023 and at the Gothenburg colloquium in 2024. Open meetings were held in Antwerp and Montreal and an open meeting is scheduled to take place at the upcoming Tokyo colloquium in May of 2025.

At the previous open meetings, the views of attendees were sought on several aspects of the 1910 Collision Convention. That convention was the CMI's first instrument, adopted the same day as the 1910 Salvage Convention. The latter convention was replaced in 1989, leaving the 1910 Collision Convention as the CMI's oldest instrument still in force. Furthermore, in addition to these meetings, the topics discussed were canvassed in a questionnaire sent to all Maritime Law Associations to obtain input from each. More than two dozen MLAs submitted replies to the questionnaire.

In parallel to the open meetings held at CMI events, the IWG has undertaken a series of closed meetings wherein members of the IWG have been able to discuss the issues facing a revised collision convention, whether it be in the form of a new stand-alone convention replacing the 1910 instrument, or a protocol updating the instrument without replacing it entirely.

It would be an understatement to say that not all MLAs and not all members of the IWG agree what changes should be proposed to the 1910 Collision Convention. However, from a review of the questionnaire and the replies received, and from discussions at the open and closed meetings, the IWG determined that there are different categories of proposed amendments, including those that are more controversial and those that are less controversial.

The IWG has determined the following to be the more controversial topics:

Collision Convention

1. The channeling of liability.
2. The need for mandatory insurance and direct action.
3. The concept of fault-based/strict/joint and several liability to third parties for damage or injury caused by the collision to persons or property on board.
4. The need to regulate damage or injury to third parties not on board, i.e. do these liabilities, independently of liability to persons and property on board, warrant joint and several liability and mandatory insurance and direct action by third parties.

The IWG has determined the following topics to be somewhat less controversial:

1. The definition of “vessel”.
2. The definition of “collision”.
3. The scope of the new instrument as applicable to all ships, inland and seagoing.
4. The waters in which the new instrument would apply, inland, territorial and EEZ.
5. The concept of fault of a colliding vessel.
6. The concept of strict liability for defects in a colliding vessel.
7. The damages recoverable in collisions.
8. The private international law applicable to collisions.
9. The jurisdiction of courts hearing collision claims.
10. The recognition and enforcement of judgments on collision claims.

The IWG now meets every other month in view of arriving at a consensus on as many of the above questions as possible. It is extremely important for the IWG to reach a consensus on these issues, regardless of which position is adopted, in order to allow the IWG to make recommendations to ExCo on the revision of the 1910 Collision Convention. It is hoped that a position will be arrived at within the coming year.

POLAR SHIPPING

YEARLY REPORT

ALDO CHIRCOP, Chair

1. Membership Matters

The IWG warmly welcomes Daisy Roche, recently appointed by ExCo, to succeed David Baker as the WG member representing the International Group of P&I Clubs (IG). She is a Senior Secretariat Executive at the International Group of P&I Clubs (IG), assisting the Group's Pollution and Claims Co-operation Committees, including liaising with the IMO and IOPC Funds. David Baker remains a member of the IWG in his personal capacity.

2. Antarctic shipping

David Baker finalized the Antarctic shipping subgroup's report "Antarctica: The new Alsatia for Liability and Compensation for Ship-Sourced Pollution Damage?" for communication by CMI President Ann Fenech to the secretariats of the Antarctic Treaty, International Maritime Organization, and International Association of Antarctic Tour Operators in November 2023. President Fenech drew attention to the report's conclusion "that there continues to be serious issues and uncertainty concerning the applicable legal regime for compensation for environmental damage from vessel-source pollution and particularly whilst the Liability Annex is yet to enter into force."

3. Arctic shipping/Indigenous rights

The subgroup on Arctic Shipping and Indigenous rights includes David Baker, Ilker Basaran, Luce Bourbeau (by invitation and acting as subgroup rapporteur), Phillip Buhler, Aldo Chircop (Chair), Peter Cullen, Didem Light, and Lars Rosenberg Overby. Work commenced in February 2024 with a virtual meeting to consider (a) purpose of the working paper, (b) scope of the topics to be addressed, and (c) work methodology, distribution of tasks and schedule. It was agreed that the scope of the issues to be addressed should relate to the Polar Code's substantive content. The Code will serve as a framework within which Indigenous rights as set out in the United Nations Declaration

on the Rights of Indigenous Peoples (UNDRIP) will be studied to determine how they interface with shipping, whether directly or indirectly. The working paper should adopt a comparative approach to enable comparisons across the Arctic region. Potential issues in the Arctic shipping context were provisionally identified and members were tasked with identifying UNDRIP provisions that potentially interface with the governance of Arctic shipping and to communicate these to the rapporteur by 1 May 2024. A provisional outline of the working paper to be prepared based on the inputs received and for discussion at CMI Gothenburg.

Following the IWG's meeting in Gothenburg, the rapporteur prepared a revised working paper outline based on comments at the meeting. Subgroup members were invited by the Chair to provide further comments on the revised draft. At the time of writing of this report, subgroup members were providing inputs.

Moving forwards, the subgroup worked according to the following timeline:

- (1) Feedback on the draft outline communicated by subgroup members to rapporteur by 15 September.
- (2) Rapporteur to prepare a first draft of the working paper for discussion and indicating areas where inputs from subgroup members are needed by 15 November. Members' expertise/inputs into discussions of developments in the individual Arctic jurisdictions was invited.
- (3) Subgroup members to provide feedback to rapporteur by 15 December. The subgroup Chair will convene a zoom meeting in November/December (date TBA).
- (4) Rapporteur to prepare the second draft of the working paper by 15 February 2025.
- (5) Subgroup members provide feedback to rapporteur by 15 March 2025. The subgroup Chair will convene a zoom meeting in February/March (date TBA).
- (6) Rapporteur to prepare the third and final draft for the IWG plenary by 15 April 2025.
- (7) Discussion of final draft in the IWG plenary and adoption (with/without change) at CMI Tokyo (13-17 May 2025).
- (8) Finalization of working paper by 15 July 2025 for uploading to CMI website and publication in the CMI Yearbook.

Efforts to seek views from Indigenous colleagues/sources will continue as appropriate throughout the process. Adjustments to the proposed timelines may be necessary to accommodate inputs.

4. Navigational aids and services

The Subgroup on Navigational Aids and Services in Arctic Waters includes Ilker Basaran (Chair), Aldo Chircop, Peter Cullen, Leyla Pearson (representing ICS), Duke Snider, and Lawson Brigham (by invitation). The subgroup convened its first meeting virtually in February 2024 to consider (a) defining the purpose of the working paper, (b) outlining the scope of topics to be addressed, and (c) establishing the work methodology, task

distribution, and work schedule. Following the meeting, Lawson Brigham (Woodrow Wilson Centre and US Coast Guard College), Phillip Buhler and Lars R. Overby were also invited by the chair to contribute to the working paper. The paper will consider the international legal framework for navigational aids and services as it applies to Arctic waters to help develop an understanding of the obligations and undertakings for coastal states in the Polar Code area. The paper will include discussion of the navigational context of Arctic shipping, comparative studies of the jurisdictions concerned and an assessment section. The next event will be a webinar on navigational matters in Arctic waters led by Duke Snider, following which a provisional outline of the working paper will be developed for further discussion in the subgroup.

5. CMI Gothenburg 2024 – Report of IWG on Polar Shipping to Assembly

The IWG had a successful closed hybrid meeting that was greatly enabled by our host, Vinge law firm, to whom we express our warmest appreciation. The IWG reviewed the progress to date on its newest work items.

(1) the interface between Indigenous rights and governance of Arctic shipping (subgroup chaired by A. Chircop, with L. Bourbeau, a yCMIer acting as rapporteur)

A first virtual meeting on 13 February identified potential issues to be addressed by a working paper. Members discussed provisions of UNDRIP which are of potential interest in the regulation shipping, as well as aspects of Arctic shipping which have the potential of impacting the exercise of Indigenous rights. This work enabled the rapporteur to prepare a preliminary draft outline of the working paper identifying pertinent UNDRIP provisions on governance rights, territorial and resource rights, environmental rights and duties of States, cultural rights, economic and development rights, and the right to safety and security. The Gothenburg meeting enabled further development of the draft outline of the working paper. The subgroup will convene the next virtual meeting in the first half of September this year. The subgroup recognize the importance of incorporating Indigenous perspectives and will endeavour to engage Indigenous organizations to partner with.

(2) Coastal states' responsibility for navigational aids and services in Arctic waters (subgroup chaired by I. Basaran).

The subgroup chair prepared a provisional outline for discussion in a first meeting on 27 February to discuss the research plan and to flesh out the working outline of the paper. It was agreed the working paper will focus on legal responsibilities in UNCLOS and the IMO conventions and adopt a comparative approach to study the practices of the coastal State jurisdictions of the Central Arctic Ocean. The subgroup also had a technical webinar on 17 May to develop an understanding of the range of navigation aids and services used in Arctic shipping. Additional technical expertise on polar operations and pilotage was brought in to assist the subgroup. The next steps focussed on enhancing the working paper outline and convening a virtual meeting in September.

Polar Shipping

Following the Gothenburg meeting, the subgroup Chair prepared a discussion document requesting feedback from members, especially regarding the local practices on navigational aids and services in the jurisdictions represented in the subgroup. Relevant documents were made available to subgroup members on Google Drive. The subgroup worked towards the following workplan and timeline:

- (1) September: Chair to distribute the initial version of the paper to subgroup members.
- (2) October: Feedback from members requested by 15 October.
- (3) November: Chair to incorporate feedback into the paper and distribute an updated version to subgroup members and schedule an online meeting.
- (4) December: Chair to convene an online meeting to discuss progress. Main topics to discuss will be the legal implications of failure to provide navigational aids and services, jurisdictional differences in practice and the best practice model. Additionally, topics will be assigned to group members to contribute.
- (5) February, 2025: Chair to collate completed sections from subgroup members.
- (6) March: Chair to assemble the second draft of the paper based on contributions and the online meeting notes. Chair will distribute the second draft to members for further review and feedback.
- (7) April: Chair will receive feedbacks and make necessary revisions to working paper and set up a second online meeting.
- (8) May: Chair will convene online meeting to finalize the paper for CMI Tokyo.
- (9) June-July: Chair will prepare finalized version of the working paper for the CMI Website and CMI Yearbook.

MOBILE OFFSHORE RENEWABLE UNITS

YEARLY REPORT

FRANK NOLAN, *Chair*

The CMI's International Working Group on Mobile Offshore Renewables Units ("MORU IWG") was formed following the May 2023 Meeting in Montreal, Canada. The MORU IWG conducted an extensive program prior to and during the Gothenburg Meeting in May of this year to acquaint CMI members with the technical, operational, commercial, financial and insurance issues facing this relatively new industry.

Following Gothenburg, the MORU IWG considered the results of those programs and determined to assemble a first questionnaire to the CMI Membership to help ascertain the current legal status and environment of MORUs in the various nations represented by CMI's membership as well as the perceived appetite and support for one or more legal instruments to improve the prospects for expanding the distribution of MORUs in the world's maritime space. In particular, the MORU IWG focused on registration of ownership in and liens and mortgages on MORUs.

That First Questionnaire was completed, approved by the Executive Council and distributed by the CMI President under cover of her letter to the presidents of the National Maritime Law Associations, dated October 15, 2024. That letter also requested that each NMLA designate a person who would be the responsible individual to supply the response of that NMLA to the Questionnaire and who the IWG could contact and offer assistance in understanding the Questionnaire and responding to any questions. The letter requested that the name and contact details of the designated individual be supplied by November 6, 2024 and the Questionnaire be answered by December 15, 2024. As of December 15, 21 NMLAs have designated contact persons and one NMLA supplied a response to the Questionnaire. Those supplying contact designations include: Brazil, China, USA, India, Norway, Spain, Denmark, Ireland, Italy, Singapore, South Korea, France, Australia and New Zealand, Malta, Germany, Sweden, Hong Kong, Poland, South Africa, Finland and Japan. One NMLA submitted a response to the Questionnaire to date and a number have requested small extensions of time.

The MORU IWG expects to review the results of the First Questionnaire in preparation of an extensive session in Tokyo in May of 2025. It is hoped that the Tokyo Session will provide sufficient basis for the CMI to determine

MORU

the best direction to pursue in enhancing the legal environment for protection and development of MORUs.

RESTATEMENT OF THE LEX MARITIMA

YEARLY REPORT

ERIC VAN HOOYDONK, *Chair*

JESUS CASAS, *Rapporteur*

The CMI International Working Group (IWG) on the Restatement of the Lex Maritima – A Brief Timeline

Maritime law has a long tradition of international unity. Its common foundation, rooted in Classical Antiquity and the Western European Middle Ages, is often referred to by the umbrella term *Lex Maritima*, a specific *Lex Mercatoria* for maritime affairs. The existence of these globally common bases has been recognized in many jurisdictions. While the belief in a *Lex Maritima* is old and widespread, a text identifying and articulating the universal principles of maritime law was missing.

In 2014, it was argued that it is possible and also appropriate to draft such a text and that the most authoritative body to give it shape would be the CMI¹. The same year, the Executive Council and Assembly approved the establishment of the International Working Group (IWG) on the Restatement of the *Lex Maritima*. After discussions in Berlin in 2014, the working group took off following the 2015 meeting in Istanbul.

The IWG conducted extensive comparative law research, examining conventions, codes, statutes, case law and doctrine. From the outset, the IWG adopted a strictly academic method: it only recognised a rule as a *Lex Maritima* Principle on condition that there was objective evidence that the rule was indeed universally shared. National peculiarities and divergences, sectoral interests, policy desires for the future and personal preferences were eliminated from its work.

¹ E. Van Hooydonk, 'Towards a worldwide restatement of the general principles of maritime law', *Journal of International Maritime Law* 2014, p. 170-182.

Lex Maritima

The IWG had meetings in London (2018), Mexico City (2019), Antwerp (2022) and Montreal (2023). Following the Covid-19 epidemic, it had numerous, intensive online discussions about numerous consecutive versions. Partial drafts were presented at the CMI events in New York (2016), Mexico City (2019), Antwerp (2022) and Montreal (2023)². A complete draft was presented at the colloquium in Gothenburg (2024). This text – the ‘Gothenburg Draft’ – is available at <https://comitemaritime.org/work/lex-maritima/>.

Following a decision of the Executive Council, the President of the CMI on 10 June 2024 forwarded the Draft CMI Lex Maritima to the national maritime law associations, together with a questionnaire inviting them to provide comments and suggestions by 1 November 2024, so as to enable the IWG to finalize its work with a view to the Tokyo conference in 2025. The IWG hopes that the final draft can be officially approved as a CMI resolution, contributing to the harmonization and unification of the maritime law.

² See also CMI Yearbook 2015, p. 431-434; CMI Yearbook 2016, p. 260-262; CMI Yearbook 2023, p. 225-226.

THE CMI LEX MARITIMA

**THE 25 GENERAL PRINCIPLES
OF MARITIME LAW**

**THE GOTHENBURG DRAFT
23 MAY 2024**

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GENERAL INTRODUCTION

Background

The CMI Lex Maritima presented here is an articulation of the general principles of maritime law. The document was adopted as a resolution of the Comité Maritime International (CMI), the global umbrella organisation of maritime law practitioners. The instrument can be considered the Lex Mercatoria for maritime affairs. There has long been a widespread belief that maritime law is founded on globally accepted basic principles, common customs and generally accepted contractual clauses. This conviction is reflected in national statutory provisions, in national case law and, above all, in ample doctrine. Extremely rare so far, however, have been the attempts to identify and formulate these common principles of maritime law into a set of written rules. The CMI Lex Maritima is the first elaborate instrument to do so and the first to have been adopted by a globally active organisation.

Objective and potential uses

By articulating in the CMI Lex Maritima, in as simple terms as possible, the common basic principles of maritime law, it aims to facilitate the understanding of maritime law, as a special branch of the law. Moreover, the instrument can assist in education, interpretation, drafting of national rules and case law. In line with the CMI's core objective, the CMI Lex Maritima can contribute significantly to the international uniformity of maritime law. The objective of the CMI Lex Maritima is further set out in Rule 1.

Methodology and criteria

It cannot be stressed enough that the CMI Lex Maritima aims only to articulate principles that are demonstrably based on wide international agreement. In other words, it is about expressing the common foundation of maritime law. Aspects on which there is no international consensus and national specificities have been eliminated from the document¹. The preparation of the CMI Lex Maritima was done on the basis of a comparison of rules of the 'positive maritime law' in order to detect common ground. In simple terms, this positive maritime law includes all sources of maritime law which are outside CMI Lex Maritima, and from which CMI Lex Maritima was extracted (see further the definition in Rule 2(3)). To substantiate the general acceptance of the Lex Maritima Principles formulated, references

¹ This immediately explains why some matters are not covered in the instrument at all, such as marine insurance and multimodal transport.

to source materials are included in the footnotes². In other words, the methodology applied was strictly objective and scientific; one can compare it to a mechanical or chemical extraction or distillation process. Logically, in this process subjective or personal preferences and policy wishes ‘de lege ferenda’ about future unification initiatives have been disregarded. Also, the focus of the preparatory research was on current maritime law. Here and there, historical notes were added to further substantiate the pedigree of some specific principles, but this was not done systematically.

‘Rules’ and ‘Principles’

The CMI *Lex Maritima* consists of 5 ‘Rules’ and 25 ‘Principles’. The ‘Rules’ are preliminary technical provisions that define the objectives, definitions, scope, status and application of the instrument. The ‘Principles’ are the substantive provisions which set out the actual general principles of maritime law. These comprise ‘Principles’ of three different types: (1) Principles the content of which is directly proclaimed by the document; (2) Principles which indicate that it is usual for positive maritime law to spell out certain rules, where, however, there is no overall international uniformity about their exact substance and/or where the rule becomes operational only on condition that positive maritime law actually introduces it (examples are mandatory provisions relating to contracts of carriage, wreck removal obligations, maritime liens and time bars) and (3) Principles for which reference is made to other instruments which as such are part of the *Lex Maritima* (the COLREG and the York-Antwerp Rules). For further explanation, reference is made to Rule 2.

Preparatory process

The CMI approved the establishment of the International Working Group (IWG) on the Restatement of the *Lex Maritima* in 2014. Subsequently, this IWG discussed successive drafts. The first version shared publicly was Version 8, which was presented at the CMI Conference in Antwerp in 2022. Version 9 was introduced to the CMI Colloquium in Montreal in 2023. Draft version 15 was presented at the CMI Colloquium in Gothenburg in 2024. The drafting of the IWG document and most of the research work were carried out by Eric Van Hooydonk, Chairman of the IWG. Comments, suggestions and additional national source materials were provided by IWG members with whom numerous fruitful exchanges were held, which led to the fine-tuning of successive versions. The most recent composition of the IWG was as follows: Eric Van Hooydonk (Belgium), Chairman; Jesús Casas Robla (Spain), Rapporteur; Eduardo Adragna (Argentina); Aybek Ahmedov (Russia); Kerim Atamer (Turkey); Werner Braun Rizk (Brazil);

² See also Commentary on Principle 17 on the special authority of national legal provisions extending the scope of international unification conventions to ‘national’ situations not governed by those conventions. Furthermore, it should be borne in mind that the absence of a particular rule in a national statutory framework does not necessarily mean that this rule does not apply in the legal system concerned. It may indeed be the case that the same rule is confirmed by national case law or doctrine.

Olivier Cachard (France); Javier Franco (Colombia); Tomotaka Fujita (Japan); Andrea La Mattina (Italy); Luiz Roberto Leven Siano (Brazil); Filippo Lorenzon (UK/Italy); Andreas Maurer (Germany); Bernardo Melo Graf (Mexico); Mišo Mudrić (Croatia); Gustavo Omana Parés (Venezuela); Massimiliano Rimaboschi (Italy); Frank Smeele (The Netherlands); Michael Sturley (USA); Lijun Zhao (China); Alex von Ziegler (Switzerland).

Websites were consulted in their version published on 20 May 2024. The data on the status of IMO conventions are based on an IMO document dated 5 September 2023.

Further planning within the CMI

This ‘Gothenburg Draft’ of the CMI Lex Maritima will be submitted to the national maritime law associations affiliated to the CMI through a CMI Questionnaire, for possible addition or correction based on the same objective and scientific methodology as explained above. This process will be supervised within the CMI by the Lex Maritima IWG. The objective is to submit the final version, adjusted based on the comments received, to the CMI General Assembly at the 2025 CMI Conference in Tokyo for final approval.

PART 1

PRELIMINARY RULES

Rule 1 – Objective

The objective of the CMI Lex Maritima is to enunciate the universal foundations of maritime law, thereby clarifying its specificities and contributing to its international uniformity.

Commentary

The CMI Lex Maritima is an instrument that enunciates the universal foundations of maritime law, thereby fulfilling a double function of clarifying the specificities of that branch of the law and contributing to its international unification.

First of all, maritime law contains numerous independent concepts and rules, some of which differ considerably from related institutions in other branches of the law. The Principles enunciated in the CMI Lex Maritima can help interested parties, lawyers, judges and arbitrators identify key maritime law concepts and principles commonly applied on a worldwide basis and prevent the application in maritime litigation of less adequate (particularly national) non-maritime rules of law. The notion of ‘non-maritime law’ comprises all law that is outside maritime law. None of these notions are defined in this instrument, however, because there is no need to do so and because views on this issue vary greatly from country to country. Suffice it here to recall that various legal systems distinguish ‘maritime law’ from ‘land law’ or ‘le droit terrestre’ (or, depending on the national legal system, similar concepts such as ‘le droit commun’, ‘el derecho común’ or ‘il diritto civile’)³.

The CMI Lex Maritima is also an educational tool, a vademecum that can efficiently introduce lawyers who are less or not familiar with maritime law to its essence (or ‘ABC’). An example of an independent maritime law concept is salvage, which differs from both the negotiorum gestio and the locatio operis faciendi of classical civil law. Similarly, although the rules on liability in the event of a collision are closer to the general tort law, they still show some peculiarities. The CMI Lex Maritima can usefully draw attention

³ **Current law:** **Argentina** (Shipping Act, Art. 1); **Belgium** (Shipping Code, Art. 2.2.4.5, § 1, 1°; 2.2.4.7, § 1; 2.4.2.6, § 7; 2.4.2.7, § 3; 3.2.2.5, § 1, 1°; 3.2.2.7, § 1); **France** (Chauveau 1958, 7, para 1; Vialard 1997, 24-25, para 12); **Ibero-America** (IIDM Maritime Model Law, Art. 1); **Italy** (Navigation Code, Art. 1); **Spain** (Maritime Navigation Act 14/2014, Art. 2.1); **USA** (i.a. *Davis & Sons, Inc. v. Gulf Oil Corp.*, 919 F.2d 313, 315; Allsop 2016 at 170). In English law, the term ‘land law’ is used to refer to the law of real estate. For this reason, the Commentary mentions ‘various legal systems’, in other words, not all of them.

to the existence of a number of such specificities. However, the rather academic debate on whether maritime law is a separate, 'autonomous' branch of law, or (only) a 'lex specialis' containing a number of derogations from non-maritime law, can be left aside. In the doctrine, both propositions have their supporters. As will be seen below, the positive law in various countries in any case recognises the ancillary value of maritime customs and general principles of maritime law.

The second objective of the CMI Lex Maritima is to contribute to the achievement of the core mission of the Comité Maritime International, which, according to its Constitution, is to 'contribute by all appropriate means and activities to the unification of maritime law in all its aspects'⁴. The CMI Lex Maritima seeks to contribute to this by identifying the 'common foundations' that form the globally accepted basis of maritime law⁵. The unification of maritime law has been the mission of the CMI since its creation in 1897, and was indeed the reason why the organisation was founded.

The CMI Lex Maritima focuses on private maritime law matters. Nevertheless, the distinction between public and private maritime law is not self-evident and in a certain sense unrealistic. Historically, maritime legislators often made no such distinction and also today, several codes, laws and treatises cover both. The continuing blending of public and private law is also well reflected, for example, in the status of the ship master, who performs both private and public functions (see Principle 11). The principles of wreck removal are also a mix of public and private law (see Principle 22). International public law regulation became increasingly important during the twentieth century, especially as a result of concerns about maritime safety and environmental protection. The International Maritime Organization (IMO), a specialised agency of the United Nations, plays the leading role in this regard. Numerous public law conventions prepared by the IMO have been adopted by States representing more than 90% of world tonnage. Examples include TONNAGE, SOLAS, LL, COLREG and MARPOL. Paraphrasing the basic principles of these globally applied conventions of an essentially regulatory and often very technical nature in the CMI Lex Maritima would provide little or no added value. This is all the more so since the rules in question are part of widely spread, already largely uniform positive maritime law. Furthermore, the conventions referred to are implemented and enforced through national legislation and supervisory agencies having powers to impose coercive measures and sanctions, where a soft law Lex Maritima instrument could offer little added value. However, a Principle on the basic responsibilities of the shipowner and ship operator does point out in general terms the obligation to comply with such public law regulations (see Principle 6). Also, a separate Principle confirms the status of COLREG, the globally accepted and applied maritime traffic code, as a

⁴ CMI Constitution 2017, Art. 1.

⁵ The legal status of the CMI Lex Maritima is defined in Rule 4 below.

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component of the Lex Maritima in its own right (see Principle 7). Yet another Principle translates the essence of environmental liability regimes such as CLC 1992, which, incidentally, is another example of a regime covering both public and private law (compulsory insurance and strict liability; see Principle 12). Finally, in support of the broad concept of ship used in the CMI Lex Maritima, additional reference is made to the analogous definitions in some public law conventions (see Rule 2(2)).

As a rule, the 'maritime law' dealt with in the CMI Lex Maritima does not touch upon the 'law of the sea', which is a branch of public international law that more specifically defines the rights and duties of States regarding the delimitation, management and use of marine areas. The most important treaty arrangement in that field is the UN Convention on the Law of Sea of Montego Bay of 10 December 1982 (UNCLOS). That convention contains a number of rules that are also considered part of customary international law of the sea. The CMI Lex Maritima does not, or at least not primarily, seek to define the rights and duties of States. Nevertheless, tangents and overlaps exist. For example, Principle 3 confirms the Flag State's power to regulate the grant of its nationality to ships. Another illustration is provided by Principle 8(3) concerning the obligation of masters to render assistance at sea to ships and persons on board in distress. This Principle has been included in several international conventions harmonising private maritime law but has also been repeated in UNCLOS. Similarly, Principle 22 on wreck removal deals with the powers of Affected States.

Finally, the CMI Lex Maritima does not deal with inland navigation law, but only with the regime of seagoing vessels (see the definition in Rule 2(2)). In regions and countries with a significant IWT sector, inland navigation law has developed into a separate branch of the law. Many notions of inland navigation law are derived from maritime law (which is, generally speaking, much older). Still, certain rules of inland waterway law have been taken into account in the drafting of some Principles of the CMI Lex Maritima (e.g. in Principle 2). Moreover, the incorporation of certain fundamental rules of maritime law into inland navigation law underlines the authority that those rules have as a generally applicable Principle (e.g. in Principle 19).

Rule 2 – Definitions

For the purposes of the CMI Lex Maritima:

- (1) 'CMI Lex Maritima' and 'Principles' mean the preliminary rules and the principles laid down or referred to in the present instrument;
 - (2) 'ship' includes any type of seagoing vessel;
 - (3) 'positive maritime law' means the rules of public or private maritime law, including the rules of non-maritime law that apply to maritime matters, which are laid down in any applicable international convention, national maritime code or statute, case law or legal doctrine;
 - (4) 'implement' means recognise, confirm, apply, effectuate and/or elaborate;
 - (5) 'maritime custom' means any customs, practice or usages which are widely known to and regularly observed in maritime matters by parties in the same situation;
 - (6) 'shipowner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship;
 - (7) 'ship operator' means the person or persons operating the ship, not being the shipowner;
 - (8) 'Court' means any court, tribunal, judge, arbitrator or any other dispute resolution entity.
-

Commentary

As item (1) indicates, this instrument contains preliminary 'rules' and substantive 'principles' that together constitute a statement of the 'Lex Maritima'. The latter concept has long been used in international legal doctrine, both in general works and in specialised studies on the subject⁶. In common law jurisprudence, 'the general maritime law' – i.e. the Lex Maritima – has been set against 'municipal maritime law'⁷. The Lex Maritima can be considered the common international heritage of values, rules and principles governing maritime matters⁸. Even after the emergence of the nation-state and the development of national maritime law and legislation, the Lex Maritima continued to function as an 'undercurrent' in court judgments⁹. The 'Lex Maritima' is often viewed as the counterpart of the 'Lex Mercatoria', or as a part of it. The notion of 'Lex Mercatoria' (or 'the Law Merchant') has often been used in the past to denote medieval European

⁶ See, for example, Allsop 2016, 163-175; Cachard 2018, 335-349; Guzmán 2019, 251-264; La Mattina 2017, 64-67; Maurer 2012; Tetley 1994, 105-145; Tetley 1996, 506; Van Hooydonk 2014, 170-182; Werner 1964, 12-13, para XI.

⁷ Even though there is no unanimity on their relationship, but that is of no importance here. See *The Lottawanna* 88 US 558 (1874); *The Gaetano and Maria* (1882) 7 PD 137; *The Tojo Maru* [1972] AC 267; *The Titanic, Inc v Haver* 171 F 3d 943 (1999) at 960-964; for a commentary, see again Allsop 2016, 163-175.

⁸ Comp. Allsop 2016 at 169.

⁹ Comp. Schoenbaum 2004-I, 20, § 2-1.

commercial law, and continues to be used today. The *Unidroit Principles of International Commercial Contracts*, several successive versions of which have been produced, are considered part of the contemporary *Lex Mercatoria*. The *Lex Maritima* proposed here and adopted by the CMI is the first contemporary compilation of the international principles of maritime law. An important difference from the aforementioned *Unidroit Principles* is that the *CMI Lex Maritima* does not only cover contract law, but a large variety of matters.

To understand the *CMI Lex Maritima* properly, it should be pointed out from the outset that the Principles contained therein are of three types:

- (1) a first type of Principles directly formulates substantive rules of law (these are referred to in the definition by the words 'principles laid down [...] in the present instrument');
- (2) a second type of Principles include concepts and rules which can be universally found but the specificities of which still often diverge; for these common yet not fully harmonised concepts or rules the *CMI Lex Maritima* refers to the 'positive maritime law', which then spells out the precise, more elaborate and detailed rules; often, Principles of this category are moreover operational only on the condition that positive maritime law actually introduces them, as is the case with mandatory provisions relating to contracts of carriage, wreck removal obligations, maritime liens and time bars (this category of Principles is covered by the formulation 'principles [...] referred to in the present instrument'; see the further explanation of items (3) and (4) of the Rule discussed here);
- (3) two international legal instruments are proclaimed *Lex Maritima* as such: *COLREG* and the *York-Antwerp Rules* (these also fall under the formulation 'principles [...] referred to in the present instrument').

Item (2) contains the simplest possible definition of the term ship, which applies for the purposes of the *CMI Lex Maritima*. However, it is difficult to proclaim a particular definition of the ship as a Principle of the *Lex Maritima* in its own right. As numerous researchers and also a working group of the CMI have noted, there is no international unanimity on the definition of the ship. Numerous positive maritime law instruments do not even contain a definition. When a definition does exist, it is usually tailored to the specific matter at hand, taking into account technological and economic aspects and specific policy objectives. The presence of self-propulsion, a certain minimum tonnage and the international nature of the operation are just some of the characteristics that may or may not play a role in such definitions of a ship. Given this context, it is not useful to aim for or proclaim here a universally applicable definition. However, specifically for the application of the *Lex Maritima* (and only for that purpose), an elementary definition is needed. The definition of a 'ship' provided here refers to 'any type of seagoing vessel'. This broad approach can also be

found in a number of international conventions¹⁰ and national (statutory or other) definitions¹¹, although the formulations there are often accompanied by further specifications, which are deliberately omitted here. In other words, while no definition can be copied from the positive maritime law that can be considered universally applicable, it is possible to extract the common core from it, and the definition presented here attempts to do so. For the purposes of the CMI Lex Maritima, which formulates only fundamental principles, a general and broad definition is most appropriate in any event. Indeed, the proposed definition recalls the underlying notion of the perils of the sea¹². More specifically, the rules of the maritime law find their historical origin (and largely their contemporary justification) in the exposure of the craft (with persons on board and cargo) to the particular dangers of the sea¹³. In other words, exposure to these perils of the sea has always been, and still is, a characterising element of maritime law. Moreover, that fact helps explain the distinction that is often made between seagoing and inland vessels. The use of the word ‘includes’ indicates that the definition does not purport to preclude that an inland vessel that also navigates maritime waters can be considered a ‘ship’ (as is the case under some laws and regulations). In any event, and fully in line with Rule 4(2), the definition under discussion is not meant to replace specific definitions of ship in the positive maritime law (which includes case law). Those definitions, where available and binding, always take precedence.

Item (3) provides a definition of ‘positive maritime law’. This definition is important to properly understand the role of the CMI Lex Maritima. This relationship is further explained in Rule 4(2) (‘Status of Principles’) and also in Rule 5 (‘Application of Principles’). In terms of substance, the definition of ‘positive maritime law’ requires little or no explanation. The

¹⁰ **Bunker Convention** (Art. 1.1); **CLC 1992**, Art. I(1); **COLREG** (Rules 3(a)); **Dumping Convention** (Art. III.2); **Hague Rules 1924**, Art. 1(d); **HNS Convention** (Art. 1.1); **Intervention Convention** (Art. II.2); **MARPOL** (Art. 2(4)); **Registration of Ships Convention** (Art. 2); **Rotterdam Rules** (Art. 1(d)); **Salvage Convention 1989** (Art. 1(b)); **SUA Convention** (Art. 1.1(a)); **Wreck Removal Convention** (Art. 1.2); **Intervention Convention** (Art. II.2).

¹¹ **Current law**: **Algeria** (Maritime Code, Art. 13); **Argentina** (Shipping Act, Art. 2); **Belgium** (Shipping Code, Art. 1.1.1.3, § 1, 1°); **Canada** (Shipping Act 2001, S. 2); **Chile** (Commercial Code, Art. 826); **China** (Maritime Code, Art. 3); **Colombia** (Commercial Code, Art. 1432; Ship Registration Act 2133 of 2021, Art. 1); **France** (Transport Code, Art. L5000-2; Bonassies-Scapel-Bloch 2022, 161-171, para 174-186); **Germany** (Rabe-Bahnsen 2018, 18, para 2); **Greece** (Code of Private Maritime Law, Art. 1.1); **Ibero-America** (IIDM Maritime Model Law, Art. 2); **Italy** (Navigation Code, Art. 136); **Japan** (Commercial Code, Art. 684); **Latvia** (Maritime Code, S. 2); **Liberia** (Maritime Law, §29(6)); **Malta** (Merchant Shipping Act, Art. 2); **Mexico** (Maritime Navigation and Commerce Act, Art. 2.4); **The Netherlands** (Civil Code, Book 8, Art. 1.1); **Norway** (Falkanger-Bull-Brautaset, 50-51); **Portugal** (Decree-Law No. 202/98, Art. 1, a); **Russia** (Merchant Shipping Code, Art. 7); **South Africa** (Merchant Shipping Act, S. 2); **Spain** (Maritime Navigation Act 14/2014, Art. 56); **Turkey** (Commercial Code, Art. 931(1)); **UK** (Merchant Shipping Act 1995, S. 313(1)); **USA** (1 USC §3; see also Robertson-Sturley 2013); **Vietnam** (Maritime Code 2015, Art. 4 and 13). For a recent comparative analysis, see Musi 2020.

¹² See, for example, Bonassies-Scapel-Bloch 2022, 20-22 and 166-167; Herber 2016, 5; Rabe-Bahnsen 2018, 14.

¹³ See, for example, Vialard 1997, 39, para 23.

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drafting is deliberately broad. The concept includes provisions of law codes or statutes (whether their provisions are mandatory or not). The reference to 'case law' also includes the case law of countries where judicial decisions do not have the value of binding precedents (as is usually the case in civil law countries). In those countries, too, case law, whatever its authority, is part of the positive maritime law in the sense of the definition used here. Legal doctrine is included as well, whatever the authority attributed to it in the national legal system. The question whether the CMI Lex Maritima itself can be part of the positive maritime law is of a rather philosophical nature. The drafting of the CMI Lex Maritima has been conceived in such a way that, in accordance with the mechanisms described in particular in Rules 4 and 5, this instrument can definitely impact on the positive maritime law. When a Court grants the CMI Lex Maritima such effect, the Lex Maritima is in a sense absorbed into 'positive maritime law', then to be understood in a broader sense than in the definition of the currently discussed Rule 2(3).

The definition of the verb to 'implement' under item (4) has been inserted in order to clarify that there are various ways in which the positive maritime law may reflect or process Principles referred to in the Lex Maritima (see the explanation about the second type of Principles above).

Item (5) defines 'maritime custom' as 'any customs, practice or usages which are widely known to and regularly observed in maritime matters by parties in the same situation'. Many maritime conventions and maritime laws recognise the value of 'maritime custom' (see the Commentary on Principle 2, which defines the role of 'maritime custom'), but definitions of this notion are rare. The broad umbrella term 'customs, practice or usages' was deliberately chosen because both international maritime conventions¹⁴ and national maritime laws¹⁵ often do not strictly define these concepts and/or indeed juxtapose them. The description 'which are widely known to and regularly observed in maritime matters by parties in the same situation' is inspired by the Unidroit Principles of International Commercial Contracts¹⁶. Whether something is 'widely known' or 'regularly observed' is a question of fact, not one of the law; some national systems provide for procedural rules to obtain industry or expert advice on such matters, but such rules cannot be considered universally applicable. The definition presented here does not include specific 'bilateral' usages or customary clauses that may develop as between the parties to a contract. Of course, the CMI Lex Maritima provides no objection to the recognition of such customs or customary clauses as the

¹⁴ **Rotterdam Rules**, Art. 25.1(c), 43 and 44; see also **Hamburg Rules**, Art. 4.2(b)(ii) and 9.1.

¹⁵ **Current law: Argentina** (Shipping Act, Art. 1); **Belgium** (Shipping Code, Art. 1.1.2.4); **Chile** (Commercial Code, Art. 4-6 and 825); **Denmark** (Merchant Shipping Act, S. Art. 322); **Finland** (Maritime Act, Chapter 14, S. 2); **Ibero-America** (IIDM Maritime Model Law, Art. 1); **Latvia** (Maritime Code, S. 166); **Mexico** (Maritime Navigation and Commerce Act, Art. 6.10); **Norway** (Maritime Code, Art. 322); **Spain** (Maritime Navigation Act 14/2014, Art. 2.1); **Sweden** (Maritime Code, Chapter 14, S. 2); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 7); **Venezuela** (Maritime Commerce Act, Art. 4).

¹⁶ **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.9(2).

source of obligations between the parties involved.

Item (6) explains that the term ‘shipowner’ in the CMI Lex Maritima always refers to the ‘registered owner’. For convenience, the definition has been taken from CLC 1992¹⁷. The person who operates a ship without being a ‘registered owner’ is referred to in the Principles as the ‘ship operator’, as defined, in the deliberately simplest and widest possible terms, in Item (7). This choice of terminology in no way suggests that as such it applies as a substantive Lex Maritima Principle or that the proposed definitions are generally valid in the positive maritime law. Indeed, the opposite is true, as terminology and definitions in international conventions and national legal systems are extremely diverse. In other words, the definition explained here applies only for the interpretation of the CMI Lex Maritima. It is entirely without prejudice to the positive maritime law, where specific concepts and definitions may apply, either strictly distinguishing owners and operators, or using umbrella terms that cover both¹⁸. Of course, the definitions used here do not rule out that the ‘shipowner’ or ‘ship operator’ may not be a natural person but a legal person.

Item (8) confirms that the term ‘Court’ used in the CMI Lex Maritima refers to any entity in charge of resolving a dispute (including e.g. an arbitrator).

Finally, it should be mentioned that some Principles presented further on include some additional definitions specifically related to the subject matter covered therein (see Principles 14, 15, 16, 17, 18 and 22).

¹⁷ CLC 1992, Art. I(3).

¹⁸ See on this point some indications in footnote 102 below.

Rule 3 – Scope *ratione navis***Without prejudice to Rule 4(2), the Principles apply to all ships.**

Commentary

The applicability of the CMI Lex Maritima to ships is explained in the Commentary on the definition of 'ship' in Rule 2(2).

The Rule proclaimed here obviously does not affect exceptions stipulated in the positive maritime law. For example, several conventions¹⁹ and national laws²⁰ provide that they do not apply to ships deployed for military or other non-commercial government functions. That such exceptions are not affected is confirmed by the reservation 'Without prejudice to Rule 4(2)'. However, given the very wide variety of such exceptions in the positive maritime law, it is not possible to include such generally applicable exceptions in the CMI Lex Maritima.

*The Rule commented on here is limited to indicating the scope *ratione navis*. It deliberately does not further specify to which events, contracts, persons or claims the CMI Lex Maritima applies. Indeed, this is sufficiently clear from the content of the Principles themselves.*

¹⁹ See, for example, **Collision Convention**, Art. 11.

²⁰ **Current law**: see, for example, **Argentina** (Shipping Act, Art. 4); **Australia** (Navigation Act 2012, S. 10-11); **Belgium** (Shipping Code, Art. 2.2.7.1 *et seq.*); **Chile** (Commercial Code, Art. 823); **China** (Maritime Code, Art. 3); **Greece** (Code of Private Maritime Law, Art. 2.2); **Ibero-America** (IIDM Maritime Model Law, Art. 4); **Korea** (Commercial Act, Art. 741(1)); **Lithuania** (Law on Merchant Shipping, Art. 1.2); **Russia** (Merchant Shipping Code, Art. 3.2); **Spain** (Maritime Navigation Act 14/2014, Art. 3); **Turkey** (Commercial Code, Art. 935); **UK** (Merchant Shipping Act 1995, S. 308(1)); **Vietnam** (Maritime Code 2015, Art. 1.1 and 13).

Rule 4 – Status of Principles

- (1) **The CMI Lex Maritima states the common international foundations of the maritime law as adopted by the General Assembly of the Comité Maritime International.**
 - (2) **The Principles do not intend to derogate from the positive maritime law, but to supplement it.**
 - (3) **Nothing in the Principles prevents a Court from applying any other general principles of maritime law which it identifies, in particular those general principles which underlie:**
 - (a) **the most commonly applied international maritime conventions;**
 - (b) **the positive maritime law of the nations.**
 - (4) **The Principles may be used as guidance for national and international legislators.**
-

Commentary

Paragraph (1) makes clear that the Principles as laid down by the CMI establish the ‘common international foundations’ of maritime law. In other words, these are principles that are universally, or nearly universally, recognised worldwide. Thus, the CMI Lex Maritima does not create new rules to harmonise divergent national rules, but formulates principles on which there is already consensus today. The inclusion of rules in this instrument is further explained in the principle-by-principle commentaries and accompanying references.

The Comité Maritime International is the worldwide association of maritime lawyers or, to be precise, an umbrella of national maritime law associations. It was founded in Antwerp in 1897. It has prepared numerous important maritime conventions (which helped inspire this CMI Lex Maritima) and has observer status with the International Maritime Organization (IMO). The adoption of this instrument by the General Assembly of the CMI therefore gives it a special authority. It is expected that the CMI will in the future periodically review, update and possibly expand the CMI Lex Maritima and that it will establish the necessary mechanism to achieve this.

Paragraph (2) defines the position of the CMI Lex Maritima in relation to the positive maritime law, as that notion is defined in Rule 2(3). The Principles do not replace the positive maritime law. Moreover, as a resolution of the CMI, they a priori lack the legal force to do so. This instrument is intended only as a supporting, supplementary tool. For example, the CMI Lex Maritima is of course not intended to change the numerous rules on liability and limitation of liability contained in the positive maritime law, for example the rules provided for in conventions such as LLMC, CLC 1992 and FUND, in national provisions on the liability of the shipowner or ship operator, or the conventions on the liability of the carrier of goods by sea and its limitation. Still, it confirms the universally recognised core rules contained in such instruments (see Principles 11, 12 and 17).

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Paragraph (3) clarifies that the CMI Lex Maritima is not intended to claim any exclusivity. Indeed, with a view to the progressive unification of maritime law, it is recommended that the Court itself look for additional general principles of maritime law, which can be detected in particular in the prevailing international conventions and the national rules of law. Such developments in case law can be taken into account in future revisions of the CMI Lex Maritima.

Paragraph (4) confirms the possibility of national legislators taking these Principles into account when drafting new provisions. This possibility is also mentioned in the Unidroit Principles of International Commercial Contracts 2016²¹. Since such practice contributes to further unification of maritime law, it should be encouraged. The provision states that the CMI Lex Maritima can serve as 'guidance'. Purposely, the word 'model' has not been used because the instrument as such is not a 'model law'.

²¹ Unidroit Principles of International Commercial Contracts 2016, Preamble.

Rule 5 – Application of Principles

The Principles should be applied:

- (1) whenever the positive maritime law refers to the general principles of maritime law, the *Lex Maritima* or the *lex mercatoria*;
- (2) whenever a Court decides to seek guidance in the general principles of maritime law, the *Lex Maritima* or the *lex mercatoria*;
- (3) whenever the parties to a contract have agreed to incorporate the Principles, the general principles of maritime law, the *Lex Maritima* or the *lex mercatoria* into their contract.

Commentary

This Rule specifies when the CMI Lex Maritima should apply. Given the ‘soft law’ nature of the instrument – in the sense of it not being a unification convention – the word ‘should’ is deliberately used instead of ‘must’.

Item (1) indicates that the positive maritime law may refer to the general principles of maritime law. Express provisions to that effect appear in some national maritime statutes²².

*As mentioned in item (2), it is also possible that, within the framework of the positive maritime law, the Court, on its own initiative or requested by a litigant, seeks guidance in the general principles of maritime law. In this respect, the CMI Lex Maritima can also be considered a restatement of the *lex mercatoria* that applies in maritime matters.*

*Item (3) highlights that the parties to a contract may declare the CMI Lex Maritima applicable among themselves. In theory, this would appear an obvious mechanism, which is also provided for in the Unidroit Principles of International Commercial Contracts 2016²³. With a view to applying the CMI Lex Maritima on a contractual basis, a ‘CMI Lex Maritima Clause’ could be inserted in maritime contracts²⁴. It should immediately be noted, however, that, unlike the aforementioned Unidroit Principles, the *Lex Maritima* does not provide a comprehensive framework for maritime contracts (or, for that matter, for any other aspect of maritime law). On the contrary, it is limited to a simple synopsis of the main tenets of maritime law. Thus, supplementing or interpreting contracts cannot be the main ambition of the CMI Lex Maritima.*

²² **Belgium** (Shipping Code, Art. 1.1.2.4, § 1); **China** (Maritime Code, Art. 268); **Croatia** (Maritime Code, Art. 986); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 7); compare also **Venezuela** (Maritime Commerce Act, Art. 3); **Vietnam** (Maritime Code 2015, Art. 5.2).

²³ **Unidroit Principles of International Commercial Contracts 2016**, Preamble.

²⁴ Such (alternative) clauses could e.g. read as follows:

‘The CMI Lex Maritima is incorporated in this contract to the extent that it is not inconsistent with the other terms of the contract’.

‘This contract shall be governed by [...] as supplemented by the CMI Lex Maritima’.

‘This dispute shall be decided in accordance with [...] as supplemented by the CMI Lex Maritima’.

PART 2

SOURCES OF MARITIME LAW

Principle 1 – Interpretation of maritime law

- (1) In the interpretation of the positive maritime law, regard should be had to the need to promote the uniformity of maritime law and the facilitation of maritime shipping and trade.
 - (2) These Principles may be used to interpret the positive maritime law.
-

Commentary

Paragraph (1) first of all invites judges, but also arbitrators, governments and national legislators to take into account the desirability of an internationally consistent and unifying approach when interpreting the positive maritime law. This call is in line with the core objective of the CMI, as already mentioned in the Commentary on Rule 1. However, in accordance with Rule 4(2), this interpretation rule cannot, of course, affect the specific interpretation rules that are part of the positive maritime law itself (including the general non-maritime law, for example the rules for the interpretation of international treaties²⁵ or the rules governing the interpretation of statutory provisions or contract clauses²⁶). On the other hand, it can be assumed that the Principle expressed here is in many cases compatible with the positive maritime law, or that it easily fits in with it. Some maritime (and other) conventions even contain explicit rules according to which, in the interpretation and application of their provisions, regard must be had to their international character and the need to promote uniformity²⁷. The same Principle has also been advocated in legal doctrine²⁸. It has been claimed that national courts apply this guideline even where the applicable convention does not expressly impose it²⁹. In any event, the Principle presented here is a logical consequence of the obligation to interpret the provisions of an international convention based on the context, the object, the objectives and the history of the convention itself rather than from the perspective of national law, which

²⁵ Vienna Convention on the Law of Treaties, Arts. 31-33.

²⁶ See, for example, **Unidroit Principles of International Commercial Contracts 2004**, Chapter 4; **Principles of European Contract Law**, Arts. 1:106 and 5:101-5:107; and the laws of **Brazil** (Civil Code, Arts. 111-114, 421-A and 423); **France** (Code civil, Art. 1188-1192); **USA** (Uniform Commercial Code, § 1-103).

²⁷ **Hamburg Rules**, Art. 3; **OTT Convention**, Art. 14; **Rotterdam Rules**, Art. 2; see also **UN Convention on Contracts for the International Sale of Goods**, Art. 7.

²⁸ Tetley MCC 2008, I, 144-146; see also Rimaboschi 2005, I, 131-133; Van Hooydonk 2011-1, 101, no. I.90.

²⁹ For example, Debattista in Baatz-Debattista-Lorenzon-Serdy-Staniland-Tsimplis 2009, 9, para 2-01.

is underlined in many maritime law systems and by many authorities on maritime law³⁰. It is also consistent with the national provisions referred to in the Commentary on Rule 5 which recognise general principles of maritime law as a formal source of law. Against this background, it comes as no surprise that authoritative international maritime legal doctrine does indeed consider it necessary to always interpret maritime law conventions in such a way as to contribute as much as possible to the international unification of maritime law³¹. In order to make such a uniform interpretation possible, account must be taken of relevant foreign case law and the Travaux Préparatoires of maritime conventions³², of the broad international regulatory framework for maritime matters³³, and also of so-called convention comparison, i.e. comparing the provisions of related conventions³⁴. In this context, national judges essentially fulfil an international function; they should – to the extent practically feasible – carry out a comparative law analysis and follow the view of the international majority³⁵. Opening up and disseminating foreign case law is a task of legal science, databases, professional journals and the government³⁶. Through its website, the CMI is developing a database on the interpretation of maritime law conventions that is accessible free of charge³⁷. However, the unifying interpretation is also advisable outside the domain of the interpretation of international conventions. In particular, where national maritime law reflects internationally accepted principles, it is in any event appropriate to pursue international uniformity.

As regards the desirability of an interpretation facilitating maritime shipping and trade – the second limb of the paragraph – it should be recalled that, since its creation in 1897, the Comité Maritime International has viewed the enhancement of legal certainty for all participants in the increasingly cosmopolitan maritime business through the unification of the maritime law as an essential means of promoting these activities³⁸. In other words, the

³⁰ See, for example, Berlingieri 1987, 341-347; Bugden-Lamont-Black 2010, 316-319, paras. 16-21-27; Carbone 2010, 60-66; De Meij 1998, 617-634; du Pontavice 1990, 725-728; Haak 2006, 201; Hendrikse-Margetson 2004, 40-50; Hendrikse-Margetson 2008, 36-37; Herber 2016, 30-31; Japikse 2004, 2, para 3; Oostwouder 1994, 16; Rabe-Bahnsen 2018, 15, para 37-38; Ridley 2010, 19-20; Schultz 1990, 238-243; Smele 2006, 248; Van Hooydonk 2011-1, 99-100, para 1.90; Zunarelli-Comenale Pinto 2023, 103.

³¹ See, for example, Herber 2016, 30-31; Rimaboschi 2005, I, 131-133; Tetley 2008, I, 144-146; Van Hooydonk 2011-1, 101, para 1.90.

³² See, for example, Berlingieri 1987, 341-350; Hendrikse-Margetson 2004, 41 and 45-46; Herber 2016, 30-31; Rabe-Bahnsen 2018, 15, para 38; Rodière 1976, 75, para 40; Tetley 2008, I, 140-144; Van Hooydonk 2011-1, 101, para 1.90.

³³ See, for example, Carbone 2010, 62-63; Van Hooydonk 2011-1, 101, para 1.90.

³⁴ See, for example, Carbone 2010, 63; De Meij 1998, 635; Van Hooydonk 2011-1, 101, para 1.90.

³⁵ See, for example, De Meij 1998, 612-613 and esp. 636-639; Hendrikse-Margetson 2004, 44-45; Hendrikse-Margetson 2008, 39-40; Jacquet-Delebecque-Corneloup 2010, 52, para 83; Van Hooydonk 2011-1, 101-102, para 1.90.

³⁶ See, for example, Herber 1987, 42; Herber 2016, 30; Hendrikse-Margetson 2004, 49; Rodière 1976, 75, para 40; Van Hooydonk 2011-1, 102, para 1.90.

³⁷ See <https://cmicmidatabase.org/>.

³⁸ See, for example, the Circular preceding the foundation of the CMI of 2 July 1896,

promotion of maritime shipping and trade is the wider objective of the unification of the maritime law, and therefore also of the present Principles. The fundamental purpose of international maritime policy and regulation to encourage shipping and trade activities, thereby contributing to the preservation of peace, justice and progress on an international level, is also reflected, for example, in the rules of the international law of the sea on freedom of navigation and the right of innocent passage³⁹ and in the IMO Convention on Facilitation of International Maritime Traffic (FAL), to which as many as 128 countries are parties, representing almost 96% of world tonnage. Although inserting into a legislative instrument a provision that expresses its underlying policy objectives is certainly not common practice in all national legal systems, some national maritime statutes explicitly mention as their objective the encouragement of maritime trade and business (in some cases other objectives are added)⁴⁰. In other cases such objective is confirmed in an explanatory memorandum accompanying the relevant legislative proposal. In view of all these elements it is logical to underline this broader macro-economic policy objective in the CMI Lex Maritima as well. The emphasis on the desirability of promoting shipping and trade is of course entirely without prejudice to the question of the allocation of rights, responsibilities and risks to the various participants in those activities, such as shipowners, ship operators, cargo interests, governments and insurers. Likewise, the reference to the broader economic policy objective is without prejudice to other objectives which maritime policy and legislation in many cases seek to achieve, such as the promotion of maritime safety, the protection of human life and the safeguarding of social and environmental interests.

Paragraph (2) confirms that these Principles may be used in interpreting the positive maritime law. Indeed, this is one of the expected main functions of the instrument. The same is provided for in the Unidroit Principles of International Commercial Contracts 2016⁴¹. Whether such use of the CMI Lex Maritima as an ancillary interpretative tool is ultimately permissible is, of course, determined by the contours of the applicable positive maritime law itself, which this instrument cannot affect.

reproduced in *Bulletin de l'Association belge pour l'unification du droit maritime*, No. 1, 1 February 1897, pp. 8-11.

³⁹ LOSC, Arts. 17 and 87; see also the Preamble to the Convention.

⁴⁰ **Current Law:** China (Maritime Code, Art. 1); Liberia (Maritime Law, §1); Vietnam (Maritime Code 2015, Art. 7); compare Australia (Navigation Act 2012, S. 3), where the focus is on safety and the environment.

⁴¹ Unidroit Principles of International Commercial Contracts 2016, Preamble.

Principle 2 – Maritime custom

- (1) The parties are bound by any maritime custom to which they have agreed or that they have confirmed between themselves.
- (2) A Court should apply maritime custom whenever the positive maritime law obliges or encourages it to do so.
- (3) A Court may also apply as maritime custom:
 - (a) these Principles;
 - (b) those general principles that underlie the most commonly used standard contractual terms and conditions as established by or agreed within representative maritime industry organisations, taking into account the cooperative nature of the relevant decision-making process.
- (4) In particular, a Court may apply maritime custom to the following matters:
 - (a) the reception of goods for maritime transportation;
 - (b) the carriage of goods on the deck of a ship;
 - (c) the delivery of goods in the port of destination;
 - (d) the documents used to arrange for maritime carriage;
 - (e) the commercial formalities in the port.

In the matters referred to under (a), (c), (d) and (e), regard may be had to local custom or the custom of the port.

Commentary

This Principle highlights the importance of ‘maritime custom’. This concept is defined above in Rule 2(5). Maritime custom is particularly important in those fields not governed by international conventions or national statutes.

Pursuant to paragraph (1), maritime custom will apply, first of all, if the parties have confirmed so among themselves. This is an obvious principle, which is in conformity with the Unidroit Principles of International Commercial Contracts 2016⁴².

However, specific contractual agreement is not the only case where maritime custom will be applicable.

Paragraph (2) draws attention to the possibility of the positive maritime law expressly referring to maritime custom. To begin with, this is the case with several international unification conventions. For example, the Hamburg Rules refer to ‘the usage of the particular trade’⁴³, and the Rotterdam Rules to ‘the customs, usages or practices of the trade’⁴⁴. Some national maritime codes and statutes more generally confirm the role of maritime custom as a

⁴² **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.9(1).

⁴³ **Hamburg Rules**, Art. 4.2(b)(ii) and 9.1.

⁴⁴ **Rotterdam Rules**, Art. 25.1(c), 43 and 44. Concerning inland navigation, see also **CMNI**, Art. 3.4(b), 6.3, 6.4, 8.1(b), 10.2, 18.1(c), 19.4 and 19.5.

source of law⁴⁵ or refer to it in relation to specific matters⁴⁶. Moreover, the importance of maritime custom is highlighted in an abundant literature⁴⁷. Incidentally, the role of custom in the interpretation of contracts is also recognised outside the sphere of maritime law in numerous legal systems. Several civil and commercial codes confirm the role of custom in express provisions.

Paragraph (3)(a) confirms that the Principles of the CMI *Lex Maritima* themselves may be recognised as maritime custom, but of course only where the relevant principles meet the definition of 'maritime custom' of Rule 2(5). Paragraph 3(b) confirms the authority of international standard contracts, which are very common in various branches of the maritime industry. In many cases these come into being, or are updated, in open consultation between the parties involved, which strengthens their acceptance and authority⁴⁸. Courts should be able to recognise certain general principles reflected in such standard contracts as autonomous maritime custom. In addition, certain generally accepted contractual arrangements may be recognised as general principles of maritime law in their own right. This is the case, for example, with the proposed Principle 21 on general average. Also, Principles 14, 15 and 16 concerning charterparties are largely inspired by commonly used standard contracts.

Paragraph (4) provides some specific examples of matters that may be governed by maritime custom or port custom. These non-exhaustive examples are drawn primarily from references in international conventions such as those dealing with the carriage of goods on the deck of a ship⁴⁹, the delivery of goods in the port of destination⁵⁰, and the documents used to

⁴⁵ **Current law:** **Argentina** (Shipping Act, Art. 1); **Belgium** (Shipping Code, Art. 1.1.2.4); **Chile** (Commercial Code, Art. 4-6 and 825); **Croatia** (Maritime Code 2004, Art. 4); **Ibero-America** (IIDM Maritime Model Law, Art. 1 and 5); **Italy** (Navigation Code, Art. 1); **Mexico** (Maritime Navigation and Commerce Act, Art. 6.10); **Spain** (Maritime Navigation Act 14/2014, Art. 2.1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 7); **Venezuela** (Maritime Commerce Act, Art. 4).

⁴⁶ **Current law:** see, for example, **Brazil** (Commercial Code, Art. 519, para 2, 591, 620, 673, 3, 742, 1, 750); **CEMAC** (CEMAC Merchant Shipping Code, Art. 392, 415, 482, 528.1, c) and 532); **China** (Maritime Code, Art. 49); **Colombia** (Commercial Code, Art. 1502 and 1513; Decree 1079 of 2015 on Regulation of Transport, Art. 2.2.3.1.2; Ship Registration Act 2133 of 2021, Art. 1); **Denmark** (Merchant Shipping Act, S. Art. 322); **Finland** (Maritime Act, Chapter 14, S. 2); **Greece** (Code of Private Maritime Law, Art. 75); **Korea** (Commercial Act, Art. 872(2)); **Latvia** (Maritime Code, S. 166); **Norway** (Maritime Code, Art. 322); **Peru** (Commercial Code, Art. 669 and 792); **Russia** (Merchant Shipping Code, Art. 285.2); **Sweden** (Maritime Code, Chapter 14, S. 2); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 53.1).

⁴⁷ See, for example, Bonassies-Scapel-Bloch 2022, 38, para 32; Cornejo Fuller 2003, 39-41; González Lebrero 2000, 20-21; Herber 23; Remond-Gouilloud 1993, 14, para 35; Rodière 1972, 125-127, para 73; Rodière 1976, 125-127, para 73; Rodière-du Pontavice 1997, 18, para 18.

⁴⁸ Maurer 100-101.

⁴⁹ **Hamburg Rules**, Art. 9.1; **Rotterdam Rules**, Art. 25(1)(c).

⁵⁰ **Hamburg Rules**, Art. 4.2(b)(11); **Rotterdam Rules**, Art. 43 and 44.

*arrange for maritime carriage*⁵¹. For that matter, the *Unidroit Principles of International Commercial Contracts 2016* also confirm the role of local port usages⁵².

⁵¹ **Rotterdam Rules**, Art. 35.

⁵² **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.9, Comment, para 4.

PART 3 SHIPS

Principle 3 – Identification, nationality and flag

- (1) All ships are identified by a name and a home port.
- (2) Ships have the nationality of the State whose flag they are entitled to fly. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. There must exist a genuine link between the State and the ship.

Commentary

The Principle formulated under paragraph (1) is an obvious rule, specific to maritime law. It is reflected in a number of conventions, including UNCLOS⁵³, and in several national statutory provisions⁵⁴. The ship's name is an essential element in, for example, the registration of ships⁵⁵, the issuance of various government certificates, the formation of contracts such as charter parties and the conduct of maritime legal proceedings. Usually, the owner is free to choose the name of the ship (often provided the name is not already used for another ship).

The Principle also mentions the home port. This term should be considered here in a broad sense, as also understanding the place or port of registration (the specific rules and terminology may vary according to applicable international or national rules).

The wording of the Principle has been deliberately kept concise. For example, there is no mention that the name and home port must be indicated on the hull, although this is common, if not expressly required by positive maritime law. Furthermore, no reference is made to the call sign, IMO number or any national identification numbers. Regarding the IMO number, it should be noted that not all ships as defined in Rule 2(2) are assigned such a number. That said, this IMO number plays an important role in commercial shipping. The official tonnage of the ship is not mentioned either, although for merchant ships this is in fact also an important means of identification, which moreover plays an important role in the application of rules of positive maritime law (such as those on tonnage limitation: see Principle 11 and also Principle 12).

⁵³ UNCLOS, Art. 94.1.2(a); see also United Nations Convention on Conditions for Registration of Ships (Geneva, 7 February 1986), Art. 11.2(a).

⁵⁴ **Current law:** for example **Algeria** (Maritime Code, Art. 14); **CEMAC** (CEMAC Merchant Shipping Code, Art. 21).

⁵⁵ **Current law:** for example **Greece** (Code of Private Maritime Law, Art. 3.2).

The Principles set out in paragraph (2) confirm key principles of the international law of the sea. The wording has been taken verbatim from UNCLOS⁵⁶ (albeit with a slight rearrangement of the order of the sentences, as the focus here is on the status of the ship rather than the obligations of the flag States) and reflects customary international law on the matter⁵⁷. The adoption of the rule in the CMI Lex Maritima is justified because it is indeed fundamental to the maritime industry and because it clarifies the Principle contained in the immediately following Principle 4 concerning the law governing property interests. Incidentally, the Principle is reiterated in some national statutes⁵⁸.

⁵⁶ **UNCLOS**, Art. 91.1, first sentence; see already **Convention on the High Seas**, Art. 5.1. The UNCLOS provision also states that ships have the nationality of the State whose flag they are entitled to fly. This specification was not reproduced here because the Principle wishes to draw attention to the essence of the relevant law in the most concise manner possible and, moreover, because the CMI Lex Maritima does not in principle seek to reiterate the international law of the sea as such.

⁵⁷ See, for example, Wolfrum 2006, 301-302, para 30-32.

⁵⁸ **Current law**: see, for example, **Argentina** (Shipping Act, Art. 597); **CEMAC** (CEMAC Merchant Shipping Code, Art. 22.1).

Principle 4 – The law governing property interests

The property interests in a ship as well as maritime mortgages are governed by the law of the State where the ship is registered. In the case of bareboat registration, these matters are governed by the law of the State of primary registration.

Commentary

This Principle first confirms that the property rights in ships are governed by the law of the State where the ship is registered. This is a generally accepted principle, expressly confirmed in some national laws⁵⁹. That the Principle included here is a conflict of laws rule cannot be an objection to its inclusion in the CMI Lex Maritima. In fact, from the very start of of the movement for the international unification of maritime law in the nineteenth century, it was envisaged that unification could be brought about by the adoption of common conflict of laws rules. The Principle proposed here is an example of such a unified conflict of laws rule that grew spontaneously.

That the lex registrationis governs ship mortgages is also generally accepted. This principle is confirmed in all international conventions on maritime liens and mortgages⁶⁰ and, in addition, in some national statutes⁶¹ (this application of the lex registrationis is, for that matter, often implicitly confirmed in provisions on the recognition and enforceability of mortgages on foreign ships effected and registered in accordance with that law). It should be noted, however, that the Principle does not cover the contractual aspects of the relationship between the mortgagee and the mortgagee.

The specific rule on bareboat charter registration can be supported by some (albeit rather rare) national statutes as well⁶². Of course, the latter rule does not deal with the law applicable to the contract either, but solely with the relevant property interests. The contractual aspects of the bareboat

⁵⁹ **Current law:** **Argentina** (Shipping Act, Art. 598); **Belgium** (Shipping Code, Art. 2.2.4.1); **China** (Maritime Code, Art. 270); **Croatia** (Maritime Code 2014, Art. 969(1), 1); **Germany** (Act Introducing the Civil Code, Art. 45(1)); **Greece** (Code of Private Maritime Law, Art. 16); **Italy** (Navigation Code, Art. 6); **The Netherlands** (Civil Code, Book 10, Art. 127.2); **Russia** (Merchant Shipping Code, Art. 415); **Slovenia** (Maritime Code, Art. 961.2 and 962); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 37); **Turkey** (Private International and Procedural Law Act, Art. 22; see also Commercial Code, Art. 996).

⁶⁰ **Liens and Mortgages Convention 1926**, Art. 1; **Liens and Mortgages Convention 1967**, Art. 1; **Liens and Mortgages Convention 1993**, Art. 1.

⁶¹ **Current law:** **Argentina** (Shipping Act, Art. 600); **Belgium** (Shipping Code, Art. 2.2.4.1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 100.3); **China** (Maritime Code, Art. 271); **Denmark** (Merchant Shipping Act, S. 74); **Greece** (Code of Private Maritime Law, Art. 47.1); **Italy** (Navigation Code, Art. 6); **Latvia** (Maritime Code, S. 44-45); **Norway** (Maritime Code, Art. 74); **Russia** (Merchant Shipping Code, Art. 425); **Spain** (Maritime Navigation Act 14/2014, Art. 143); **Sweden** (Maritime Code, Chapter 3, S. 19-21); **USA** (46 U.S.C. § 31301(6) (B); Gilmore-Black 1975, 698-702, § 9-51); **Venezuela** (Maritime Commerce Act, Art. 132). For the **UK**, see Mandaraka-Sheppard 2006, 363-370.

⁶² **Current law:** **Belgium** (Shipping Code, Art. 2.2.4.1, § 1, 1° and 2.2.5.1, § 1, second indent); **Malta** (Merchant Shipping Act, Art. 84M); compare also **China** (Maritime Code, Art. 271).

charter are dealt with in Principle 14, which also contains a definition of this contract.

The Principle explained here contains no substantive rules on property interests in a ship. There are no unification conventions on this subject and the national rules differ widely, which can be partly explained by the differences between legal traditions.

On the important issue of which law governs maritime liens, no Principle has been formulated either. The matter is fraught with a substantial lack of uniformity, making it impossible to express any universally applicable principle. However, some substantive rules governing maritime liens are dealt with in Principle 23 on preferential rights.

Principle 5 – Ownership and management

- (1) A ship may be owned by a single registered owner or by two or more part owners.
- (2) Part owners of a ship:
 - (a) take all decisions affecting their common interest by majority voting;
 - (b) are liable in proportion to their shares in the ship;
 - (c) may appoint a ship's manager or ship's husband.
- (3) Shipowners or ship operators may hire a ship out to a bareboat, a time or a voyage charterer.
- (4) Shipowners or ship operators may appoint a ship manager who may be responsible for the commercial, technical and/or crew management of the ship.
- (5) Shipowners or ship operators may appoint a ship agent who represents them in port.

Commentary

As already mentioned, the property status of ships is not governed by any international conventions and is therefore pre-eminently determined by national maritime law. The same applies to the management and operation of ships. Nevertheless, some universal underlying principles can be identified.

The first is that ships may be the subject of co-ownership. This is confirmed in the first paragraph. The co-ownership of ships is a very old notion and remains relevant to contemporary shipping business in many countries. Several national maritime laws therefore contain special provisions on ship co-ownership⁶³, and the concept is also recognised in maritime law systems lacking a comprehensive statutory framework⁶⁴.

How ship co-ownership works is briefly outlined in paragraph (2). These rules of thumb are based on a comparative analysis of the available national

⁶³ **Current law:** **Argentina** (Shipping Act, Art. 164 *et seq.*); **Belgium** (Shipping Code, Art. 2.3.1.1 *et seq.*); **Brazil** (Commercial Code, Art. 484 *et seq.*); **CEMAC** (Merchant Shipping Code, Art. 54 *et seq.*); **Chile** (Commercial Code, Art. 837); **China** (Maritime Code, Art. 10); **Colombia** (Commercial Code, Art. 1459 *et seq.*); **Denmark** (Merchant Shipping Act, S. 101 *et seq.*); **Finland** (Maritime Act, Chapter 5); **France** (Transport Code, Art. L5114-30 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 51 *et seq.*); **Italy** (Navigation Code, Art. 258 *et seq.* and 278 *et seq.*); **Japan** (Commercial Code, Art. 692 *et seq.*); **Korea** (Commercial Act, Art. 756 *et seq.*); **Mexico** (Maritime Navigation and Commerce Act, Art. 84 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 74-76); **The Netherlands** (Civil Code, Book 8, Art. 160 *et seq.*); **Norway** (Maritime Code, S. 101 *et seq.*); **Peru** (Commercial Code, Art. 602 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 64 and 150 *et seq.*); **Sweden** (Maritime Code, Chapter 5); **Turkey** (Commercial Code, Art. 1064 *et seq.*); **Uruguay** (Commercial Code, Art. 1045 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 75 *et seq.*). In Germany, the relevant legal provisions were repealed in 2013.

⁶⁴ Such as the **UK**. In addition to the relevant case law, see also The Merchant Shipping Act, S. 10(2)(c) and The Merchant Shipping (Registration of Ships) Regulations 1993, Reg. 2(2)(a). Compare, for **South Africa**, Hare 1999, 124-126, § 3-1.2.1-2.

legal regimes. Like all other Principles contained in the CMI Lex Maritima, these rules can only apply unless otherwise provided in the positive maritime law or under a contract (see again Rule 4(2)). Moreover, it should be noted that some national legal provisions are mandatory.

Paragraph (3) confirms the possibility of a vessel being chartered, according to one of three (non-exhaustively) enumerated formulas. These types of charterparties are addressed in separate Principles (Principles 14, 15 and 16). The expression ‘hire out’ is not intended to refer to a specific classification of the contract under national law (such as a lease).

Paragraph (4) confirms the possibility of designating a ship manager. This is also a common practice, subject to little or no international or national regulation, although there are rare examples of legislation⁶⁵. However, international standard contracts are frequently used. It is not to be excluded that a Court, in accordance with Principle 2(3)(b), finds confirmation of maritime custom in such contracts.

Paragraph (5) refers to the common practice of shipowners or ship operators appointing shipping agents. International standard contracts also exist on this subject, but there are no international conventions and furthermore there are only a limited number of national legislative frameworks⁶⁶. In many countries, the ship agent is considered an ordinary commercial agent and is subject to the relevant general rules. Especially since, as far as is known, few disputes around this matter are brought before law courts, a general reference to the principle of shipping agency may suffice. There is no need to go into the distinction between types of shipping agents. For completeness, it may also be mentioned that some national laws make the appointment of a ship’s agent mandatory. But that is certainly not a rule that can be elevated to Lex Maritima Principle.

⁶⁵ **Current law:** Greece (Code of Private Maritime Law, Art. 64-65).

⁶⁶ **Current law:** Belgium (Shipping Code, Art. 2.3.1.28); CEMAC (Merchant Shipping Code, Art. 621 *et seq.*, on the ‘consignataire’); Chile (Commercial Code, Art. 917 *et seq.*); Colombia (Commercial Code, Art. 1489 *et seq.*); Croatia (Maritime Code 2014, Art. 674 *et seq.*); France (Transport Code, Art. L5413-1 and L5413-2, on the ‘consignataire’); Greece (Code of Private Maritime Law, Art. 66-68); Ibero-America (IIDM Maritime Model Law, Art. 79 *et seq.*); Italy (Navigation Code, Art. 287 *et seq.*); Latvia (Maritime Code, S. 112(4)-(7)); Lithuania (Law on Merchant Shipping, Art. 40); Mexico (Navigation and Maritime Commerce Act, Art. 22 *et seq.*); Slovenia (Maritime Code, Art. 659 *et seq.*); Spain (Maritime Navigation Act 14/2014, Art. 319 *et seq.*); Vietnam (Maritime Code 2015, Art. 235 *et seq.*).

PART 4

MARITIME RESPONSIBILITIES AND LIABILITIES

Principle 6 – Responsibilities of shipowner and ship operator

The shipowner or, as the case may be, the ship operator, is responsible for compliance with international and national standards relating to, inter alia, the operation and safety of the ship, the protection of the marine environment, the employment of seafarers and maritime security.

Commentary

The responsibilities and liabilities of shipowners and ship operators have been unified internationally only to a limited extent. Nevertheless, Principles 6 to 9 outline the contours of the universally applicable maritime law concerning key responsibilities of shipowners, ship operators, ship masters and pilots, and Principles 10 to 12 complement this with some basic principles on liabilities towards claimants.

Principle 6 first draws attention to the responsibility of the shipowner or, as the case may be, the ship operator, for compliance with international and national standards relating to, inter alia, the operation and safety of the ship, the protection of the marine environment, the employment of seafarers and maritime security. The purpose of this paragraph is to draw attention to the extensive regulations concerning these matters and the primordial responsibility of the parties involved to comply with these regulations, which are largely introduced and kept up to date by the IMO. As made clear in the definition in Rule 2(6), the term ‘shipowner’ in these Principles always refers to the ‘registered owner’ (or the person(s) owning the ship). The person who operates the ship without being its ‘registered owner’ is referred to as the ‘ship operator’, as defined in Rule 2(7). Because the relevant positive maritime law is vast and complex and because it moreover shows many variations, the CMI Lex Maritima cannot specify which party exactly bears ultimate responsibility for compliance with the the relevant rules and regulations. In sum, the CMI Lex Maritima is, in this respect as well, limited to pointing out, in a synoptical, very much simplified manner, the core obligations that arise from the positive maritime law. Some, albeit rare, national statutes proclaim a similar general principle⁶⁷.

⁶⁷ **Current law: Algeria** (Maritime Code, Art. 574).<

Principle 7 – The Rules of the Road

The International Regulations for Preventing Collisions at Sea, 1972, are as such part of the Lex Maritima.

Commentary

This Principle confirms that the Collision Regulations adopted by the IMO belong as such to the Lex Maritima. This is justified for several reasons. First, because of the nature of the subject matter, these regulations containing the 'Rules of the Road' are the most important, primordial standard of conduct for ships at sea. Second, the 1972 IMO Convention was the result of an international unification movement that started as early as 1889. Third, today no less than 164 states are party to the Convention, representing 98.91% of the world's tonnage. No other IMO convention covers such a large share of the world fleet. Fourth, the Convention is implicitly referred to in the 1982 UN Convention on the Law of the Sea⁶⁸. Fifth, it is difficult to imagine a situation where seagoing vessels sailing in international waters would follow different standards of conduct than those set forth in COLREG.

The rule has not been inserted into Principle 8 concerning the responsibilities of the ship master because COLREG must be observed by all ship officers and because COLREG itself points out that nothing in it shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with the Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case⁶⁹. Any infringement of COLREG may have an impact on collision liability which is the subject of Principle 19.

Concerning the territorial scope of COLREG, it should be recalled that the Rules contained therein apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels⁷⁰. However, nothing in the Rules interferes with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to COLREG⁷¹. In many cases, such special local rules indeed apply.

⁶⁸ UNCLOS, Art. 94.4.c.

⁶⁹ COLREG, Rule 2(a).

⁷⁰ COLREG, Rule 1(a).

⁷¹ COLREG, Rule 1(b).

Principle 8 – The ship master

- (1) The ship master is responsible for the command, the proper management and the navigation of the ship, the safety of the ship, her crew and passengers, the prompt receipt and proper stowage, care and discharge of cargo, and the maintenance of discipline on board.
- (2) The ship master shall:
 - (a) apply good seamanship;
 - (b) exercise due care in the treatment of crew and other persons on board;
 - (c) have regard for the need to preserve the marine environment.
- (3) Every ship master is bound, in so far as he can do without serious danger to his ship and persons thereon, to render assistance to any person and ship found at sea in danger of being lost.
- (4) The ship master is authorised to sign bills of lading. The positive maritime law may mandate the ship master to perform further legal acts representing the shipowner, the ship operator or other parties.

Commentary

Paragraph (1) describes in concise terms the main tasks of the master of a ship. It is based on generally accepted principles. Some national maritime laws contain specific, often more elaborate provisions or even separate chapters on the responsibilities of ship masters⁷². It should be noted that the responsibilities defined in this Principle may rest, as the case may be, with anyone in command of a ship (e.g., a substitute for the master if the master deceases or is incapacitated, or a watch officer on the bridge). The task defined here in general terms includes keeping the ship's books and documents.

⁷² **Current Law:** **Algeria** (Maritime Code, Art. 580 *et seq.*); **Argentina** (Shipping Act, Art. 120 *et seq.*); **Belgium** (Shipping Code, Art. 2.4.2.1 *et seq.*); **Brazil** (Commercial Code, Art. 496 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 374 *et seq.* and 739 *et seq.*); **Chile** (Commercial Code, Art. 905 *et seq.*); **China** (Maritime Code, Art. 35 *et seq.*); **Colombia** (Commercial Code, Art. 1495 *et seq.*); **Denmark** (Merchant Shipping Act, S. 131 *et seq.*); **Finland** (Maritime Act, Chapter 6); **France** (Transport Code, Art. L5412-2 *et seq.*); **Germany** (Commercial Code, § 479 and Maritime Labour Act, § 121); **Greece** (Code of Private Maritime Law, Art. 190 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 68 *et seq.*); **Italy** (Navigation Code, Art. 292 *et seq.*); **Japan** (Commercial Code, Art. 708 *et seq.*; Seamen's Act, Art. 7 *et seq.*); **Korea** (Commercial Act, Art. 745 *et seq.*); **Latvia** (Maritime Code, S. 274 *et seq.*); **Liberia** (Maritime Law, §296); **Lithuania** (Law on Merchant Shipping, Art. 12 *et seq.*); **Malta** (Merchant Shipping Act, S. 100 *et seq.*); **Mexico** (Navigation and Maritime Commerce Act, Art. 28); **Morocco** (Maritime Commerce Code, Art. 140 *et seq.*); **The Netherlands** (Civil Code, Book 8, Art. 260 *et seq.*); **Norway** (Maritime Code, S. 131 *et seq.*); **Peru** (Commercial Code, Art. 622 *et seq.*); **Russia** (Merchant Shipping Code, Art. 61 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 171 *et seq.*); **Sweden** (Maritime Code, Chapter 6); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 51 *et seq.*); **Turkey** (Commercial Code, Art. 1090 *et seq.*); **Uruguay** (Commercial Code, Art. 1074 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 18 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 52 *et seq.*).

Paragraph (2) confirms in simple terms three fundamental standards of conduct for those in charge of a ship. The first is the standard of good seamanship, which relates in particular to navigation and which is referred to explicitly in numerous traffic codes or collision avoidance regulations⁷³ as well as in some national statutory provisions⁷⁴ and, of course, in case law⁷⁵. More specifically, seamanship is also a requirement under rules on professional qualifications⁷⁶. The second standard concerns conduct towards persons and is in line with contemporary maritime labour law⁷⁷ and the protection of human rights. The third standard is consistent with contemporary maritime environmental law⁷⁸.

Paragraph (3) concerns the obligation to render assistance to ships and persons on board following a collision or other maritime accident. The universality of this rule is evidenced by its inclusion in several law of the sea and maritime law conventions⁷⁹ and numerous national laws⁸⁰. French authorities Bonassies and Scapel have termed this Principle an ‘obligation impérieuse’ based on ‘une tradition immémoriale à la mer’⁸¹.

Paragraph (4) confirms that the ship master is authorised to sign bills of lading. The paragraph further states that positive maritime law may confer

⁷³ **Current law:** Rule 2(a) COLREG (‘ordinary practice of seamen’) and 8(a) (‘good seamanship’); **Germany** (Maritime Waterways Regulations, § 3(1)).

⁷⁴ **Current Law:** **Algeria** (Maritime Code, Art. 592, para 2); **Belgium** (Shipping Code, Art. 2.4.2.5, § 1); **Denmark** (Merchant Shipping Act, S. 132); **Finland** (Maritime Act, Chapter 6, S. 9); **Germany** (Pilotage Act, § 25(2)); **Norway** (Maritime Code, S. 132); **Sweden** (Maritime Code, Chapter 6, S. 2); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 52.2).

⁷⁵ **Current Law:** **Germany** (Supreme Court 12 July 2005 - VI ZR 83/04; Supreme Court 14 July 1976 - II ZR 145/74; Hanseatic High Court 4 August 2000 - 6 U 184/98).

⁷⁶ **Current law:** UNCLOS (Art. 94.4(b)); ILO C125 (Fishermen’s Competency Certificates Convention, 1966, Art. 11(a)(i)).

⁷⁷ **Current Law:** MLC 2006, Art. IV.

⁷⁸ **Current law:** **Russia** (Merchant Shipping Code, Art. 61); **Spain** (Maritime Navigation Act 14/2014, Art. 182.1).

⁷⁹ **High Seas Convention 1958**, Art. 12.1; **UNCLOS**, Art. 98.1; **SOLAS Convention** (Annex, Chapter V, Rule 33.1); **Search and Rescue Convention** (Annex, Art. 2.10); **Collision Convention 1910**, Art. 8; **Salvage Convention 1910**, Art. 11-12; **Salvage Convention 1989**, Art. 10.

⁸⁰ **Current Law:** **Algeria** (Maritime Code, Art. 285 and 334); **Belgium** (Shipping Code, Art. 2.4.5.35); **Canada** (Shipping Act 2001, S. 148); **CEMAC** (CEMAC Merchant Shipping Code, Art. 228 and 255); **Chile** (Commercial Code, Art. 914, 10⁹); **China** (Maritime Code, Art. 166 and 174); **Colombia** (Commercial Code, Art. 1501, 26, 1536 and 1553); **Croatia** (Maritime Code 2004, Art. 756(1) and 764(1)); **Finland** (Maritime Act, Chapter 6, S. 11); **Germany** (Ship Safety Regulations, § 2); **Greece** (Code of Private Maritime Law, Art. 210); **Ibero-America** (IIDM Maritime Model Law, Art. 333 and 347); **India** (Merchant Shipping Act, S. 348); **Ireland** (Merchant Shipping Act 1894, S. 422); **Japan** (Seamen’s Act, Art. 14); **Latvia** (Maritime Code, S. 63); **Liberia** (Maritime Law, §296(10)); **Mexico** (Navigation and Maritime Commerce Act, Art. 162); **Morocco** (Maritime Commerce Code, Art. 309bis); **Nigeria** (Merchant Shipping Act, S. 269 and 272); **Norway** (Maritime Code, S. 135); **Portugal** (Decree-Law No. 203/98, Art. 3); **Russia** (Merchant Shipping Code, Art. 62-63); **Slovenia** (Maritime Code, Art. 753); **Sweden** (Maritime Code, Chapter 8, S. 4); **USA** (46 U.S.C. § 2304).

⁸¹ Bonassies-Scapel 2016, 342, para 479; see also Bonassies-Scapel-Bloch 2022, 4339, para 532.

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additional powers on the master to represent the shipowner, the ship operator or possibly even other parties (such as cargo interests). Although these traditional commercial representation powers of the master have become less important in practice due to the improvement of means of communication and the appointment of ship's agents, many national laws continue to expressly recognise them⁸². However, since there is no uniformity in this regard, it suffices here to draw attention to the possibility.

Ship masters are often also authorised to draw up birth and death certificates on board the ship or to officialise wills. In some cases, marriages can be executed before the master. Furthermore, national laws confer disciplinary and/or criminal investigative and sanctioning powers on the master and allow him or her to use coercive measures against those on board. Because these are purely civil or public law regulations and in view of variations in national provisions, no further Principles have been included here.

Nor has a Principle been included on unmanned ships or Maritime Autonomous Surface Ships (MASS). Important technological and legal developments are taking place in this area, but it is far too early to detect Lex Maritima Principles in it.

⁸² **Current Law:** **Algeria** (Maritime Code, Art. 583 *et seq.*); **Brazil** (Commercial Code, Art. 513 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 375 *et seq.*); **Chile** (Commercial Code, Art. 907 and 914-916); **Colombia** (Commercial Code, Art. 1501); **Denmark** (Merchant Shipping Act, S. 137-138); **Finland** (Maritime Act, Chapter 6, S. 13 and 15-16); **France** (Transport Code, Art. L5412-4-5); **Germany** (Commercial Code, § 479(1), 513(1) and 584(1); Rabe-Bahnsen 2018, 68 *et seq.*, para 12 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 68-69); **Italy** (Navigation Code, Art. 306 *et seq.*); **Japan** (Commercial Code, Art. 708); **Korea** (Commercial Act, Art. 749 *et seq.*); **Latvia** (Maritime Code, S. 274); **Lithuania** (Law on Merchant Shipping, Art. 12-13); **Malta** (Merchant Shipping Act, S. 101); **Morocco** (Maritime Commerce Code, Art. 150); **The Netherlands** (Civil Code, Book 8, Art. 260-261); **Norway** (Maritime Code, Art. 137-139); **Peru** (Commercial Code, Art. 623); **Russia** (Merchant Shipping Code, Art. 71); **Spain** (Maritime Navigation Act 14/2014, Art. 185); **Sweden** (Maritime Code, Chapter 6, S. 8-9); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 53 and 55); **Turkey** (Commercial Code, Art. 1103 *et seq.*); **Uruguay** (Commercial Code, Art. 1114 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 18-19 and 24).

Principle 9 – The pilot

The pilot is a local guide to the master. He may conduct the ship, subject to the master's command.

Commentary

Most countries or ports have special laws or regulations concerning pilotage. Many of them indicate that the pilot is an advisor to the ship master^{83 84} and/or a local guide⁸⁵, assistant^{86 87} or expert⁸⁸, who contributes to the safety of navigation to, from and in ports⁸⁹. Furthermore, it is confirmed in various countries that the pilot may^{90 91} or, by definition, must^{92 93} actually take charge

⁸³ **Legal history:** **Belgium** (Pilotage Act 1967, Art. 5); **France** (Pilotage Act 1928, Art. 1).

⁸⁴ **Current law:** **Argentina** (Shipping Act, Art. 145; Pilotage Regulations, Arts. 1 and 13); **Belgium** (Flemish Pilotage Decree, Arts. 2, 4^o and 8); **Belgium-The Netherlands** (Scheldt Regulations, Art. 10.1); **Brazil** (Federal Law 9.537/97, Art. 12; Rules of the Maritime Authority on the Pilotage Service NORMAM--12/DPC, Arts. 0121 and Art. 0228 a) 1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 644.2); **Chile** (Pilotage Regulations, Art. 3); **Colombia** (Pilotage Act, Arts. 14 and 21); **Croatia** (Maritime Code 2004, Art. 68(1)); **Cyprus** (Cyprus Port Authority (Operation of Port Precincts) Regulations 1976 to 2015, Reg. 149(1)); **Denmark** (Pilotage Act 567/2006, § 3, 8)); **EU** (EU Maritime Pilotage Study 1995, 59-62); **Finland** (Pilotage Act 940/2003, Section 2, 1); **France** (Transport Code, Art. L5341-1); **Germany** (Pilotage Act, §§ 1 and 23(1); Ehlers 2017, 275, para 2); **Malta** (Maritime Pilotage Regulations, Reg. 5(1)); **The Netherlands** (Pilotage Act, Art. 2.1); **Spain** (Maritime Navigation Act 14/2014, Art. 325; General Pilotage Regulations (Royal Decree 393/1996), Art. 2.1 and 2.2.e)); **UK** (Chorley-Giles 1987, 350-351; Grime 1991, 227; Rose 1984, 31-32).

⁸⁵ **Current law:** **CEMAC** (CEMAC Merchant Shipping Code, Art. 2, 56)); **EU** (Ports Regulation 2017/352, Art. 2(8)); **Japan** (Pilotage Act, Art. 2); **Korea** (Pilotage Act, Art. 2.1); **Norway** (Pilotage Act, §§ 4, a) and 8); **USA** (Schoenbaum 2004 II, 71, § 13-1).

⁸⁶ **Legal history:** **Belgium** (Pilotage Act 1967, Art. 5).

⁸⁷ **Current law:** **Algeria** (Maritime Code, Art. 171); **Australia** (Navigation Act 2012, S. 21(1)); **Colombia** (Pilotage Act, Art. 2.22-23); **Cyprus** (Cyprus Port Authority (Operation of Port Precincts) Regulations 1976 to 2015, Reg. 149(1)); **France** (Transport Code, Art. L5341-1); **Italy** (Navigation Code, Art. 92); **Malta** (Maritime Pilotage Regulations, Regs. 3 and 5(1)); **Portugal** (Decree-Law 48/2002, Art. 1.1).

⁸⁸ **Current law:** **Finland** (Pilotage Act 940/2003, Section 2, 1); **USA** (Parks 1982, 1025).

⁸⁹ **Current law:** **Argentina** (Pilotage Regulations, Art. 2); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM--12/DPC, Art. 0121); **Cyprus** (Cyprus Port Authority (Operation of Port Precincts) Regulations 1976 to 2015, Reg. 149(1)); **EU** (Ports Regulation 2017/352, Art. 2(8)); **Korea** (Pilotage Act, Art. 2.1); **Malta** (Maritime Pilotage Regulations, Reg. 5(1)); **Mexico** (Navigation and Maritime Commerce Act, Art. 55); **Norway** (Pilotage Act, §§ 1 and 8); **Portugal** (Decree-Law 48/2002, Art. 1.1); **Romania** (Ordinance 22/1999 on the administration of ports and waterways etc., Arts. 19(1)b)1. and 47(2)); **Spain** (Maritime Navigation Act 14/2014, Art. 325; General Pilotage Regulations (Royal Decree 393/1996), Art. 2.1 and 2.2.e)).

⁹⁰ **Legal history:** **Belgium** (Royal Decree on Scheldt Pilotage 1871; Cour de cassation 16 March 1896; Disciplinary and Criminal Code for Merchant Shipping and Fishing 1928, Art. 67); **Belgium-The Netherlands** (Scheldt Regulations 1843, Arts. 19 and 22); **France** (Danjon 1926 II, 128, para 556).

⁹¹ **Current law:** **Belgium** (Flemish Pilotage Decree, Art. 8); **Germany** (Pilotage Act, § 23(2)); **Norway** (Pilotage Act, § 7); **Spain** (Maritime Navigation Act 14/2014, Art. 327); **The Netherlands** (Pilotage Act, Art. 2.1).

⁹² **Legal history:** **UK** (Abbott 1802, 140); **Canada** (Report of the Royal Commission on Pilotage 1968, I, 26-27).

⁹³ **Current law:** **Australia** (Navigation Act 2012, Ss. 14(1) and 326(1)); **Canada** (Pilotage Act, S. 1.1); **Hong Kong** (Pilotage Ordinance (Cap. 84), S. 2); **Ireland** (Harbours Act, 1996,

*of the navigation or have the conduct of the vessel. Conduct is different from command but, as some jurisdictions insist, more than merely advising.⁹⁴ It is often indicated explicitly that the master continues to carry out the command or at least has final responsibility^{95 96} and may or indeed has to intervene or overrule the pilot if circumstances require⁹⁷. The rule that the pilot is only a helper and a counsellor, while the master continues to command, was considered by Rodière to be common to all nations⁹⁸. Additional comparative law research confirms that the principles do converge, with in the common law legal systems a slightly stronger emphasis on the obligation of the pilot to factually conduct the vessel, without prejudice to the command of the master in the sense of the legal power or authority of command⁹⁹. A universal expression that summarises the division of roles and often appears in logbooks is 'Master's orders, pilot's advice'¹⁰⁰. Only in very exceptional systems, which can be considered a case of *exceptio firmitat regulam*, the pilot has, pursuant to express provisions, final responsibility for the decisions¹⁰¹.*

S. 2); **Nigeria** (Ports Authority (Pilotage) Regulations, Reg. 2); **Singapore** (Maritime and Port Authority of Singapore Act (Chapter 170A), S. 2); **South Africa** (Legal Succession to the South African Transport Services Act 1989, Sch. 1, S. 10(2)); **UK** (Pilotage Act, S. 31(1)); **USA** (Parks 1982, 1022-1027, with cases; Resolution adopted by the Board of Trustees of the American Pilots' Association on October 8, 1997, on The Respective Roles and Responsibilities of the Pilot and the Master).

⁹⁴ Hill 2003, 460-461.

⁹⁵ **Legal history:** **Belgium** (Pilotage Act 1967, Art. 5); **Canada** (Report of the Royal Commission on Pilotage 1968, I, 26-27); **France** (Danjon 1926 II, 128, para 556).

⁹⁶ **Current law:** **Algeria** (Maritime Code, Art. 177); **Argentina** (Pilotage Regulations, Art. 13); **Australia** (Navigation Act 2012, S. 326(1)-(2)); **Belgium** (Flemish Pilotage Decree, Art. 8); **Belgium-The Netherlands** (Scheldt Regulations, Art. 10.1); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM--12/DPC, Art. 0230 a); **Chile** (Commercial Code, Art. 909 Pilotage Regulations, Art. 3); **China** (Maritime Code, Art. 39); **Colombia** (Pilotage Act, Art. 14); **Croatia** (Maritime Code 2004, Art. 73(1)); **Cyprus** (Cyprus Port Authority (Operation of Port Precincts) Regulations 1976 to 2015, Reg. 149(2)); **Germany** (Pilotage Act, § 23(2)); **Korea** (Pilotage Act, Art. 18.5); **Malta** (Maritime Pilotage Regulations, Reg. 5(2)); **Mexico** (Navigation and Maritime Commerce Act, Art. 58.1); **Norway** (Pilotage Act, § 7 and 8); **Russia** (Merchant Shipping Code, Art. 96-97 and 102); **Singapore** (Maritime and Port Authority of Singapore Act (Chapter 170A), S. 2); **Slovenia** (Maritime Code, Art. 86); **Spain** (Maritime Navigation Act 14/2014, Art. 327); **UK** (Merchant Shipping Act, S. 313(1); Pilotage Act 1987, S. 16 (implicitly)); Douglas-Lane-Peto 1997, 299-300, para 21.25; Grime 1991, 227; **USA** (Resolution adopted by the Board of Trustees of the American Pilots' Association on October 8, 1997, on The Respective Roles and Responsibilities of the Pilot and the Master); **Vietnam** (Maritime Code 2015, Art. 249).

⁹⁷ **Current law:** **Argentina** (Pilotage Regulations, Art. 13); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM--12/DPC, Art. 0230 b) 4); **Canada** (Pilotage Act, S. 26(1)); **South Africa** (Legal Succession to the South African Transport Services Act 1989, Sch. 1, S. 10(2)); **UK** (Chorley-Giles 1987, 350-351; Rose 1984, 31-32); **USA** (Parks 1982, 1027-1030, with cases; Resolution adopted by the Board of Trustees of the American Pilots' Association on October 8, 1997, on The Respective Roles and Responsibilities of the Pilot and the Master; Schoenbaum 2004 II, 81, § 13-6, with cases).

⁹⁸ Rodière 1976, 577, para 448.

⁹⁹ Van Hooydonk 1999, 457-506.

¹⁰⁰ See Hare 1999, 363. Flemish Scheldt pilot Sven De Ridder confirmed that in practice formulas such as 'various courses as per pilot's advice' and 'various courses as per master's orders and pilot's advice' are used (with thanks to Capt. De Ridder).

¹⁰¹ **Current law:** **Mexico** (Navigation and Maritime Commerce Act, Art. 55); **Panama Canal** (Regulation on Navigation in Panama Canal Waters, Art. 92 and Annex, Art. 105(2)-(3)).

With that proviso, Principle 9 is the common denominator of the provisions investigated. It deliberately makes no mention of the respective 'liabilities' of the pilot and the ship master. The reason for this is that the Principle is not intended to define the respective liabilities of these parties (or of the pilotage service, the shipowner or the ship operator, for that matter). Liability in relation to pilotage is regulated internationally in different ways and cannot therefore be the object of a Lex Maritima Principle. Nor has a rule been included on compulsory pilotage. In many marine areas (especially in port approaches and within port waters), ships are required to take a pilot on board. Exceptions often apply and/or the option exists for experienced masters to obtain a Pilotage Exemption Certificate (PEC). These are public law regulations the precise terms of which vary according to local conditions; therefore, they are not reflected in the Lex Maritima Principle expressed here.

Principle 10 – Joint and vicarious liability of shipowner and ship operator

The positive maritime law may implement the Principle that the shipowner or, as the case may be, the ship operator, is liable not only for the consequences of his own actions, but also for contracts entered into by or acts committed by other persons involved in the operation of the ship.

Commentary

Principle 10 draws attention to the presence in positive maritime law of specific provisions concerning the liability of the shipowner or ship operator. There is no international unification convention on this subject, and a comparison of national systems shows that very significant divergences exist. It often happens that special statutory provisions declare the (registered) shipowner or the ship operator bound by contracts entered into by the master of the ship or liable for acts of the crew or other persons employed on the ship. Likewise, who bears responsibility in the case of a ship operated by a bareboat charterer is regulated in a variety of ways. In extreme cases, the (registered) shipowner remains jointly and severally liable for virtually all debts; in other cases, the bareboat charterer assumes the bulk, if not all of the liabilities¹⁰². In common law countries, the matter is governed by the principles concerning the action in rem against the ship¹⁰³. Although certain

¹⁰² **Current law:** **Algeria** (Maritime Code, Art. 577); **Argentina** (on the liability of the *armador*, i.e., the ship owner or operator, see Shipping Act, Art. 174); **Belgium** (on the liability of the *scheepseigenaar*, i.e. the registered owner, see Shipping Code, Art. 2.3.1.19 *et seq.*); **Brazil** (Commercial Code, Art. 494); **CEMAC** (CEMAC Merchant Shipping Code, Art. 372.1); **Chile** (on the liability of the *armador*, i.e. the ship owner or operator, see Commercial Code, Art. 885 *et seq.*); **Colombia** (on the liability of the *armador*, i.e., the ship owner or operator, see Commercial Code, Art. 1479 *et seq.*); **Denmark** (on the liability of the *reder*, i.e. the ship owner or operator, see Merchant Shipping Act, S. 151); **Finland** (Maritime Act, Chapter 7, S. 1); **France** (on the liability of the *armateur*, i.e. the ship owner or operator, see Transport Code, Art. L5412-1); **Germany** (on the liability of the *Reeder*, i.e. the registered owner, see Commercial Code, § 480); **Greece** (on the liability of the owner-operator and the (non-owning) operator, see Code of Private Maritime Law, Art. 49 and 62 respectively); **Ibero-America** (on the liability of the *armador*, i.e., the ship owner or operator, see IIDM Maritime Model Law, Art. 91); **Italy** (on the liability of the *armatore*, i.e. the ship owner or operator, see Navigation Code, Art. 274); **Latvia** (Maritime Code, S. 57); **Malta** (on the liability of the owner of a ship, see Merchant Shipping Act, S. 347 *et seq.*); **The Netherlands** (on the liability of the *reder*, i.e. the registered owner, see Civil Code, Book 8, Art. 8:360; see also Art. 8:461); **Norway** (on the liability of the *reder*, i.e. the registered owner or the bareboat charterer, see Maritime Code, S. 151); **Peru** (Commercial Code, Art. 599 *et seq.*); **Portugal** (Decree-Law No. 202/98, Art. 4 *et seq.*); **Slovenia** (Maritime Code, Art. 382); **Spain** (on the liability of the *armador*, i.e. the ship owner or operator, see Maritime Navigation Act 14/2014, Art. 149); **Sweden** (on the liability of the *redar*, i.e. the ship owner or operator, Chapter 7, S. 1); **Switzerland** (on the liability of the *armateur*, i.e., the ship owner or operator, see Federal Law on Maritime Navigation under the Swiss Flag, Art. 48); **Turkey** (Commercial Code, Art. 1109); **Uruguay** (Commercial Code, Art. 1048 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 37 *et seq.*).

¹⁰³ **Current law:** **Canada** (Gold-Chircop-Kindred, 760 *et seq.*); **South Africa** (Admiralty Jurisdiction Regulation Act 105 of 1983; Hare 1999, 64-67, §2-2.2); **UK** (Senior Courts Act 1981, S. 20-21; Derrington-Turner, 9-43, para 01-2.83); **USA** (Federal Rules of Civil Procedure, Supplemental Rule C; Schoenbaum I, 526; Tetley 2008, I, 572-574; see also Gilmore-Black, 589-594); compare also **Latvia** (Maritime Code, S. 43).

similarities can be detected, no real unity can be discerned in all this and therefore the Lex Maritima Principle limits itself to drawing attention to the possibility of positive maritime law comprising specific rules on the joint and several or vicarious liability of shipowners and ship operators.

Principle 11 – General tonnage limitation

The positive maritime law may implement the Principle that shipowners, ship operators and salvors have the right to limit their liability for specific categories of claims.

To this end it may implement, inter alia, the following Principles:

- (1) Limits of liability are based on the tonnage of the ship and may distinguish between general limits and limits for passenger claims.
- (2) A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.
- (3) A person liable may constitute a limitation fund which shall be distributed among claimants.
- (4) Creditors are barred from exercising any right against other assets of the person by or on whose behalf a fund is constituted.
- (5) The limitation may also be invoked without the constitution of a fund.

Commentary

Principle 11 draws attention to the possibility of the positive maritime law introducing a system of (general) limitation of liability based on the tonnage of the ship. The right to limit liability is based on an ancient tradition and has been the subject of successive unification conventions. Following conventions from 1924 and 1957, the LLMC Convention came into being in 1976, and has since been revised. The consecutive LLMC regimes have a wide reach worldwide¹⁰⁴ but it would be too far-reaching to consider them as such parts of the Lex Maritima, as some countries indeed still apply diverging national provisions¹⁰⁵. Therefore, simplified paraphrasing of the core principles that can be derived from the LLMC has been preferred here. To know the specific applicable rules, again the positive maritime law will have to be consulted, from which the Lex Maritima Principles do not aim to derogate (see Rule 4(2)). It should be pointed out in this context that the LLMC Convention itself also allows for various national derogations.

As for the reference to the ‘shipowner’ and the ‘ship operator’, it should be noted that the LLMC Convention contains a more comprehensive, and broad definition of the persons entitled to limitation¹⁰⁶. Again, a simplified wording has been preferred. On the meaning of ‘shipowner’ and ‘ship operator’ in these Principles, see Rule 2(6)-(7) and the relevant Commentary.

¹⁰⁴ LLMC 1976: 55 States, 52.90% of World Tonnage; LLMC PROT 1996: 63 States, 69.80% of World Tonnage.

¹⁰⁵ See, for example, **Argentina** (Shipping Act, Art. 175 *et seq.*); **Colombia** (Commercial Code, Art. 1480-1481).

¹⁰⁶ See LLMC, Art. 1(1) and 1(2).

Some legal systems (such as that of the EU)¹⁰⁷ provide for compulsory liability insurance. As this is not a universally applicable principle, it has not been included in the CMI Lex Maritima.

The limitation of liability with regard to cargo and passenger claims is covered below, in Principles 17 and 18 respectively.

¹⁰⁷ Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims.

Principle 12 – Pollution liabilities

- (1) The positive maritime law may implement the Principle of strict civil liability of shipowners for claims involving oil pollution damage.

To this end it may implement, inter alia, the following Principles:

- (a) No liability shall attach to the shipowner in specific circumstances such as force majeure or intent to cause damage by another party.
 - (b) No claims for compensation may be made against specific categories of persons such as the owner's servants or agents, the crew, any charterer, any salvor or any person taking preventive measures.
 - (c) Nothing shall prejudice any right of recourse of the shipowner.
 - (d) The shipowner has the right to limit his liability in accordance with limits of liability based on the tonnage of the ship.
 - (e) The shipowner shall not be entitled to limit his liability if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such loss would probably result.
 - (f) For the purpose of availing himself of the benefit of limitation of liability, the shipowner shall constitute a limitation fund which shall be distributed among claimants.
 - (g) The shipowner shall maintain insurance or other financial security, each ship shall carry a certificate relating thereto and any claim for compensation may be brought directly against the insurer or other person providing financial security.
 - (h) States may participate in an international funding mechanism to provide compensation for oil pollution damage to the extent that the strict liability of the shipowner is inadequate.
- (2) The positive maritime law may implement the Principles of, inter alia, strict civil liability and compulsory insurance or financial security and direct action for bunker oil damage, damage caused by hazardous and noxious substances and wreck removal costs.

Commentary

The first paragraph of Principle 12 draws attention to the existence of specific civil liability regimes relating to oil pollution damage. These have been established from 1969 through successive international conventions. The most important regime today is CLC 1992. Currently 146 states are parties to this regime, representing 97.55% of world tonnage. However, it is premature to label this convention as such as part of the Lex Maritima. Nevertheless, some core provisions of CLC 1992 have been paraphrased in this Principle. The last point draws attention to the FUND regime, which is based on an initial convention from 1971 and has been amended repeatedly since then. Although very successful, it is as such not a Lex Maritima Principle either, even if only because of simultaneously applicable successive versions.

Paragraph (2) refers to the possibility of positive maritime law implementing the Bunker Convention, the HNS Convention or the Nairobi Wreck Removal Convention. The international success of these relatively recent instruments, while considerable, still varies¹⁰⁸, so it is premature to proclaim any substantive Lex Maritima Principles about them. However, with a view to promoting understanding of maritime law and its unification, it is useful to draw attention to these important regimes. In addition, the Nairobi Wreck Removal Convention is to an extent reflected in Principle 22.

The Principle does not extend to criminal liability for pollution damage.

¹⁰⁸ BUNKER: 106 States, 95.02% of World Tonnage; HNS 1996: 14 States, 16.73% of World Tonnage; HNS 2010: 6 States, 3.53% of World Tonnage; Nairobi WRC: 66 States, 80.27% of World Tonnage.

PART 5

MARITIME CONTRACTS

Principle 13 – Freedom of maritime contract

Within the boundaries of the positive maritime law, parties are free to enter into a maritime contract and to determine its contents.

Commentary

Freedom of contract is an important principle in the Lex Mercatoria. In fact, it is the subject-matter of the very first provision of the Unidroit Principles of International Commercial Contracts 2016¹⁰⁹. In maritime law, the principle is no less fundamental. While it is not expressed in any general convention provision, it is inherent in the positive maritime law. For example, it is generally accepted that freedom of contract applies in the area of chartering ships¹¹⁰. The same applies, for example, with respect to ship management, shipbuilding, ship agency, towage and ship classification. Explicit confirmation of freedom of contract, as far as that particular domain is concerned, can be found in the Salvage Convention 1989¹¹¹. In several countries, freedom of contract is expressly recognised in the general contract law provisions of their civil and/or commercial codes, which may also apply in maritime matters¹¹². Given this context and particularly in view of the absence of any universally applicable rule explicitly confirming freedom of contract in maritime matters, its proclamation as the basic assumption in the Principle explained here is an important added value of the CMI Lex Maritima.

However, numerous restrictions on freedom of contract follow from the positive maritime law (see the definition of this concept in Rule 2(3)). Such restrictions may follow, first of all, from mandatory provisions, although these are rather rare in maritime law. Still, they are quite important in relation to the carriage of goods and passengers, as confirmed in Principles 17(3)(g) and 18(2)(e). Maritime labour law is also largely of a mandatory

¹⁰⁹ **Unidroit Principles of International Commercial Contracts 2016**, Art. XX.

¹¹⁰ **Current law:** **Denmark** (Merchant Shipping Act, S. Art. 322); **Finland** (Maritime Act, Chapter 14, S. 2); **Greece** (Code of Private Maritime Law, Art. 73); **Ibero-America** (IIDM Maritime Model Law, Art. 134); **Latvia** (Maritime Code, S. 166); **Norway** (Maritime Code, Art. 322); **Sweden** (Maritime Code, Chapter 14, S. 2).

¹¹¹ **Salvage Convention 1989**, Art. 6(1) and also 7.

¹¹² **Current law:** for example, **Belgium** (Civil Code, Art. 5.14), **France** (Civil Code, Art. 1102); **Italy** (Civil Code, Art. 1322); **Spain** (Civil Code, Art. 1255).

*nature*¹¹³. In some areas, there is (at least in some legal systems) an obligation to contract (for example in relation to insurance, pilotage, towing or ship agency). Some rules of the positive maritime law – which may, again in accordance with the definition of the concept in Rule 2(3), comprise general rules of contract law contained in civil or commercial codes – may impose more general restrictions on freedom of contract based on ‘public policy’ or ‘public order’¹¹⁴. Criminally sanctioned statutory or regulatory provisions cannot be derogated from by contract either. Finally, maritime contracts will also be unable to deviate from certain specific provisions of general or ‘land’ law that also apply to maritime matters, such as consumer law or competition law (for the purposes of the present Principles, these rules also belong to the ‘positive maritime law’: see the mention of ‘including the rules of non-maritime law that apply to maritime matters’ in the definition in Rule 2(3)). Finally, a number of rules of the positive maritime law concern extra-contractual liability, where freedom of contract is irrelevant (or at least less relevant).

No provision has been inserted into this Principle on the performance of maritime contracts and in particular good faith. The main reason is that good faith as an overarching principle, although central to civil law systems, is not recognised as such in the shipping law of common law countries¹¹⁵.

¹¹³ See **Maritime Labour Convention**, Art. VI, Regulation 2.1 and Standard A2.1.

¹¹⁴ **Current law**: for example, **Argentina** (Civil and Commercial Code, Art. 958); **Belgium** (Civil Code, Art. 1.3); **France** (Civil Code, Art. 1102); **Spain** (Civil Code, Art. 1255).

¹¹⁵ On this issue, see Tettenborn 2015, 41-66.

Principle 14 – Bareboat charterparty

- (1) A bareboat or demise charterparty is a contract under which the shipowner, in exchange for the payment of hire, provides the charterer with an unmanned ship which the charterer shall possess, employ, man and operate for an agreed period.
- (2) The positive maritime law or the contract may implement, inter alia, the following Principles:
 - (a) The contract shall specify particulars such as place and date, identity of the parties, particulars of the ship, place of delivery, time for delivery, cancelling date, place of redelivery, trading limits, charter period and charter hire.
 - (b) The owners shall deliver the ship in a seaworthy condition, in every respect ready for service and properly documented, and at a safe berth or mooring.
 - (c) The ship shall not be delivered before the time for delivery without the charterers' consent and the owners shall exercise due diligence to deliver the ship not later than that time.
 - (d) Should the ship not be delivered by the cancelling date, the charterers shall have the option of cancelling the charterparty.
 - (e) The owners and charterers shall each appoint and pay for their respective surveyors for the purpose of determining and agreeing in writing the condition of the ship at the time of delivery and redelivery.
 - (f) The ship shall be employed in lawful trades for the carriage of lawful merchandise within the agreed trading limits.
 - (g) The charterers shall procure that all transport documents shall contain a paramount clause which shall incorporate the positive maritime law applicable to the carriage.
 - (h) The charterers shall properly maintain the ship in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, at their own expense, maintain the ship's class and all necessary certificates.
 - (i) The charterers shall at their own expense crew, victual, navigate, operate, supply, fuel, maintain and repair the ship and they shall be responsible for all costs and expenses whatsoever relating to their use and operation of the ship. The crew shall be the servants of the charterers for all purposes whatsoever.
 - (j) The charterers shall have the liberty to paint the ship in their own colours, install and display their funnel insignia and fly their own house flag.
 - (k) The charterers shall make no structural or substantial changes to the ship without the owners' prior written approval.
 - (l) The owners shall have the right at any time after giving reasonable notice to the charterers to inspect the ship or instruct a duly authorised surveyor to carry out such inspection on their behalf.

- (m) The charterers shall pay hire due to the owners in accordance with the terms of the charterparty.
- (n) The charterers shall indemnify the owners against any loss, damage or expense arising out of or in relation to the operation of the ship by the charterers.
- (o) All salvage and towage performed by the ship shall be for the charterers' benefit.
- (p) If the ship becomes a wreck, or any part of the ship is lost or abandoned, the charterers shall be liable for any and all expenses in connection with the removal of the ship.
- (q) The owners shall not contribute to general average.
- (r) Each party shall be entitled to terminate the charterparty by written notice to the other party in the event of the other party's default, as specified in the charterparty.
- (s) At the expiration of the charter period the ship shall be redelivered by the charterers and taken over by the owners at the place for redelivery at such readily accessible safe berth or mooring as the owners may direct.

Commentary

Regarding charterparties, there are no international unification conventions. The matter is traditionally left to freedom of contract (which latter is confirmed in Principle 13). In this field, international standard contracts are used, to which negotiated modifications are often made ('rider clauses'). These model contracts are aligned with case law and meaningfully facilitate (and, above all, speed up) negotiations. National statutory provisions on chartering contracts exist as well, but they vary widely¹¹⁶ and are always of non-mandatory, supplemental nature; moreover they are usually of limited importance in dispute resolution practice¹¹⁷. The recent codification of

¹¹⁶ One of the aspects on which there are significant divergences is the distinction between, or assimilation of, the voyage charter and the contract of carriage. In accordance with the established methodology underlying these Lex Maritima Principles, such divergences are not considered further here (see also the Commentary accompanying Principle 17 below).

¹¹⁷ **Current law:** **Argentina** (Shipping Act, Art. 219 *et seq.*); **Brazil** (Commercial Code, Art. 566 *et seq.*; Waterway Transportation Act 9432/97, Art. 2°, I); **CEMAC** (CEMAC Merchant Shipping Code, Art. 469 *et seq.*); **Chile** (Commercial Code, Art. 927 *et seq.*); **China** (Maritime Code, Art. 127 *et seq.*); **Denmark** (Merchant Shipping Act, S. Art. 321 *et seq.*); **Finland** (Maritime Act, Chapter 14); **France** (Transport Code, Art. L5423-1 *et seq.*); **Germany** (Commercial Code, § 553 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 72 *et seq.*); **Ibero-America** (IIDM Maritime Model Law), Art. 136 *et seq.*); **Italy** (Navigation Code, Art. 376 *et seq.*); **Japan** (Commercial Code, Art. 704 *et seq.* and 748 *et seq.*); **Korea** (Commercial Act, Art. 827 *et seq.*); **Latvia** (Maritime Code, Art. 165 *et seq.*); **Lithuania** (Law on Merchant Shipping, Art. 37-40); **Mexico** (Navigation and Maritime Commerce Act, Art. 107 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 206 *et seq.* and Art. 270 *et seq.*); **The Netherlands** (Civil Code, Book 8, Art. 370 *et seq.* and 530 *et seq.*); **Norway** (Maritime Code, Art. 321 *et seq.*); **Peru** (Commercial Code, Art. 665 *et seq.*); **Russia** (Merchant Shipping Code, Art. 115 *et seq.*, 198 *et seq.* and 211 *et seq.*); **Slovenia** (Maritime Code, Art. 434 *et seq.* and 643 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 203 *et seq.*); **Sweden** (Maritime Code, Chapter 14); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 90 *et seq.*); **Turkey** (Commercial Code, Art. 1119 *et seq.*); **Uruguay** (Commercial Code, Art. 1195 *et seq.*);

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Belgian maritime law is original in that it reflects the core clauses of the most commonly used standard contracts and therefore corresponds as closely as possible to commercial reality¹¹⁸. The Principles on charterparties contained in the CMI Lex Maritima follow this example, although even considerably more concisely worded. This choice is consistent with the observation, reflected in Principle 2(3)(b) above, that internationally common standard contracts can be deemed to reflect relevant custom.

The CMI Lex Maritima focuses on the three most common types of charterparties: bareboat charters, time charters and voyage charters. These are also the types of charters to which national legislators usually pay attention. However, many other specific charters exist, each with their own standard clauses, such as tanker charters, offshore industry charters and dredger, tug or crew transfer vessels charters.

The definition of the bareboat or demise charter included in paragraph (1) can be considered universally accepted¹¹⁹. The term ‘unmanned’ does not refer to remotely or autonomously steered vessels, but to vessels for which the charterer must hire the necessary crew.

The further rules on the bareboat charter in paragraph (2) were extracted mainly from BIMCO’s BARECON 2017. These provisions are a simplified selection of the most important and typical clauses in this type of contract. However, the elements mentioned are not meant to be exhaustive. As these are essentially customary contractual arrangements, from which the rules have been extracted, it is stated here that not only the positive maritime law may ‘implement’ the rules cited, but also the contract itself. The Principle on bareboat chartering proposed here is – just as those on time and voyage chartering – somewhat more detailed than the Principles on carriage of goods and passengers presented below. That choice was made to respect, as much as possible, the wording of, and the compromises underlying, the relevant international standard contracts.

Some flag states allow bareboat registration of ships, which is briefly referred to in Principle 4 above.

Venezuela (Maritime Commerce Act, Art. 177 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 175 *et seq.* and 215 *et seq.*)

¹¹⁸ **Current law:** **Belgium** (Shipping Code, Art. 2.6.1.1 *et seq.*).

¹¹⁹ **Current law:** **Belgium** (Shipping Code, Art. 2.1.1.4, 2°); **CEMAC** (CEMAC Merchant Shipping Code, Art. 2, 2) and 500); **Chile** (Commercial Code, Art. 965); **China** (Maritime Code, Art. 144); **Colombia** (Ship Registration Act 2133 of 2021, Art. 1); **France** (Transport Code, Art. L5423-8); **Germany** (Commercial Code, § 553(1)); **Greece** (Code of Private Maritime Law, Art. 107); **Ibero-America** (IIDM Maritime Model Law), Art. 140); **Mexico** (Navigation and Maritime Commerce Act, Art. 114); **The Netherlands** (Civil Code, Book 8, Art. 530); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 90); **Vietnam** (Maritime Code 2015, Art. 229.1).

Principle 15 – Time charterparty

- (1) A time charterparty is a contract under which the shipowner or ship operator, hereinafter referred to as ‘owners’, in exchange for the payment of hire, provides the charterer with a manned ship which the charterer shall employ for an agreed period.
- (2) The positive maritime law or the contract may implement, inter alia, the following Principles:
 - (a) The contract shall specify particulars such as place and date, identity of the parties, particulars of the ship, place of delivery, time for delivery, cancelling date, place of redelivery, trading limits, charter period and charter hire.
 - (b) The owners agree to let, and the charterers agree to hire, the ship from the time of delivery, for the charter period within the agreed trading limits.
 - (c) The ship shall be delivered to the charterers at the place of delivery.
 - (d) The ship on delivery shall be seaworthy and in every way fit to be employed for the intended service and with full complement of qualified master, officers and ratings, and her holds shall be clean and in all respects ready to receive the intended or any permissible cargo.
 - (e) Prior to delivery and redelivery the parties shall, unless otherwise agreed, each appoint surveyors, for their respective accounts, who shall not later than at first loading port/last discharging port respectively, conduct joint on-hire/off-hire surveys.
 - (f) The ship shall be loaded and discharged in any safe anchorage or at any safe berth or safe place that the charterers or their agents may direct, provided the ship can safely enter, lie and depart always afloat.
 - (g) The owners shall:
 - provide and pay for the insurances of the ship, and for all provisions, cabin, deck, engine-room and other necessary stores, boiler water and lubricating oil;
 - pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew and crew visas;
 - maintain the ship’s class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, have a full complement of master, officers and ratings;
 - provide any documentation relating to the ship as required to permit her to trade within the agreed limits.
 - (h) The charterers shall:
 - provide and pay for all the bunkers;
 - pay for port charges, compulsory gangway watchmen and cargo watchmen, compulsory and/or customary pilotages,

- canal dues, towages, agencies, commissions, consular charges, and all other usual expenses;
- provide and pay for necessary dunnage, lashing materials and any extra fittings requisite for a special trade or unusual cargo.
 - (i) The master shall perform the voyages with the utmost despatch and shall render all customary assistance with the ship's crew. The master shall be under the orders and directions of the charterers as regards employment and agency; and the charterers shall perform all cargo handling, their risk and expense, under the supervision of the master.
 - (j) The ship shall be employed in carrying lawful merchandise.
 - (k) The charterers shall pay the agreed hire.
 - (l) The ship shall be redelivered to the owners in good order and condition, ordinary wear and tear excepted, at the place for redelivery.

Commentary

Regarding the general approach to charterparties in the CMI Lex Maritima, reference is made to the explanation of Principle 14 above.

The definition of a time charter in paragraph (1) can be considered generally accepted¹²⁰.

Paragraph (2) provides a sampling of the most common clauses in such contracts. This takes into account various international standard contracts, such as NYPE 46, NYPE 2015 and BALTIME 1939 (revised 2001).

¹²⁰ **Current law:** **Belgium** (Shipping Code, Art. 2.1.1.4, 3°); **Brazil** (Waterway Transportation Act 9432/97, Art. 2°, II); **CEMAC** (CEMAC Merchant Shipping Code, Art. 2, 2) and 490); **Chile** (Commercial Code, Art. 934); **China** (Maritime Code, Art. 129); **Denmark** (Merchant Shipping Act, S. Art. 321); **Finland** (Maritime Act, Chapter 14, S. 1); **France** (Transport Code, Art. L5423-10); **Germany** (Commercial Code, § 557(1)); **Greece** (Code of Private Maritime Law, Art. 93.1); **Ibero-America** (IIDM Maritime Model Law, Art. 148); **Japan** (Commercial Code, Art. 704); **Korea** (Commercial Act, Art. 842); **Latvia** (Maritime Code, S. 165); **Morocco** (Maritime Commerce Code, Art. 270); **The Netherlands** (Civil Code, Book 8, Art. 373.1); **Norway** (Maritime Code, Art. 321); **Russia** (Merchant Shipping Code, Art. 198); **Sweden** (Maritime Code, Chapter 14, S. 1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 94.1); **Turkey** (Commercial Code, Art. 1131(1)); **Vietnam** (Maritime Code 2015, Art. 220.1).

Principle 16 – Voyage charterparty

- (1) A voyage charterparty is a contract under which the shipowner or ship operator, hereinafter referred to as ‘owners’, in exchange for the payment of hire, provides the charterer with a manned ship which the charterer shall employ for an agreed voyage.
- (2) The positive maritime law or the contract may implement, inter alia, the following Principles:
 - (a) The contract shall specify particulars such as place and date, identity of the parties, particulars of the ship and the cargo, loading place, date expected ready to load, discharging place, freight rate, laytime, demurrage and cancelling date.
 - (b) The ship shall, as soon as her prior commitments have been completed, proceed to the agreed loading place or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo which the charterers bind themselves to ship, and being so loaded the ship shall proceed to the discharging place, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.
 - (c) The owners are responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the owners or their manager to make the ship in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the owners or their manager. The owners are not responsible for loss, damage or delay arising from any other cause whatsoever.
 - (d) The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the charterers, free of any risk, liability and expense whatsoever to the owners. The charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board.
 - (e) The owners shall throughout the duration of loading and discharging give free use of the ship’s cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment shall be in good working order.
 - (f) The charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the ship caused by stevedores.
 - (g) The cargo shall be loaded and discharged within the agreed total number or running days or hours, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. Laytime for loading and discharging shall only commence following a notice of readiness.
 - (h) Demurrage at the loading and discharging port is payable by the charterers at the agreed rate.
 - (i) Should the ship not be ready to load (whether in berth or not)

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on the agreed cancelling date, the charterers shall have the option of cancelling the charterparty.

- (j) The freight may be prepaid or paid on delivery, as the parties have agreed.
- (k) The owners shall pay all dues, charges and taxes customarily levied on the ship.
- (l) The charterers shall pay all dues, charges, duties and taxes customarily levied on the cargo.

Commentary

Also with regard to the voyage charterparty, reference is made to the general commentary on charter contracts accompanying Principle 14.

The definition in paragraph (1) can be considered generally accepted¹²¹. It should be noted that a voyage charter may provide for more than one voyage.

The specific clauses of this type of contract set out in paragraph (2) are a summary of some of the clauses contained in GENCON 1994. Provisionally, GENCON 2022 has not been taken into account. Nor has attention been paid to the possibility of alternative clauses (such as Liner Terms vs FIO).

¹²¹ **Current law:** **Belgium** (Shipping Code, Art. 2.1.1.4, 4°); **Brazil** (Waterway Transportation Act 9432/97, Art. 2°, III); **CEMAC** (CEMAC Merchant Shipping Code, Art. 2, 2) and 475); **Chile** (Commercial Code, Art. 948); **Denmark** (Merchant Shipping Act, S. Art. 321); **Finland** (Maritime Act, Chapter 14, S. 1); **France** (Transport Code, Art. L5423-13); **Greece** (Code of Private Maritime Law, Art. 99.1); **Ibero-America** (IIDM Maritime Model Law, Art. 160); **Italy** (Navigation Code, Art. 384); **Japan** (although somewhat less explicit, Commercial Code, Art. 748(1)); **Korea** (Commercial Act, Art. 827(1)); **Latvia** (Maritime Code, S. 165); **The Netherlands** (Civil Code, Book 8, Art. 373.1 and 502); **Norway** (Maritime Code, Art. 321); **Sweden** (Maritime Code, Chapter 14, S. 1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 94.1); **Vietnam** (Maritime Code 2015, Art. 146.2).

Principle 17 – Contract for the carriage of cargo

- (1) A contract for the carriage of goods by sea is a contract under which a carrier undertakes, in exchange for the payment of freight, to carry goods by sea from one place to another and to deliver them to a legitimate receiver.
 - (2) The shipper is entitled to obtain from the carrier a transport document for the carriage of goods by sea, such as a bill of lading, evidencing the maritime transport contract and the receipt of the goods under such contract by the carrier or a performing party. Such transport document may be negotiable or non-negotiable.
 - (3) In relation to carriage of goods by sea, the positive maritime law may implement, inter alia, the following Principles:
 - (a) The period of responsibility of the carrier is limited.
 - (b) The carrier shall exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship, and make the holds and all other parts of the ship in which the goods are carried, fit and safe for their reception, carriage and preservation.
 - (c) Cargo may be carried on deck only in specific cases.
 - (d) In specific cases the carrier shall be exonerated from liability.
 - (e) The carrier's liability for loss or damage to cargo is limited to a specific amount per package or unit or per kilogram of weight of the cargo lost or damaged.
 - (f) Notice of loss or damage to cargo must be given within a specific time limit.
 - (g) Any clause in a contract of carriage relieving the carrier from mandatorily defined liability or lessening such liability shall be null and void.
-

Commentary

In order to regulate the contract of maritime carriage of goods, several international unification conventions have been established: the Hague Rules, the Hague-Visby Rules, the Brussels Protocol attached to the latter regime, the Hamburg Rules and the Rotterdam Rules for carriage of goods. The success of these treaty regimes varies. The Hague Rules with modifications remain by far the most common regime to date (which, incidentally, is also referred to in standard charterparties).

In this situation of still limited unification and even fragmentation of international regimes, it is not possible to articulate a universally accepted comprehensive regime on the contract of carriage of goods by sea by way of Lex Maritima Principles. Nevertheless, Principle 17 sets out some general rules of thumb related to the contract of carriage of goods. Again, the drafting relies on synthesis and simplification, focusing on the basic concepts and rules. Deliberately, the very different national views on e.g. the relationship between the voyage charter and the transport contract as well as the distinction between monistic and dualistic approaches to the

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relationship between conventions and national law have been ignored¹²². Nor was further consideration given to the national statutory provisions, contained in various civil or commercial codes, that govern the contract of carriage in general; they do not in fact belong to maritime law.

Paragraph (1) of Principle 17 offers an elementary definition of the contract for the carriage of goods by sea, which can be considered to be generally applicable¹²³.

Also the elementary rules regarding the ‘transport document for the carriage of goods by sea’ in paragraph (2) can be considered of general application¹²⁴. The right of the shipper to obtain from the carrier a transport document (unless there is a contrary agreement or custom) is a Principle in its own right (which also applies if the ships is operated under a time or voyage charter)^{125 126}. Transport documents often contain a choice of

¹²² This latter distinction means, practically speaking, that directly applicable international unification conventions in the first system apply by themselves, with national law possibly extending the international scope of these conventions to other, ‘national’, situations, while the conventions in the second system apply only after national transposition. Especially in the first hypothesis, national law may considerably reinforce the Lex Maritima authority of the international regime. The references below do not specify whether national legislation belongs to a monistic or a dualistic regime.

¹²³ **Current law:** **Hamburg Rules**, Art. 1.7; **Rotterdam Rules**, Art. 1.1; **Algeria** (Maritime Code, Art. 738); **Belgium** (Shipping Code, Art. 2.6.2.1, 2°); **CEMAC** (CEMAC Merchant Shipping Code, Art.2, 24); **Chile** (Commercial Code, Art. 974); **China** (Maritime Code, Art. 41); **France** (Transport Code, Art. L5422-1); **Germany** (Commercial Code, § 481(1)); **Greece** (Code of Private Maritime Law, Art. 117.1); **Ibero-America** (IIDM Maritime Model Law, Art. 186.1); **Korea** (Commercial Act, Art. 791); **Lithuania** (Law of Merchant Shipping, Art. 2.15); **Mexico** (Navigation and Maritime Commerce Act, Art. 128); **The Netherlands** (Civil Code, Book 8, Art. 370.1); **Russia** (Merchant Shipping Code, Art. 115.1); compare **Morocco** (Maritime Commerce Code, Art. 206); **Slovenia** (Maritime Code, Art. 435 and 439-440); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 101.1); **Venezuela** (Maritime Commerce Act, Art. 197.6).

¹²⁴ **Current law:** **Hague Rules**, Art. 3.3-4 and 3.7; **Hamburg Rules**, Art. 14-16; **Rotterdam Rules**, Art. 35-36; **Algeria** (Maritime Code, Art. 748 *et seq.*); **Argentina** (Shipping Act, Art. 298); **Belgium** (Shipping Code, Art. 2.6.2.5, § 3 and 7); **Brazil** (Commercial Code, Art. 575 *et seq.*; Water Transportation Act 116/67, Art.4; Bills of Lading Decree 19.473 of 1930); **CEMAC** (CEMAC Merchant Shipping Code, Art. 516 *et seq.*); **Chile** (Commercial Code, Art. 1014 *et seq.*); **China** (Maritime Code, Art. 71 *et seq.*); **Colombia** (Commercial Code, Art. 1601 *et seq.* and 1634 *et seq.*); **Denmark** (Merchant Shipping Act, S. 292 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 42 *et seq.*); **France** (Transport Code, Art. L5422-3 *et seq.*); **Germany** (Commercial Code, § 513 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 121 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 220 *et seq.*); **Korea** (Commercial Act, Art. 852 *et seq.*); **Latvia** (Maritime Code, S. 152 *et seq.*); **Liberia** (Maritime Law, §122(3) and (7)); **Mexico** (Navigation and Maritime Commerce Act, Art. 129 *et seq.*); **The Netherlands** (Civil Code, Book 8, Art. 399 *et seq.*); **Norway** (Maritime Code, S. 292 *et seq.*); **Peru** (Commercial Code, Art. 719 *et seq.*); **Russia** (Merchant Shipping Code, Art. 142 *et seq.*); **Slovenia** (Maritime Code, Art. 491 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 246 *et seq.*); **Sweden** (Maritime Code, Chapter 13, S. 42 *et seq.*); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 112 *et seq.*); **USA** (46 U.S.C. § 30703; COGSA, S. 3(3) and (7)); **Venezuela** (Maritime Commerce Act, Art. 232 *et seq.*).

¹²⁵ **Legal history:** **Harter Act**, S. 4.

¹²⁶ **Current law:** **Hague Rules**, Art. 3.3; **Hamburg Rules**, Art. 14; **Rotterdam Rules**, Art. 35; **Algeria** (Maritime Code, Art. 748); **Argentina** (Shipping Act, Art. 298); **Belgium** (Shipping

law and/or a jurisdiction clause. Because positive maritime law does not necessarily allow enforcement of such clauses, this possibility has not been mentioned in the paragraph.

*Paragraph (3) contains a number of principles relating to the contract of carriage of goods by sea which appear in almost all jurisdictions (and/or in commonly applied contract clauses). This is firstly the case in respect of the period of responsibility mentioned in point (a)*¹²⁷. *In that connection, it should be pointed out that, in principle, the carrier is liable from the receipt of the goods until their delivery*¹²⁸. *The carrier's obligation to exercise (at least) due diligence referred to in item (b) is also widely recognised*^{129 130}, just

Code, Art. 2.6.2.5, § 3); **Brazil** (Commercial Code, Art. 578; Water Transportation Act 116/67, Art. 4, § 1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 518); **Chile** (Commercial Code, Art. 1014); **China** (Maritime Code, Art. 72); **Colombia** (Commercial Code, Art. 1601 and 1635); **Denmark** (Merchant Shipping Act, S. 294); **Finland** (Maritime Act, Chapter 13, S. 44); **France** (Transport Code, Art. L5422-3); **Germany** (Commercial Code, § 513); **Greece** (Code of Private Maritime Law, Art. 122.1); **Ibero-America** (IIDM Maritime Model Law, Art. 220); **Korea** (Commercial Act, Art. 852); **Latvia** (Maritime Code, S. 152); **Liberia** (Maritime Law, §122(3)); **Mexico** (Navigation and Maritime Commerce Act, Art. 129); **The Netherlands** (Civil Code, Book 8, Art. 399); **Norway** (Maritime Code, S. 294); **Peru** (Commercial Code, Art. 719); **Russia** (Merchant Shipping Code, Art. 142); **Slovenia** (Maritime Code, Art. 491); **Spain** (Maritime Navigation Act 14/2014, Art. 246); **Sweden** (Maritime Code, Chapter 13, S. 44); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 113); **USA** (46 U.S.C. § 30703(a); COGSA, S. 3(3)); **Venezuela** (Maritime Commerce Act, Art. 232).

¹²⁷ **Current law:** **Hague Rules**, Art. 1(e) and 7; **Hamburg Rules**, Art. 4; **Rotterdam Rules**, Art. 12; **Algeria** (Maritime Code, Art. 739); **Argentina** (Shipping Act, Art. 268 and 284); **Belgium** (Shipping Code, Art. 2.6.2.1, 5° and 2.6.2.10); **Brazil** (Water Transportation Act 116/67, Art. 3); **CEMAC** (CEMAC Merchant Shipping Code, Art. 545-546); **Chile** (Commercial Code, Art. 982-984); **China** (Maritime Code, Art. 46); **Colombia** (Commercial Code, Art. 1606); **Denmark** (Merchant Shipping Act, S. 274); **Finland** (Maritime Act, Chapter 13, S. 24); **Germany** (Commercial Code, § 498(1)); **Greece** (Code of Private Maritime Law, Art. 120 and 132.1-2); **Ibero-America** (IIDM Maritime Model Law, Art. 197 and 202.1); **Latvia** (Maritime Code, S. 134); **Liberia** (Maritime Law, §120(e)); **Norway** (Maritime Code, S. 274); **Slovenia** (Maritime Code, Art. 535); **Spain** (Maritime Navigation Act 14/2014, Art. 279); **Sweden** (Maritime Code, Chapter 13, S. 24); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 103); **USA** (COGSA, S. 1(e)); **Venezuela** (Maritime Commerce Act, Art. 202-203); **Vietnam** (Maritime Code 2015, Art. 170).

¹²⁸ Some provisions provide for a limitation of the temporal scope of mandatory application and/or a definition of the commencement and the termination of the carriage, rather than a definition of the carrier's period of responsibility.

¹²⁹ **Legal history:** **Harter Act**, S. 2-3.

¹³⁰ **Current law:** **Hague Rules**, Art. 3.1; **Hamburg Rules** (implicitly: see Sturley-Fujita-van der Ziel, 78, para 5.004 and 84, para 5.021); **Rotterdam Rules**, Art. 14; **Algeria** (Maritime Code, Art. 770); **Argentina** (Shipping Act, Art. 270 and 272); **Belgium** (Shipping Code, Art. 2.6.2.5, § 1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 525); **China** (Maritime Code, Art. 47); **Colombia** (Commercial Code, Art. 1582 and 1600, somewhat stricter); **Denmark** (Merchant Shipping Act, S. 262, somewhat stricter); **Finland** (Maritime Act, Chapter 13, S. 12, somewhat stricter); **France** (Transport Code, Art. L5422-6); **Germany** (Commercial Code, § 485, somewhat stricter); **Greece** (Code of Private Maritime Law, Art. 132.3, in rather general terms); **Ibero-America** (IIDM Maritime Model Law, Art. 199); **Japan** (Commercial Code, Art. 739); **Korea** (Commercial Act, Art. 794-795); **Latvia** (Maritime Code, S. 135); **Liberia** (Maritime Law, §122(1)); **The Netherlands** (Civil Code, Book 8, Art. 381.1); **Norway** (Maritime Code, S. 262, somewhat stricter); **Slovenia** (Maritime Code, Art. 453); **Sweden** (Maritime Code, Chapter 13, S. 12, somewhat stricter); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 102); **USA** (46 U.S.C. § 30705-30706; COGSA, S. 3(1));

*as are the limitations on the carriage on deck as referred to in item (c)*¹³¹. *Item (d) draws attention to the cases of exemption from liability recognised in both conventions and statutes*¹³². *Item (e) does the same with regard to limitation of liability in favour of the carrier*¹³³. *That these items only mention liability for loss or damage does not exclude that the carrier may also be liable for delay. However, there is even less international uniformity on this*¹³⁴, *so the issue is deliberately not touched upon here. The obligation*

Venezuela (Maritime Commerce Act, Art. 204). Under the common law of **England**, the duty is an implied absolute undertaking (*Kopitoff v Wilson*, (1876) 1 QBD 377 at 380-381).

¹³¹ Under some regimes, deck cargo is considered outside the scope of the mandatory liability rules or is governed by special liability rules; restrictions may also result from contracts of sale, which are, however, outside the scope of the CMI *Lex Maritima*. **Current law:** **Hague Rules**, Art. 1(c); **Hamburg Rules**, Art. 9; **Rotterdam Rules**, Art. 25; **Algeria** (Maritime Code, Art. 774); **Belgium** (Shipping Code, Art. 2.6.2.19); **CEMAC** (CEMAC Merchant Shipping Code, Art. 528); **Chile** (Commercial Code, Art. 1003-1005); **China** (Maritime Code, Art. 53); **Denmark** (Merchant Shipping Act, S. 263 and 284); **Finland** (Maritime Act, Chapter 13, S. 13 and 34); **France** (Transport Code, Art. L5422-7 and L5422-16); **Germany** (Commercial Code, § 486(4) and 500); **Greece** (Code of Private Maritime Law, Art. 135); **Ibero-America** (IIDM Maritime Model Law, Art. 210); **Latvia** (Maritime Code, S. 124 and 144); **Norway** (Maritime Code, S. 263 and 284); **Russia** (Merchant Shipping Code, Art. 138); **Sweden** (Maritime Code, Chapter 13, S. 13 and 34); **Turkey** (Commercial Code, Art. 1151); **Venezuela** (Maritime Commerce Act, Art. 221-222); **Vietnam** (Maritime Code 2015, Art. 170.4.c) and 172).

¹³² **Current law:** **Hague Rules**, Art. 4.1-4; **Hamburg Rules**, Art. 5.4-6; **Rotterdam Rules**, Art. 17.2-3; **Algeria** (Maritime Code, Art. 803); **Argentina** (Shipping Act, Art. 272 and 275); **Belgium** (Shipping Code, Art. 2.6.2.6, § 1-2); **CEMAC** (CEMAC Merchant Shipping Code, Art. 546); **China** (Maritime Code, Art. 51); **Colombia** (Commercial Code, Art. 1609); **Denmark** (Merchant Shipping Act, S. 275 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 25 *et seq.*); **France** (Transport Code, Art. L5422-12); **Latvia** (Maritime Code, S. 136); **Germany** (Commercial Code, § 498 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 202); **Korea** (Commercial Act, Art. 796); **Liberia** (Maritime Law, §123(1)-(3)); **The Netherlands** (Civil Code, Book 8, Art. 383); **Norway** (Maritime Code, S. 275 *et seq.*); **Russia** (Merchant Shipping Code, Art. 166 *et seq.*); **Slovenia** (Maritime Code, Art. 537 and 540); **Sweden** (Maritime Code, Chapter 13, S. 25 *et seq.*); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 104); **Turkey** (Commercial Code, Art. 1179-1182); **USA** (46 U.S.C. § 30706; COGSA, S. 4(1)-(2)); **Venezuela** (Maritime Commerce Act, Art. 205-206).

¹³³ **Current law:** **Hague Rules**, Art. 4.5; **Hague-Visby Rules**, Art. 4.5; **Hague-Visby Rules SDR Protocol**, Art. 4.5; **Hamburg Rules**, Art. 6 and 8; **Rotterdam Rules**, Art. 59-61; **Algeria** (Maritime Code, Art. 805 *et seq.*); **Argentina** (Shipping Act, Art. 278); **Belgium** (Shipping Code, Art. 2.6.2.6, § 5 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 552); **Chile** (Commercial Code, Art. 992); **China** (Maritime Code, Art. 56 *et seq.*); **Denmark** (Merchant Shipping Act, S. 280 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 29 *et seq.*); **France** (Transport Code, Art. L5422-13 *et seq.*); **Germany** (Commercial Code, § 504 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 138); **Ibero-America** (IIDM Maritime Model Law, Art. 243 *et seq.*); **Korea** (Commercial Act, Art. 797); **Latvia** (Maritime Code, S. 140 *et seq.*); **Liberia** (Maritime Law, §123(5)); **The Netherlands** (Civil Code, Book 8, Art. 388); **Norway** (Maritime Code, S. 280 *et seq.*); **Russia** (Merchant Shipping Code, Art. 169 *et seq.*); **Slovenia** (Maritime Code, Art. 550); **Spain** (Maritime Navigation Act 14/2014, Art. 282); **Sweden** (Maritime Code, Chapter 13, S. 29 *et seq.*); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 105); **Turkey** (Commercial Code, Art. 1186); **USA** (COGSA, S. 4(5)); **Venezuela** (Maritime Commerce Act, Art. 211).

¹³⁴ **Current law:** **Hamburg Rules**, Art. 5.2 and 5.4; **Rotterdam Rules**, Art. 21; **Argentina** (Shipping Act, Art. 286); **Belgium** (Shipping Code, Art. 2.6.2.30); **CEMAC** (CEMAC Merchant Shipping Code, Art. 546 *et seq.*); **Chile** (Commercial Code, Art. 985 and 993); **China** (Maritime Code, Art. 50); **Denmark** (Merchant Shipping Act, S. 278); **Finland** (Maritime Act, Chapter 13, S. 28); **Greece** (Code of Private Maritime Law, Art. 133); **Ibero-America** (IIDM Maritime Model Law, Art. 202 and 206); **Latvia** (Maritime Code, S. 138); **Norway**

*referred to in item (f) to notify loss or damage within a specified period is also universal*¹³⁵, *just as the invalidity of certain contractual liability clauses mentioned in item (g)*^{136 137}.

Due to the lack of uniformity, no provision has been included in relation to multimodal transport.

(Maritime Code, S. 278); **Spain** (Maritime Navigation Act 14/2014, Art. 280 and 283); **Sweden** (Maritime Code, Chapter 13, S. 28); **Venezuela** (Maritime Commerce Act, Art. 212 *et seq.*).

¹³⁵ **Current law:** **Hague Rules**, Art. 3.6; **Hamburg Rules**, Art. 19; **Rotterdam Rules**, Art. 23; **Algeria** (Maritime Code, Art. 790); **Belgium** (Shipping Code, Art. 2.6.2.5, § 6); **Chile** (Commercial Code, Art. 10274 *et seq.*); **China** (Maritime Code, Art. 81); **Denmark** (Merchant Shipping Act, S. 288); **Finland** (Maritime Act, Chapter 13, S. 38); **Germany** (Commercial Code, § 510); **Ibero-America** (IIDM Maritime Model Law, Art. 208); **Latvia** (Maritime Code, S. 148); **Liberia** (Maritime Law, §122(6)); **The Netherlands** (Civil Code, Book 8, Art. 492); **Norway** (Maritime Code, S. 288); **Russia** (Merchant Shipping Code, Art. 162); **Slovenia** (Maritime Code, Art. 526); **Spain** (Maritime Navigation Act 14/2014, Art. 285); **Sweden** (Maritime Code, Chapter 13, S. 38); **Turkey** (Commercial Code, Art. 1185); **USA** (COGSA, S. 3(6)).

¹³⁶ **Legal history:** **Harter Act**, S. 1-2.

¹³⁷ **Current law:** **Hague Rules**, Art. 3.8; **Hamburg Rules**, Art. 23; **Rotterdam Rules**, Art. 79; **Algeria** (Maritime Code, Art. 811); **Argentina** (Shipping Act, Art. 259, para 2 and 280); **Belgium** (Shipping Code, Art. 2.6.2.5, § 8); **CEMAC** (CEMAC Merchant Shipping Code, Art. 571); **Chile** (Commercial Code, Art. 929); **Denmark** (Merchant Shipping Act, S. 254); **Finland** (Maritime Act, Chapter 13, S. 4); **France** (Transport Code, Art. L5422-15); **Germany** (Commercial Code, § 512); **Greece** (Code of Private Maritime Law, Art. 119.1); **Ibero-America** (IIDM Maritime Model Law, Art. 261); **Korea** (Commercial Act, Art. 799); **Latvia** (Maritime Code, S. 115); **Liberia** (Maritime Law, §122(8)); **The Netherlands** (Civil Code, Book 8, Art. 382); **Norway** (Maritime Code, S. 254); **Russia** (Merchant Shipping Code, Art. 116 and 175); **Slovenia** (Maritime Code, Art. 559-560); **Spain** (Maritime Navigation Act 14/2014, Art. 277.1); **Sweden** (Maritime Code, Chapter 13, S. 4); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 117); **Turkey** (Commercial Code, Art. 1243); **USA** (46 U.S.C. § 30704-30705; COGSA, S. 3(8)); **Venezuela** (Maritime Commerce Act, Art. 219); **China** (Maritime Code, Art. 44). At the common law of **England**, freedom of contract prevails in common carriage.

Principle 18 – Contract for the carriage of passengers

- (1) A transport contract for the carriage of passengers by sea is a contract under which a carrier undertakes, in exchange for the payment of freight, to carry passengers and their luggage by sea from one place to another.
- (2) The positive maritime law may implement, inter alia, the following Principles:
 - (a) The passenger is entitled to obtain from the carrier a passenger ticket and, whether or not included therein, a receipt for his luggage.
 - (b) The carrier is liable for loss suffered as a result of the death of or personal injury to a passenger and loss of or damage to luggage or vehicles under specific conditions and within specific limits.
 - (c) Notice of loss or damage to luggage must be given within a specific time limit.
 - (d) The carrier shall maintain insurance or other financial security and each ship shall carry a certificate relating thereto.
 - (e) Any clause in a contract of carriage relieving the carrier from mandatorily defined liability or lessening such liability shall be null and void.

Commentary

For the carriage of passengers by sea, an internationally harmonised regime is laid down in the Athens (PAL) Convention. The 2002 Protocol amending the Athens Convention (PAL PROT 2002) currently has 34 member states, representing more than 44% of the world fleet. The consolidated regime (PAL 2002) has been integrated into EU law¹³⁸. However, there is no fully uniform global system.

Nevertheless, Principle 18 sets forth a number of Principles relating to the regulation of the contract of carriage of passengers by sea which are mainly derived from the most widely applied version of the PAL Convention. The Principle does not address the additional rules on consumer protection found in some legal systems.

The definition in paragraph (1) is supported by numerous provisions of national positive maritime law¹³⁹.

¹³⁸ **Regulation (EC) No 392/2009** of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; see also **Belgium** (Shipping Code, Art. 2.6.2.35-36); **Denmark** (Merchant Shipping Act, S. 403a); **Finland** (Maritime Act, Chapter 13, S. 1-2); **Germany** (Commercial Code, § 536(2)); **Greece** (Code of Private Maritime Law, Art. 153); **Latvia** (Maritime Code, S. 239(3)); **Norway** (Maritime Code, S. 418); **Spain** (Maritime Navigation Act 14/2014, Art. 298.1); **Sweden** (Maritime Code, Chapter 15, S. 1-3); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 118); **UK** (Merchant Shipping Act, S. 183).

¹³⁹ **Current law:** **Algeria** (Maritime Code, Art. 821); **Belgium** (Shipping Code, Art. 2.6.2.34,

Numerous provisions of the positive maritime law also support the references in paragraph (2) to the right of passengers to obtain a ticket and a receipt for their baggage (item (a)); this Principle is indeed based on numerous national provisions, although an express obligation to issue such documents does not seem to apply universally)¹⁴⁰, the carrier's liability (item (b))^{141 142}, the obligation to notify damage or loss of luggage (item (c))¹⁴³, the obligation

4°); **Chile** (Commercial Code, Art. 1044); **China** (Maritime Code, Art. 107); **France** (Transport Code, Art. L5421-1); **Greece** (Code of Private Maritime Law, Art. 152.1); **Ibero-America** (IIDM Maritime Model Law, Art. 286-287); **Korea** (Commercial Act, Art. 817); **Lithuania** (Law of Merchant Shipping, Art. 2.12); **Mexico** (Navigation and Maritime Commerce Act, Art. 139); **The Netherlands** (Civil Code, Book 8, Art. 500.e); **Russia** (Merchant Shipping Code, Art. 177.1); **Slovenia** (Maritime Code, Art. 587); **Spain** (Maritime Navigation Act 14/2014, Art.287.1); **Turkey** (Commercial Code, Art. 1247(1)); **Venezuela** (Maritime Commerce Act, Art. 276); **Vietnam** (Maritime Code 2015, Art. 200.1).

¹⁴⁰ **Current law:** **Algeria** (Maritime Code, Art. 826 *et seq.*); **Argentina** (Shipping Act, Art. 318 *et seq.*); **Belgium** (Shipping Code, Art. 2.6.2.54); **CEMAC** (CEMAC Merchant Shipping Code, Art. 588 and 603); **Chile** (Commercial Code, Art. 1048 *et seq.*); **China** (Maritime Code, Art. 110, on the evidential value alone); **Greece** (Code of Private Maritime Law, Art. 152.2); **Ibero-America** (IIDM Maritime Model Law, Art. 289 *et seq.*); **Italy** (Navigation Code, Art. 396 *et seq.*); **Lithuania** (Law of Merchant Shipping, Art. 31.2); **Mexico** (Navigation and Maritime Commerce Act, Art. 141); **The Netherlands** (Civil Code, Book 8, Art. 528, optionally); **Russia** (Merchant Shipping Code, Art. 179); **Slovenia** (Maritime Code, Art. 589 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 288 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 279 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 201).

¹⁴¹ **Current law:** **PAL 1974**, Art. 3 and 7-8; **PAL 2002**, Art. 3 and 7-8; **Algeria** (Maritime Code, Art. 841 *et seq.*); **Argentina** (Shipping Act, Art. 330-331 and 337); **Belgium** (Shipping Code, Art. 2.6.2.40); **CEMAC** (CEMAC Merchant Shipping Code, Art. 573 *et seq.*); **Chile** (Commercial Code, Art. 1057 *et seq.*); **China** (Maritime Code, Art. 114 *et seq.*); **Colombia** (Commercial Code, Art. 1596); **Denmark** (Merchant Shipping Act, S. 418 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 11 *et seq.*); **France** (Transport Code, Art. L5421-2 *et seq.*); **Germany** (Commercial Code, § 538 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 155 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 288 and 302 *et seq.*); **Italy** (Navigation Code, Art. 408 *et seq.*); **Latvia** (Maritime Code, S. 240 *et seq.*); **Liberia** (Maritime Law, §142); **Lithuania** (Law of Merchant Shipping, Art. 35); **Mexico** (Navigation and Maritime Commerce Act, Art. 142); **The Netherlands** (Civil Code, Book 8, Art. 504 *et seq.*); **Norway** (Maritime Code, S. 418a *et seq.*); **Russia** (Merchant Shipping Code, Art. 186 *et seq.*); **Slovenia** (Maritime Code, Art. 601 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 298 *et seq.*); **Sweden** (Maritime Code, Chapter 15, S. 19 *et seq.*); **Turkey** (Commercial Code, Art. 1256 and 1262 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 291 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 203 *et seq.*).

¹⁴² In specific cases the carrier loses the right to limit liability. **Current law:** **PAL 1974**, Art. 13; **PAL 2002**, Art. 13; **Algeria** (Maritime Code, Art. 849); **Belgium** (Shipping Code, Art. 2.6.2.44); **CEMAC** (CEMAC Merchant Shipping Code, Art. 578); **Chile** (Commercial Code, Art. 1071); **China** (Maritime Code, Art. 118); **Denmark** (Merchant Shipping Act, S. 424); **Finland** (Maritime Act, Chapter 13, S. 17); **Germany** (Commercial Code, § 545); **Ibero-America** (IIDM Maritime Model Law, Art. 314); **Latvia** (Maritime Code, S. 248); **Liberia** (Maritime Law, §152); **Mexico** (Navigation and Maritime Commerce Act, Art. 142, last para); **The Netherlands** (Civil Code, Book 8, Art. 504c); **Norway** (Maritime Code, S. 424); **Russia** (Merchant Shipping Code, Art. 193); **Slovenia** (Maritime Code, Art. 611); **Sweden** (Maritime Code, Chapter 15, S. 25); **Venezuela** (Maritime Commerce Act, Art. 302); **Vietnam** (Maritime Code 2015, Art. 210).

¹⁴³ **Current law:** **PAL 1974**, Art. 15; **PAL 2002**, Art. 15; **Algeria** (Maritime Code, Art. 851-852); **Argentina** (Shipping Act, Art. 338); **Belgium** (Shipping Code, Art. 2.6.2.39); **CEMAC** (CEMAC Merchant Shipping Code, Art. 580); **China** (Maritime Code, Art. 119); **Germany** (Commercial Code, § 549); **Ibero-America** (IIDM Maritime Model Law, Art. 316); **Latvia** (Maritime Code, S. 249); **Liberia** (Maritime Law, §154); **The Netherlands** (Civil Code, Book 8, Art. 511); **Slovenia** (Maritime Code, Art. 617); **Turkey** (Commercial Code, Art. 1269);

to carry insurance (item (d))¹⁴⁴ and the invalidity of alternative contractual terms (item (e))¹⁴⁵.

Venezuela (Maritime Commerce Act, Art. 304); **Vietnam** (Maritime Code 2015, Art. 213).

¹⁴⁴ **Current law:** **PAL 2002**, Art. 4bis; **Belgium** (Shipping Code, Art. 2.3.2.19 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 602); **Greece** (Code of Private Maritime Law, Art. 159); **Latvia** (Maritime Code, S. 241); **Mexico** (Navigation and Maritime Commerce Act, Art. 143); **The Netherlands** (Civil Code, Book 8, Art. 529 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 300); **Turkey** (Commercial Code, Art. 1259); **Vietnam** (Maritime Code 2015, Art. 203.3).

¹⁴⁵ **Current law:** **PAL 1974**, Art. 18; **PAL 2002**, Art. 18; **Algeria** (Maritime Code, Art. 824); **Argentina** (Shipping Act, Art. 339); **Belgium** (Shipping Code, Art. 2.6.2.37); **CEMAC** (CEMAC Merchant Shipping Code, Art. 583 and 614); **Chile** (Commercial Code, Art. 1075); **China** (Maritime Code, Art. 126); **Denmark** (Merchant Shipping Act, S. 430); **Finland** (Maritime Act, Chapter 13, S. 21); **Germany** (Commercial Code, § 551); **Greece** (Code of Private Maritime Law, Art. 157); **Ibero-America** (IIDM Maritime Model Law, Art. 317); **Italy** (Navigation Code, Art. 415); **Latvia** (Maritime Code, S. 251); **Liberia** (Maritime Law, §157); **Mexico** (Navigation and Maritime Commerce Act, Art. 138); **The Netherlands** (Civil Code, Book 8, Art. 520); **Norway** (Maritime Code, S. 430); **Russia** (Merchant Shipping Code, Art. 178); **Slovenia** (Maritime Code, Art. 619); **Spain** (Maritime Navigation Act 14/2014, Art. 298.2); **Sweden** (Maritime Code, Chapter 15, S. 35); **Venezuela** (Maritime Commerce Act, Art. 306).

PART 6

MARITIME INCIDENTS

Principle 19 – Collisions

- (1) **If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.**
 - (2) **If two or more vessels are in fault the liability of each vessel shall be in proportion to the degree of the faults respectively committed.**
 - (3) **If, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability is apportioned equally.**
 - (4) **If the collision is accidental, if it is caused by force majeure, or if the cause of the collision is left in doubt, the damages are borne by those who have suffered them.**
-

Commentary

This Principle is derived from the International Convention for the Unification of Certain Rules of Law Relating to Collisions between Vessels, done at Brussels on 23 September 1910. This convention, which was prepared by the CMI, continues to be a great success worldwide. Almost 90 states are bound by it. This makes it the most widely distributed CMI Convention. However, the United States is not a Party.

In principle, the Collision Convention only applies when all the vessels involved in the collision belong to Convention States. Where all the interested parties are nationals of the same State as the State of the court handling the case, national law and not the Convention applies¹⁴⁶. National legislators are thus free to develop their own rules for collisions with a purely national dimension. It appears, however, that many countries have aligned their own legislation with the wording of the Collision Convention¹⁴⁷.

The wording of the Principle presented here is based on a non-authentic translation of the Convention text¹⁴⁸ (the only authentic version of which is

¹⁴⁶ Collision Convention 1910, Art. 12.

¹⁴⁷ **Current law:** see also the references to the Collision Convention in **Belgium** (Shipping Code, Art. 2.7.2.3); **Greece** (Code of Private Maritime Law, Art. 199.1); **Mexico** (Navigation and Maritime Commerce Act, Art. 154); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 121).

¹⁴⁸ As reproduced in the *CMI Handbook of Maritime Conventions*, 2004 Vancouver Edition. This does not alter the fact that the wording of some of the Convention's provisions is rather imprecise (see, for example, Berlingieri 2015, 16).

in French). In line with the general methodology underlying the CMI Lex Maritima, the rules set out here are deliberately limited to the fundamental liability principles of the Convention. This should not be interpreted as implying that the other provisions of the Collision Convention do not contain globally accepted rules.

Paragraph (1) of the Principle reproduces Article 3 of the Collision Convention. The provision establishes the principle of fault or negligence based liability, which is in line with the general tort law of most countries and already appeared in some national laws before 1910¹⁴⁹. That the rule under discussion is in line with general liability law partly explains the major success of the 1910 Collision Convention. Unsurprisingly, the Convention's fault based liability rule has been confirmed in various national legal provisions¹⁵⁰. The rule was also reaffirmed in the 1960 UNECE Convention on collisions between inland waterway vessels in Europe¹⁵¹. This further strengthens the authority of the Principle (although inland navigation law as such is not touched upon by the CMI Lex Maritima).

Paragraph (2) adopts the first sentence of the first paragraph of the Collision Convention's Article 4. The harmonisation of the liability regime for both-to-blame collisions was on the agenda of the CMI from its creation and was already discussed at the very first conference for the unification of maritime law in Antwerp in 1885¹⁵². The introduction of the rule was the main contribution of the CMI Convention of 1910 to the international unification of the law of collisions. It confirmed the pre-existing regime of

¹⁴⁹ **Legal history:** **Belgium** (Maritime Act 1879, Art. 228); **France** (Ordonnance de la Marine 1681, III.VII, Art. 11; Code de commerce 1807, Art. 407). It should be observed, however, that in pre-modern maritime law fault-based collision liability was by no means considered a general principle, and that the law of collision was rethought in response to the rise of steam navigation (see Owen 1977, 759-772).

¹⁵⁰ **Current law:** **Algeria** (Maritime Code, Art. 277); **Argentina** (Shipping Act, Art. 359); **Belgium** (Shipping Code, Art. 2.7.2.4); **Brazil** (Commercial Code, Art. 749); **CEMAC** (CEMAC Merchant Shipping Code, Art. 222); **Chile** (Commercial Code, Art. 1121); **China** (Maritime Code, Art. 168); **Croatia** (Maritime Code, Art. 750(1)); **Denmark** (Merchant Shipping Act, Art. 161.1); **Finland** (Maritime Act, S 2); **France** (Transport Code, Art. L5131-3); **Germany** (Commercial Code, § 570); **Greece** (Code of Private Maritime Law, Art. 201.1 and 202.1); **Italy** (Navigation Code, Art. 483); **Japan** (Commercial Code, Art. 788); **Korea** (Commercial Act, Art. 878); **Latvia** (Maritime Code, Art. 60.1); **Lithuania** (Law on Merchant Shipping, Art. 57.2); **Malta** (Merchant Shipping Act, S; 360(2)); **Morocco** (Maritime Commerce Code, Art. 294); **The Netherlands** (Civil Code, Book 8, Art. 544); **Norway** (Maritime Code, S. 161); **Peru** (Commercial Code, Art. 839); **Russia** (Merchant Shipping Code, Art. 312); **Slovenia** (Maritime Code, Art. 746); **Spain** (Maritime Navigation Act, Art. 340); **Sweden** (Maritime Code, Chapter 8, S. 1); **Turkey** (Commercial Code, Art. 1288); **UK** (Merchant Shipping Act, S. 187(4)); **Venezuela** (Maritime Commerce Act, Art. 321); **Vietnam** (Maritime Code 2015, Art. 208.2).

¹⁵¹ UNECE Convention Relating to the Unification of Certain Rules concerning Collisions in Inland Navigation (Geneva, 15 March 1960), Arts. 2.1 and 3.

¹⁵² See *The Travaux Préparatoires of the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels*, 23 September 1910, and of *the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships*, 10 May 1952 (Antwerp, 1997), 6 et seq.; see also Berlingieri 2015, 3.

several countries¹⁵³ and replaced several alternative regimes, including the automatic apportionment of liability by halves¹⁵⁴. The scope of this rule of the Convention has also been extended through national provisions¹⁵⁵. The reason why the USA never joined the Convention is that cargo interests opposed its principle of proportionate liability in both-to-blame collision cases, preferring, instead, the imposition of joint and several liability upon both shipowners¹⁵⁶. However, the USA eventually joined the international trend by means of a ruling of the Supreme Court in 1975 which endorsed the principle of proportionate fault liability¹⁵⁷, so that on this point US law was deliberately aligned with the convention regime. However, the Principle presented here does not adopt the more detailed rules of the Collision Convention on the existence (or not) of a joint and several liability¹⁵⁸. With regard to damage to the ships and to the cargo and other property on board, the Convention provides that the ships in fault shall only be liable to pay compensation up to the amount of their share of the faults committed. This rule is still not accepted in the USA¹⁵⁹, and for that reason the relevant provisions of the Convention are not presented here as part of the *Lex Maritima*.

Paragraph (3) reflects the second sentence of the first paragraph of the Collision Convention's Article 4. This rule, which covers the case of 'inscrutable fault', does not seem to have given rise to any controversy.

¹⁵³ **Legal history:** Belgium (Maritime Act 1879, Art. 229); Denmark; Germany; Greece; Norway; Portugal; Rumania; Sweden (see Owen 1977, 794).

¹⁵⁴ See *The Travaux Préparatoires of the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels, 23 September 1910, and of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships*, 10 May 1952 (Antwerp, 1997), 67-69; Berlingieri 2015, 17-19.

¹⁵⁵ **Current law:** Algeria (Maritime Code, Art. 278, first para); Argentina (Shipping Act, Art. 360, first para); Belgium (Shipping Code, Art. 2.7.2.5, § 1); Canada (Marine Liability Act, S. 17(1)); CEMAC (CEMAC Merchant Shipping Code, Art. 223.1); Chile (Commercial Code, Art. 1122); China (Maritime Code, Art. 169); Croatia (Maritime Code, Art. 752(1)); Denmark (Merchant Shipping Act, Art. 161.2); Finland (Maritime Act, S. 2); France (Transport Code, Art. L5131-4); Germany (Commercial Code, § 571(1)); Greece (Code of Private Maritime Law, Art. 203.2); Italy (Navigation Code, Art. 484); Japan (Commercial Code, Art. 788); Korea (Commercial Act, Art. 879); Latvia (Maritime Code, Art. 60.2); Lithuania (Law on Merchant Shipping, Art. 57.4); Malta (Merchant Shipping Act, S. 360(1)); Morocco (Maritime Commerce Code, Art. 295); The Netherlands (Civil Code, Book 8, Art. 545.2); Nigeria (Merchant Shipping Act, S. 340(1)); Norway (Maritime Code, S. 161); Russia (Merchant Shipping Code, Art. 313.1); Slovenia (Maritime Code, Art. 748); Spain (Maritime Navigation Act, Art. 341.1); Sweden (Maritime Code, Chapter 8, S. 1); Turkey (Commercial Code, Art. 1289, para 1, sentence 1); UK (Merchant Shipping Act, S. 187(1)); Venezuela (Maritime Commerce Act, Art. 322); Vietnam (Maritime Code 2015, Art. 208.2).

¹⁵⁶ See Owen 1977, 797-798.

¹⁵⁷ *United States v. Reliable Transfer Co. (The Mary A. Whalen)*, 421 US 307, 1975 AMC 541; Schoenbaum 2004 II, 106-107, § 14-4.

¹⁵⁸ **Collision Convention 1910**, Art. 4, second and third paras; see also UNECE Convention Relating to the Unification of Certain Rules concerning Collisions in Inland Navigation (Geneva, 15 March 1960), Art. 4.1.

¹⁵⁹ See Bonassies-Scapel 2016, 334, para 395; Herber 2016, 391-392; Rabe-Bahnsen 2018, 1338-1339, para 18; Schoenbaum 2004 II, 128-130, § 14-8.

It already appeared in national laws before 1910¹⁶⁰ and continues to be confirmed in the current ones¹⁶¹ as well as in US case law¹⁶² and the UNECE Convention on collisions in inland navigation¹⁶³.

Paragraph (4) is taken from the first paragraph of Article 2 of the Collision Convention. Since the rule – which covers, inter alia, the so-called ‘inevitable accident’ cases – is only a logical, in fact entirely obvious consequence of the negligence-based liability system, and is, furthermore, in many countries perfectly in line with the general law of torts, some consider it superfluous¹⁶⁴. However, it is not incorrect, and given the diversity of liability regimes in history, its express confirmation in earlier¹⁶⁵ as well as current¹⁶⁶ national statutes, and its inclusion in the successful 1910 Convention, it is useful to repeat it here. It also features in the UNECE Convention on collisions in inland navigation, for that matter¹⁶⁷.

¹⁶⁰ **Legal history:** France (Code de commerce 1807, Art. 407).

¹⁶¹ **Current law:** Algeria (Maritime Code, Art. 278, second para); Argentina (Shipping Act, Art. 360, first para); Belgium (Shipping Code, Art. 2.7.2.5, § 1); Canada (Marine Liability Act, S. 17(1)); CEMAC (CEMAC Merchant Shipping Code, Art. 223.1); China (Maritime Code, Art. 169); Colombia (Commercial Code, Art. 1533); Croatia (Maritime Code, Art. 752(2)); Denmark (Merchant Shipping Act, Art. 161.2); Finland (Maritime Act, S 2); France (Transport Code, Art. L5131-4); Germany (Commercial Code, § 571(1)); Greece (Code of Private Maritime Law, Art. 203.2); Italy (Navigation Code, Art. 484); Japan (Commercial Code, Art. 788); Korea (Commercial Act, Art. 879); Latvia (Maritime Code, Art. 60.3); Lithuania (Law on Merchant Shipping, Art. 57.4); Malta (Merchant Shipping Act, S. 360(1)); Morocco (Maritime Commerce Code, Art. 295); The Netherlands (Civil Code, Book 8, Art. 545.2); Nigeria (Merchant Shipping Act, S. 340(1)(a)); Norway (Maritime Code, S. 161); Russia (Merchant Shipping Code, Art. 313.1); Slovenia (Maritime Code, Art. 748); Spain (Maritime Navigation Act, Art. 341.2); Sweden (Maritime Code, Chapter 8, S. 1); Turkey (Commercial Code, Art. 1289, para 1, sentence 2); UK (Merchant Shipping Act, S. 187(2)); Venezuela (Maritime Commerce Act, Art. 322); Vietnam (Maritime Code 2015, Art. 208.2). The Chilean Commercial Code does not mention the rule.

¹⁶² *Citadel Shipping Co. v. Consolidated Grain* 1983 AMC 1721; Tetley 2002, 235.

¹⁶³ UNECE Convention Relating to the Unification of Certain Rules concerning Collisions in Inland Navigation (Geneva, 15 March 1960), Art. 4.2.

¹⁶⁴ Bonassies-Scapel 2016, 332, para 392; Rabe 2000, 980, para 1; Rabe-Bahnsen 2018, 1287, para 2.

¹⁶⁵ **Legal history:** Belgium (Maritime Act 1879, Art. 228); France (Code de commerce 1807, Art. 407).

¹⁶⁶ **Current law:** Algeria (Maritime Code, Art. 281); Argentina (Shipping Act, Art. 358); Belgium (Shipping Code, Art. 2.7.2.7); Brazil (Commercial Code, Art. 750); CEMAC (CEMAC Merchant Shipping Code, Art. 221); Chile (Commercial Code, Art. 1120); China (Maritime Code, Art. 167); Colombia (Commercial Code, Art. 1531); Croatia (Maritime Code, Art. 755); Denmark (Merchant Shipping Act, Art. 162); Finland (Maritime Act, S 4); France (Transport Code, Art. L5131-3); Italy (Navigation Code, Art. 482); Korea (Commercial Act, Art. 877); Latvia (Maritime Code, Art. 59); Lithuania (Law on Merchant Shipping, Art. 57.3); Morocco (Maritime Commerce Code, Art. 293); The Netherlands (Civil Code, Book 8, Art. 543); Norway (Maritime Code, S. 162); Peru (Commercial Code, Art. 843); Russia (Merchant Shipping Code, Art. 311.1); Slovenia (Maritime Code, Art. 752); Sweden (Maritime Code, Chapter 8, S. 2); Turkey (Commercial Code, Art. 1287, para 1); Venezuela (Maritime Commerce Act, Art. 321); Vietnam (Maritime Code 2015, Art. 208.3).

¹⁶⁷ UNECE Convention Relating to the Unification of Certain Rules concerning Collisions in Inland Navigation (Geneva, 15 March 1960), Art. 2.2.

Principle 20 – Salvage

- (1) Voluntary assistance to a ship in danger constitutes a salvage operation.
 - (2) Salvage operations which have had a useful result give right to a salvage reward.
 - (3) The salvage reward shall not exceed the salvaged value of the ship and other property.
 - (4) No salvage reward is due if the salvage operation has had no useful result.
 - (5) The salvage reward shall be fixed taking into account the relevant circumstances and with a view to encouraging salvage operations.
 - (6) The positive maritime law or contractual arrangements may provide for compensation for the costs incurred by a salvor to prevent or limit damage to the environment.
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Commentary

Whereas in pre-industrial times rules on the seizure of shipwrecks (jus naufragii) and on compensation for rescuers of shipwrecks can be found¹⁶⁸, today's salvage law crystallized in the nineteenth century, with the development of steam navigation. Around the middle of the 19th century, steam tugboats were developed and some companies focused on providing assistance to ships and cargoes in distress. However, the lack of uniform regulations and the existence of a multitude of national laws gave rise to innumerable conflicts between laws. The Comité Maritime International responded to the need for international harmonisation by establishing, together with the Collision Convention, the 1910 Salvage Convention. Just as the Collision Convention, the 1910 Salvage Convention was a great success: it was immediately followed by the most important maritime nations, so that it was labelled as a true 'international law'¹⁶⁹, and it became binding on more than 80 countries. The 1910 Salvage Convention was based on the 'No Cure, No Pay' principle: no salvage fee is due if the salvage operations do not produce a useful result ('un résultat utile' in the authentic French version). By adopting this principle, the international community aligned itself with English (and US) law and departed from earlier views in French law¹⁷⁰. The Convention added that when a salvage remuneration is due, it may under no circumstances exceed the value of the property salvaged¹⁷¹.

In the aftermath of the environmental disaster with the oil tanker Amoco Cadiz in 1978, the IMO asked the Comité Maritime International to prepare a revision of the 1910 Salvage Convention. It was generally felt that an overly strict application of the 'No Cure No Pay' principle no longer met the

¹⁶⁸ See details in Brice, 3-14, paras. 1-07-1-36; Tetley 2002, 321-322;

¹⁶⁹ Smeesters-Winkelmolen III, 388, para 1206.

¹⁷⁰ See, among others, Tetley 2002, 323-326.

¹⁷¹ **Salvage Convention 1910**, Art. 2.

needs of the time. It was not considered appropriate to discourage salvage companies in cases where it is clear that the ship or cargo can no longer be saved, but where it is nevertheless worthwhile to try to prevent or limit environmental damage. The arrangement prepared by the CMI eventually led to the adoption, within the IMO, of the 1989 Salvage Convention. In the revision of the 1910 Salvage Convention, the principle was maintained that only the salvor who has achieved a useful result is entitled to a salvage reward. Likewise, the 1989 Convention confirmed that the salvage reward shall not exceed the salvaged value of the vessel. However, a right to special compensation for acts that prevent or minimise damage to the environment was added.

*Meanwhile, 78 states, representing 62.23% of the gross tonnage of the world fleet, are parties to the 1989 Salvage Convention (including the USA). The Convention is therefore regarded as a success. However, the 1910 Convention remains equally relevant, since it continues to bind more than 80 parties (including, admittedly, States that also became parties to the 1989 Convention). It follows that both Conventions should be taken into account when identifying the relevant Lex Maritima Principles. In doing so, consideration should also be given to the national laws that have introduced or extended the Conventions, or are analogous to them¹⁷². A fourth source of the Lex Maritima relating to salvage is provided by the model contracts in force in the maritime sector. The best known is the Lloyd's Open Form (LOF), which is regularly reviewed. The LOF is headed 'No Cure, No Pay' and thus immediately confirms the central principle. Some countries use their own standard conditions, which are also based on the 'No Cure, No Pay' principle¹⁷³. US case law considers the general maritime law of salvage a part of the *jus gentium* or customary international law¹⁷⁴. The latter confirms that the matter dealt with here, too, is indeed based on deeper, common roots.*

The six sub-Principles proposed here form the core of the law relating to salvage operations, and relate more specifically to the question of the remuneration that the salvor can claim. As already mentioned¹⁷⁵, the law relating to salvage differs fundamentally from the rules of civil law relating to the negotiorum gestio and the locatio operis faciendi. Incidentally, some

¹⁷² For the international scope of the Conventions, which limit the role that can be played by the national legislature, see **Salvage Convention 1910**, Art. 15; **Salvage Convention 1989**, Art. 2 and 30. See also the mere reference to the Salvage Convention 1989 in **Belgium** (Shipping Code, Art. 2.7.5.5); **Greece** (Code of Private Maritime Law, Art. 196.1); **Lithuania** (Law on Merchant Shipping, Art. 55); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 121); **UK** (Merchant Shipping Act, S. 224); see also **Mexico** (Navigation and Maritime Commerce Act, Art. 166).

¹⁷³ See, for example, the U.S. Open Form Salvage Agreement, the Salvage Agreement (No Cure - No Pay) of the Japan Shipping Exchange, and the French Formule Villeneau.

¹⁷⁴ Schoenbaum 2004 II, 164, para 16-1, with references.

¹⁷⁵ See the Commentary of Principle 1 above.

national maritime laws expressly confirm this¹⁷⁶. As already mentioned, it is in principle possible to deviate by contract from the rules of positive law concerning salvage, and to fix the amount of remuneration by agreement between the parties¹⁷⁷. Therefore, the Principles proposed here in no way reflect mandatory norms.

To begin with, the notion of salvage should be clarified. Paragraph (1) proposes a definition of operations which in any case constitute salvage. The most important requirement is that there should be a ship in danger. This rule, which has been considered 'the very foundation' of the legal regime of salvage¹⁷⁸, is confirmed in the convention provisions¹⁷⁹, national laws¹⁸⁰, case law¹⁸¹ and doctrine¹⁸². The voluntary nature of the salvage operation is also important, because if the service is provided on the basis of a pre-existing legal or contractual obligation (for example, where a tug merely fulfils its towage contract), usually no salvage reward can be claimed¹⁸³.

¹⁷⁶ **Current law:** **Belgium** (Shipping Code, Art. 2.7.5.5, § 3); **The Netherlands** (Civil Code, Book 8, Art. 577, concerning *negotiorum gestio* only).

¹⁷⁷ **Current law:** **Salvage Convention 1910**, Art. 6; **Salvage Convention 1989**, Art. 6 and 7 (and Berlingieri 2015, 86-90); compare the laws of, for example, **Algeria** (Maritime Code, Art. 343); **Belgium** (Shipping Code, Art. 2.7.5.6); **Brazil** (Law 7.203/1984, Art. 10); **CEMAC** (CEMAC Merchant Shipping Code, Art. 248); **Chile** (Commercial Code, Art. 1130); **Croatia** (Maritime Code, Art. 774); **Finland** (Maritime Act, S. 3); **France** (Transport Code, Art. L5132-1, I); **Korea** (Maritime Act, Art. 883); **Morocco** (Maritime Commerce Code, Art. 305); **Nigeria** (Merchant Shipping Act, S. 390(5)); **Portugal** (Decree-Law No. 203/98, Art. 2.1); **Slovenia** (Maritime Code, Art. 758); **Sweden** (Maritime Code, Chapter 16, S. 3); **Venezuela** (Maritime Commerce Act, Art. 343).

¹⁷⁸ Bonassies-Scapel 2016, 427, para 496.

¹⁷⁹ **Current law:** **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Art. 1(a).

¹⁸⁰ **Current law:** **Algeria** (Maritime Code, Art. 332); **Belgium** (Shipping Code, Art. 2.7.5.1, 1°); **Brazil** (Law 7.203/1984, Art. 1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 243.1); **Chile** (Commercial Code, Arts. 1128, 1° and 1136); **China** (Maritime Code, Art. 171); **Colombia** (Commercial Code, Art. 1545); **Croatia** (Maritime Code, Art. 760 and 761, I)); **Denmark** (Merchant Shipping Act, S. 441.1); **Finland** (Maritime Act, S. 1.1); **Germany** (Commercial Code, § 574, I); **Italy** (Navigation Code, Art. 491); **Korea** (Maritime Act, Art. 882); **Latvia** (Maritime Code, Art. 252.1); **Mexico** (Navigation and Maritime Commerce Act, Art. 161); **Morocco** (Maritime Commerce Code, Art. 300); **The Netherlands** (Civil Code, Book 8, Art. 551.a); **Nigeria** (Merchant Shipping Act, S. 387); **Norway** (Maritime Code, Art. 441, a); **Portugal** (Decree-Law No. 203/98, Art. 1.1.a)); **Russia** (Merchant Shipping Code, Art. 337.2, 1); **Spain** (Maritime Navigation Act 14/2014, Art. 358.1); **Sweden** (Maritime Code, Chapter 16, S. 1.1); **Turkey** (Commercial Code, Art. 1298(1)); **Vietnam** (Maritime Code 2015, Art. 185.1).

¹⁸¹ **Current law:** see generally Tetley 2002, 332; **France** (see references in Bonassies-Scapel 2016, 427-428, paras 496-428; Rodière 1972, 182-183, para 162); **UK** (see references in Baatz-Campàs-Debattista-Gürses-Hjalmarsson-Lista-Lorenzon-Serdy-Tsimplis 2018, 243; Bishop, 485-487; Kennedy-Rose, 180-193, paras 5.001-5.024); **USA** (see references in Brice, 55-57, paras 1-171-1-174; Schoenbaum 2004 II, 165-166, § 16-1).

¹⁸² **Current law:** **Canada** (Gold-Chircop-Kindred, 606-607); **France** (Bonassies-Scapel 2016, 427-428, paras. 496-428; Rodière 1972, 182-183, para 162); **UK** (Kennedy-Rose, 180-193, paras 5.001-5.024).

¹⁸³ **Current law:** **Salvage Convention 1910**, Art. 4; **Salvage Convention 1989**, Art. 17 and in various national laws: **Algeria** (Maritime Code, Art. 339); **Argentina** (Navigation Act, Art. 376); **Brazil** (Law 7.203/1984, Art. 11); **Belgium** (Shipping Code, Art. 2.7.5.18); **CEMAC** (CEMAC Merchant Shipping Code, Art. 243.1 and 246); **Chile** (Commercial Code, Art. 1150); **Croatia** (Maritime Code, Art. 777); **Denmark** (Merchant Shipping Act, S. 450); **Finland**

However, national law may provide otherwise specifically with regard to public authorities¹⁸⁴; still, such national laws would not be incompatible with the Principle enunciated here, which does not intend to provide an exhaustive definition. Faithful to the methodology used in the drafting of these Principles, the definition has indeed been kept to a minimum. For example, it does not specify the waters in which salvage operations can be carried out¹⁸⁵, or whether inland vessels or other property may also be salvaged¹⁸⁶. There is no overall uniformity or unanimity on these issues, although the general tendency of the 1989 Salvage Convention was to extend the scope of the regime on salvage.

Paragraph (2) expresses the basic principle according to which salvage operations which had a useful result give right to a salvage reward. The wording is closely aligned with that of the relevant Convention articles¹⁸⁷ and the correlating national laws¹⁸⁸ and has roots in, particularly, English (and US) case law¹⁸⁹. The rule implies that it is not necessary to agree the compensation contractually in advance. This approach avoids cumbersome and inevitably unbalanced negotiations in the face of an emergency and encourages an immediate approach to dealing with the situation.

(Maritime Act, S. 10); **Ibero-America** (IIDM Maritime Model Law, Art. 355); **Korea** (Maritime Act, Art. 882 and 890); **Latvia** (Maritime Code, Art. 261(1)); **Germany** (Commercial Code, § 579, I); **Malta** (Merchant Shipping Act, Art. 344(b)(i)); **Morocco** (Maritime Commerce Code, Art. 303); **Nigeria** (Merchant Shipping Act, S. 389(3) and 390(4)); **Norway** (Maritime Code, Art. 450); **Sweden** (Maritime Code, Chapter 16, S. 10). See also Bishop, 478-483; Brice, 59-103, paras 1-184-1-339; Schoenbaum 2004 II, 165-166, § 16-1; Tetley 2002, 330-331.

¹⁸⁴ **Salvage Convention 1989**, Art. 5(3).

¹⁸⁵ In principle, the geographical scope of the Conventions is quite wide: see **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Arts. 1(a) and 30(1)(a) and (b).

¹⁸⁶ On the latter aspect, see and compare **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Art. 1(a), (b) and (c) and Art. 30(1)(a) and (b).

¹⁸⁷ **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Art. 12(1).

¹⁸⁸ **Current law**: **Algeria** (Maritime Code, Art. 336); **Argentina** (Navigation Act, Art. 371); **Belgium** (Shipping Code, Art. 2.7.5.13, § 1); **Brazil** (Law 7.203/1984, Art. 10, § 1°); **CEMAC** (CEMAC Merchant Shipping Code, Art. 244.1); **China** (Maritime Code, Art. 179); **Colombia** (Commercial Code, Art. 1545); **Croatia** (Maritime Code, Art. 771(1)); **Finland** (Maritime Act, S. 5); **France** (Transport Code, Art. L5132-3, I); **Germany** (Commercial Code, § 576, I); **Ibero-America** (IIDM Maritime Model Law, Art. 348); **Korea** (Maritime Act, Art. 882); **Latvia** (Maritime Code, Art. 256(1)); **Morocco** (Maritime Commerce Code, Art. 301); **The Netherlands** (Civil Code, Book 8, Art. 561.1); **Nigeria** (Merchant Shipping Act, S. 390(1)); **Portugal** (Decree-Law No. 203/98, Art. 5.1); **Russia** (Merchant Shipping Code, Art. 341.1); **Slovenia** (Maritime Code, Art. 760); **Spain** (Maritime Navigation Act 14/2014, Art. 362.1); **Sweden** (Maritime Code, Chapter 16, S. 5); **Turkey** (Commercial Code, Art. 1304(1)); **Venezuela** (Maritime Commerce Act, Art. 343); **Vietnam** (Maritime Code 2015, Art. 187.1). **Malta** seems to deviate from the Principle in that it seems to grant a right to 'reasonable' remuneration in any event; however, the salvage reward is limited to the amount of the property saved (which implies that is nothing is saved, no award can be granted), and the law also confirms that, in determining the amount or the apportionment of salvage, the court shall have regard to, *inter alia*, the measure of success obtained (Merchant Shipping Act, Arts. 343(1) and 345(2)(a)). **Japan** seems to require that the property concerned has effectively been salvaged, and the result is a factor in the determination of the amount due (Commercial Code, Arts. 792(1) and 793).

¹⁸⁹ See Kennedy-Rose, 364-394, paras 9.001-9.061; Schoenbaum 2004 II, 165 and 167, § 16-1.

Paragraph (3) confirms that the salvage reward shall not exceed the salvaged value of the ship (and other property). This is also a general principle, which is the logical consequence of the rule that remuneration depends on the result achieved, as the latter is precisely determined by the value of the property salvaged. Again, the principle is explicitly confirmed in the Convention provisions¹⁹⁰ and in national laws¹⁹¹.

Paragraph (4) states that no salvage reward is due if the salvage operation had no useful result. This is expressed in the expression ‘No Cure, No Pay’, on which the Conventions¹⁹², numerous national laws¹⁹³ and various standard contract forms are based.

Paragraph (5) provides that the salvage reward shall be fixed taking into account the relevant circumstances and with a view to encouraging salvage operations. The reference to ‘relevant circumstances’ is a simplification of the relevant provisions of the 1910 and 1989 Salvage Conventions. Both Conventions list the factors to be taken into account in determining the reward, although the 1989 Convention contains a broader list¹⁹⁴. It cannot therefore be said that there is general international agreement on these criteria, but it is clear that the judge or arbitrator must take the circumstances of each case into account. There is no objection to the general reference to the ‘relevant circumstances’ since the positive law takes precedence in any event and the list of criteria contained in the Salvage Convention 1989 is clearly not intended to be exhaustive¹⁹⁵. The principle that the judge or arbitrator must also keep in mind the desirability of encouraging salvage operations is an underlying policy principle of the law relating to salvage

¹⁹⁰ **Salvage Convention 1910**, Art. 2; **Salvage Convention 1989**, Art. 13(3).

¹⁹¹ **Current law**: **Algeria** (Maritime Code, Art. 347); **Argentina** (Navigation Act, Art. 371); **Belgium** (Shipping Code, Art. 2.7.5.14, § 3); **Brazil** (Law 7.203/1984, Art. 10, § 1°); **CEMAC** (CEMAC Merchant Shipping Code, Art. 244.3); **Chile** (Commercial Code, Art. 1139); **China** (Maritime Code, Art. 180); **Croatia** (Maritime Code, Art. 771(2)); **Denmark** (Merchant Shipping Act, S. 445.1); **Finland** (Maritime Act, S. 5); **France** (Transport Code, Art. L5132-4, III); **Germany** (Commercial Code, § 577, II); **Italy** (Navigation Code, Art. 491); **Japan** (Commercial Code, Art. 795); **Korea** (Maritime Act, Art. 884(1)); **Latvia** (Maritime Code, Art. 256(1)); **Malta** (Merchant Shipping Act, Art. 343(1)); **Morocco** (Maritime Commerce Code, Art. 301); **The Netherlands** (Civil Code, Book 8, Art. 563.3); **Nigeria** (Merchant Shipping Act, S. 392(3)); **Norway** (Maritime Code, Art. 445); **Russia** (Merchant Shipping Code, Art. 342.3); **Slovenia** (Maritime Code, Art. 760); **Spain** (Maritime Navigation Act 14/2014, Art. 362.1); **Sweden** (Maritime Code, Chapter 16, S. 5); **Turkey** (Commercial Code, Art. 1304(3)); **Venezuela** (Maritime Commerce Act, Art. 356); **Vietnam** (Maritime Code 2015, Art. 188.1).

¹⁹² **Salvage Convention 1910**, Art. 2; **Salvage Convention 1989**, Art. 12(2).

¹⁹³ **Current law**: **Algeria** (Maritime Code, Art. 337); **Belgium** (Shipping Code, Art. 2.7.5.13, § 2); **CEMAC** (CEMAC Merchant Shipping Code, Art. 244.2); **Chile** (Commercial Code, Art. 1137); **China** (Maritime Code, Art. 179); **Croatia** (Maritime Code, Art. 771(3)); **Denmark** (Merchant Shipping Act, S. 445.1); **France** (Transport Code, Art. L5132-3, I); **Latvia** (Maritime Code, Art. 256(1)); **Morocco** (Maritime Commerce Code, Art. 301); **The Netherlands** (Civil Code, Book 8, Art. 561.2); **Nigeria** (Merchant Shipping Act, S. 390(1)); **Norway** (Maritime Code, Art. 445); **Russia** (Merchant Shipping Code, Art. 341.2); **Turkey** (Commercial Code, Art. 1304(2)); **Venezuela** (Maritime Commerce Act, Art. 343).

¹⁹⁴ See and compare **Salvage Convention 1910**, Art. 8; **Salvage Convention 1989**, Art. 13(1).

¹⁹⁵ On the latter point, see Berlingieri 2015, 102.

as a whole, and is moreover expressly confirmed in the 1989 Convention¹⁹⁶. The objective of encouraging of salvage is explained first of all by the fact that it is not always obvious to find assistance at sea in an emergency, and by the fact that it helps to combat piracy and embezzlement by salvors. More specifically, the drafters of the 1989 Convention had professional salvors in mind¹⁹⁷. The relevant provisions of the Conventions are confirmed in, or have at least inspired, various national laws¹⁹⁸.

Finally, paragraph (6) states that the positive maritime law or contractual arrangements may provide for compensation for the costs incurred by a salvor to prevent or limit damage to the environment. This too is a simplifying summary of the existing rules. On the one hand, as already mentioned, the 1989 Convention introduced, in derogation from the 'No Cure, No Pay' principle, a right to 'special compensation' for the salvor who has taken action to prevent or limit damage to the environment¹⁹⁹. In addition, rules to the same or a similar effect have been inserted into various national laws²⁰⁰. On the other hand, a specific contractual arrangement is often used in practice, more specifically the SCOPIC Clause annexed to the Lloyd's Open Form. The latter system is very different from the Convention regime, so that different solutions are applied on this point as well. It is therefore sufficient to draw attention in this Principle, in a general sense, to the possibility that a salvor may be entitled, either on a statutory or contractual basis, to compensation for environmental measures independently of the traditional salvage reward, which is dealt with in paragraphs (1) to (5) above.

¹⁹⁶ **Salvage Convention 1989**, Art. 13(1) and the Preamble.

¹⁹⁷ See Berlingieri 2015, 101.

¹⁹⁸ **Current law:** **Algeria** (Maritime Code, Art. 345); **Argentina** (Navigation Act, Art. 379); **Belgium** (Shipping Code, Art. 2.7.5.14); **CEMAC** (CEMAC Merchant Shipping Code, Art. 250); **Chile** (Commercial Code, Art. 1138); **China** (Maritime Code, Art. 180); **Croatia** (Maritime Code, Art. 774); **Denmark** (Merchant Shipping Act, S. 446); **Finland** (Maritime Act, S. 6); **France** (Transport Code, Art. L5132-4); **Germany** (Commercial Code, § 577); **Ibero-America** (IIDM Maritime Model Law, Art. 349); **Italy** (Navigation Code, Art. 491); **Japan** (Commercial Code, Art. 793); **Korea** (Maritime Act, Art. 883); **Latvia** (Maritime Code, Art. 257); **Malta** (Merchant Shipping Act, Art. 345(2)); **Morocco** (Maritime Commerce Code, Art. 307); **The Netherlands** (Civil Code, Book 8, Art. 563.2); **Nigeria** (Merchant Shipping Act, S. 392); **Norway** (Maritime Code, Arts. 446); **Portugal** (Decree-Law No. 203/98, Art. 6); **Russia** (Merchant Shipping Code, Art. 342.1); **Slovenia** (Maritime Code, Art. 762); **Sweden** (Maritime Code, Chapter 16, S. 6); **Venezuela** (Maritime Commerce Act, Art. 344); **Vietnam** (Maritime Code 2015, Art. 188). Compare also, on earlier US case law, Schoenbaum 2004 II, 171-172, § 16-1).

¹⁹⁹ **Salvage Convention 1989**, Art. 14.

²⁰⁰ **Current law:** **Belgium** (Shipping Code, Art. 2.7.5.15); **Brazil** (Law 7.203/1984, Art. 10, § 2°); **CEMAC** (CEMAC Merchant Shipping Code, Art. 244.2); **Chile** (Commercial Code, Art. 1140-1144); **Croatia** (Maritime Code, Art. 775); **Denmark** (Merchant Shipping Act, S. 449); **Finland** (Maritime Act, S. 9); **France** (Transport Code, Art. L5132-5); **Germany** (Commercial Code, § 578); **Ibero-America** (IIDM Maritime Model Law, Art. 351); **Japan** (Commercial Code, Art. 805); **Korea** (Maritime Act, Art. 885); **Latvia** (Maritime Code, Art. 260); **The Netherlands** (Civil Code, Book 8, Art. 564); **Nigeria** (Merchant Shipping Act, S. 393); **Norway** (Maritime Code, Art. 449); **Portugal** (Decree-Law No. 203/98, Art. 5.2 and 9); **Russia** (Merchant Shipping Code, Art. 343); **Sweden** (Maritime Code, Chapter 16, S. 9); **Turkey** (Commercial Code, Art. 1312); **Venezuela** (Maritime Commerce Act, Art. 346); **Vietnam** (Maritime Code 2015, Art. 189).

Principle 21 – General average

- (1) **There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.**
- (2) **General average sacrifices and expenditures shall be borne by the different contributing interests in accordance with the most commonly applied version of the York Antwerp Rules, as revised from time to time by the Comité Maritime International, which is as such part of the Lex Maritima.**

Commentary

The York-Antwerp Rules are a contractual standard arrangement for the handling of general average cases. The basic rules are (1) that there is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure; and (2) that general average sacrifices and expenditures shall be borne by the different contributing interests²⁰¹. These fundamental rules are confirmed in the Lex Maritima Principle presented here.

The solidarity mechanism that applies in general average cases is one of the oldest and most characteristic institutes of maritime law. The earliest formulation can be found in Antiquity, more specifically in the maritime law of the island of Rhodes, as adopted into the Roman Digest²⁰². The principle was further elaborated in the Rolls of Oléron and subsequent maritime law compilations and statutes²⁰³. The first version of the modern international rules was adopted in 1860²⁰⁴. They have been updated several times, and the current version of the York-Antwerp Rules was adopted by the CMI in 2016. The York-Antwerp Rules are not an international unification convention, but a set of rules referred to worldwide in transport contracts and charter parties. In other words, they are a successful example of international self-regulation by the maritime sector²⁰⁵. General average is as such considered part of the Lex Maritima²⁰⁶.

²⁰¹ **York-Antwerp Rules 2016**, Rule A. Exactly the same wording occurred in **York-Antwerp Rules 2014**, Rule A, **York-Antwerp Rules 1994**, Rule A and **York-Antwerp Rules 1974**, Rules A and B. This stable formulation underlines its Lex Maritima authority.

²⁰² The so-called *Lex Rhodia de jactu* (Dig. XIV.2.1).

²⁰³ **Legal history: France** (Ordonnance de la Marine, VII.III, Art. 2; Code de commerce, Art. 401).

²⁰⁴ For an overview of the development of general average law, see Rodière 1972, 289 et seq., para 260 et seq. (with P. Lureau).

²⁰⁵ On the impact of the Rules, see, for example, Gilmore-Black 1975, 252-253, § 5-5; Maurer 2012, 46; Tetley 2002, 367-368; Van Hooydonk, 2011-8, 225-227, para 8.384.

²⁰⁶ Tetley 2002, 363, fn. 1 and 367-368.

A striking phenomenon of recent decades is that national legislators, instead of including a (non-mandatory) substantive regulation of general average in their maritime laws, are increasingly resorting to a mere reference to (a certain version of) the York-Antwerp Rules (or to certain provisions of it)²⁰⁷. The fact that these rules thus have the status of default contract law underscores their acceptance and authority. It is therefore entirely logical that the Principle presented here confirms that the York-Antwerp Rules as such belong to the Lex Maritima. With the exception the general definition of a general average act which is useful as a reminder and from an educational point of view on behalf of non-maritime lawyers it is thus superfluous to incorporate substantive provisions from the York-Antwerp Rules in these Principles: the latter Rules themselves simply constitute the relevant Lex Maritima. However, in accordance with Rule 4(2), this does not mean that the York-Antwerp Rules, in their capacity as Lex Maritima, would take precedence in the unlikely event that the application of the York-Antwerp Rules would not have been contractually agreed upon and that the national default statutory provisions on general average (if any) should be applied. Here again, the Principle does not aim to override the positive maritime law²⁰⁸. Because of the primacy in the industry of the York-Antwerp Rules, national substantive statutory provisions have not been considered any further here.

The Principle deliberately states that only the ‘commonly applied version’ of the Rules is relevant, so that the final say belongs to the economic actors involved. Currently the relevant version is the York-Antwerp Rules 2016. The Principle also explicitly confirms the role of the CMI as guardian of the continuous updating of the Rules²⁰⁹.

²⁰⁷ **Current law:** **Argentina** (Shipping Act, Art. 403); **Belgium** (Belgian Shipping Code, Art 2.7.1.4); **Denmark** (Merchant Shipping Act, S. 461); **Finland** (Maritime Act, Chapter 17, S. 1); **Greece** (Code of Private Maritime Law, Art. 221); **Latvia** (Maritime Code, S. 162(2)); **Luxemburg** (Act on the establishment of a national Luxemburg shipping register, Art. 119); **The Netherlands** (Civil Code, Book 8, Art. 613 and, on inland navigation, Art. 1022); **Norway** (Maritime Code, Section 461); **Russia** (Merchant Shipping Code, Art. 285.2); **Spain** (Maritime Navigation Act 14/2014, Art. 356.1); **Sweden** (Maritime Code, Chapter 17, S. 1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 122(2)); **Turkey** (Commercial Code, Art. 1273). In Germany, the intention to introduce a statutory reference to the York-Antwerp Rules encountered constitutionality concerns (Herber 2016, 406). See also the Chinese Maritime Code, Art. 203.

²⁰⁸ Given the paramount importance in the industry of the York-Antwerp Rules, references to the numerous substantive provisions of national laws on general average are not included here. Essentially, however, these confirm the principles contained in the York-Antwerp Rules (or at least a version of them).

²⁰⁹ In addition to the York-Antwerp Rules, the CMI in 2016 adopted ‘CMI Guidelines relating to General Average’.

Principle 22 – Wreck removal

- (1) For the purposes of this Principle, ‘wreck’ means a sunken or stranded ship.
 - (2) The positive maritime law may implement the following Principles:
 - (a) The shipowner, ship operator or ship master shall report to the authorities without delay when a ship has been involved in a maritime casualty resulting in a wreck.
 - (b) The shipowner or ship operator shall remove a wreck determined to constitute a hazard. To that end, the authorities may set a reasonable deadline.
 - (c) If the shipowner or ship operator does not remove the wreck within the deadline set or if immediate action is required, the authorities may remove the wreck themselves.
 - (d) Except in specific circumstances and without prejudice to any right to limit liability, the shipowner or ship operator shall be liable for the costs of locating, marking and removing the wreck.
-

Commentary

The rules on wreck removal have a long tradition. Because of the public interests involved, they are largely rules of public law. In the past, the focus has been on the rights to abandoned objects, the rights of finders and owners and/or combating the plundering of shipwrecks run aground on the coast. Some national laws remain oriented towards these aspects, and in any event they show only limited uniformity. A modern international regime, which highlights the powers of States to remove, or have removed, shipwrecks that may have adversely affect the safety of lives, goods and property at sea, as well as the marine environment, only came into being in 2007, when the IMO’s Nairobi Wreck Removal Convention was adopted (for which CMI provided important preparatory work). Currently, the Wreck Removal Convention is binding on 66 States, representing already 80.27 of the world’s tonnage. The general principles presented here are based on this Wreck Removal Convention as well as on concurrent specific provisions of national laws (some of which refer to the Convention²¹⁰) and of various national and local traffic, navigation and police regulations.

Paragraph (1) contains a definition of a ‘wreck’ in which the corresponding definition of the Wreck Removal Convention²¹¹ has deliberately been stripped to the bone.

On the substance, paragraph (2) contains the basic principles on wreck

²¹⁰ **Belgium** (Shipping Code, Art. 2.7.6.8); **The Netherlands** (Civil Code, Book 8, Art. 655); **UK** (Merchant Shipping Act, S. 255A);

²¹¹ **Wreck Removal Convention**, Art. 1(4); see also, for example, **Latvia** (Maritime Code, S. 267); **The Netherlands** (Maritime Accident Control Act, Art. 1.e); **Nigeria** (Merchant Shipping Act, S. 361); **Vietnam** (Maritime Code 2015, Art. 276).

removal which can be found in the Wreck Removal Convention and in numerous national laws, and the general validity of which is also confirmed in the doctrine. This is specifically the case with the duty to report wrecks (item (1))²¹², the duty to remove wrecks (item (b))²¹³, the power of authorities to remove wrecks ex officio (item (c))²¹⁴, and the liability of the shipowner or ship operator for the costs of wreck removal (item (d))²¹⁵. Other arrangements that appear in the Wreck Removal Convention, such as compulsory insurance and the procedural requirements for information exchange between the Affected State and the Flag State do not appear to be sufficiently universally established to be currently proclaimed as Principles of the *Lex Maritima*.

²¹² **Wreck Removal Convention**, Art. 5; see also, for example, **Australia** (Navigation Act 2012, S. 232); **Belgium** (Shipping Code, Art. 2.7.6.12); **CEMAC** (CEMAC Merchant Shipping Code, Art. 280); **Latvia** (Maritime Code, S. 268(1)); **Malta** (Merchant Shipping Act, S. 332); **Mexico** (Navigation and Maritime Commerce Act, Art. 173); **The Netherlands** (Maritime Accident Control Act, Art. 5-6); **Spain** (Maritime Navigation Act 14/2014, Art. 370); **UK** (Merchant Shipping Act, S. 236 and 255B).

²¹³ **Wreck Removal Convention**, Art. 9.2; see also **Belgium** (Shipping Code, Art. 2.7.6.3; Flemish Shipping Decree, Art. 17); **CEMAC** (CEMAC Merchant Shipping Code, Art. 283.1 and 291); **Latvia** (Maritime Code, S. 269-270); **Morocco** (Maritime Commerce Code, Art. 124); **The Netherlands** (Maritime Accident Control Act, Art. 9 *et seq.*); **Nigeria** (Merchant Shipping Act, S. 366 *et seq.*); **Russia** (Merchant Shipping Code, Art. 109); **Vietnam** (Maritime Code 2015, Art. 277); **UK** (Merchant Shipping Act, S. 255D).

²¹⁴ **Wreck Removal Convention**, Art. 9.7-8; see also **Australia** (Navigation Act 2012, S. 229 *et seq.*); **Belgium** (Shipping Code, Art. 2.7.6.4; Flemish Shipping Decree, Art. 140); **CEMAC** (CEMAC Merchant Shipping Code, Art. 282.1 and 283.2); **Latvia** (Maritime Code, S. 270(3)); **Malta** (Merchant Shipping Act, S. 339); **Mexico** (Navigation and Maritime Commerce Act, Art. 170); **Morocco** (Maritime Commerce Code, Art. 124); **The Netherlands** (Wreck Act 1934; Maritime Accident Control Act, Art. 13); **Nigeria** (Merchant Shipping Act, S. 382 *et seq.*); **Russia** (Merchant Shipping Code, Art. 111); **Vietnam** (Maritime Code 2015, Art. 277); **UK** (Merchant Shipping Act, S. 252-253 and 255F).

²¹⁵ **Wreck Removal Convention**, Art. 9.10-11; see also **Belgium** (Shipping Code, Art. 2.7.6.6; Flemish Shipping Decree, Art. 18-19); **CEMAC** (CEMAC Merchant Shipping Code, Art. 282.2 and 293); **Latvia** (Maritime Code, S. 269(2)); **The Netherlands** (Civil Code, Book 8, Art. 656-658); **Vietnam** (Maritime Code 2015, Art. 277); **UK** (Merchant Shipping Act, S. 255G *et seq.*).

PART 7

MARITIME SECURITIES AND TIME BARS

Principle 23 – Preferential rights

The positive maritime law may implement the following Principles:

- (1) Specific categories of creditors of a ship are given priority over others in accordance with an order of precedence. Such preferential rights may include special legislative rights, maritime liens, mortgages, hypothecs and similar registerable charges, and second-rank liens.
 - (2) Claims secured by a maritime lien are ranked based on an order between categories, taking into account, as the case may be, the sequence of voyages and the date when the claim came into existence.
 - (3) A maritime lien follows the ship notwithstanding any change of ownership or of registration.
 - (4) A maritime lien shall be extinguished after a specific lapse of time.
-

Commentary

In the field of preferential rights on ships there is no genuine uniformity. Attempts to harmonise this matter internationally have largely failed. For maritime shipping, successive conventions and protocols were drawn up in 1926, 1967 and 1993²¹⁶. They had limited success, and the coexistence of three convention regimes is in itself an obstacle to unity. Many countries have their own regimes, based on either legislation or case law²¹⁷. The major stumbling block to unification is the divergence of national policies to favour certain creditors over others. In this context, the interests of contractual creditors emerging from day-to-day ship operations clash with those of third-party claimants and those of the providers of long-term loans that support the financing of new ships. Despite the fragmentation of the regimes, they rest on a common foundation, notably the principle that a ranking between creditors is possible and moreover common, and that these priority rights are usually grouped into broad categories. This element is expressed here in item (1). The various categories of prioritised claims are subsumed here under the general term ‘preferential rights’ (see also the heading of the Principle) and not under the designation ‘maritime liens and mortgages’. The reason is that various international and national regimes

²¹⁶ **Liens and Mortgages Convention 1926; Liens and Mortgages Convention 1967; Liens and Mortgages Convention 1993;** For inland navigation, international rules were elaborated in 1930 and 1965.

²¹⁷ Back in 1983, the CMI found that no uniformity could be established among States not party to the 1926 Convention. The conclusion of a questionnaire on the existence of maritime privileges read: ‘La diversité des réponses est telle [...] qu’aucune unité se dégage clairement’ (CMI-document MLM-1926/1967-27(tr) V-1983, 7).

also recognise preferential rights that constitute neither a 'maritime lien' nor a 'mortgage'. Exactly how the privilege system functions must in each case be ascertained in the applicable positive maritime law. Whether that is the law of the State of registration of the vessel, the *lex fori* or the *lex contractus*, is not uniform internationally, so a *Lex Maritima Principle* cannot be formulated on that point either. Whether the positive maritime law permits an action in rem against the ship or only an action in personam is another point of international divergence, so no universally valid Principle could be formulated on this issue either.

Items (2) to (4) confirm the possibility of a number of arrangements found in each of the maritime harmonisation conventions and in numerous national laws. This applies, in particular, to rules on the ranking of claims²¹⁸, the principle that a maritime lien survives despite any change of ownership or registration (French *droit de suite*)²¹⁹ and the extinction of a maritime lien after a certain lapse of time²²⁰. Again, the applicable arrangements must in each case be verified in the positive maritime law.

²¹⁸ **Liens and Mortgages Convention 1926**, Art. 2 *et seq.*; **Liens and Mortgages Convention 1967**, Art. 2 *et seq.*; **Liens and Mortgages Convention 1993**, Art. 2 *et seq.*; **Algeria** (Maritime Code, Art. 72 *et seq.*); **Argentina** (Shipping Act, Art. 471 *et seq.*); **Belgium** (Shipping Code, Art. 2.2.5.1 *et seq.*); **Brazil** (Commercial Code, Art. 470 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 75 *et seq.*); **Chile** (Commercial Code, Art. 839 *et seq.*); **China** (Maritime Code, Art. 21 *et seq.*); **Colombia** (Commercial Code, Art. 1555 *et seq.*); **Croatia** (Maritime Code, Art. 241 *et seq.*); **Denmark** (Merchant Shipping Act, S. 51 *et seq.*); **Finland** (Maritime Act, Chapter 3, S. 2 *et seq.*); **France** (Transport Code, Art. L5114-7 *et seq.*); **Germany** (Commercial Code, § 596 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 42 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 31 *et seq.*); **Italy** (Navigation Code, Art. 548 *et seq.*); **Japan** (Commercial Code, Art. 842 *et seq.*); **Korea** (Commercial Act, Art. 777 *et seq.*); **Latvia** (Maritime Code, S. 33 *et seq.*); **Lithuania** (Law on Merchant Shipping, Art. 62 *et seq.*); **Mexico** (Navigation and Maritime Commerce Act, Art. 91 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 77 *et seq.*); **The Netherlands** (Civil Code, Book 8, Art. 210 *et seq.*); **Nigeria** (Merchant Shipping Act, S. 67 *et seq.*); **Norway** (Maritime Code, S. 51 *et seq.*); **Russia** (Merchant Shipping Code, Art. 367 *et seq.*); **Slovenia** (Maritime Code, Art. 237 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 122 *et seq.*, Art. 122.1 referring to the Liens and Mortgages Convention 1993); **Sweden** (Maritime Code, Chapter 3, S. 36 *et seq.*); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 38, referring to the Liens and Mortgages Convention 1926); **Turkey** (Commercial Code, Art. 1320 *et seq.* and 1392); **USA** (46 U.S.C. § 31341 *et seq.*); **Uruguay** (Commercial Code, Art. 1037-1038); **Venezuela** (Maritime Commerce Act, Art. 113 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 40 *et seq.*).

²¹⁹ **Liens and Mortgages Convention 1926**, Art. 8; **Liens and Mortgages Convention 1967**, Art. 7.2; **Liens and Mortgages Convention 1993**, Art. 8; **Algeria** (Maritime Code, Art. 82); **Belgium** (Shipping Code, Art. 2.2.5.9); **CEMAC** (CEMAC Merchant Shipping Code, Art. 85); **Chile** (Commercial Code, Art. 842-843); **China** (Maritime Code, Art. 26); **Colombia** (Commercial Code, Art. 1555); **Croatia** (Maritime Code, Art. 243); **Denmark** (Merchant Shipping Act, S. 53); **Finland** (Maritime Act, Chapter 3, S. 4); **France** (Transport Code, Art. L5114-18); **Ibero-America** (IIDM Maritime Model Law, Art. 32); **Italy** (Navigation Code, Art. 557); **Korea** (Commercial Act, Art. 785); **Latvia** (Maritime Code, S. 36); **The Netherlands** (Civil Code, Book 8, Art. 215.1); **Nigeria** (Merchant Shipping Act, S. 71(2)); **Norway** (Maritime Code, S. 53); **Russia** (Merchant Shipping Code, Art. 370); **Slovenia** (Maritime Code, Art. 241); **Sweden** (Maritime Code, Chapter 3, S. 38); **Turkey** (Commercial Code, Art. 1321(5)); **Venezuela** (Maritime Commerce Act, Art. 114); **Vietnam** (Maritime Code 2015, Art. 40.5).

²²⁰ **Liens and Mortgages Convention 1926**, Art. 9; **Liens and Mortgages Convention 1967**, Art. 8; **Liens and Mortgages Convention 1993**, Art. 9; **Algeria** (Maritime Code, Art. 84-85); **Argentina** (Shipping Act, Art. 484-485); **Belgium** (Shipping Code, Art. 2.2.5.18 *et*

Principle 24 – Immobilisation of ships

- (1) **Ships may be prevented from sailing pursuant to arrest, seizure, administrative detention or a right of retention.**
Arrest is the immobilisation of a ship by judicial order at the request of a creditor in order to secure a claim.
Seizure is the immobilisation of a ship in execution or satisfaction of a judgment or other enforceable instrument with a view to a forced sale of a ship.
Administrative detention is the immobilisation of a ship by a body with public law powers in order to secure a claim or based upon suspected or proven infringements of laws or regulations.
A right of retention is the immobilisation by a creditor of a ship in its possession in order to secure a claim.
- (2) **The positive maritime law may implement the Principle that ships may only be arrested to secure specific categories of maritime claims.**
- (3) **The competent judicial authority shall permit the release of an arrested ship upon sufficient security being furnished.**

Commentary

Like the matter of preferential rights on ship, ship arrest has been the subject of international harmonisation attempts, which, however, have met with only limited success. The 1952 Ship Arrest Convention prepared by the CMI sought to reconcile the divergent views on ship arrest of the common law tradition and the civil law tradition through a compromise arrangement. This convention has been considered a regional success in Europe and Africa. A new 1999 Ship Arrest Convention had a much more limited success. In all cases, numerous countries remain not bound by any of these conventions. In these circumstances, a minimal enunciation of the relevant Lex Maritima has also been adopted here.

The first paragraph clarifies the distinction between ship arrest proper, seizure, administrative detention and a right of retention. Although each of

seq.; **CEMAC** (CEMAC Merchant Shipping Code, Art. 86); **Chile** (Commercial Code, Art. 855); **China** (Maritime Code, Art. 29); **Colombia** (Commercial Code, Art. 1563); **Croatia** (Maritime Code, Art. 246-247); **Denmark** (Merchant Shipping Act, S. 55); **Finland** (Maritime Act, Chapter 3, S. 6); **France** (Transport Code, Art. L5114-17); **Germany** (Commercial Code, § 600); **Ibero-America** (IIDM Maritime Model Law, Art. 36); **Italy** (Navigation Code, Art. 558); **Japan** (Commercial Code, Art. 846); **Korea** (Commercial Act, Art. 785); **Lithuania** (Law on Merchant Shipping, Art. 64); **Mexico** (Navigation and Maritime Commerce Act, Art. 93); **Morocco** (Maritime Commerce Code, Art. 79); **The Netherlands** (Civil Code, Book 8, Art. 219); **Nigeria** (Merchant Shipping Act, S. 73); **Norway** (Maritime Code, S. 55); **Russia** (Merchant Shipping Code, Art. 371); **Slovenia** (Maritime Code, Art. 248); **Sweden** (Maritime Code, Chapter 3, S. 40); **Turkey** (Commercial Code, Art. 1326); **Venezuela** (Maritime Commerce Act, Art. 118-119); **Vietnam** (Maritime Code 2015, Art. 43).

Lex Maritima

these immobilisation mechanisms is widely recognised and also applied, less specialised lawyers often confuse them. It is therefore useful to recall in the CMI *Lex Maritima* their basic characteristics. Ship arrest is essentially a judicial measure taken at the request of a creditor seeking payment or financial security. The possibility of ship arrest can as such be considered a *Lex Maritima* Principle, as it is confirmed not only in the aforementioned international conventions²²¹ but also in various national maritime law systems²²². Seizure is a measure in execution or satisfaction of a judgment with a view to forced sale of the ship. It is referred to in the *Ship Arrest Conventions*²²³ and is regulated in numerous national legal systems²²⁴. Ship detention is essentially a unilateral government measure based on rules of international or national public law. Claims of public authorities (such as a Harbour Master) may relate, for example, to damage to harbour works, wreck removal or harbour dues²²⁵. Proven or suspected infringements which may give rise to detention may relate so safety or environmental laws and regulations²²⁶. Rights of retention are referred to in the recent *Liens and Mortgages Conventions*²²⁷ and specifically regulated in some national legal systems²²⁸.

Paragraph (2) states that the positive maritime law may limit ship arrest to those cases where the arresting creditor has a 'maritime claim'. This

²²¹ **Arrest Convention 1952**, Art. 1(2); **Arrest Convention 1999**, Art. 2(2); see also **MLC 2006**, Standard A2.5.1.6

²²² **Current law**: **Algeria** (Maritime Code, Art. 150 *et seq.*); **Belgium** (Shipping Code, Art. 2.2.6.1 *et seq.*); **Brazil** (Commercial Code, Art. 479); **CEMAC** (CEMAC Merchant Shipping Code, Art. 144 *et seq.*); **Colombia** (Commercial Code, Art. 1449 *et seq.*); **Denmark** (Merchant Shipping Act, S. 91 *et seq.*); **Finland** (Maritime Act, Chapter 4); **France** (Transport Code, Art. L5114-21 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 272 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 20 *et seq.*); **Latvia** (Maritime Code, S. 47 *et seq.*); **Mexico** (Navigation and Maritime Commerce Act, Art. 268 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 110); **Norway** (Maritime Code, S. 91 *et seq.*); **Russia** (Merchant Shipping Code, Art. 388 *et seq.*); **Slovenia** (Maritime Code, Art. 947 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 470 *et seq.*); **Sweden** (Maritime Code, Chapter 4); **Venezuela** (Maritime Commerce Act, Art. 92 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 129 *et seq.*).

²²³ **Arrest Convention 1952**, Art. 1(2); **Arrest Convention 1999**, Art. 2(2).

²²⁴ **Current law**: **Algeria** (Maritime Code, Art. 160 *et seq.*); **Belgium** (Shipping Code, Art. 2.2.6.25 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 157 *et seq.*); **France** (Transport Code, Art. L5114-23 *et seq.*); **Latvia** (Maritime Code, S. 47(2) and 55-56); **Morocco** (Maritime Commerce Code, Art. 111 *et seq.*); **The Netherlands** (Civil Procedure Code, Art. 562a *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 480 *et seq.*).

²²⁵ International conventions that regulate or confirm administrative detention powers include **Liens and Mortgages Convention 1926** (Protocol of Signature); **Arrest Convention 1952**, Art. 2.; for an example of a national regime, see **Australia** (Navigation Act 2012, S. 248 *et seq.*).

²²⁶ For example, SOLAS, MARPOL and Port State Control arrangements.

²²⁷ **Liens and Mortgages Convention 1967**, Art. 6; **Liens and Mortgages Convention 1993**, Art. 7.

²²⁸ **Current law**: **Belgium** (Shipping Code, Art. 3.2.3.21 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 76); **Chile** (Commercial Code, Art. 856-857); **Denmark** (Merchant Shipping Act, S. 54); **Finland** (Maritime Act, Chapter 3, S. 5); **Ibero-America** (IIDM Maritime Model Law, Art. 46); **Latvia** (Maritime Code, S. 35); **Norway** (Maritime Code, S. 54); **Russia** (Merchant Shipping Code, Art. 373); **Slovenia** (Maritime Code, Art. 430); **Sweden** (Maritime Code, Chapter 3, S. 39); **Turkey** (Commercial Code, Art. 950(1)); **Venezuela** (Maritime Commerce Act, Art. 128).

restriction is provided for in the two Ship Arrest Conventions²²⁹ and various national laws²³⁰.

Paragraph (3) confirms the general principle that arrest of a ship should be lifted if adequate security has been provided. This rule is also confirmed in the Ship Arrest Conventions²³¹ and national legislations²³²

²²⁹ **Arrest Convention 1952**, Art. 2; **Arrest Convention 1999**, Art. 2(2).

²³⁰ **Current law**: **Algeria** (Maritime Code, Art. 151); **Belgium** (Shipping Code, Art. 2.2.6.1 and 2.2.6.4); **CEMAC** (CEMAC Merchant Shipping Code, Art. 149); **Denmark** (Merchant Shipping Act, S. 91-92); **Finland** (Maritime Act, Chapter 4, S. 3-4); **Ibero-America** (IIDM Maritime Model Law, Art. 21); **Latvia** (Maritime Code, S. 48-50); **Mexico** (Navigation and Maritime Commerce Act, Art. 269); **Norway** (Maritime Code, S. 92); **Russia** (Merchant Shipping Code, Art. 388.1-2 and 389); **Spain** (Maritime Navigation Act 14/2014, Art. 472); **Sweden** (Maritime Code, Chapter 4, S. 3); **Turkey** (Commercial Code, Art. 13521); **Venezuela** (Maritime Commerce Act, Art. 92-93); **Vietnam** (Maritime Code 2015, Art. 139).

²³¹ **Arrest Convention 1952**, Art. 5; **Arrest Convention 1999**, Art. 4.

²³² **Current law**: **Algeria** (Maritime Code, Art. 156); **Belgium** (Shipping Code, Art. 2.2.6.20); **Ibero-America** (IIDM Maritime Model Law, Art. 27); **Latvia** (Maritime Code, S. 51); **Mexico** (Navigation and Maritime Commerce Act, Art. 273); **Russia** (Merchant Shipping Code, Art. 391); **Turkey** (Commercial Code, Art. 1370-1371); **Venezuela** (Maritime Commerce Act, Art. 98); **Vietnam** (Maritime Code 2015, Art. 137 and 142).

Principle 25 – Time bars

The positive maritime law may implement the Principle that maritime substantive rights or rights of action are time-barred if judicial, arbitral or alternative dispute settlement proceedings have not been instituted within a specific period.

Commentary

Numerous international unification conventions²³³ and almost countless national statutory provisions²³⁴ define specific time bars for several categories of maritime claims (whether substantive rights or rights of action, which some legal system distinguish). There is no genuine international unity, but the principle that such specific time bars may indeed apply is universally accepted. This Principle recognises this and draws attention to it. Whether the positive maritime law allows parties to extend a time bar is not touched upon here, but in many cases this possibility exists and is used in practice.

²³³ Except where indicated, all the following provisions provide for a two-year limitation period: **Collision Convention 1910**, Art. 7; **Salvage Convention 1910**, Art. 10; **Hague Rules**, Art. 3(6) (1 year); **Hamburg Rules**, Art. 20; **PAL 1974** (Art. 16); **Salvage Convention 1989**, Art. 23; **CLC 1992** (3 years), Art. VIII; **Rotterdam Rules**, Art. 62.

²³⁴ See, for example, **Algeria** (Maritime Code, Art. 356); **Argentina** (Shipping Act, Art. 240); **Belgium** (Shipping Code, Art. 2.3.1.18); **Brazil** (Commercial Code, Art. 449 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 659 and 663); **Chile** (Commercial Code, Art. 1246 *et seq.*); **China** (Maritime Code, Chapter XIII); **Colombia** (Commercial Code, Art. 1539); **Croatia** (Maritime Code, Art. 673); **Denmark** (Merchant Shipping Act, S. 501 *et seq.*); **Finland** (Maritime Act, Chapter 19); **France** (Transport Code, L5422-11); Art. **Germany** (Commercial Code, § 605 *et seq.*); **Japan** (Commercial Code, Art. 806); **Greece** (Code of Private Maritime Law, Art. 280 *et seq.*); **France** (Transport Code, Art. L5423-4); **Ibero-America** (IIDM Maritime Model Law, Art. 246 and 320); **Italy** (Navigation Code, Art. 383); **Korea** (Maritime Act, Art. 895); **Latvia** (Maritime Code, S. 325 *et seq.*); **Liberia** (Maritime Law, §155); **Lithuania** (Law on Merchant Shipping, Art. 75); **Mexico** (Navigation and Maritime Commerce Act, Art. 156); **Morocco** (Maritime Commerce Code, Art. 298); **The Netherlands** (Civil Code, Book 8, Art. 1790); **Nigeria** (Merchant Shipping Act, S. 343); **Norway** (Maritime Code, S. 501 *et seq.*); **Russia** (Merchant Shipping Code, Art. 408 *et seq.*); **Slovenia** (Maritime Code, Art. 658); **Spain** (Maritime Navigation Act 14/2014, Art. 142); **Sweden** (Maritime Code, Chapter 19); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 87); **Turkey** (Commercial Code, Art. 1188); **UK** (Merchant Shipping Act, S. 190); **USA** (46 U.S.C. § 30106); **Venezuela** (Maritime Commerce Act, Art. 330); **Vietnam** (Maritime Code 2015), Art. 262).

CITATIONS AND ABBREVIATIONS

Abbott 1802	Abbott, <i>A treatise of the law relative to merchant ships and seamen</i> (London, 1802)
Allsop 2016	J. Allsop, 'Comity and Unity in Maritime Law', <i>CMI Yearbook 2016</i> (Antwerp, 2017), 163-175
Baatz-Debattista-Lorenzon-Serdy-Staniland-Tsimplis 2009	Y. Baatz, C. Debattista, F. Lorenzon, A. Serdy, H. Staniland and M. Tsimplis, <i>The Rotterdam Rules: A Practical Annotation</i> (London 2009)
Baatz-Campàs-Debattista-Gürses-Hjalmarsson-Lista-Lorenzon-Serdy-Tsimplis 2018	Y. Baatz, A. Campàs Velasco, C. Debattista, Ö Gürses, J. Hjalmarsson, A. Lista, F. Lorenzon, A. Serdy and M. Tsimplis, <i>Maritime Law</i> (Abingdon, 2018)
Berlingieri 1987	G. Berlingieri, 'Uniformity in Maritime Law and Implementation of International Conventions', (1987) <i>JMLC</i> , 317-350
Berlingieri 2015	G. Berlingieri, <i>International Maritime Conventions</i> , Vol. 2 (Abingdon, 2015)
Bishop	A. Bishop, 'Law of Salvage', in D.J. Attard (Ed.), <i>The IMLI Manual on International Maritime Law</i> , Vol. II (Oxford, 2016), 474 <i>et seq.</i>
Bonassies-Scapel 2016	P. Bonassies and C. Scapel, <i>Droit maritime</i> (Issy-les-Moulineaux 2016)
Bonassies-Scapel-Bloch 2022	P. Bonassies, C. Scapel and C. Bloch, <i>Droit maritime</i> (Paris 2022)
Brice	J. Reeder (Ed.), <i>Brice on Maritime Law of Salvage</i> (London, 2003)
Bugden-Lamont-Black	P.M. Bugden and S. Lamont-Black, <i>Goods in Transit and Freight Forwarding</i> (London 2010)
Bunker Convention or BUNKER	International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
Cachard 2018	O. Cachard, 'La nouvelle <i>Lex maritima</i> . A propos de la résurgence d'une source du droit maritime', in M.-E. Ancel <i>et al.</i> , <i>Le droit à l'épreuve des siècles et des frontières. Mélanges en l'honneur du Professeur Bertrand Ancel</i> (Paris / Madrid, 2018), 335-349
Carbone 2010	S.M. Carbone, <i>Conflits de lois en droit maritime</i> (Leiden / Boston 2010)

Lex Maritima

CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale
Chauveau 1958	P. Chauveau, <i>Traité de droit maritime</i> (Paris 1958)
Chorley-Giles 1987	N.J.J. Gaskell, C. Debattista and R.J. Swatton, <i>Chorley & Giles' Shipping Law</i> (London 1987)
CLC 1992	International Convention on Civil Liability for Oil Pollution Damage, 1992
CMI	Comité Maritime International
CMNI	Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000
COGSA	Carriage of Goods by Sea Act
Collision Convention 1910	International Convention for the Unification of Certain Rules of Law Relating to Collision Between Vessels, 1910
COLREG	Collision Regulations, attached to the Convention on the International Regulations for Preventing Collisions at Sea, 1972
Convention on the High Seas	Convention on the High Seas, 1958
Cornejo Fuller 2003	E. Cornejo Fuller, <i>Derecho Marítimo Chileno</i> (Valparaíso 2003)
Danjon 1926 II	D. Danjon, <i>Traité de droit maritime</i> , II (Paris 1926)
De Meij 1998	P. De Meij, 'Interpretatie van verdragen van uniform (vervoer)recht', (1998) <i>European Transport Law</i> , 607-647
Derrington-Turner	S.C. Derrington and J.M. Turner, <i>The Law and Practice of Admiralty Matters</i> (Oxford, 2007)
Douglas-Lane-Peto 1997	R. Douglas, P. Lane and M. Peto, <i>Douglas & Geen on the Law of Harbours Coasts and Pilotage</i> (London / Hong Kong, 1997)
Dumping Convention	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972
du Pontavice 1990	E. du Pontavice, 'Interprétation des conventions maritimes internationales en droit français', (1990) <i>RIDC</i> , 725-728
Ehlers 2017	P. Ehlers, <i>Recht des Seeverkehrs</i> (Baden-Baden, 2017)
Falkanger-Bull-Brautaset	T. Falkanger, H.J. Bull and L. Brautaset, <i>Scandinavian Maritime Law. The Norwegian Perspective</i> (Oslo 2017)

FUND	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
Gilmore-Black 1975	G. Gilmore and C.L. Black; <i>The Law of Admiralty</i> (Mineola, New York, 1975)
Gold-Chircop-Kindred	E. Gold, A. Chircop, and H. Kindred, <i>Maritime Law</i> (Toronto, 2003)
González Lebrero 2000	R.A. González Lebrero, <i>Manual de derecho de la navegación</i> (Buenos Aires 2000)
Grime 1991	R. Grime, <i>Shipping Law</i> (London 1991)
Guzmán 2019	J.V. Guzmán Escobar, 'A Latin American Perspective', <i>CMI Yearbook 2019</i> (Antwerp, 2020), 251-264
Haak 2006	K.F. Haak, 'Uniform vervoerrecht: verwezenlijking en beperking', in F. De Ly, K.F. Haak and W.H. van Boom (Eds.), <i>Eenvormig bedrijfsrecht: realiteit of utopie?</i> (The Hague 2006), 183-202
Hague Rules	International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924
Hague-Visby Rules	International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924, as Amended by the Protocol of 1968
Hague-Visby Rules SDR Protocol	Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1979
Hamburg Rules	United Nations Convention on the Carriage of Goods by Sea, 1978
Hare 1999	J. Hare, <i>Shipping Law & Admiralty Jurisdiction in South Africa</i> (Kenwyn 1999)
Harter Act	An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connexion with the carriage of property, 1893
Hendrikse-Margetson 2004	M.L. Hendrikse and N.J. Margetson, 'Uniforme uitleg van internationale zeerechtelijke regelingen', in M.L. Hendrikse and N.H. Margetson, <i>Capita zeerecht</i> (Deventer 2004), 39-50
Hendrikse-Margetson 2008	M.L. Hendrikse and N.J. Margetson, 'Uniform Construction and Application of The Hague (Visby) Rules', in M.L. Hendrikse, N.H. Margetson and N.J. Margetson (Eds.), <i>Aspects of Maritime Law. Claims under Bills of Lading</i> (Austin 2008), 35-57

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Herber 1987	R. Herber, 'Gesetzgebungsprobleme bei der internationalen Zivilrechtsvereinheitlichung', (1987) <i>Zeitschrift für Gesetzgebung</i> , 17-42
Herber 2016	R. Herber, <i>Seehandelsrecht. Systematische Darstellung</i> (Berlin / Boston 2016)
Hill 2003	C. Hill, <i>Maritime Law</i> (London / Hong Kong, 2003)
HNS Convention or HNS 1996	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
HNS 2010	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, as Amended by the Protocol of 2010
Kennedy-Rose	F.D. Rose, <i>Kennedy and Rose Law of Salvage</i> (London, 2010)
IIDM Maritime Model Law	Proyecto de Ley Modelo de Derecho Marítimo (versión 2021), approved by the General Assembly of the Instituto Iberoamericano de Derecho Marítimo on 18 October 2023
IMO	International Maritime Organization
Intervention Convention	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969
IWT	Inland Waterway Transportation
Jacquet-Delebecque-Corneloup 2010	J.-M. Jacquet, Ph. Delebecque and S. Corneloup, <i>Droit du commerce international</i> (Paris 2010)
Japikse 2004	R.E. Japikse, <i>Verkeersmiddelen en vervoer. Deel I. Algemene bepalingen en rederij</i> (Deventer 2004)
La Mattina 2017	A. La Mattina, 'Decision making and maritime law: the role of the Lex Maritima', <i>Il diritto marittimo</i> 2017, 64-67
Liens and Mortgages Convention 1926	International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1926
Liens and Mortgages Convention 1967	International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, 1967
Liens and Mortgages Convention 1993	International Convention on Maritime Liens and Mortgages, 1993
LL	International Convention on Load Lines, 1966

LLMC Convention, LLMC 1976 or LLMC	Convention on Limitation of Liability for Maritime Claims, 1976
LLMC PROT 1996	Protocol Amending the International Convention on Limitation of Liability for Maritime Claims, 1996
Mandaraka-Sheppard 2006	A. Mandaraka-Sheppard, <i>Modern Admiralty Law</i> (Abingdon / New York 2006)
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973
Maurer 2012	A. Maurer, <i>Lex Maritima</i> (Tübingen 2012)
MLC 2006	Maritime Labour Convention, 2006
Musi 2020	M. Musi, <i>La nozione di nave</i> (Bologna 2020)
Oostwouder 1994	W.J. Oostwouder, <i>Hoofdzaken Boek 8 BW</i> (Deventer 1994)
OTT Convention	United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, 1991
Owen 1977	D.R. Owen, 'The origins and development of marine collision law', (1977) <i>Tulane Law Review</i> , 759-819
PAL 1974	Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
PAL 2002	Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as Amended by the Protocol of 2002
PAL PROT 2002	Protocol Amending the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002
Parks 1982	A.L. Parks, <i>The Law of Tug, Tow and Pilotage</i> (London, 1982)
Rabe 2000	D. Rabe, <i>Seehandelsrecht</i> (Munich 2000)
Rabe-Bahnsen 2018	D. Rabe and Kay Uwe Bahnsen, <i>Seehandelsrecht</i> (Munich 2018)
Registration of Ships Convention	United Nations Convention on Conditions for Registration of Ships, 1986
Remond-Gouilloud 1993	M. Remond-Gouilloud, <i>Droit maritime</i> , (Paris 1993)
Ridley 2010	B. Harris, <i>Ridley's Law of the carriage of goods by land, sea and air</i> (London 2010)
Rimaboschi 2005, I	M. Rimaboschi, <i>Méthodes d'unification du droit maritime</i> , I (Trieste, 2005)

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Robertson-Sturley 2013	D.W. Robertson and M.F. Sturley, 'Vessel Status in Maritime Law: Does Lozman Set a New Course?', (2013) <i>JMLC</i> , 393-500
Rodière 1972	R. Rodière, <i>Traité general de droit maritime. Evénements de mer</i> (Paris 1972)
Rodière 1976	R. Rodière, <i>Traité general de droit maritime. Introduction. L'armement</i> (Paris 1976)
Rodière-du Pontavice 1997	R. Rodière and E. du Pontavice, <i>Droit maritime</i> (Paris 1997)
Rose 1984	F. Rose, <i>The Modern Law of Pilotage</i> (London, 1984)
Rotterdam Rules	United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008
Salvage Convention 1989	International Convention on Salvage, 1989
Schoenbaum 2004 II	T.J. Schoenbaum, <i>Admiralty and Maritime Law</i> , II (St. Paul, Minn., 2004)
Schultsz 1990	J.C. Schultsz, 'Interpretation of international conventions', in Economic and Social Commission for Asia and the Pacific, <i>Essays on maritime legislation</i> , II (Bangkok 1990), 235-243
Smeele 2006	F.G.M. Smeele, 'Eenvormig zeerecht: doelstellingen en verwezenlijking', in F. De Ly, K.F. Haak and W.H. van Boom (Eds.), <i>Eenvormig bedrijfsrecht: realiteit of utopie ?</i> (The Hague 2006), 225-250
Smeesters-Winkelmolen III	C. Smeesters and G. Winkelmolen, <i>Droit Maritime et Droit Fluvial</i> (Brussels 1938)
SOLAS	International Convention for the Safety of Life at Sea, 1974
SUA Convention	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988
Sturley-Fujita-van der Ziel	M.F. Sturley, T. Fujita and G. van der Ziel, <i>The Rotterdam Rules</i> (London, 2010)
Tetley 1994	W. Tetley, 'The General Maritime Law – The Lex Maritima', (1994) <i>Syracuse Journal of International Law and Commerce</i> , Vol. 105, 105-145
Tetley 1996	W. Tetley 'The general maritime law: the Lex Maritima' (1996) <i>European Transport Law</i> , 469-506
Tetley 2002	W. Tetley, <i>International maritime and admiralty law</i> (Cowansville 2002)

Tetley 2008, I	W. Tetley, <i>Marine cargo claims</i> , Vol. I (Cowansville 2008)
Tettenborn 2015	A. Tettenborn, 'Good Faith, the DCFR and Shipping Law', in W. Verheyen, F.G.M. Smeele and M.A.J.H. Hoeks, <i>Common core, PECL and DCFR: could they change shipping and transport law</i> (Cambridge / Antwerp / Portland 2015), 41-66
TONNAGE	International Convention on Tonnage Measurement of Ships, 1969
UNCLOS	United Nations Convention on the Law of the Sea, 1982
USC	United States Code
Van Hooydonk 1999	E. Van Hooydonk, 'De taakverdeling tussen de kapitein en de loods', in <i>Liber amicorum Hubert Libert</i> (Antwerp / Apeldoorn 1999)
Van Hooydonk 2011-1	E. Van Hooydonk / Commissie Maritiem Recht, <i>Eerste Blauwboek over de herziening van het Belgisch scheepvaartrecht</i> (Antwerp / Apeldoorn 2011)
Van Hooydonk 2011-8	E. Van Hooydonk / Commissie Maritiem Recht, <i>Achtste Blauwboek over de herziening van het Belgisch scheepvaartrecht</i> (Antwerp 2011)
Van Hooydonk 2014	E. Van Hooydonk, 'Towards a worldwide restatement of the general principles of maritime law', (2014) <i>JIML</i> , 170-182
Vialard 1997	A. Vialard, <i>Droit maritime</i> (Paris 1997)
Werner1964	A.-R. Werner, <i>Traité de droit maritime général</i> (Genève, 1964)
Wolfrum 2006	R. Wolfrum, 'Hohe See und Tiefseeboden (Gebiet)', in W. Graf Vitzthum (Ed.), <i>Handbuch des Seerechts</i> (Munich 2006)
Wreck Removal Convention or Nairobi WRC	Nairobi International Convention on the Removal of Wrecks, 2007
Zunarelli-Comenale Pinto 2023	S. Zunarelli and M.M. Comenale Pinto, <i>Manuale di diritto della navigazione e dei trasporti</i> (Milan, 2023)

DRAFT CMI QUESTIONNAIRE

on

The CMI Lex Maritima – The Gothenburg Draft

National maritime law associations are hereby invited to comment on the attached Draft CMI Lex Maritima, prepared by the International Working Group on the subject. This draft was presented at the CMI Colloquium in Gothenburg in May 2024.

The Draft CMI Lex Maritima is an articulation of the universally applicable basic principles of maritime law. In other words, it deals with the common core of maritime law, on which there is at least a rough global consensus.

By articulating in the CMI Lex Maritima, in as simple terms as possible, the common basic principles of maritime law, the instrument aims to facilitate the understanding of maritime law, as a special branch of the law. The instrument can assist in education, interpretation, the drafting of national rules and case law. In line with the CMI's core objective, the CMI Lex Maritima can contribute significantly to the international uniformity of maritime law.

Given the aim of the Draft CMI Lex Maritima, aspects on which there is no international consensus as well as national specificities have been eliminated from the document. The preparation of the CMI Lex Maritima was done on the basis of a comparison of rules of the 'positive maritime law' in order to detect common ground. To substantiate the general acceptance of the Principles, numerous references to source materials are included in the footnotes. In other words, the methodology applied was strictly objective and scientific; one can compare it to a mechanical or chemical extraction or distillation process. Logically, in this process subjective or personal preferences and policy wishes 'de lege ferenda' about future unification initiatives have been disregarded.

The following three questions are submitted to national associations:

- (1) *please correct the references in the Draft Principles to your national law where necessary*, adding to that end sources from relevant positive law (legislation, case law, legal doctrine);
- (2) *please complete the references in the Draft Principles to your national law where necessary*, adding to that end sources from relevant positive law (legislation, case law, legal doctrine);
- (3) *please make substantiated suggestions to amend or expand the Draft Principles where you believe that they incorrectly or insufficiently reflects universally (or almost universally) accepted rules*, taking into account the methodology and the distinction between three categories

of Principles, and adding to that end sources from relevant positive law (legislation, case law, legal doctrine).

To facilitate your reply, a table is added below.

When providing feedback and/or suggestions the IWG would be grateful if you could always provide evidence in the form of full text legislation, full text of judgements, articles and scholarly work and/or any other materials supporting your views (weblinks, copies or scans, not just references).

Please submit your reply **no later than 1 November 2024**. Based on the comments and suggestions received, the Draft Lex Maritima will then be further finalised with a view to approval by the CMI Assembly in Tokyo in May 2025. Thank you very much in advance.

Table to facilitate MLA replies to the CMI Questionnaire on the CMI Lex Maritima – The Gothenburg Draft

	Please correct the references in the Draft to your national law where necessary	Please complete the references in the Draft to your national law where necessary	Please make substantiated suggestions to amend the Draft where you believe that it insufficiently reflects universally (or almost universally) accepted rules	Please state here which evidence you have added to your reply
Part 1 – Preliminary rules				
Rule 1 Objective				
Rule 2 Definitions				
Rule 3 Scope <i>ratione navis</i>				
Rule 4 Status of Principles				
Rule 5 Application of Principles				

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Part 2 – Sources of maritime law				
Principle 1 Interpretation of maritime law				
Principle 2 Maritime cu- stom				
Part 3 – Ships				
Principle 3 Identification, nationality and flag				
Principle 4 The law gov- erning property interests				
Principle 5 Ownership and management				
Part 4 – Maritime responsibilities and liabilities				
Principle 6 Responsibil- ities of ship- owners and ship operator				
Principle 7 The Rules of the Road				
Principle 8 The ship master				
Principle 9 The pilot				
Principle 10 Joint and vi- carious liability of ship owner and ship op- erator				
Principle 11 General tonna- ge limitation				
Principle 12 Pollution liabi- lities				

Questionnaire Lex Maritima

Part 5 – Maritime contracts				
Principle 13 Freedom of maritime con- tract				
Principle 14 Bareboat char- terparty				
Principle 15 Time charter- party				
Principle 16 Voyage char- terparty				
Principle 17 Contract for the carriage of cargo				
Principle 18 Contract for the carriage of passengers				

Part 6 – Maritime incidents				
Principle 19 Collisions				
Principle 20 Salvage				
Principle 21 General ave- rage				
Principle 22 Wreck removal				

Part 7 – Maritime securities and time bars				
Principle 23 Preferential rights				
Principle 24 Immobilization of ships				
Principle 25 Time bars				

Are there other general principles of maritime law which your National Association would like to see included in the CMI Lex Maritima?				

OFFSHORE ACTIVITIES

YEARLY REPORT

JORGE RADOVICH, *Chair*

Introduction

I have been asked to provide a report on the status of the draft International Convention in 2024 that the International Working Group of the Comité Maritime International on Offshore Activities is working on. I believe that it would not be understandable to those who have not been able to follow the Group's proceedings and discussions without the brief explanation of its background that I will provide.

Since first recognizing the need for an offshore Oil and Gas Convention (the OGA Convention for the initials of Oil and Gas in English) in 2020, the IWG on Offshore Activities convened a Committee to draft a first text, followed by its circulation to all IWG members for review and comment on October 2021. Initially modeled on the structure of the CLC/Fund, Bunkers and HNS Conventions, the draft was adapted to the particularities, uniqueness and diversity of the offshore oil and gas activities, first and foremost that they are actual industrial activities.

During the several editing iterations of the Convention, consensus was reached on a majority of concepts, even regarding contributions to the Fund. The application of our Convention is restricted to transboundary pollution as explained below.

We have now a complete draft of the body of the Convention and the structuring of its Compensation Fund.

Grammatical, detail and punctuation modifications aside, I think that currently the only serious dissent is whether only spills that cause economic damage should be covered and compensated, as in the CLC/Fund Convention, which is the minority opinion, or whether compensation for transboundary environmental damages and ecological restoration should be included, as the ample majority of the IWG members maintains.

1. The Progress Towards the Current Consolidated Draft of the OGA Convention

After recognizing the need for an offshore Oil and Gas Convention in 2020, the IWG on Offshore Activities convened a Committee to draft a

first text, to be followed by its circulation to all IWG members for review and comment. The basic premises underpinning the need for this OGA Convention were: The dangers of pollution and the increasingly high risks posed by worldwide offshore activities; the lack of comprehensive international compensation mechanisms for offshore pollution; the notable paucity of environmental protection and financial security provided by the existing international agreements on the waterborne transport of oil and gas and by the current worldwide trends towards compensating environmental damages caused by human activities.

The Drafting Committee was composed by: Jorge Radovich, Aldo Brandani, Stephen Rares, with several comments received and acknowledged from Aurelio Fernández Concheso. The drafting Committee produced a first draft version of the OGA Convention, circulated to all IWG Members on October 19, 2021.

Substantial comments and contributions were offered by IWG members Prof. Mäns Jacobsson and Andrew Taylor, introduced into the main Convention text during the iteration of draft versions produced up to the beginning of 2024.

Initially modeled on the structure of the CLC/Fund, Bunkers and HNS Conventions, the draft was adapted to the particularities, uniqueness and diversity of the offshore oil and gas activities, first and foremost that they are actual industrial activities with distinctive facilities, equipment and infrastructure. Their components are much more than just tankers or other transport vessels.

For our production of the OGA Convention draft we took inspiration from several Mäns lectures he so kindly sent us. In particular, from his recent: **Is There a Future for the Unification of Maritime Law? Global Ocean Institute World Maritime University, 27 September 2022**. We fully agree with his statements there, for instance:

“The preparation of maritime law conventions was in the past considered mainly a legal, technical matter and was to a large extent left to eminent lawyers. Nowadays the issues that will have to be addressed in this field of law are often of a more political nature, for instance environmental issues,...”

“The development in the maritime industries will, however, result in new issues arising that will necessitate major amendments to existing conventions, and sometimes also the elaboration of new conventions.”

“It should be emphasized that law is not – and should not be – static but should, and will, develop to take into account changes in society and in economic and social circumstances as well as technological developments and new political priorities, so as to ensure that the law meets the requirements of modern society in a rapidly changing world. This applies equally to national laws and to international treaties,...”

The OGA Convention draft establishes that the liability corresponds to the licensee of the Offshore installation, and is objective, limited, with few possibilities of exoneration or subrogation.

The OGA Convention also describes and regulates a compensation Fund to which the licensee operator itself must contribute, and not the importer of oil or gas as in the CLC/Fund Convention, due to the mentioned characteristics of the offshore activities. The draft contemplates that the contributor may be the coastal State itself. The draft also establishes different criteria for the contributions of first time licensees than for established offshore operators.

The OGA Convention draft includes compensation for environmental damages caused by Offshore installations and operations in addition to compensation for pure economic loss due to pollution. This specific point is opposed by three of the fourteen members of the IWG.

However, this regulation is not new, and the offshore industry is already adapted to it in places where applied. For instance, the US regime addresses natural resource damage as opposed to the international regime (CLC/Fund) in respect to tankers. In the Gulf of Mexico, compensation of environmental damages from offshore oil spills are increasingly mandated by the Courts, similar to European sentences on oil spills. We believe that there should be compensation for natural resource damages, particularly considering today's environmental conscious society.

A number of international trends move in that direction, such as the sustainable development goals contained in the UN AGENDA 30.

Also, the 2023 "INTERGOVERNMENTAL CONFERENCE ON AN INTERNATIONAL LEGALLY BINDING INSTRUMENT UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION" (the "**BBNJ CONFERENCE**") has established a Financing Fund to, among other activities, "...*finance rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction*".

Provisions for economic compensation for environmental damages have been similarly produced, for the first time, by the "Conference of the United Nations Framework Convention on Climate Change (COP 27-UNFCCC)".

Hence, what is proposed in our OGA draft is fully in line with current UN efforts regarding the protection of the marine environment.

Most of the authors, individually and institutionally, think nowadays that environmental damage should be compensated or that current international agreements are very limited and ineffectual for adequate compensation of damages by spills. For examples see:

Spicer W. 2014. Deepwater Horizon: Lessons for the Offshore. . Dalhousie Law Journal. Volume

37. Issue 1 37:1 Special Issue: 4th East Coast Seminar of the Canadian Energy Law Foundation Article 7. 4-1-2014.

Radovich J.M. and Brandani, A. 2013. "Protecting the aquatic environment: Are all costs and benefits accounted for?," in *Le Droit Maritime Français*, no. 715 (France: Wolters Kluwer, October 2013), 839–861.

K. De Smedt et al., *Civil Liability and Financial Security for Offshore Oil and Gas Activities. Final Report*, (Maastricht: European Institute for Transnational Legal Research, Faculty of Law, Maastricht University,

Netherlands, 2013), p. 393, available online:

<http://ec.europa.eu/dgs/energy/tenders/doc/2013/20131028_b3-978-1_final_report.pdf>.

J. Rochette and L. Chabason, “Strengthening the Regulation of Offshore Oil

Exploitation: Global Environmental Law at a Crossroads” (paper presented at the 10th Annual Colloquium of the IUCN Academy of Environmental Law, July 1–5, 2012, University

of Maryland Francis King Carey School of Law, Baltimore, Maryland), available online: <<http://digitalcommons.law.umaryland.edu/gelc>>.

Global Ocean Commission, *From Decline to Recovery. A Rescue Package for the Global Ocean* (Oxford, UK: Global Ocean Commission, 2014), Proposal 6, pp. 62–67.

S. Rares, “An International Convention on Off-Shore Hydrocarbons Leaks?,” *Australian &*

New Zealand Maritime Law Journal 26, no. 1 (2012): 10–23 at 10.

Radovich J.M. & Brandani A, 2018. *The Need of International Regulation for Offshore Liability and Financial Security*. OCEAN YEARBOOK, pp. 313-344.

Civil Liability and Compensation for Marine Pollution. Lessons to be Learned for Offshore Oil Spills. Oil, Gas & Energy Law Intelligence, Vol. 8 – issue 3. Electronic copy available at: <http://ssrn.com/abstract=1975802>

Economic Analysis of Compensation for Oil Pollution. *Journal of Maritime Law and Commerce* (2006) 37: 179.

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, USA. 2011. Deep Water. The Gulf Oil Disaster and the Future of Offshore Drilling. Report to the President.

Nathan Richardson, 2010. *Deepwater Horizon* and the Patchwork of Oil Spill Liability Law. Backgrounder pp.1-6, Resources for the Future, Washington D.C.

Richards, Rebecca K. (2011) “Deepwater Mobile Oil Rigs in the Exclusive Economic Zone and the Uncertainty of Coastal State Jurisdiction,” *Journal of International Business and Law*: Vol. 10: Iss. 2, Article 10.

Available at: <http://scholarlycommons.law.hofstra.edu/jibl/vol10/iss2/10>

Since its inception the OGA Convention draft was discussed by e-mail, meetings at CMI Conferences and Colloquiums, and virtual meetings, resulting in numerous modifications and improvements.

For instance, and despite that many MODUs do have crews, we deleted this word in Art. II.4 and replaced it with a broader and more encompassing expression.

We also deleted the paragraph of Article XIV related to compensation of death, which was left in the draft by mistake, because this kind of issues are not transboundary pollution damage and should be ruled by the State that gave the authorization to operate the Offshore Activities.

In Antwerp, various issues were discussed in the meeting of the IWG, such as from when the Convention start to apply, which we have already

incorporated to the draft, and it was pointed out that the issue of contributions should be addressed to encourage the ratification of the OGA Convention. Professor Ilker Basaran – teaching in USA – made a presentation in support of compensation for environmental damages, stressing its importance.

From September 2022 to date, several opinions favorable to the most recent OGA Convention draft were received from Members, individual professionals and Maritime Associations.

Leaving the details aside, I think that the main issue is whether the OGA Convention should protect the marine and coastal environments, flora and fauna, by compensating pollution damages as the UN Agenda 30 and other relevant international documents and gatherings impose.

2. Regulation of Transboundary Pollution

A very simple and provisional characterization of Transboundary pollution or cross border pollution could be that it occurs when an Offshore installation causes damage to the waters or coasts of a country other than the one that granted the concession. Below we summarize some relevant points.

The most famous case is that of the DEEPWATER HORIZON: in 2010 in the Gulf of Mexico, it exploded and caught fire, causing eleven deaths and a colossal spill. It was retained by British Petroleum. More than \$20 billion were paid, although the US Oil Pollution Act (OPA) established a much smaller limitation. The actual extension of the spill and its damages has not been ascertained to date.

However, the MONTARA case had greater institutional consequences: In 2009, a platform operated by a Thai oil company was drilling when an explosion occurred and a large amount of crude oil. Originally released in Australia's EEZ the spill spread regionally and affected Indonesia's waters.

In 2012 Indonesia raised the issue with the IMO Maritime Safety Committee. The matter was directed to the Legal Committee.

At its Hundredth Session, held in London, from April 15 to 19, 2013, the IMO Legal Committee: resolved that:

1. There is no compelling need to prepare an international treaty on Off Shore activity.
2. The objective for IMO should be to assist States to reach bilateral or regional agreements by creating workshops or consultative groups.
3. There is no need for the IMO to be directly involved in this, which could delay bilateral or regional agreements.
4. In 2014, Indonesia insisted on the need to regulate offshore exploration and exploitation and the cross-border pollution it causes, also with negative results.
5. In fact, to date there is no International Convention that regulates the subject.

On April 14, 2015, the Ibero-American Institute of Maritime Law presented a position paper requesting that the IMO Legal Committee regulate offshore extractive activities. In LEG 102 it was decided that this would not be carried out, in response to the position of an important group of States that considered offshore crafts as “not vessels”, and that this regulation was

within their sovereign attributions, and hence no need for an international convention in this regard was needed.

For this reason, the IWG did not focus on a global regulation of offshore extractive activity, since any other attempt would suffer the same fate, but limited itself to transboundary pollution only.

CMI Newsletter N° 1 2020, Minutes of the CMI Assembly meeting Mexican Colloquium Working Group Reports (f) Offshore Activities Pollution Liability and Related Issues: Report of the undersigned. I began the report to the Assembly by reminding that, as the report to EXCO and Assembly in Genoa had explained, the way towards an international convention on Transboundary Pollution caused by Offshore Activities through the IMO Legal Committee had been closed. Patrick Griggs had reported that the Legal Committee had adopted a Guidance Document and had expressed the hope that it would prove useful and had agreed that no further work by the Committee would be necessary. Accordingly, as far as IMO's Legal Committee was concerned, there was, at the time, no interest in an international convention on the subject.

The ExCo authorized the IWG to work on a Convention limited to MODUs in the first instance – since there were possibilities that they would be considered vessels – and later it was extended to any type of Offshore artifacts as a consequence of new claims that were not limited to MODUs.

3. The situation in 2024

Significant progress was made in the drafting of the OGA Convention. We have now a complete draft of the body of the Convention and the structuring of its Compensation Fund. During the several editing iterations consensus was reached on majority of points, even regarding contributions to the Fund, which must be contributed by the operator of the Offshore installation and not by the importer of the hydrocarbon as in the CLC/Fund Convention and others administered by the IOPC Fund.

This is because Offshore facilities constitute true industrial complexes that connect the Platforms through pipes with facilities on land, with vessels (if they can be considered vessels because they are not actually destined to navigation) that operate as storage tanks (FSOs) and others that are true refineries (FPSOs), and are also connected by pipes, so that the final destination of the hydrocarbons can be very diverse.

Grammatical and punctuation modifications aside, I think that the only serious dissent is whether only spills that cause economic damage should be covered and compensated, as in the CLC/Fund Convention, which is the minority opinion, or whether restoration of transboundary environmental damage caused by Offshore facilities should be included, as the ample majority maintains.

We are currently at the stage of further deliberating the latest draft and hope to have a finalised draft to share shortly

GÖTEBORG COLLOQUIUM

SPEAKERS PRESENTATIONS

OPENING REMARKS

ANN FENECH, *President of the CMI*

Distinguished guests, dear friends.

1. Welcome to Gothenburg. How very fortunate we are to be here at probably one of the most beautiful times of the year in this glorious weather. The last time the CMI was in Gothenburg was in 1923 and I know that Paula will tell you more about that.
2. Thank you dear Paula Backden President of the Swedish MLA and to all of your team and thank you to all the organising committee particularly Secretary General Rosalie Balkin and Head Office Manager Evelien Peeters for the organisation of this colloquium. The organisation of this event started shortly after we left Montreal and the organising committee has left no stone unturned in producing what we believe is a hugely varied academic programme quite apart from the social programme which will see us going back to the roaring 20's during the gala dinner.
3. The idea of having a 1920's themed gala dinner came whilst we were speaking on how fitting it would be to celebrate at this Colloquium the 100th Anniversary of the Hague Rules of 1924 – one of the greatest contributions of the CMI to the unification of international maritime law. With over 90% of world trade today being carried by sea, it makes it crucial more than ever before, to have this sector properly regulated by an international regime which is contemporary and fit for today's purpose, hence one of the focuses of this colloquium will be the Rotterdam Rules.
4. Drafting conventions is what the CMI is known for and of course our very latest jewel in the CMI crown – the Convention on the International Effects of Judicial Sales of Ships, has since Montreal been signed off in Beijing in September 2024. I think I can speak for Henry Li when I say it was very probably one of the happiest days of our mutual careers to see the fruit of two working groups, one that drafted the convention and

one that pushed it through UNCITRAL arrive to the all important signing ceremony in Beijing and to see 15 countries sign up to it. These 15 were followed by another 2 a few weeks later. Regrettably the EU had not yet finalised its procedures by then and so no EU member state was able to sign up.

5. In line with what I believe to be another deliverable of the CMI we have worked very hard indeed with the EU and encouraged it to finalise its internal procedures so that on the 15th of March of this year the EU signed the Convention in New York together with Belgium, the first EU member state to sign the convention. A few weeks ago Luxembourg followed suit. This brings the signatory states to 19 plus the European Union.
6. The road is now open for EU member states to sign the convention and so the Maltese government is organising a celebratory event to which EU Member states and all countries with diplomatic credentials to Malta have been invited to attend to hear about the advantages of signing. Those present will also be given the opportunity of signing the actual convention. This is quite an exceptional affair because the UN Treaty Book normally only leaves the UN once to go to the country indicated by the General Assembly of the United Nations as the one holding the signing ceremony of the Convention which was Beijing. So exceptionally the treaty book will be brought to Malta and Mr. Miguel Serpa de Soares, Under secretary General of the UN will be accompanying the treaty book and attending in person. Also present will be Mr. Richard Sonnenshien, Director General from the Justice Directorate at the European Commission.
7. The CMI has throughout played a key role in co-ordinating these efforts between the Maltese government, UNCITRAL and the EUROPEAN UNION and various states. We did this because we recognise that post drafting and adoption the CMI must continue to follow up with signing until ratification and coming into force of a convention.
8. The ink hasn't yet quite dried on our Convention on the International effects of judicial sales and we have a number of interesting projects in the pipeline. A number of these projects will be showcased during our colloquium: decarbonisation, safety and security risks to commercial shipping and how these effect the insurance market, sanctions, mobile offshore renewable units, MASS, EU regulation, our Lex Marittima project, the future of Lloyds Open Form, – these are all exciting topics happening in real time and the CMI is in real time taking them forward.
9. We are ladies and gentlemen living in challenging times. There are some very serious scenarios which are threatening world order and international shipping and the new Secretary General of the IMO, Mr. Arsenio Dominguez, shared with me his concerns during my meeting with him earlier this year. I pledged to him the support of CMI confirming that the CMI is there willing and able to assist. And one project we will be actively involved in is the project announced at LEG 111 only a few weeks ago relating to the urgent need to address fraudulent registrations and fraudulent activity. Each and every marine litigation lawyer in this room and beyond has over the past year or so seen a marked increase in this phenomenon. The British delegation at the IMO will be leading

this effort and I have already communicated with them and pledged our assistance through our extensive network of NMLAs.

10. This colloquium and indeed every CMI colloquium, seminar or conference would not materialise if it were not for the Speakers, Chairs and Panellists who have kindly agreed to share their time with us. Thank you all.
11. These fall roughly into 2 categories. The category made up of those who I consider to be CMI born and bred practitioners and academics – CMI Activists. To these I say thank you because I know only too well how challenging it is to cope with a busy practice and to dedicate the time required for the high quality work output which the Comité is famous for. The second category is made up of persons who are not perhaps CMI “activists” but who have accepted to come and participate at our colloquium to speak, to deliver papers and to participate in our panels none the less. A number of these also come from industry and are our esteemed consultative members. We have a record number of Consultative Members participating in this colloquium this year from IMO, BIMCO, ICS, IGP&I, ISU, WMU, IMLI, ITF, EMLO, IBA, And to these we say welcome and thank you for agreeing to participate and to share your expert knowledge. I am convinced that today more than ever before, Industry needs the CMI to provide it with solid solutions aimed at the unification of international maritime law, and the Comité needs industry to ensure that the solutions it provides are fit for purpose. It is this meeting of expert minds from law and industry from different cultures, jurisdictions and disciplines, which provides food for thought, challenging debate between established veteran practitioners and experts and industry players and yet provides fertile learning experiences and opportunities for our younger members who are given the space to hear, to contribute and to mix with world authorities on the various subjects and above all to meet friends and make new acquaintances.
12. Thank you all for coming to our Colloquium. I hope you will all have, as I certainly will, a fruitful and enjoyable few days at the CMI Colloquium in Gothenburg.

Thank you

OPENING SPEECH

PAULA BÄCKDÉN, *President of the Sweden MLA*

WELCOME TO GOTHENBURG

Bienvenue a Göteborg

Bienvenudo a Gotemburgo

Huānyíng lái dào gēdébǎo

Yōtebori e yōkoso

Merhba ghal Gothenburg

VÄLKOMMEN TILL GÖTEBORG

It is my proud honour to, on behalf of the Swedish Maritime Law Association, welcome you all to the City of Göteborg, a city where we, for generations, have lived not just by the sea but from the sea.

In 1923, the CMI held its fourteenth conference here in Göteborg, and had it not been for the pandemic this colloquium would have been marked the 100th anniversary of that conference. However, on the other hand this year marks the 100th anniversary of the Hague Rules, which has given us the opportunity to devote parts of the program to the remarkable work of lawyers before us that has lasted for a century!

Given the two centennials that frames this colloquium, I would like to take the opportunity to reflect on how this organization has evolved since 1923. In the report of the CMI conference that was published in a Swedish law journal in 1923, a Swedish delegate stated that the “CMI has during the last decenniums exercised significant influence in the field of international maritime lawmaking”. Conventions such as the Collision convention and the Salvage convention had been drafted by the CMI and had proven to become internationally accepted law. Although the Hague Rules were first drafted by the International Law Committee, it was only after the CMI had put its touch to it that it was accepted at a diplomatic conference in 1924.

Over the hundred years to come the CMI has, as an organization, grown in strength. Back in 1923, the CMI had 16 member-maritime law associations, and the president of the organization was the Belgian minister of the Colonies. Today, CMI has an incredible 52 member-maritime law associations, each representing a free and sovereign state.

Back in 1923 there were 38 delegates attending the conference and attending an international conference was not without severe obstacles. Today, although a flight from Japan, South America or Australia is indeed long, the travel time is nothing compared to the boat trip one hundred

years ago. Therefore, we have today 269 delegates from 43 of our member associations. Delegates that are here to share knowledge and experience which is far wider than what could have been the case between the 38 delegates in 1923.

The increased number of member associations has broadened the cultural diversity of the CMI. It means that today, more than ever, our organization can claim to be international.

Also, while reading the 1923 yearbook and the transcripts from the Göteborg conference, it did strike me that the speakers address the audience as Ladies and Gentlemen, which shows that there in fact were women in the audience. However, I think also in this respect our organization has become a lot more diverse.

My conclusion is that today, one hundred years since the last Göteborg conference, the CMI has gained inner strength through its increased and more diverse membership. The knowledge and experience contained in this very room covers all continents of the world, various legal systems and especially various legal traditions as well as varying cultural experience. For the two days to come, this knowledge and experience will be liberally shared and this is something that our organization does so well: to share knowledge freely with our peers.

However, I want to end by citing Mr FRANCK, the then president of the CMI, from his welcome speech here in Göteborg in 1923 where he warned the delegates that “No doubt we have some reasons to congratulate ourselves on our past success, but we must certainly not be self-content with admiration over what we have done we must look forward to what we are doing and to what we are going to do.”

Again, a warm welcome to my city of Göteborg!

THE 2024 BERLINGIERI LECTURE: THE HAGUE RULES AT 100*

MICHAEL STURLEY**

Introduction

Good morning, everyone. It is a real pleasure for me to be back in Gothenburg. I am particularly pleased that this week — unlike my first visit to Gothenburg, in May 1995 — we have seen no snow. All of us attending this conference are very indebted to our local hosts not only for the wonderful academic and social programs but also for arranging such excellent weather.

I am deeply honored to be delivering this year's Berlingieri Lecture. I worked closely with Francesco Berlingieri for decades, culminating in our work together at UNCITRAL in negotiating the Rotterdam Rules. But my first contact with Francesco was in the late 1980s, when I began compiling the travaux préparatoires of the Hague Rules. In those days, we corresponded by letter. I vividly recall one exchange we had. In my research, I discovered that a "Francesco Berlingieri" was prominently involved in the negotiation of the Hague Rules, so in one letter I asked whether the Francesco Berlingieri of the 1920s had been his father. Two weeks later, I received the reply — his grandfather! The entire CMI is indebted to the remarkable Berlingieri family for all of the contributions that it has made — and continues to make — to our work. But I am personally indebted to the Francesco Berlingieri for whom this lecture is named for having been one of my mentors in this field.

In light of that background, it is appropriate that I have been invited to speak on the history of the Hague Rules. As we all know by now, this year marks their centenary. On August 25, 1924, the international community concluded the world's first multilateral treaty to provide uniform rules to govern central aspects of the carriage of goods by sea. And the Hague Rules were remarkably successful. Indeed, they continue — with some relatively modest amendments — to govern most of the world's maritime trade today. Celebration of their centenary is accordingly appropriate.

* The 2024 Berlingieri Lecture was delivered on May 23, 2024, at the CMI Colloquium in Gothenburg, Sweden.

** Fannie Coplin Regents Chair in Law, University of Texas at Austin; B.A., J.D., Yale; M.A. (Jurisprudence) Oxford.

The Maritime Law Background

This morning's story is not limited to the events of the early 1920s. The Hague Rules were designed to allocate the risk of loss for damage to ocean cargo carried under bills of lading. To understand them, therefore, it is helpful to begin with the pre-existing risk allocation. Under early nineteenth century maritime-law principles, which both common-law and civil-law countries recognized and accepted, a carrier was absolutely liable for cargo damage unless it could prove (1st) that its negligence had not contributed to the loss and (2nd) that one of four "excepted causes" (act of God, act of public enemies, shipper's fault, or inherent vice of the goods) was responsible for the loss. In other words, if one of the four exceptions applied, the carrier was liable only if it had been at fault, but in all other cases it was liable without fault. That extensive no-fault liability, in an era when such liability was rare, led many to describe the carrier as an "insurer" of the goods. Although that label is technically incorrect, it well conveys the concept that a carrier assumed very broad liability for cargo damage under general maritime law.

The major maritime nations accepted that risk allocation as a matter of principle, but by the late nineteenth century there were important differences in application. British courts, for example, viewed that risk allocation essentially as a default rule applying only in the absence of an agreement to the contrary. In deference to "freedom of contract," the shipper and carrier could agree on a different risk allocation — including one in which the carrier assumed virtually no liability, even for its own negligence. Most European and Commonwealth countries eventually followed the British example.

In the United States, on the other hand, freedom of contract was more restricted. Federal courts permitted carriers to limit their liability in many circumstances, but carriers could not exonerate themselves from the consequences of their own negligence or their failure to provide a seaworthy ship. The Japanese Commercial Code was similar.

That conflict among major maritime nations, which became more serious in the early twentieth century, meant that the general maritime law no longer provided a uniform risk allocation. The desire to restore international uniformity to the field ultimately produced the Hague Rules. But it was an extended process.

Early Attempts to Achieve Uniformity

The Hague Rules were not the international community's first attempt to address the problem. In 1882, the International Law Association — fresh off its success with the York-Antwerp Rules — promulgated a model bill of lading which became known as the "Conference form." It never achieved general acceptance, but it was a first step. Several of the form's innovations reappeared in the Hague Rules — including the central compromise distinguishing "ordinary" matters such as stowage and care of the cargo from "accidents of navigation."

In 1885, the International Law Association proposed a set of rules (the first "Hamburg Rules") that parties could voluntarily incorporate by reference into their bills of lading, much like the York-Antwerp Rules. These Hamburg

Rules proved unworkable, and in 1887 they were “rescinded.” The format — uniform rules rather than a model bill of lading — was the one innovation that endured.

After 1887, the International Law Association turned to other subjects, but a new player emerged in 1897 — the CMI. The CMI did not do anything with bills of lading yet, but it will rejoin our story soon. It instead began work on collisions at sea. When it recognized that private agreement would be ineffective, it persuaded the Belgian government to sponsor the first Diplomatic Conference on Maritime Law, held in Brussels in 1905. That first Diplomatic Conference addressed different subjects, but future Diplomatic Conferences will be part of our story soon.

Domestic Legislation

With the apparent break-down of the international efforts to achieve an agreement, cargo interests became increasingly frustrated with what they viewed as overreaching on the part of the carriers. The United States took the lead in the domestic regulation of exoneration clauses in 1893. The original proposal would have given cargo owners broad protection, but in its final form the U.S. Harter Act adopted a more balanced compromise. The carrier’s obligation to furnish a seaworthy vessel was reduced to an obligation “to exercise due diligence.” If the carrier exercised due diligence to make the vessel seaworthy, it would not be liable “for damage or loss resulting from faults or errors in navigation or in the management” of the vessel.

Although the United States stood alone with the Harter Act for a decade, eventually other countries where cargo interests were strong followed the U.S. lead. New Zealand’s Shipping and Seamen Act, 1903, included provisions that were substantially identical to the central provisions of the Harter Act. In 1904, Australia passed its first Sea-Carriage of Goods Act, which was more generous to cargo interests. The carrier’s obligation to furnish a seaworthy ship, for example, was absolute, not simply a due-diligence obligation. And the Australian Act prohibited choice-of-law clauses designed to avoid the application of Australian law for shipments from Australia and choice-of-forum clauses purporting to oust or lessen the jurisdiction of the Australian courts.

The Australian legislation was then the model for the Canadian Water Carriage of Goods Act 1910, which first introduced an explicit package limitation. The Canadian Act ultimately served as the direct model for the Hague Rules.

All of this domestic legislation made the conflict among national laws more serious in the short run, but in the long run those actions subjecting carriers to conflicting regulation increased their incentive to support an international resolution of the problem. The domestic legislation of the late nineteenth and early twentieth centuries, coupled with the threat of more extensive domestic regulation in the 1920s, therefore turned out to be a major factor in the eventual procurement of an international agreement.

Michael Sturley

The Drafting of the Hague Rules

With this background in mind, we can now discuss the events of the 1920s. The immediate impetus for the Hague Rules came from the British Empire. While shipowners were politically powerful in Great Britain itself, the situation was reversed in the overseas Dominions. As the First World War was coming to an end, they pressured the Imperial government to coordinate Harter-style legislation for the entire British Empire. In 1917, the Dominions Royal Commission recommended such legislation. In 1918, the Imperial War Conference concluded that the issue merited investigation. In February 1921, the Imperial Shipping Committee concluded “[t]hat there should be uniform legislation throughout the Empire on the lines of the existing Acts dealing with shipowners’ liability.” And in the summer of 1921, an Imperial Conference committed all of the governments involved (including the British government) to introducing such legislation in their own countries.

British opposition had long been thought to be the principal impediment to international uniform legislation on bills of lading. Now that the British government was committed to domestic legislation on the topic, the prospect of international agreement was much more appealing to British interests — including the powerful shipowning interests. If they were to be subject to regulation in their home ports, they preferred uniform regulation wherever they did business and, just as significantly, comparable regulation for their foreign competitors. The British therefore took the lead in resurrecting the work of the International Law Association. In May 1921, the ILA’s Maritime Law Committee met in London. Despite indignant protests from British shipowners that “freedom of contract” was the appropriate regime, the Committee agreed to formulate uniform model rules based on the Canadian Act to govern ocean bills of lading.

Although the sub-committee appointed to draft the rules contained representatives of carriers, shippers, bankers, and underwriters from Britain and the Continent, the two dominant members were Sir Norman Hill, representing carriers, and James McConechy, representing cargo interests. A month later, the draft was complete.

The CMI was not yet involved in the process. The Antwerp conference in July 1921 discussed a proposal for a broad “Code of Affreightment” covering a wide range of subjects (including rights and obligations under charterparties). In the end, it took no action on bills of lading, but passed a resolution “instruct[ing] the Permanent Bureau to follow the labours of the approaching Hague Conference [of the International Law Association] and to devise the necessary measures for a thorough investigation of the question with a view to subsequent international action on diplomatic lines.”

The International Law Association held its next conference at The Hague in September 1921, and the Maritime Law Committee met in separate session to discuss the Hill-McConechy draft. After four days of debate between cargo interests (including bankers and underwriters) and carrier interests, the members unanimously agreed on the text of “the Hague Rules,” and their agreement was ratified by the full Association in plenary session at the end of the conference. Like the York-Antwerp Rules and the Hamburg

Rules of 1885, the new rules were designed for voluntary incorporation by reference into bills of lading. Thus the shipowners temporarily preserved their “freedom of contract” while conceding their willingness to assume greater liability for cargo if the shippers demanded it.

Shipowners were cautiously pleased with the results of the Hague Conference. Although they continued to argue that “freedom of contract” was best for all concerned, they were willing to accept the Hague Rules of 1921 as preferable to different legislation in every country in which they did business. The World Shipping Conference in late 1921 recommended the rules “for voluntary international application” but — recognizing the strength of the cargo interests — conceded that they were suitable “for adoption by international convention,” “if and so far as may be necessary.” The shipowners clung to their hope that their voluntary adoption of the Hague Rules would stave off legislation, but if what they described as “state interference” was to be inevitable, they wanted it to be on internationally uniform terms.

Reaction among cargo interests was mixed. Their principal objection was the voluntary nature of the rules. British shippers, in particular, demanded the legislation that had been promised at the Imperial Conference. When the British Board of Trade announced that the government was prepared to introduce a bill in Parliament similar to the Canadian Act, the shipowners made the best of what they viewed as a bad situation. The Board of Trade arranged a meeting between Sir Norman Hill (the leading spokesman for the carriers both on the drafting sub-committee and at The Hague) and Andrew Marvel Jackson (the legal adviser of the British Federation of Traders’ Associations). They discussed compromise legislation, based on the Hague Rules of 1921, that could replace the bill that the government had drafted.

Now the CMI starts to play the central role in the story. At the London conference in October 1922, the Hill-Jackson compromise draft was the basis for further discussion. The delegates reviewed the entire code section by section, adopting most of the Hill-Jackson changes and adding some new amendments that others favored. To meet the demand for an international convention, the CMI also put the rules into a “legislative form” that a diplomatic conference could adopt. By the end of the London Conference, a draft was ready for diplomatic consideration.

The London conference ended on October 11, 1922. Six days later, the fifth session of the Diplomatic Conference on Maritime Law opened in Brussels under the chairmanship of Louis Franck — CMI president, one of the founders — then a member of the Belgian government. The last-minute addition of the Hague Rules to the agenda did not interfere with the Conference’s ability to discuss them. The delegates represented their countries in Brussels, but as individuals almost all of those from major maritime countries had attended the CMI conference in London the week before. The last-minute change did mean that many delegates had not received instructions from their governments, and thus they were unable to commit their countries to the final text.

The diplomatic conference began by appointing a sous-commission that reviewed the amended draft approved at the CMI’s London Conference.

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Recognizing that the draft represented a compromise among the interests involved, framed by those “personally engaged in the business to be regulated,” it proposed almost no changes in substance.

In plenary session, the Brussels Conference again subjected the draft rules to section-by-section review. By this point, however, the pressure not to change the text was so strong that the only substantial amendment was to resolve a controversy regarding article 3(6)’s notice-of-claim and time-for-suit provisions, which had proved troublesome at the CMI conference and at the sous-commission meeting.

Because many delegates in Brussels lacked the authority to commit their governments, the conference agreed that it would adopt the text simply “as the basis of [a] convention [...],” leaving “the exact terms ... to be decided by a future meeting ... or through the usual diplomatic channels.”

At this point in the story, I feel compelled to remind you that the CMI held its 1923 conference in August here in Gothenburg. The diplomatic developments were discussed, but by then the work had moved to Brussels.

In October 1923, an expanded bills of lading sous-commission reconvened in Brussels to examine the comments that the 1922 draft had generated and to consider final changes to it. Most of the discussion in 1923 simply clarified the existing text. The one significant revision to the substance of the convention was the addition of the “gold clause” as article 9 of the convention.

After the 1923 meeting of the sous-commission, all that remained to be done on the convention was of a ministerial or formal nature. The sous-commission’s changes were incorporated into the rules. Technical provisions governing such topics as the ratification, denunciation, and amendment of the convention were added. Finally, in August 1924, the conference formally reconvened for the official act of concluding the convention and opening it for signature. That formal action is the event whose centenary we now celebrate.

The International Adoption of the Hague Rules

As anyone who follows current events in this field recognizes, the formal signing of a convention is not the end of the story but merely the beginning of a new chapter. For the Hague Rules to have real meaning, they needed to be ratified. And the ratification story — by its nature — proceeds in separate strands in many capital cities around the world. I will focus on two very different ratification stories here.

The British government, having pledged to enact uniform legislation based on the Canadian Water-Carriage of Goods Act, moved quickly to implement the convention. Indeed the government did not wait for the diplomatic conference to complete its work, but introduced a bill in March 1923 to enact the then-current draft of the Hague Rules as domestic law. Although there was widespread support for the bill, there was also some vocal opposition. Most of the commercial opposition was either irrelevant or ill-informed, but Lord Justice Scrutton — a judge of the Court of Appeal, the author of the leading treatise on charterparties and bills of lading, and

the most respected commercial jurist of his generation — argued that the rules were unclear and would most likely lead to increased litigation. The parliamentary session expired with no action being taken.

The British government introduced a new Carriage of Goods by Sea Bill in February 1924 to enact what was then the latest version of the Hague Rules — as amended by the international sous-commission the previous October. This bill passed Parliament with little discussion, and the British Carriage of Goods by Sea Act received the royal assent on August 1, 1924 — three weeks before the diplomatic conference completed its formalities.

Other countries in the British Empire soon followed the mother country's lead. Australia enacted its new Sea Carriage of Goods Act later the same year, India enacted its COGSA in 1925, and so on. Outside of the British Empire, however, the response to the Hague Rules was less enthusiastic. Before the United States acted in 1936, only Belgium had passed national legislation implementing the Hague Rules (as the international convention was still called, notwithstanding the significant amendments since the Hague conference).

In the United States, we have a much different story. There was vigorous commercial opposition from a small group of cargo interests. Apathy, inertia, and simple misunderstanding were even more powerful roadblocks on the route to ratification.

The organized opposition came primarily from a few shippers who hoped that they could do better. No one seriously denied that the Hague Rules were an improvement over the Harter Act for cargo interests. But a few believed that they could obtain a radical amendment of the Harter Act that would be even more beneficial. They were therefore unwilling to accept more modest improvements in their situation for fear that it would make it impossible to obtain more sweeping changes.

In February 1923, the first bill was introduced in the House of Representatives to enact the Hague Rules — a month before the first British bill was introduced in Parliament. As in Great Britain, it was too late in the legislative session for the bill to be enacted. As in Great Britain, the affected commercial interests had the opportunity to make their views known in formal legislative hearings. The similarities with the British experience ended there.

Between 1923 and 1930, seven more bills were introduced in Congress to enact the Hague Rules, and three more Congressional hearings were held. But nothing came to a vote in either the House or the Senate. By now it was clear that Congress would not approve any Hague Rules legislation — however desirable it might be — if there was serious opposition from any of the affected U.S. interests. The matter was simply too technical for politicians to make an independent judgment, and thus Congress would act only with the unanimous support of the interested parties.

The major turning point came in November 1930, when the U.S. Chamber of Commerce sponsored a conference to consider the Hague Rules. The conference recommended seven amendments to clarify the bill that was then pending before Congress. When proponents of the legislation agreed to accept those amendments, opponents agreed to drop their other objections

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and support the measure. It appeared that prompt passage would finally be possible. New obstacles, however, delayed enactment for another five years.

The biggest obstacle was the Great Depression, which focused Congress's priorities on more urgent matters. A new bill was introduced in each Congressional session, but even the sponsor was too busy to have time to hold hearings. The Hague Rules waited while Congress enacted the New Deal.

The final push began with the introduction of another bill in 1935. When the Senate Commerce Committee held a hearing, only supporters appeared. Even previous opponents testified in favor. The bill passed the Senate without a recorded vote.

While the bill was pending, the Senate also gave its advice and consent to the treaty with a single reservation — that the package limitation in the United States be \$500, which was then virtually the same as £100.

The Senate's action in passing the bill and approving the treaty put pressure on the House to pass the bill before Congress adjourned, for U.S. cargo interests were eager to ensure that the compromise reached at the Chamber of Commerce Conference became a part of domestic law before the President ratified the treaty. Thus the hearings on the House side were filled with testimony in favor of the bill. The Committee on Merchant Marine and Fisheries reported it favorably, and it passed the House without discussion. A week later, President Roosevelt signed the bill and the Carriage of Goods by Sea Act became law in 1936.

Before then, other countries had hesitated to adopt the Hague Rules. Indeed there had been a movement among British shipowners in the early 1930s to repeal the U.K. COGSA on the ground that the rest of the world was unwilling to accept international uniformity. Elsewhere, Italy tentatively approved the convention in 1928, but postponed its ratification until other nations committed themselves. France discussed withholding its acceptance of the treaty until Germany, Italy, and Norway ratified it.

With U.S. ratification of the Hague Rules, however, the world's remaining maritime powers joined the new regime fairly quickly. Canada passed its new Water Carriage of Goods Act barely two months after the U.S. COGSA. Within two years, France, Italy, Germany, Poland, and the four Nordic countries had all followed suit. By 1938, the overwhelming majority of the world's shipping was committed to the Hague Rules.

The Aftermath

Although the Hague Rules provided an internationally accepted uniform legal regime for cargo liability immediately before the outbreak of World War II, the uniformity began to break down soon after the wide-spread acceptance of the Rules. In part, that was due to the changing world political situation, as former colonies became independent countries with their own agendas. National-court interpretations of the Hague Rules also produced problems that called for new solutions. And developments in the world economy produced one of the most visible problems with the Hague Rules, as rising and falling exchange rates left unit limitation values under article

4(5) that varied among major maritime nations by a ratio of over three to one.

The CMI sponsored the first — and most widely accepted — post-Hague regime to deal with some of those problems. That story brings us back to Sweden and the 1963 Stockholm Conference with its signing ceremony in that historic Swedish city of Visby — thus giving us the Hague-Visby Rules. But we do not have time for that story now.

Conclusion

I will instead conclude by taking a quick look at where things stand today. A century ago, before any nation had adopted the Hague Rules, the world faced a variety of different regimes. Although there was widespread agreement on many of the basic principles of general maritime law, different nations interpreted them differently in important ways. And several nations had enacted their own domestic regimes. All of this is once again true today.

Fifty years ago, before any nation had adopted the Hague-Visby Rules, the world faced a situation in which uniformity had broken down for a variety of reasons — some technological, some political, some legal, some economic. That is once again true today. The Hague-Visby Rules remain the dominant legal regime, but they are seriously out-of-date. They are, after all, simply the Hague Rules with a handful of amendments designed to address very specific problems. We have 1968 amendments to a 1924 convention based on an 1893 domestic statute designed to address the problems of the early steam era. The drafters of the Visby Protocol could not have imagined electronic commerce. They barely dealt with the container revolution, which was still in its infancy at the time. While multimodal contracts govern shipments on a door-to-door basis today, the Hague-Visby Rules still apply on a tackle-to-tackle basis. And of course many countries do not follow the Hague-Visby Rules. In the world's largest economy, the unamended Hague Rules are still in force. The world's second-largest economy has a unique Maritime Code that combines elements of the Hague-Visby Rules, the Hamburg Rules, and domestic innovations.

The Rotterdam Rules could provide a solution to our current problems. Perhaps the lessons that we learned from the ratification of the Hague Rules can help us achieve a solution. For the moment, we can look back to August 25, 1924, and celebrate that milestone. But the focus of this conference must now turn to the future and address how our generation can match the accomplishments of Francesco's grandfather's generation.

100 YEARS OF UNIFYING CARRIAGE OF GOODS BY SEA

STUART HETHERINGTON

Standing Committee on Ratification of the Rotterdam Rules:

The papers presented at the Gothenburg Colloquium by a panel of speakers including members of the Standing Committee were published separately in book form (together with other materials) and can be accessed electronically on the CMI website: <https://comitemaritime.org/work/ratification-of-rotterdam-rules/>

ATTACKED IN THE RED SEA! RESPONDING TO AN INCIDENT – CURRENT ISSUES AND COMPLEXITIES

RICHARD NEYLON

Emerging Issues in International Maritime Law

(1) Piracy, Maritime Violence and Fraudulent Activities

(a) **Attacked in the Red Sea – Responding to an incident – Current Issues and Complexities – Richard Neylon**

(b) **Registration and the Dark Fleet – Michelle Wiese Bockmann**

(2) The Effects of Sanctions on World Trade – Anders Leissner

Internation Working Group Piracy, Maritime Violence and Fraudulent Activity Including Fraudulent Registries

Richard Neylon (Chair) (UK)

Emeka Akabogu (Nigeria)

Charles Buss (UK)

Patrick Griggs (UK)

John Kimball (USA)

Louis Mbanefo (Nigeria)

Lene-Camilla Nordlie (Norway)

Pietro Palandri (Italy)

Ian Ralby (USA)

Lars Rosenberg Overby (Denmark)

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Michelle Wiese Bockmann (UK)

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Richard Neylon

HFW

The threat from INSURGENTS (Houthis) (Deliberate Attack) towards merchant vessels affiliated with Israel, the U.S and the UK in the SOUTHERN RED SEA is HIGH – with a STABLE forecast throughout MAY.



HFW

The threat from INSURGENTS (Houthis) (Deliberate Attack) towards merchant vessels affiliated with Israel, the U.S and the UK in the NORTHERN GULF OF ADEN is HIGH – with a STABLE forecast throughout MAY.



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PROBLEMS AND EXPOSURES ARISING FROM FRAUDULENT VESSEL REGISTRATION AND THE DARK FLEET

MICHELLE WIESE BOCKMANN

Lloyd's List Intelligence

An accident waiting to happen...

how the 'dark' fleet of tankers shipping sanctioned oil uses deceptive shipping practices and regulatory arbitrage to avoid scrutiny

Michelle Wiese Bockmann

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May 23, 2024

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What is the 'dark fleet'?

A vessel is part of the 'dark fleet' if:

- ✓ It is aged 15 years or older
- ✓ It is anonymously owned and/or has a corporate structure designed to obfuscate beneficial ownership discovery
- ✓ It is solely deployed in sanctioned oil trades
- ✓ It is engaged in one or more of the deceptive shipping practices outlined by the US State Department in its guidance issued in May 2020

The dark fleet excludes tankers tracked to government-controlled shipping entities such as Russia's Sovcomflot or Iran's National Iranian Tanker Co.



Lloyd's List Intelligence

Some important facts to consider on the Dark Fleet...

- Shipping is an international industry and what counts as a sanctions 'breach' in one jurisdiction, may not in another
- Therefore, **it is not possible to make any judgement** about whether the vessels in the Dark Fleet **are breaching sanctions**
- Furthermore, **it is not possible to apply such judgements to tankers in the context of the G7 Russian oil price cap**
- The only people who know the price of the Russian oil cargo are the **buyer** and the **seller**
- This information is **private and confidential**; it is not provided at any point in the attestation chain, and only available on request from other tier providers **since February 20, 2024**, when Western regulators announced tightened criteria for marine service providers, such as insurers, to **secure attestation for each voyage and subsequent STS transfers within 30 days**
- In the context of Russian oil exports, **P&I cover from the International Group is seen as a proxy for G7 price cap compliance**

The Dark Fleet mapped as of May 19, 2024



Source: Lloyd's List Intelligence Seasearcher

The Dark Fleet: Key figures



~600 tankers of 83.7m dwt (~14.5% internationally trading fleet) are engaged in Venezuela, Iran and Russia trades. This figure has doubled since February 2022 (and increased by **~70 tankers** in the past 7 months)



82% of dark fleet* tankers have no known P&I coverage

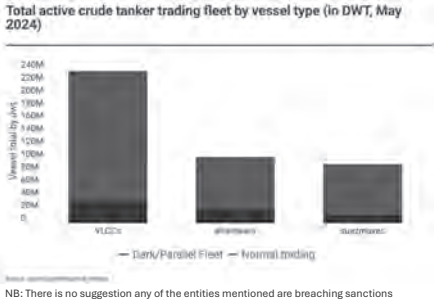


~300 'dark fleet' tankers directly linked to Russian trading between February 2024 and April 2024

(in addition to Sovcomflot/Russia ~100 tankers, ~200 Greek-owned tankers, ~50 Turkish tankers; ~80 'other' category)

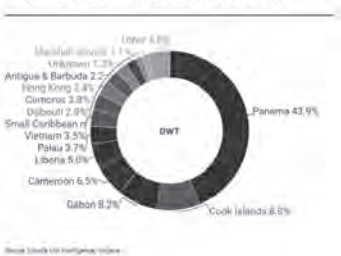
NB: SCF and Greek-owned tankers are NOT defined as part of the dark fleet*

Approximately 14.5% of current internationally trading crude tankers are in the dark/parallel fleet...

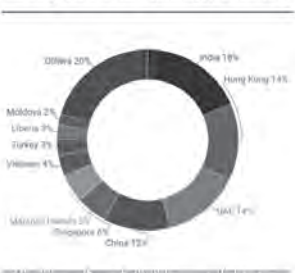


The Dark Fleet: Flags States & ISM Managers

Flag State of dark fleet* vessels (% of total DWT)



ISM manager of dark fleet* by country (% of total DWT)

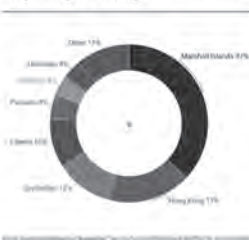


Figures correct as of May 17, 2024
* See slide 2 for methodology

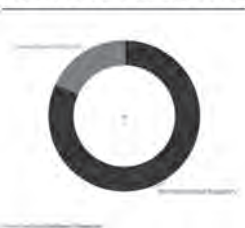
NB: There is no suggestion any of the entities mentioned are breaching sanctions

The Dark Fleet: Registered Owners & P&I Insurance

Registered owners of dark fleet* vessels by country of incorporation (% of total DWT)



The dark fleet* by P&I insurance status (% of total DWT)



Russia's Ingosstrakh provides P&I coverage for many dark fleet tankers in Iran, Russia and Venezuelan trades. Retrospective sanctions exclusion clauses apply for all

Figures correct as of May 17, 2024
* See slide 2 for methodology

NB: There is no suggestion any of the entities mentioned are breaching sanctions. IG Insurance is seen as a proxy for G7 oil price cap compliance

Common characteristics of Russia-calling Dark Fleet tankers (February – April 2024)

- **Flags:** Panama, Liberia, Gabon, Cook Islands, Palau
- **Class:** Indian Register of Shipping, Lloyd's Register, Rina
- **Registered owner:** High % incorporated in Marshall Islands even though relatively few are flagged there
- **ISM entities:** Nexus UAE/India/China & Hong Kong

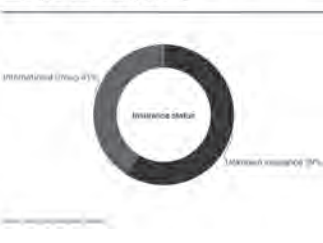


Source: Lloyd's List Intelligence

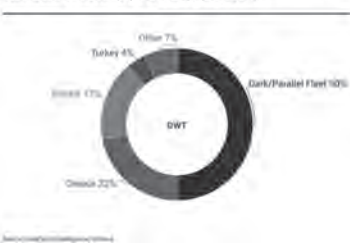
NB: There is no suggestion any of the entities mentioned are breaching sanctions

Regulatory crackdown & enforcement is recalibrating Russia risk

Tanker calls at key Russian oil export ports by insurance status (% of total calls, April 2024)



Tanker calls at key Russian oil export ports by country of beneficial ownership (% of DWT, April 2024)



NB: There is no suggestion any of the entities mentioned are breaching sanctions. International Group insurance is seen as a proxy for G7 oil price cap compliance

Where are Russian crude oil export prices now?

Russian crude assessed price Jan 2023-April 2024 (\$/bbl)



Prominent dark fleet operators plus those targeted by regulators since November (in red) reflag/rename/fragment into multiple new entities to circumvent sanctions

- Five shipmanagement/operators companies covering more than 100 tankers and described as part of "Putin's fleet" sanctioned by the UK's Office of Financial Sanctions Implementation no longer operate or manage any ships, which have moved to new companies
- Beks tanker fleet
- Fractal Shipping DMCC
- K&O Shipmanagement FZE,
- Radiating World Shipping Services LLC
- Star Voyages Shipping Services LLC,
- New technical, commercial and shipmanagement structures established underscore giant game of regulatory 'whack-a-mole' under way in sanctions compliance and enforcement
- Tankers' ownership, management and operational structures even more complex with new jurisdictions including Guinea-Bissau, Eswatini, Barbados, Gabon (flag) Hong Kong, India, Mauritius, Marshall Islands, Seychelles, UAE (ISM & registered ownership)

Avalanche of new entities/jurisdictions to obfuscate tanker ownership

- **Fractal Shipping SA/Fractal Marine DMCC/Wanta Shipping LLC-FZ:** 26 tankers, 2.0m dwt, only 10 remain on dark fleet list. Most have new names, registered owners or commercial managers or ISM managers or a combination of the above spanning Singapore, Marshall Islands, Turkey, India, Hong Kong. Aizdihar Ship Charter FZCO (ZDIHAR SHIP CHARTER FZCO, BPT Shipping Co LLC, Westanker Ltd, Kupa Lines Inc, Charminar Lines Inc, Vaigai Lines Inc, Ellora Lines Inc, Dev Lines Inc, Ikara Lines Inc, Lhotse Lines Inc, Nestos Lines Inc, Nilwala Lines Inc, Plutus Lines Inc, Priapus Lines Inc, Koshi Lines Inc, Srimi Lines Inc, Gomti Lines Inc, Draco Buren Shipping Private Limited, Smiling Courage Ltd.
- **Radiating World Shipping Services LLC/ Star Voyages Shipping Services LLC** (ISM and technical manager of 26 tankers 1.6m dwt), flag: Cook Islands. New entities: Breath Shipping Services LLC; One Moon Shipping Services, Almuhit Alhadi Marine Services; Alqutb Alshamali Marine Services LLC, Peninsula Maritime India Private Limited. Also linked to **Star Voyages Shipping Services LLC**
- **Hennesea Holdings Ltd/Maritas Fleet Private Ltd and Hennesea Tankers** – 29 tankers including 18 directly linked to Hennesea Tankers Corporation FZE). ~Bravo Ship Management/IMMS Middle East Co/Gravitas Shipping DMCC. Alia Ship Serve Co; Duke Logistics LLC-FZ; Nanak Shipping Pvt Ltd, Kroeger Tankers FZE; Ship Tech Management

- **Gatik Shipmanagement:** ~53 tankers: Reflagged to Gabon/Panama April 2023 with new ISM entities: ARK SeaConnect Shipmanagement, Aayan Shipping Private Ltd, Caishan Ship Management, Delta Ships Management, Galena Ship Management, Gaurik Ship Management, Geras Ship Management, Girik Ship Management, Maple Maritime Solutions FZE, Orion Ship management, Plutos Ship Management, Zidan Ship Management. all in India. Linked companies: commercial operator Buena Vista Shipping (commercial manager of 16 tankers), two via Dubai-based LTA Shipping FZCO* Five ex-Gatik gone to Tükiye-based shipmanager Unic Tanker Ship Management *
- reorganized for a second time:
Fuxi Shipping & Marine, Aklan Shipping Inc, Atbara Maritime Corp, Antaeus Shipping & Marine Inc, Apollo Shipping & Marine Inc, Oceancraft Holdings Ltd, CMSM Ship & Commercial Management Limited Liability Partnership; Angat Shipping Inc, Elgon Maritime Corp, Gordian Shipping & Marine Inc, Bagsak Shipping Inc, Neptune Fleet Solutions Ltd, Augusta Shipping & Marine Inc, Kangen Maritime Corp, Hera Shipmanagement, Elizario Shipping Inc, Amsha Maritime, Hai Marine and Shipping Inc, Long Island Shipping & Marine, Ionia Shipping & Marine Inc, Leopard Shipping Inc, Sapang Shipping Inc, Beacon Ship Management, Rahad Maritime Corp, Jiang Shipping & Marine Inc, Sudair Maritime Inc, Tunasan Shipping Inc, Bicol Shipping Inc, Pearl Shipping & Marine, Gessi Maritime Corp, Glory Shipping and Marine Inc, Nargis Shipping & Marine Inc, Bisu Marine & Shipping, Arctictransit Maritime Ltd, Tirad Shipping Inc, Onrim Shipping & Marine Inc, Oriental Dynasty Inc, CMSM Ship & Commercial Management Limited Liability Partnership; Paradise Shipping & Marine Inc, Sapphist Shipping Inc, Magnificent Shipping Inc-MAI, Protogeno Shipping & Marine, Campana Shipping Inc, Gorgeous Shipping & Marine Inc, Wisdoms Shipping & Marine Inc, Zenith Shipping Inc-Sey, Zeynep Shipping and Marine Inc

Unscrutinised attestation documents doing all the heavy lifting

- Marine insurers and shipowners bear brunt of tougher Russia oil price cap rules as of February 20, 2024 - require pre-voyage attestation documentation/breakdown of freight costs
- Regulators must carefully choreograph enforcement to achieve compliance balance that neutralises sanctions-circumventing dark fleet while rewarding those enterprising private Greek shipowners with a large risk appetite



Compliance fallout: P&I club/flag/class purge & floating storage

- Hennesea Holdings Ltd** tankers unable to trade
- Signs **Sovcomflot**-sanctioned tankers cannot trade
- Fractal Marine DMCC** fate?
- Can regulatory crackdown get the price cap to work when the price exceeds the cap?
- What to watch: discount Brent vs Urals \$/bbl
- December 11: Quint-seal compliance note issued from five US government departments



Source: Lloyd's List Intelligence

Mind the gap: Illegitimate and fraudulent shipping practices threaten regulatory integrity of global trade

- Fake or fraudulent recognised organisations
- Fake or fraudulent flag registries
- Fake P&I Clubs
- Vessel IMO number identity fraud
- Fraudulently issued IMO company identification numbers
- Illegal/dangerous ship-to-ship transfers
- Vessel spoofing and AIS manipulation

Flagless, sanctioned ships with no clear insurance continue to trade unchallenged

The globalised ship fleet has been largely immune to international regulatory scrutiny, with governments unable to keep up with the rapid pace of flag-hopping among registries or the increasing use of private security forces through the cracks of international regulations.

Sanctioned ships briefly find a new home as Eswatini enters the flagging business

A private company registered in the landlocked African state of Eswatini has established itself as the latest ship register to take on sanctioned tonnage, following Gabon's recent move as the epicentre of dark fleet business.

Fake flags, rogue registries and dark fleet spark calls for crackdown on ship oversight

Fraudulent ship registries threaten safety and security, pollution and crew welfare, and international legal compliance is ignored, but there are limited options to the state to deal with the growing problem.



Fraudulent Ship Registration

World Maritime University definition...

"Fraudulent Registry" ≠ "Pseudo-Registry"

The two notions differ, while the decisive criterion is the State's knowledge and will. In a Pseudo-Registry, the following acts and characteristics, as the case may be, are present:

- a. Registry is not situated in the territory of the relevant flag State.
- b. Registry is not administered and controlled by the flag State but by a private entity.
- c. Flag State delegates all statutory functions to the private entity that operates the Registry.
- d. Flag State consents to delegation and sub-delegation of functions to RO's, which are non-IACS members.
- e. Flag State allows and facilitates incorporation and operation of "brass plate" companies.
- f. Flag State tolerates lack of transparency in respect of ownership and control of registered vessels.
- g. Flag State elects not to be an IMO Member with the aim of implementing its own standards.

WMU

Flags to watch

- Antigua & Barbuda
 - Barbados
 - Belize
 - Cameroon
 - Comoros
 - Cook Islands
 - Djibouti
- 
 - Eswatini
 - Gabon
 - Guyana
 - Mongolia
 - Palau
 - San Marino
 - Sao Tome & Principe
 - Tanzania

Ownership clusters

- Cameroon/Seychelles/Kazakhstan**
Six tankers (five aframax, one very large crude carrier) share ISM management based in Kazakhstan, with registered ownership via single-ship entities in Seychelles and all flagged with Cameroon
- Palau/Seychelles/Moldova**
Twenty tankers share seven Moldovan entities as their ISM manager, with registered SPVs in the Seychelles and all flagged in Palau
- Cook Islands/Marshall Islands/UAE**
Thirty-three tankers at least 16 classed with China Classification
- Gabon/Marshall Islands/India**
Structure favoured by the world's largest dark fleet ship operator formerly known as Gatik Ship Management, now fragmented into 18 ISM entities
- Panama/Hong Kong/China**
42 tankers flagged with Panama, ship management in Hong Kong or China, using Panama-based recognised organisation, Overseas Marine Certification Services



Iran overview

- Inefficient – as many as four STS shipments over 4 months
- ~220 tankers tracked; 125 VLCCs
- Only 8 had Western insurance

Iranian crude tanker shipments by flag state (% of DWT, May 2023-May 2024)



GPS jamming/GNSS manipulation/spoofing/hacking



* OFAC warned April 2023 over Kozmino
 * Becoming more difficult to detect via examination of speed and course over water

Dark Fleet: Spoofing Hotspots



- * Off Angolan coast
- * Iran/Iraq waters
- * Gulf of Oman
- * Kozmino, Russia
- * Black Sea region

Source: Lloyd's List Intelligence

Spoofing AIS receiver: Matthew (IMO 9228150)

- Panama-flagged, 2001-built Supramax bulk carrier seized by Irish authorities Sept 2023 with 2 tonnes of cocaine
- AIS receiving station in Dubai hacked to create new set of AIS messages for vessel via MMSI
- AIS created over the real ones to look legitimate and almost impossible to spot – can re-use a previous AIS tracking
- AIS data review during voyage past South America found AIS signal received by Dubai receiving station August 19-September 23
- Working hypothesis: group working out of Dubai providing false AIS signals to the Dubai AIS receiver station while vessel turns off its own transponder to conduct hidden activities. Supporting evidence: no other station other than Dubai detected AIS from Matthew during the period of spoofing. Vessels at sea near Dubai are always picked up by other local AIS stations e.g. Abu Dhabi



Dark Fleet: Ship-to-ship transfer hotspots



- International waters:
- Ceuta, near Gibraltar
- Malta
- Southeast Malaysia
- Anchorages off Malaysia's eastern
- West Africa
- Kalamata (Laconia Bay, Greece)
- Kavkaz, Russia
- Mid-Atlantic
- Yeosu, South Korea
- Sohar anchorage, Oman

Source: Lloyd's List Intelligence

Lloyd's List Intelligence

Abuse of the IMO company identification numbering scheme

- Seychelles-Cameroon-Georgia nexus for fleet of 10 sanctions-busting tankers shipping Iranian, Venezuelan and Russian oil including one (Liberty) now stuck off Indonesia
- Scant technical oversight of the Cameroon and Tanzania flag administrations allowed shipowners to dupe IMO into unwittingly issuing IMO company numbers for companies that did not exist
- How widespread is this practice?



Source: Lloyd's List Intelligence

Lloyd's List Intelligence

25

How to set up your own 'dark fleet' : A-Z (1)

- Incorporate 'front' company/companies wholly owned by shareholder front person apparently unconnected to ultimate beneficial owner in select jurisdiction. Legal consultant employed to undertake all paperwork required for incorporation of all entities
- Incorporate single vessel entities (special purpose vehicle) in same jurisdiction for each tanker upon purchase that is wholly owned by the front company. Each SPV is 100% owned by another front person who is sole president/secretary/director
- Purchase agreement signed between front company and seller to buy vessel with the single vessel entity nominated as buyer
- Establish escrow agreement between front company, the seller and an 'escrow agent'. This satisfies KYC obligations
- Nominate front people to be granted powers of attorney in purchase agreement to execute sale and purchase deal. Funds for vessel paid to escrow agent for distribution to sellers from buyers, along with fees to shipbroker involved in sale



Lloyd's List Intelligence

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How to set up your own dark fleet: A-Z (2)

- Sign bareboat charter between front company and oil company (usually two years). Charterparty is nominated in non-US currency. Total value of agreement typically around same price as purchase price
- Shipmanagement agreement signed with other newly incorporated entities, which are normally related to the beneficial owner. Typical fees secured of around \$2.5m/year/ship. Each shipmanagement entity is usually another SPV, also owned by another front person, established in friendly jurisdiction outside Western influence
- Insurance placed outside P&I International Group of 12 clubs, usually Russian
- Vessels reflagged/classed to unquestioning jurisdiction using same legal consultants or another 'one stop' marine service provider



Single-purpose companies, with nominee shareholders and escrow accounts that allow the beneficial owner to remain hidden and money to change hands without penalty, are an open secret in London shipping

- With escrow agent, sale-and-purchase transactions can be structured to meet KYC obligations but still allow Russia-linked entities to buy them
- Two lawyers in Dubai "that everybody knows about" are regularly acting to facilitate tanker sales between European owners and anonymous buyers of tonnage for Russian trading, according to **Martin Fulford Smith**, managing director of **Affinity Shipbroking**
- Financiers and lawyers deliberately don't ask the right questions when it came to selling tonnage, Fulford Smith claims
- Counter argument: no requirement within "challenging and nuanced" sanctions regulations to speculate about the intended purpose of the tanker from the new buyer



Richard Fulford Smith – managing director of Affinity Shipbroking

Iranian dark fleet trade reconstructed

- Purchase 'spare' AIS as part of spoofing requirements
- Paint over the ship's name on the hull and put on a fake one
- Call at Iranian port/waters with AIS switched off /location spoofed
- Undertake ship-to-ship transfer to receive Iranian crude cargo
- Documents received in Iran refer to fake name with real IMO number, with name repainted by crew on ship after sailing from Iranian waters
- Fake bill of lading from SOMO provided changing cargo to Iraqi condensate
- Cargo transferred to mother vessel (typically off Malaysia). Mother vessel then transfers to another tanker for ultimate destination of China



Questions?



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THE EFFECTS OF SANCTIONS ON WORLD TRADE

ANDERS LEISNER

VINGE

The Effects of Sanctions on World Trade

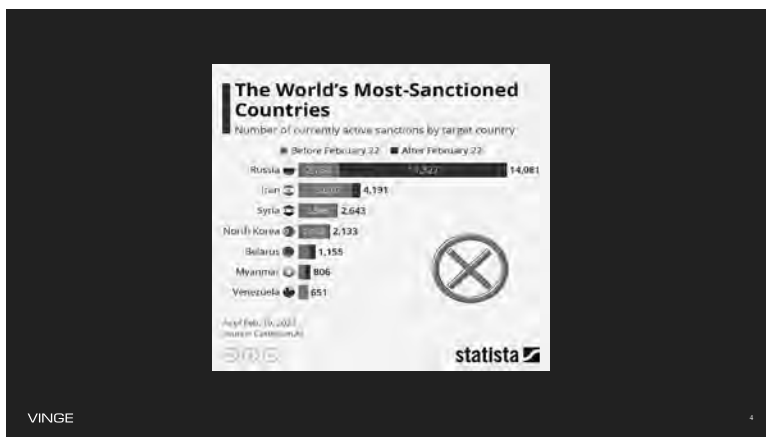
and some other reflections

Anders Leissner

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An instrument dating back 432 BC





Problematization

- Sanctions divide the world - "fragmented globalisation"
- Creates shadow systems e.g the dark fleet and unregulated financial services
- Creates human suffering
- Does asset freeze mean confiscation?
- Do sanctions work?

Legal challenges

- EU sanctions are not unanimously applied within the EU (up to now)
- The legislation is a negotiated political product
- Conflicting sanctions regimes regarding e.g. Iran
- Complex jurisdictional issues for global companies e.g. application to branch offices outside the EU
- Few legal precedents and weak enforcement in the EU (so far)
- Proving ownership and control
- Overcompliance

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14 oktober 2022 6

Shipping is in focus



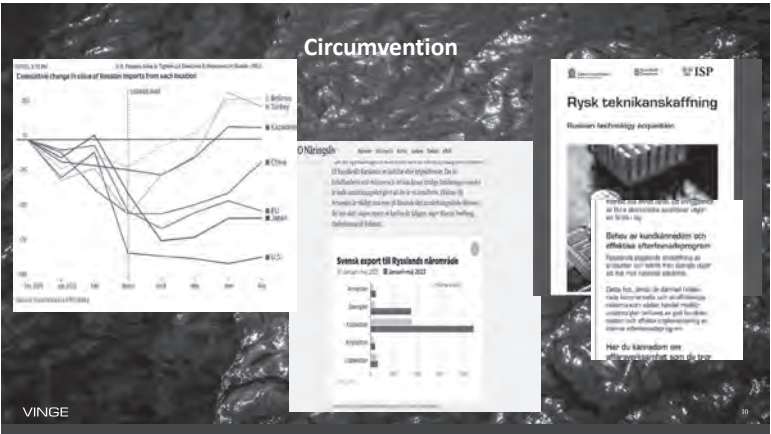
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23 May 2024 7



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23 May 2024 8



Not circumvention

January 2022

- India's oil import from Russia: **1.7 million barrels / month**
- EU's import of refined oil products from India: **1.1 million barrels / month**

April 2023

- India's oil import from Russia: **63 million barrels / month**
- EU's import of refined oil products from India: **7.4 million barrels / month**

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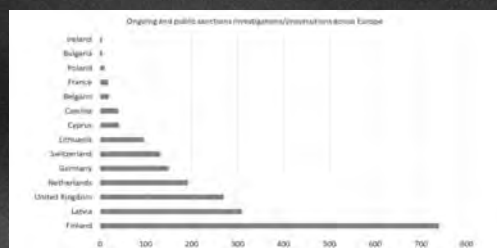
Enforcement trends

- US is leading enforcement measures sanctioning third country companies in Germany, Belgium Ireland Netherlands, Cyprus and Finland (as well as an acquitted Russian national in Sweden) for sanction breaches
- Far less companies sanctioned by the EU despite having the power to sanction anyone it “reasonably suspects” facilitate circumvention of Russia sanctions
- Few sanctions related judgements in European courts so far but some cases stand out (French CEO convicted in Finland in March 2024)
- US has sanctioned 831 vessels – EU has sanctioned two, both North Korean
- EO 14114 enables sanctioning of foreign banks that facilitate transactions that allow Russia to access military-industrial items
- A new EU Directive aims towards harmonizing enforcement; criminalizing breaches, imposing company liability, aiding and attempt will be a crime

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Ongoing investigations

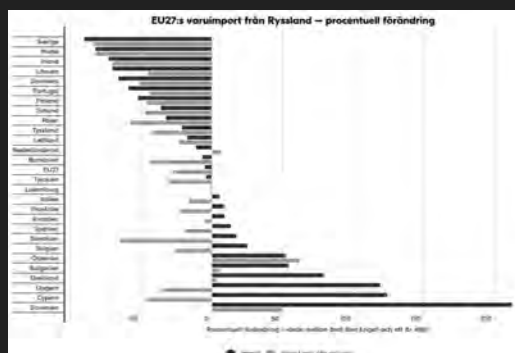


source: Duane Morris LLP

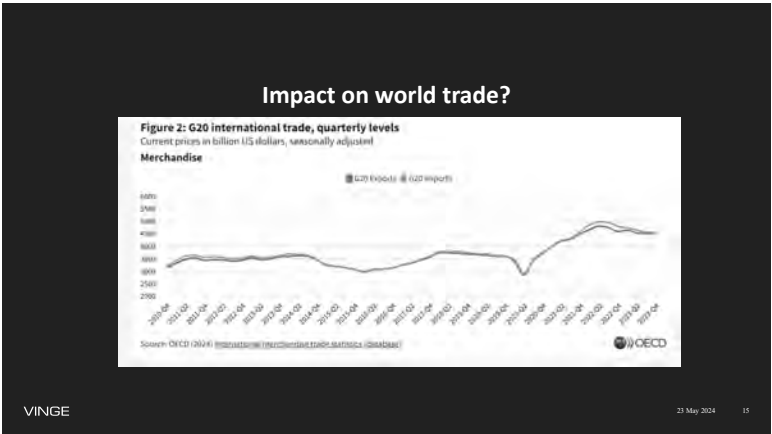
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Business with Russia - no unity within EU



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PRESENTATION OF THE DRAFT CMI LEX MARITIMA PRINCIPLES ON CHARTER PARTIES

ANDREAS MAUER

With regard to charter contracts, we were unable to find any uniform rules in positive maritime law. In some countries there are no specific rules on charter parties, while in others they are only very rudimentary. However, we know from both practical experience and academic research that the vast majority of charter agreements worldwide are concluded using standardized contracts. Of these standard contracts, those of the Baltic and International Maritime Council are the most common.

The principles that we have formulated are therefore fundamentally based on the most commonly used BIMCO standard forms. These are BARECON 2017 for bareboat charters, NYPE 46, NYPE 2015 and Baltime 1939 (revised 2001) for time charters and GENCON 1994 for voyage charters.

This approach can of course be criticized with the objection that contracts can be neither law nor the basis for principles, but merely regulate the relationship between the two contracting parties. In many legal systems it has long been a consensus that contracts do not amount to law although the existence of “contracts without law” and “law without the state” have been subject to scholarly debate for a long time.

In this case, however, the situation is different. For more than 100 years, academic literature has argued that standard contracts are instruments used by one party with great bargaining power to impose unfavorable contractual terms on the other party. Such contracts have been labelled contracts of coercion, for example. This is based on the assumption that one party uses such contracts to gain advantages for itself. For this reason, standard contracts were and are viewed critically in many legal systems and in some cases are also subject to judicial review of their content.

However, BIMCO's contracts differ from such standard contracts in particular, especially with regard to their drafting process. Similar to the CMI, the contracts and contract clauses are designed at the drafting stage to ensure that they are acceptable not only to individual industry stakeholders, but to all subsequent users of the contracts. Not only individual companies are involved in the process of creating these contracts, but a wide range of stakeholders have the opportunity to participate in the drafting process. Their involvement is then incorporated into the draft contracts. This not only increases the subsequent acceptance of the respective standard contracts, but

also their acceptability among those who will later be affected by the rules. The objective is to produce standard forms and other documents that strike a fair and equitable balance between the parties, that are legally sound and that can easily be understood by everyone involved. The drafting process is set to be a discursive process in which many different and partly concurring interests are accommodated.

Against this background, standard contracts that have been drafted under the participation of many stakeholders have a greater acceptability and therefore a higher legitimacy than many other rules and especially than other types of contracts.

This higher dignity of standard contracts also allows us to state in principle 2 (3) b that courts may apply as maritime customs standard contracts that are based on cooperative and participative drafting processes.

We are well aware that the principles on charter parties are more extensive than other principles in this draft, which might be counterintuitive with respect to the nature of principles. But we wanted to respect and reflect the underlying wordings and compromises to the greatest possible extent.

PRESENTATION OF THE DRAFT CMI LEX MARITIMA PRINCIPLE POLLUTION LIABILITIES

EDUARDO ADRAGNA

Overview

The CMI Working Group on the Lex Maritima was set up to provide an organic bundle of common accepted principles of maritime law. Within the project, which last version shall circulate under the nomenclature of “Gothenburg Draft” (hereinafter the Gothenburg Draft or the Document)¹, Part 4 devotes to “Maritime Responsibilities and Liabilities” (Principles 6 to 12). In this paper, I will examine briefly Principle 12 “Pollution Liabilities”. This principle focuses on compensation, one of the gateways that the international community found to make good their commitment towards protection of the marine environment. Other legal devices, with the aim to prevent shipping incidents and operational pollution alike, have been addressed elsewhere in the Document².

In the economy of the Gothenburg Draft, Principle 12 is a second category principle³. The first paragraph is devoted to compensation for oil

¹ The document “The CMI Lex Maritima. The 25 Principles of Maritime Law. The Gothenburg Draft”, dated May 23, 2024, is available at: <https://comitemaritime.org/work/lex-maritima/> (last accessed in July 2024)

² Methodologically, the CMI Lex Maritima focuses on private maritime law contents. Therefore, the body of rules related to construction, operation and manning standards for ships, training standards for crews and the set up of management systems for ships, ports and shipowners, are not embodied as such as principles within the Gothenburg Draft. Nevertheless, some blending of public and private laws has been reflected in the Document, for example, in Principle 3 (Identification, nationality and flag), Principle 6 (Liabilities of the Shipowner and operator towards the marine environment), Principle 11 (functions of the Master), Principle 20 (salvage), Principle 22 (wreck removal), where in one way or the other, the rules behind the principles have been designed to (or have the effect of) prevent or address the marine pollution. See Gothenburg Draft, p. 8-9.

³ According to the General Introduction to the Document, the first category is assigned to principles the content of which is directly proclaimed by the document where there is demonstrable uniformity. The second category is assigned to those rules that are usual in the positive maritime law but, however, there is no overall international uniformity about their exact substance and/or where the rule becomes operational only on the condition that positive maritime law introduces it (contingent). The *tertium genus* is assigned to principles where *renvoi* is made to the text of international instruments (which as such are part of the Lex Maritima). See Gothenburg Draft, pages 5, 40-41.

pollution damages whereas the second refers to the rules that play a role in the compensation for damages coming from other sources. All in all, this principle reflects the major trends in a field where there is no uniformity⁴. This explains why it was not assigned to the first category of principles⁵.

First Paragraph: Compensation for oil pollution damages

Regarding compensation for oil pollution damages, the text of the first paragraph transpires the essence of the 1992 Protocol to the Civil Liability Convention Protocol (hereinafter 1992 CLC) and the supplementary 1992 Protocol to the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (hereinafter 1992 IOPC Fund)⁶.

I. Liabilities of the shipowner

Principle 12 (1) initially contemplates the rule of strict civil⁷ liability of shipowners for claims involving oil pollution damages⁸.

The wording then goes on to paraphrase the core provisions of the 1992 CLC so that the reader shall find there in a) the exclusion of liability of the shipowner in case of force majeure or intent to cause damage by third parties, b) reflects that liabilities are channelled towards the registered owners and thus some persons have the protection of the regime and cannot be sued, c) provides

⁴ One might immediately think on the different successive instruments that followed the original 1969 CLC/1971 IOPC, not mentioning that some states adopted a different approach (for example, the 1990 Oil Pollution Act in the United States), or left, although in minority, the matter unregulated (thus applying general civil or environmental laws).

⁵ In a different fashion, Professor Jorge Bengolea Zapata elaborated on the general principles of shipping law as these then must have been in 1976. In the context of his *teoría general* (general theory), principles were distinguished, according to their degree of generality, in general principles (*strictu sensu*) and particular to a certain institution. Limitation of shipowners' liability was considered a general principle though no reference was made to cases of marine of pollution (which at the time were largely unregulated). See [in Spanish] Bengolea Zapata, Jorge, *Teoría general del Derecho de la Navegación*, Buenos Aires, Plus Ultra, 1976, pages 63-87. More recently in Argentina on principles of shipping law see [in Spanish] Chamí, Diego E, "Curso de Derecho de la Navegación", Abeledo Perrot, Buenos Aires, 2022, pages 52-63 and from the author of this paper [in Spanish], *Los principios en el ámbito del derecho marítimo*, Revista de Derecho Comercial y de las Obligaciones, 2011-A-547, Lexis Nexis, Buenos Aires, 2011.

⁶ See Gothenburg Draft, commentary at p. 40. The 1992 CLC and 1992 IOPC Fund regimes are in force in most of the South American countries (Brazil is party to the 1969 CLC). These entered into force (by accession) in Argentina on October 13, 2001. For an explanation of how paths divert – in the field of principles – from the Environmental and Maritime Laws perspectives see [in Spanish] Cappagli, Alberto C (h), "La contaminación del medio marino y los buques petroleros", Abeledo Perrot, Buenos Aires, 2011, pages 3-21.

⁷ Criminal liability has not been provided for here.

⁸ Art III, 1. 1992 CLC. Strict civil liability, designed to protect vulnerable interests, seems to be the trend in this field, see *inter alia* the amendments brought by the 1990 Oil Pollution Act to the 33 USC Ch. 40 §2702, Elements of liability (a) In general: *Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident.*

for the shipowner's right of recourse whereas in d) the shipowner has the right to limit his liability in accordance with limits based on the tonnage of the ship.

Conversely, e) emphasizes that shipowners shall not be entitled to limit their liability if it is proved that the pollution damage resulted from personal act or omission, committed with intent to cause such damage, or recklessly and with knowledge that such loss would probably result. Formula akin to the provision in art. 4 of the 1976 Convention on Limitation of Liability for Maritime Claims (breviter 1976 LLMC).

Practicalities have been also considered. The enjoyment of the benefit of limitation is tied to the constitution of a limitation fund for distribution among claimants. The shipowner shall maintain insurance or other financial security, with each ship carrying the appropriate certificate. Any claim for compensation may be brought directly against the insurer or other person providing financial security.

II. Other sources for funding compensation

Principle 12 (1) considers in h) the main features of the 1992 IOPC Fund. Thus, the wording provides that States may engage in an international funding mechanism to provide compensation for oil pollution damage to the extent that strict liability of the shipowner is inadequate. Thus, as a matter of principle, a supplementary compensation scheme may apply in cases where the shipowners' liability is excluded, or the same or their insurers are financially unable to provide for compensation, in presence of "mystery" oil spills (unidentified source), as in the 1992 IOPC Fund regime.

It shall be noted that, although successful, the 1992 IOPC Fund regime has not been labelled as such as *Lex Maritima*, arguably due to the fact that it has been implemented if only by different simultaneously applicable successive versions⁹.

Second Paragraph: Pollution from other sources

Finally, Principle 12 (2) is also worded as principle of the second category within the Document. In this sense, it provides that the positive maritime law may – inter alia – implement the principle of strict civil liability coupled with compulsory insurance or other financial security with direct action for bunker oil damages (2001 Bunker Convention), damage caused by hazardous and noxious substances (1996 HNS Convention) and wreck removal costs (2007 Nairobi Wreck Removal Convention). Moreover, the beefier of the 2007 Wreck Removal Convention is, to a certain extent, reflected in Principle 22 of the Gothenburg Draft.

Conclusions

Liabilities for damages to the marine environment coming from marine sources (specially shipping) are a major topic of contemporary maritime

⁹ See Gothenburg Draft, commentary at p. 40.

law. The international community has reacted to the issue coming up with peculiar compensation schemes which Principle 12 tends to condensate for the purposes of the Lex Maritima Project.

At this stage of affairs, no uniformity can be expected in the underlying legislation. Nevertheless, this principle aims to reveal some areas of apparent consensus. As any other principle contained in the Document, is subject to the contingencies of time and place, which might make the apparent consensus we see today strengthened in the future.

MOBILE OFFSHORE RENEWABLES UNITS: THE CASE FOR UNIFICATION OF MARITIME LAW

ALEXANDER SEVERANCE



*Mobile Offshore Renewable Units ("MORUs"):
What are we talking about?*

MORUs: Generating Assets

Floating Wind Turbines



Credit: Photo of the Kincardine Offshore Wind Farm project courtesy of Principle Power

Floating Tidal Energy Converters



Credit: Scottish Government, CC BY 2.0 <<https://creativecommons.org/licenses/by/2.0/>>, via Wikimedia Commons

Floating Wave Energy Converters



Credit: Mousse Energy Ltd

MORUs: Generating Assets (cont.)

Floating Solar Energy Converters



Credit: Ocean Sun

Floating Ocean Thermal Energy Converters



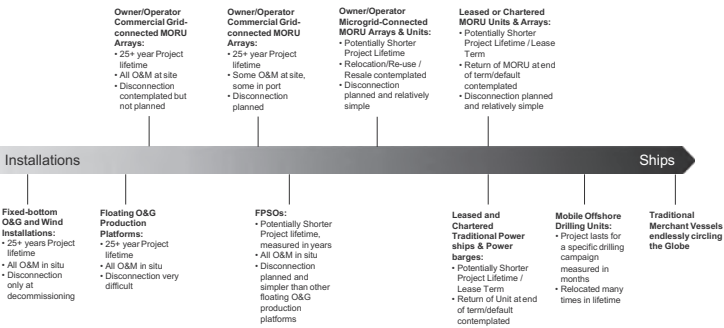
Credit: Global OTEC

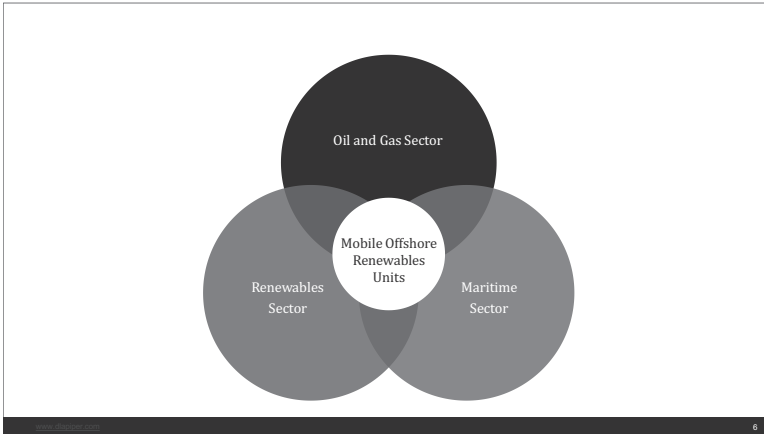
Hybrids



Credit: Floating Power Plant

Is MORU Mobility Closer to an “Installation” or a “Ship”?





Some Questions to Keep in Mind When Considering Legal Challenges to Greater International Deployment of MORUs



What is a Mobile Offshore Renewables Unit, and is it a "ship"/"sea going ship"/"vessel" (at least legally for purposes of a relevant convention)?



Which (and how many) States are party to that convention?



When, what, and where could something go wrong? While in transit or at site? In whose waters?



If there is no international convention which: (i) is applicable to MORUs, (ii) covers the circumstances which have occurred, and (iii) is binding on the relevant States, then which State's domestic law applies?



Is there relevant international convention, treaty, or agreement which might apply in those circumstances?

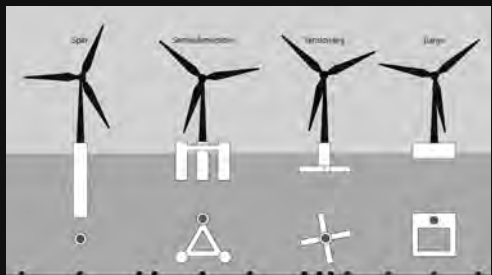


How does this lack of uniformity & legal uncertainty impact MORU projects:

- Cost of capital?
- Insurability?
- Bankability?
- LCoE?

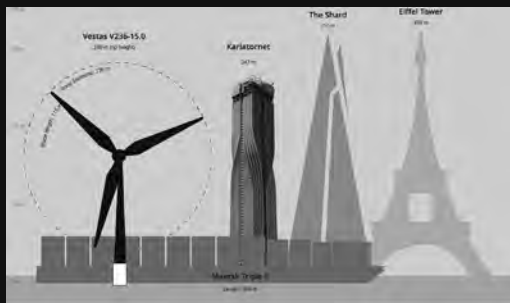
Floating Wind Turbines: Floating Towards the Future

Most floating wind turbines fit within a few common archetypes, derived from offshore oil and gas technology



Credit: DLA Piper Denmark 2023

How Big Are Floating Wind Turbines?



DLA Piper Denmark 2024



Credit: Outfit Oceanwind 2023

A floating wind farm might have 50...100...or 150 FWTs.
1,5 GW wind farm = 100 x 15 MW FWTs, over ~500km²

Unlike Fixed-bottom Turbines, Floating Wind Turbines is assembled in Harbour and towed to the offshore site



Credit: Ole Jørgen Bratland / © Equinor



Credit: Jan Arne Wold / © Equinor



Credit: Photo of the Kincardine Offshore Wind Farm project courtesy of Principle Power

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Three Distinct Floating Wind subsectors evolving...

Large Arrays connected to onshore grids



Credit: Odjell Oceanwind 2023

Small Arrays connected to offshore O&G Installations



Credit: Odjell Oceanwind 2023

Offshore Power-to-X



Credit: HydrePoint AS and VergiaAS

Market outlook
2021-2025

Commissioned in 2023: Hywind Tampen (88 MW), CNOOC Deep Sea Floating Qingdao/Haiyou Quantian (7.25 MW), X1 Wind PivotalBuoy (0.22 MW, Mar-May 2023), WPPower (0.2 MW, Nov 2022-Jan 2023), DemoSATH – BIMEP (2 MW), T-Omega Wind 1/16 Prototype (0.3 MW)

To be commissioned in 2024-2025: Provence Grand Large (25 MW, all turbines installed), EFL (30 MW), EOLINK (5 MW), Nezyr2 (1.6.6 MW)



Government targets 2030-2040 (fixed & floating)

Installed offshore wind capacity targets by countries (fixed and floating)

- United Kingdom:** 50 GW by 2030, **5 of which is floating**
- Ireland:** 5 GW by 2030
- France:** 2.4 GW by 2024; 5-6.2 GW by 2028; 40 GW by 2050
- Portugal:** 2-3.5 GW by 2030 for first auction, aiming to reach 10 GW
- Spain:** 3 GW by 2030
- Norway:** 30 GW by 2040, ports able to facilitate 5 GW by 2030
- Greece:** 4.9 GW by 2032 **mainly floating**
- Turkey:** 5 GW by 2035
- South Korea:** 14.3 GW by 2030, **half of which is floating**
- Japan:** 10 GW by 2030, 30-45 GW by 2045, 4 sea areas identified for next auction of FOW demos; Goto project delay because of defect in the spar
- Taiwan:** 5.7 GW by 2025; 13 GW by 2030; 55 GW by 2050
- Victoria State (Australia):** 2 GW by 2030, 4 GW by 2035, 9 GW by 2040
- United States:** 30 GW bottom-fixed by 2030 + **15 GW of floating by 2035**. By state: Oregon: 3 GW by 2030, Louisiana: 5 GW by 2035, California: 5 GW by 2030



Installed capacity projections (fixed-bottom & floating wind)
180 GW by 2030 (low scenario)
500 GW by 2030 (high scenario)
Westwood

Floating wind installed capacity projection
= 6.8-11 GW by 2030



More markets: Large projects announced in **Italy**; more demonstrations in **China**; 2 GW of projects announced in **New Zealand**; 3 offshore wind zones announced in **Australia**

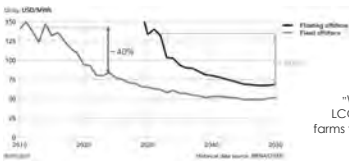
Emerging markets: World Bank/ESMAP published offshore wind roadmaps for **Vietnam**, the **Philippines**, **Sri Lanka**; **Colombia** is preparing offshore wind tender; **Romania** published draft law for offshore wind framework; **India** introduced 37 GW of bids between 2024-2030; **Brazil** proceeds to environmental licensing agency

15

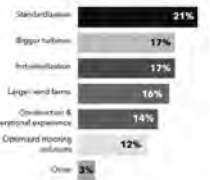
Market outlook 2050

DNV 2024: Floating wind reaches a global installed capacity of 289 GW by 2050 equivalent to 17% of offshore wind capacity out of almost 1700 GW in total.

IRENA 2021: The world needs 2000 GW offshore wind by 2050 to achieve carbon neutrality and a 1.5°-compliant pathway.



Where will the LCOE reduction come from?



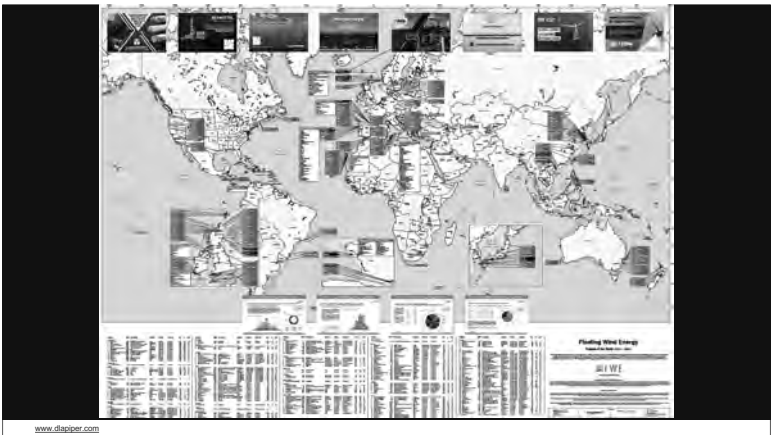
"Wind farm and turbine size increase to be the biggest driver of LCOE reduction as we move from pilot to commercial sized wind farms this decade, with standardization becoming a key enabler for industrialization, which will drive cost reduction post 2030."

DNV - Floating Wind: Turning Ambition Into Action (2023)



WFO - THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

16



Inevitably, Bad Things Will Happen...

- MORUs will be towed to foreign waters and ports
- Ownership and creditor rankings will be contested
- Contractual breaches and defaults will be committed
- Arrests will be attempted
- Bankruptcies will result
- Accidents and environmental incidents will occur
- Criminal acts will be (allegedly) perpetrated
- Collisions, allisions, and losses will happen
- The Kraken will be released...

But then what?

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So what is the MORU IWG doing?

Yesterday, we ran full day open workshop to discuss some of international legal obstacles to greater bankability and insurability of MORUs, consisting of :

- A Developers panel, with participants from
 - Renantis/Ventient (soon to be Nadara)
 - Seatwirl
 - Deepwind Offshore
 - SBM Offshore
 - A Class Society and Flag State panel, with participants from
 - Norwegian Maritime Authority
 - French Directorate General of Maritime Affairs, Fisheries and Aquaculture
 - DNV
 - ABS
 - A Lenders and Insurers panel, with participants from
 - Santander
 - NIORD (a Norwegian Hull subsidiary)
 - Codan
- Speakers from World Forum Offshore and Metcalf & Co.

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Credit: SBM Offshore

Mobile Offshore Renewable Units and Maritime Conventions

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Three Theses:

- 1. Although mobile offshore renewables units ("MORUs") float, are towable, and in some cases have been registered as a vessel, they may not legally be "ships" for all purposes, but they may (or may not) be within the meaning of some conventions.
- 2. As a result of the nomenclature issue, the application of current maritime conventions to MORUs is either uncertain or absent in key areas.
- 3. Legal uncertainty or absence of applicable conventions will lead to unnecessary contractual complexity, higher finance costs, and economic inefficiencies for an emerging maritime sector.



Credit: Photo of the Kincardine Offshore Wind Farm project courtesy of Principle Power
www.diapaper.com

Potentially MORU-relevant Maritime Conventions

Convention	In force?	Applicable
UNCLOS		
Registration of ships 1986	No	
Vessels under construction 1967	No	
Maritime liens and mortgages 1926		
Maritime liens and mortgages 1993		
Judicial sales	No	
Arrest of ships 1952		
Arrest of ships 1999		
Collision 1910		
Civil Jurisdiction (collisions) 1952		
COLREG 1972		
SOLAS 1974		

Convention	In force?	Applicable
ISM Code		
ISPS Code		
MODU Code		
Salvage 1989		
Wreck removal 2007		
Ship recycling 2009	No	
LLMC 1976		
LLMC PROT 1996		
Bunker 2001		
HNS 1996	No	
Penal jurisdiction 1952		
SUA 1988		

The CMI's prior work and MORUs

Topic	Rio 1977 ¹	Norwegian Alternative 1977 ²	Sydney 1994 ³	Vancouver 2001 ⁴	Relevant to MORUs?
Nationality/Registration	Yes	Yes	Yes	Yes	Yes
Liens	Yes	Yes	Yes	Yes	Yes
Mortgages	Yes	Yes	Yes	Yes	Yes
Vessels under construction	Yes		Yes		Yes
Arrest	Yes	Yes	Yes	Yes	Yes
Other creditors' remedies				Yes	Yes
Judicial Sales					Yes
Collisions	Yes	Yes	Yes	Yes	Yes
Civil jurisdiction				Yes	Yes
Penal jurisdiction				Yes	Yes
Removal				Yes	Yes
Salvage	Yes	Yes	Yes	Yes	Yes
Safety				Yes	Yes
Limitations of Liability	Yes	Yes	Yes	Yes	Yes
Liability for pollution	Yes	Yes	Yes	Yes	Maybe?
Limitation Fund				Yes	Maybe?
Apportionment of liability				Yes	Yes
Financial responsibility / maintenance of insurance				Yes	Yes

1 Under the Rio draft, Convention parties which were also parties to certain maritime topical conventions would agree amongst themselves to apply those referenced conventions to "troll" as well.

2 Under the Norwegian alternative, "troll" shall be "subject to the rules applicable to sea-going ships under the law of a State Party to this Convention", i.e. the parties would treat MORUs as vessels as they would under their own law (excluding international obligations).

3 Under the Sydney draft, Convention parties which were also parties to certain maritime topical conventions would agree amongst themselves to apply those referenced conventions to "troll" as well, and if not a party to those conventions, apply State Party law applicable to vessels generally.

4 The Vancouver draft ended the incorporation of topical convention by reference approach as unworkable, and provided stand-alone substantive provisions governing Offshore Units on selected topics.

“The sea with its winds, its storms, and its dangers never changes and this demands a necessary uniformity of juridical regime.”

—Pasquale Stanislao Mancini, in his inaugural address to the University of Turin, 1860

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- 4 Severance, Alexander, Annex to Mare Incognitum, Part II: A Draft Mobile Offshore Renewables Unit Convention (August 3, 2021). 46(2) Tulane Maritime Law Journal 245 (2022), Available at SSRN: <https://ssrn.com/abstract=3898441>

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**OCEAN WINDS
THE DELEVOPER’S VIEW**

RAFAEL AGEO DAMAS



Rafael Ageo Damas

WHO WE ARE?

Ocean Winds (OW) is an international company dedicated to **offshore wind energy** and created as a 50-50 joint venture, owned by **EDP Renewables** and **ENGIE**. Based on our belief that offshore wind energy is **an essential part of the global energy transition**, we develop, finance, build and operate offshore wind farm project all around the world.

When EDP and ENGIE combined their offshore wind assets and project pipeline to create OW in 2020, the company had a total of 1.5 GW under construction and 4.0 GW under development. OW has been adding rapidly to that portfolio and is now on a trajectory to reach the 2025 target of 5 to 7 GW of projects in operation, or construction, and 5 to 10 GW under advanced development. Currently, **OW's offshore wind gross capacity already operating, in construction or with advanced development rights granted has reached 16.6 GW.**

OW, headquartered in Madrid, is **currently present in seven countries**, and primarily targets markets in Europe, the United States, selected parts of Asia, and Brazil.

More information: www.oceanwinds.com



OUR WORK

DEVELOP

We develop offshore wind farms to accelerate the energy transition, generating clean energy all over the world. We work hand and hand with all our stakeholders for our projects to benefit the local communities and create local opportunities.



13.2 GW
in advanced development

FINANCE

We finance and invest to support countries in achieving their net-zero ambitions.



€7.4 Billion
in Project finance in 2023

BUILD

We build the infrastructures to make the most of the clean and endless energy that wind offers, both bottom-fixed and floating offshore wind farms.



1.9 GW
under construction

OPERATE

We operate projects driven by innovation, always striving to unlock new potential and tackle the challenges we face. We are a long-term partner, involved in the local economy and thriving on maximizing positive impacts.



1.5 GW
in operation



Our Present

15 years developing, building and operating
Floating Offshore Wind

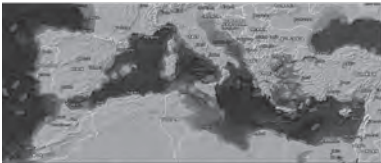
Why floating offshore? Key drivers behind



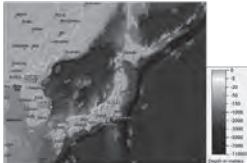
North America - Atlantic and Pacific Coast



North Sea



Iberian Peninsula and Mediterranean Sea

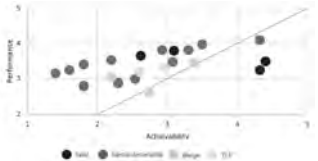


Japan and Korea

Floating Offshore is a viable solution at water depths >60m



10-40 40-60 >50 >120 Water Depth* (in meters)



Performance

Achievability

● Data ● Semi-submersible ● Spar ● TLP



Concept Project Pre-Feed Feed

Monopiles

- Basic extension of turbine tower
- Economically feasible in shallow water depths (10-40m)

Jackets & other fixed

- Different technologies: jackets, tripods, tripods, gravity base.
- Economically feasible in transitional water depths (40-60m)

Floating

- Different technologies: TLP, Semi-submersible, Spar.
- Expected economical feasibility in deep waters (>60m).

Ocean Winds Floating Offshore Wind Experience

Proven technology and gained knowledge ready to deploy

Prototype

Pre-commercial projects

Commercial scale projects

WindFloat 1, Portugal

- DECOMMISSIONED
- PILOT: 2011 TO 2016
- DEMONSTRATED TECHNICAL VIABILITY

WindFloat Atlantic, Portugal

- IN OPERATION
- 25 MW CAPACITY
- HOUSEHOLDS POWERED: 25,000 / YEAR
- IN OPERATION SINCE 2020

EFGL, France

- UNDER CONSTRUCTION
- 30 MW CAPACITY
- HOUSEHOLDS POWERED: 50,000 / YEAR

KF Wind, South Korea;

Golden State Wind, US; Arven, UK

COMMERCIAL PROJECTS UNDER DEVELOPMENT

- 6,2GW OF SECURED CAPACITY
- >1GW CAPACITY
- HOUSEHOLDS POWERED: OVER 1.3 MILLION HOUSEHOLDS

WindFloat Atlantic: First global semi-submersible floating offshore wind farm

OW
OFFSHORE WIND

LOCATION

18 km of the coast of Viana do Castelo, Portugal, in 100m water depth, in an area of sand and sediments, suitable for mooring

TECHNOLOGY

- 3 wind turbines V164 - 8.4 MW each
- 3 WindFloat floating platforms
- Dynamic cables for the collecting system

INTERCONNECTION

Constructed by PT TSO (REN) allowing a direct connection to 60kV to an existing onshore substation operated by PT DSO (E-REDES)

FINANCING

- EIB: Project Finance 60 M€
- EU FUNDING - NER300
- PT ENVIRONMENTAL FUND (FA)
- WINDPLUS shareholders funds



STATUS

In Operation

- 25 MW CAPACITY
- DESIGNED FOR 25 YEARS OF OPERATION
- FID FEB 2018 / FC OCT 2018
- EQUIPMENT FABRICATION STARTED IN Q1 2018
- OFFSHORE INSTALLATION IN SUMMER 2019 / WINTER 2020
- OPERATION & MAINTENANCE BASE IN THE NORTH OF PORTUGAL, USING TECHNICAL TEAMS AND LOCAL LOGISTICS



WindFloat Atlantic: Highlighting path to Commercial Scale



Installation & Tow-out to Site – Port of Ferrol
WTF installed at quayside and towed fully assembled to site



Fabrication
Lisboa Shipyard, Portugal and Port of Ferrol, Spain

Eoliennes Flottantes du Golfe du Lion, pre-commercial project under construction in France

OW
OFFSHORE WIND

LOCATION

over 16 kilometers off the coast of the Leucate-Le Barcarès area in the Mediterranean Sea in water depths of 65 to 80 meters

FLOATERS

3 WindFloat floating platforms: 3rd generation of the Principle Power Inc. floater technology – after WindFloat 1 (2MW) starting operation ten years ago and WindFloat Atlantic (25MW) from two years ago – the design of the EFL floater holds significant improvements and new solutions. With such a long operational experience, it is now the most advanced floater technology.

TURBINES

3 Vestas V164
10MW/unit

PARTNER

Banque des Territoires



- 30 MW CAPACITY
- HOUSEHOLDS POWERED: 50,000
- DESIGNED FOR 20 YEARS OF OPERATION
- FID JANUARY 2022



KF WIND, world's first large scale commercial floating wind project



LOCATION
Over 90 km from the coast in Ulsan, Korea at a water depth of between 175 to 275 meters.

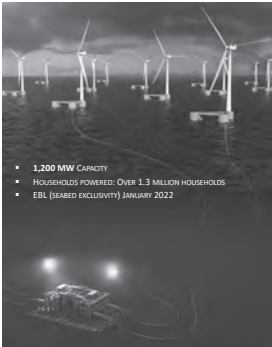
TECHNOLOGY
WindFloat floating platforms

PARTNERS
Aker Offshore Wind (for the 3 sites)
Kumyang Green Power (for 1 site)

DEVELOPMENT OF FLOATING WIND INDUSTRY IN KOREA

- Contribute toward the **national energy transition to decarbonize**, as well as the economic development of the region of Ulsan.
- **Up to 77% of content manufactured in Korea**, of which around 63% would be fabricated in the Ulsan area,
- Resulting in the creation of thousands of jobs and the **reindustrialization** of the region

STATUS
In Advanced development



Opportunities for Floating Wind



Clean energy generation
(at high capacity)



Local return:
supply chain development (potential for exportations), job creation, knowledge, competences of working force, education.



Synergies with other economical actors in sea area
(fisheries, aquaculture, enhance biodiversity, etc.)



R&D opportunities



What needs to be done to facilitate floating offshore wind development?



1

Define planning of the ocean

- Define key areas of development to focus research
- Define timelines to anticipate and prepare necessary investments

2

Define stable regulatory frameworks

- Design rigorous and realistic awarding criteria
- Clear knowledge of International Maritime Conventions.
- Clarity on applicability of International Regulations.

3

Prepare the infrastructures for this new capacity

- Define the interconnection points of the large-scale projects (grid connection)
- Ports adaptability



TAKE AWAYS



- Floating wind foundations opened new markets with **large wind resource** in geographies around the world, for **water depths above 60m**.
- **Technology** development progressing, with multiple concepts being proposed based on the experience from the Oil&Gas industry.
- OW is a **pioneer** in floating offshore wind energy with over **15 years of experience** developing and operating floating wind, including the first commercial projects.

THE INSURERS' VIEW

MATS JOHAN WAAGE



NIORD established by Norwegian Hull Club

- New subsidiary company dedicated to Offshore Renewables
- Established as an MGA fully owned by Norwegian Hull Club (NHC), to prepare for growth and increased market cooperation
- NHC has a strategic and financial long-term commitment with NIORD
- NHC offers existing capacity (90 MUSD on EML basis) to NIORD
- NIORD has from 1/4 2024 new Nordic and Lloyds capacity of 25 MUSD on EML basis in addition to the existing NHC capacity
- NIORD manages NHC Renewables portfolio
- All renewals managed by NIORD and transferred to the new set-up

NIORD

NIORD Vision

Being one of the leading offshore renewables insurers in the world:

- Bottom-fixed and floating wind
- Wave, tidal, and floating solar technology

NIORD will aim to be:

- THE leading market for floating offshore windfarms
- A leading market for bottom-fixed offshore windfarms
- A specialist underwriter for other offshore renewable devices

NIORD

ERM&AM INSURERS ENERGY



From MOUs to MORUs

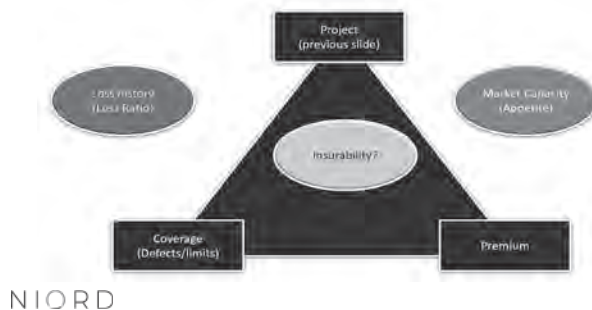
MORU Insurers Project Assessment

- Robustness of manufacturing Schedules
- Design-specific challenges
- WTG OEM Considerations
- Grid Connection
- Clarity in Assurance
- Major Component Exchange Strategy

NIORD

ERM&AM INSURERS ENERGY

Insurability of MORUs



MORUs are more “mariny” than bottom-fixed

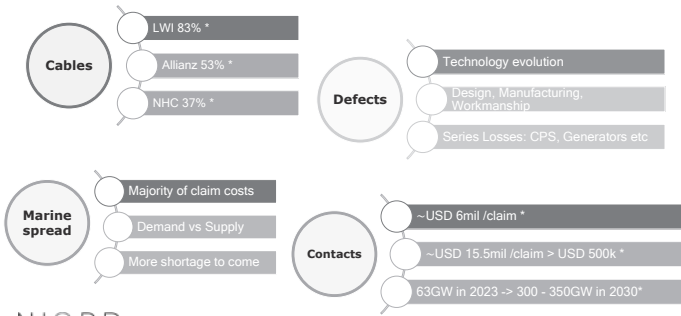
- ❑ Need for tow during operations
 - ❑ Due to claimable losses
 - ❑ Due to maintenance requirements (as a prudent uninsured...)
 - ❑ Minor Works clauses: is the tow to shore “minor”?
 - ❑ Temporary Removal Clauses: is the MORU “temporarily removed”?

MORUs and compartmentalization of costs

- ❑ Wind Farms insured with one Sum Insured
 - ❑ No stated sublimit per floating unit
 - ❑ Capex WTGs+Foundation/number of floaters?
 - ❑ Likely that replacement of one floater will far exceed the original building cost per unit
- ❑ Business Interruption Cover
 - ❑ No sublimits per floater
 - ❑ What if the insured chooses not to repair
 - ❑ Total Loss – BI payable? – compare H&M Total Loss and Loss of Hire suspended

Mats Johan Waage

Claims within offshore wind



NIORD

DESIGNING INSURANCE BUSINESS



Gravity foundation hit by Rock Piper in Le Havre

Thursday, September 15 2022

WIND ENERGY - FÉCAMP

As the last three gravity foundations prepare to leave the port of Le Havre this Thursday, September 15, 2022, one of the structures already in place off Fécamp was hit by a ship.



Juliette D stuck in storm



SAFETY4SEA PLUS

Foundation to be removed after collision

Services (contracted, 3000) will intervene to lift the structure from the offshore platform where the storm-rigged "top-down" hit it (see this).

NOUVEA

Gravity foundation hit by Rock Piper in Le Havre

Thursday, September 15 2022

WIND ENERGY - FÉCAMP

As the last three gravity foundations prepare to leave the port of Le Havre this Thursday, September 15, 2022, one of the structures already in place off Fécamp was hit by a ship.



Cargo ship collides with Orsted wind turbine

09/05/2023, 4:25 pm

By Romain Thibaut



After a cargo ship, following a collision with a concrete wind turbine

[Cargo ship collides with Orsted wind turbine \(www.leparisien.fr\)](#)



Sea Worker capsizes off Denmark

Large offshore wind turbine capsized off Denmark coast

By Romain Thibaut

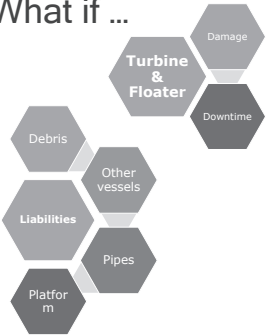


Eide barge secured after dramatic drift

Norwegian owner says incident is under investigation after tense threatened oil platforms.

[Eide barge secured after dramatic drift \(www.leparisien.fr\)](#)

What if ...





Conclusions Claims

- Watch out for contacts
- Cable and defects remain the main cost drivers
- Concerns related new tech
- Tow-to-port
- Potential for major incidents

NIORD

DAVID H. BENTON & ASSOCIATES

P&I Risks and Limitation of Liability

- Damage to third party caused by the MORU during tow
- Damage to third party caused by MORU becoming un-moored
- TPL cover afforded under Physical Damage Construction All Risk limited to 25/50/100 MUSD
- MORUs are not "ships" and not navigable – do not fit within the current limitation conventions
- Dutch Law is different: "Could a rubber duck be a vessel under Dutch Law?"

NIORD

NEGOTIATING AT THE TREATY LEVEL & EXPERIENCES FROM THE BBNJ

NIELS KRABBE



MORU, the law of the sea and the new global oceans treaty (BBNJ)



NIELS KRABBE, DEPARTMENT OF LAW

UNIVERSITY OF GOTHENBURG

MORU and the law of the sea

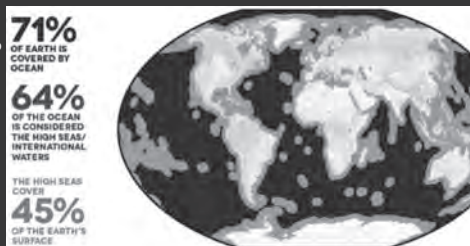
- A queer concept under the law of the sea?
- Ship or installation/structure - status dependent on how it operates: Navigational freedom or economic activity?
- Navigational freedoms criteria
- Perhaps not so difficult to determine legal status?
- Why there still is a case for developing new rules

The new global oceans agreement (BBNJ)

Relationship to UNCLOS?

When does it apply?

Where does it apply?



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Four thematic areas

- Marine genetic resources
- Area based management tools including marine protected areas
- Environmental impact assessments
- Capacity building and transfer of marine technology

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How BBNJ may set a precedent for domestic maritime regulation

Impact of including cumulative environmental pressures

Applies also to activities with limited individual impact but significant accumulated effect

Strategic environmental assessments

Blue carbon and climate references

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Learnings for future negotiations

- Even in dark geopolitical times – multilateral treaty making is possible
- Bridging north-south polarization
- When EU, US and China is onboard, things get going
- Time and effort



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OPEN IWG SESSION: MORU

CONTEXT FOR DEFINING FLOATING
OFFSHORE WIND TURBINES

LOUISE EFTHIMIOU



WFO

FLOATING OFFSHORE WIND COMMITTEE

Photo of the WindRoad Atlantic project courtesy of Principle Power/Ocean Winds

Context for defining
Floating Offshore Wind
Turbines

Louise Efthimiou
WFO Floating Offshore Wind Manager

Comité Maritime International Colloquium
2024, Gothenburg

HAMBURG

NEW YORK

TOKYO

TAIPEI

WFO and the FOWC

WFO (World Forum Offshore Wind) is the world's leading business platform for the offshore wind industry. By connecting and supporting our members, WFO is helping to make offshore wind one of the world's leading sources of renewable energy.



120+ members

Events & Network, Committees,
Research & Insights, Visibility



FOWC Subcommittees



Cables & FOSS

Hayden Marcollo, Moorsure/AMOG

White Paper = Status quo of dynamic cable development for floating offshore wind

Workshop to be planned in June to answer insurer questions

New topic: under investigation



Moorings

David Timmington, Griffin-Woodhouse Ltd.

Continued exploration of technologies and research in FOW moorings

Drafting second White Paper further defining mooring system reliability, bringing together other research projects in this area

Strong community of experts in FOW moorings



O&M

Ilmas Bayati, PEAK Wind

February 2023 publication of second White Paper on offsite major maintenance

New topic: defining digitalisation of the operational phase for FOW



Risk & Insurance

Ralf Skowronnek, Skowronnek & Bechnak

Liaising relationship with JNRC

2024 onwards: Extending focus areas, next one being a study of the cost vs. risk allocation across the entire FOW system (not only moorings, cables, O&M but also floater and turbine)



WFO - THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

3

FOWC Subcommittees



Environment, Cohabitation & Biodiversity

Roland Teixeira, H2Air / Jean-Philippe Pagot, EDF Renouvelables / Tania Moreira, Masdar / Brian McGrellis, Remantis / Roeland De Rycker (DEME)

Focus on environmental impacts: life cycle assessment, link with fisheries, marine habitats...

Demonstrate that floating offshore wind can coexist harmoniously with marine ecosystems & other economic activities



Serial Fabrication

Darren McQuillan, BARDEX

Full name: Serial Production and Fabrication of Steel and Concrete Platforms Subcommittee

Promote lean manufacturing principles, standardization and automation concepts to reduce costs and reach net-zero goals

Platform agnostic approach



Contract Interface

Azadeh Nassiri, Slaughter & May / Sophie Fellah, BW Ideol / TBD

Provide guidance to minimise interface risk in multi-contract procurement structures and at various project phases (FEED, installation...)

Identify opportunities for risk sharing and other solutions to favor insurability & bankability



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Sources: RWE, BW Ideol, Principle Power, etc.

Floating Offshore Wind Turbine (FOWT) key characteristics

Floater design

Moorings

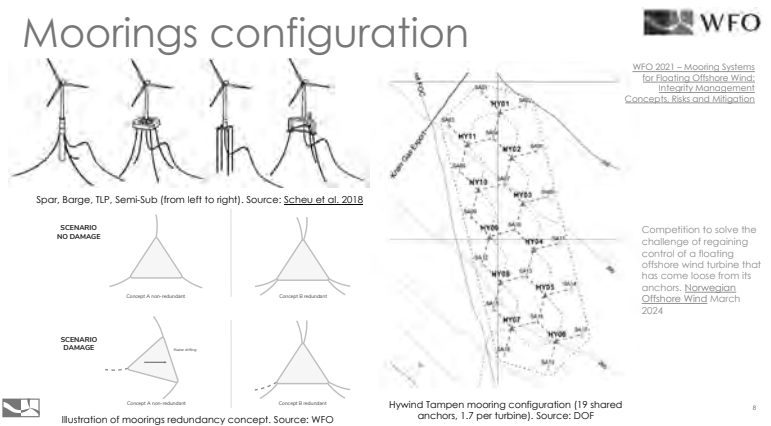
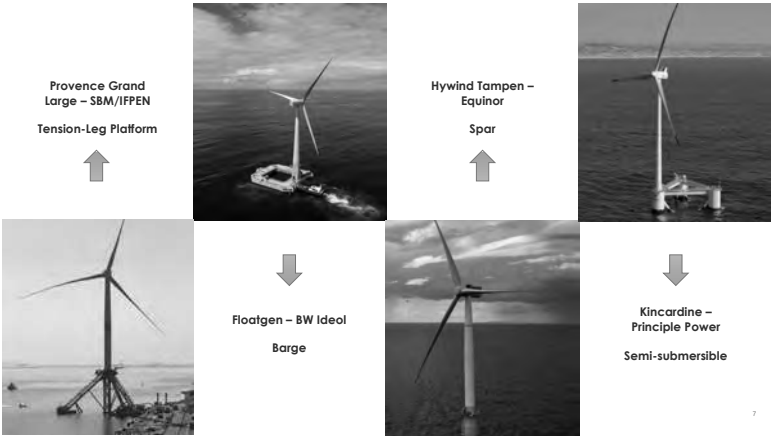
Cables

Fabrication & installation

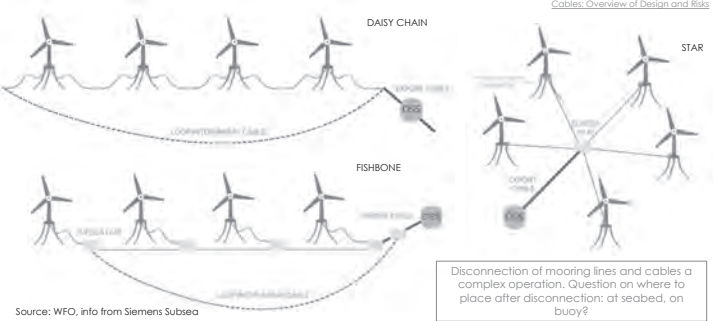
Operations & Maintenance (O&M)

Environmental impact

5



Cable configuration



Source: WFO, info from Siemens Subsea

Fabrication & installation



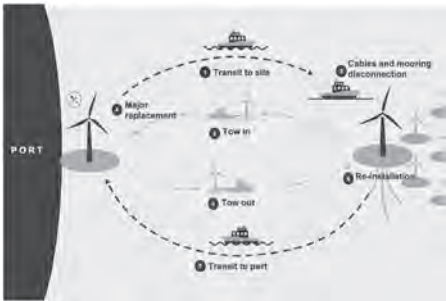
Floater guide port design or port capability guides floater? (🤖)



Source: left image ABP, Crowle and Thies (2021) ; right image WFO

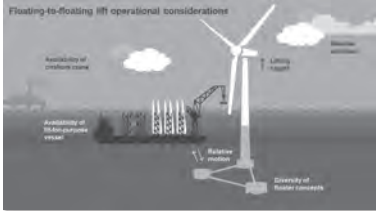
WFO 2022 blog article

O&M: today we do tow-to-port

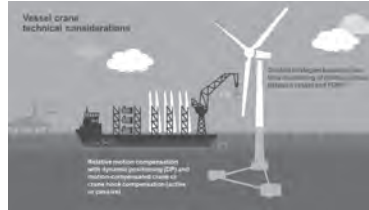


WFO 2021 – Challenge and Opportunities of Major Maintenance for Floating Offshore Wind

Future? Onsite repair: floating-to-floating



WFO 2023 – Onsite Major Replacement Technologies for Floating Offshore Wind



Source: WFO/PEAK Wind



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Future? Onsite repair: add-on crane



1) Tower-based

1a) Self-hoisting: Self-hoisting cranes are installed by using wires attached to the nacelle. They can crawl via those wires.

1b) Self-climbing: Self-climbing cranes are adapted to the tubular steel tower and can climb up to the nacelle. The lifting mechanism can be a brace that secures itself around the tower, or a system that attaches itself directly to the tower using pins.

2) Platform-based

A platform-based add-on crane is secured on an area of the floater. An area of the floater could mean the column or between two columns for a semi-sub (Figure 3), or somewhere on the barge.



Source: WFO/PEAK Wind



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Insurance perspective



RISK MITIGATION: lower the probability of failure in dynamic cables

- redundancy : loop for array, dual export cable (like b-f), substation, mooring system

LOSS MITIGATION: reduction of repair cost and downtime

- replaceability : accessories designed for cost-efficient and fast repair/replacement
- replaceability cont'd: spare parts plan & procurement, clear repair terms

Cable failure = loss of energy production
i.e. loss of FOWT / wind farm function.
Managing risks therefore key to achieving insurer confidence.

SCENARIO
NO DAMAGE



SCENARIO
DAMAGE



How the CAI/OSU and O&M/BI insurances responds in case of LOSS OR DAMAGE DUE TO DEFECT:

Floating Offshore Wind: LEG 1 → LEG 2
Bottom fixed: LEG 2 → LEG 3
Wind Turbine (floating/bottom fixed): LEG 2

LEG 1	LEG 2	LEG 3
Repair Costs	Loss of Revenue	Repair Costs
Loss of Revenue	Loss of Revenue	Loss of Revenue
Repair Costs	Loss of Revenue	Repair Costs
Loss of Revenue	Loss of Revenue	Loss of Revenue

Source: Ralf Skowronnek, Chairman WFO Floating Wind Insurance Subcommittee



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WFO 2021 – Insurability of Floating Offshore Wind

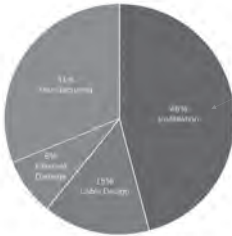
Bottom-fixed experience



The Carbon Trust estimates the average failure rate envelope of static offshore wind subsea cables to be between 1.9×10^{-3} failures/km/year and 2.13×10^{-2} failures/km/year. (Phase V FWJIP 2023)

Mitigation measures needed across development, manufacturing and installation phases:

- quality site survey, subsea cable expert expert in manufacturing and installation
- public communication of cable issues as done in the past



mishandling & overbending but also issues in design, timeline pressures, personnel experience...

Recorded failure modes for bottom-fixed wind export and inter-array cables in the UK that were discovered during operation. Source: ORE Catapult 2021

Market outlook 2021-2025

Commissioned in 2023: Hywind Tampen (88 MW), CNOOC Deep Sea Floating Qingdao/Haiyou Guanian (7.25 MW), X1 Wind PivotBuoy (0.22 MW, Mar-May 2023), WP2Power (0.2 MW, Nov 2022-Jan 2023), DemoSATH – BIMEP (2 MW), T-Omega Wind 1/1.6 Prototype (0.3 MW)

To be commissioned in 2024-2025: Nezyr2 (1.6 MW), Provence Grand Large (25 MW, all turbines installed), EFGL (30 MW), EOLINK (5 MW), Eolmed (30 MW)



EARLY 2021 122 MW END 2022 191 MW TODAY 225 MW BY 2025 >550 MW

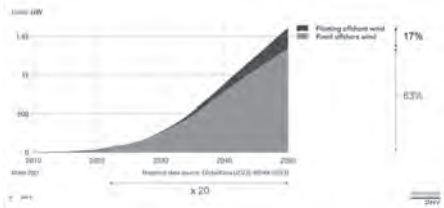
Contextualising figures

WFO 2023 – Global Offshore Wind Report

2023: largest offshore wind farm commissioned is 1.5 GW. For floating wind it's 88 MW. Less than 10% size.

As of 2023: There is 67 GW of offshore wind capacity in operation. 225 MW of it is floating wind. **Less than 1% of offshore wind capacity in operation.**

Reminder estimation by DNV for 2050: Floating wind reaches a global installed capacity of 289 GW equivalent to 17% of offshore wind capacity in operation (=1700 GW).



Auctions & tenders 2022-2025

Already announced

- **UK** January 2022: 15 GW ScotWind, March 2023: INTOG awarded to 13 winners, including 2 major floating developers.
- **UK** recent AR5 strike price was too low (44 pounds/MWh) and no offer was made by developers, UK government increased the strike price to 73 pounds/MWh for the next AR6 set to open by March 2024. AR6 also ups the cap for floating wind projects to £176/MWh, 52% higher than AR5's £116/MWh.
- **USA** December 2022: 4.6 GW lease sale in California December 2023-May 2024: Proposed Sale Notice in Central Atlantic, Gulf of Mexico (second time), Gulf of Maine, Oregon.
- **Portugal** launched the initial stage of offshore wind tender with three areas totalling 3.5 GW

To be announced later (this year or early next):

- **UK** Celtic Sea Floating Offshore Wind Leasing Round 5 upsizes capacity to 4.5 GW
- **Norway** Utsira Nord zone is postponed indefinitely for now, waiting for future updates
- **France** Brittany A05 250 MW winner chosen but not yet announced, Mediterranean A06 2 x 250 MW winner announced by end 2024
- **Taiwan** demo project of max 540 MW winner announced by end 2024



WFO – THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

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Industry priorities



Centred on **design** for reliability and serial production

- Standardisation of floater parts
- Innovation for moorings & cable systems : size, materials, accessories
- Validation of design tools
- Turbine control methods

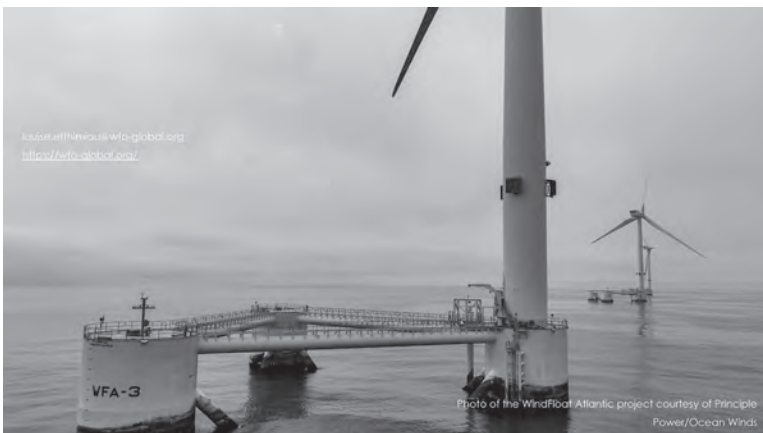
(ETIPWind Roadmap 2020, still relevant today)

...What can CMI do in the meantime?



WFO – THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

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info@wfo.global
<http://wfo.global/>

Photo of the WindPilot Atlantic project courtesy of Principle Power/Ocean Winds

Floater technology

As you may have seen from the market overview, there are not many projects currently in the water. The main operating projects are:

→ Floatgen using BW Ideal concrete barge with moonpool (Hibiki steel version in Japan). Both operating since 2018. Performance facts: Floatgen

cumulated capacity > 30 GWh, lifetime extension announced: Hibiki weathered 8 super typhoons (2022 report)
→ Windfloat Atlantic (COD 2020) & Kincardine (COD 2021) using Principle Power Windfloat floater. Performance facts: Windfloat H₂ 20m end 2023.

Kincardine major component replacement

→ Hywind Scotland (2017), Hywind Tampen (2023) with Equinor spar floater (working on semi-sub concept too). Performance facts: Scotland 54% capacity factor over 5 years but now need for low-to-port, environmental impact studies at Scotland, Tampen has first-ever shared moorings system

BUT ALSO: TetraSpar (Shesdal, spar configuration) DEMOSath (Saitec, barge).

Some of their next activities:

- Ideal Edmed (30 MW) project; involved in South Brittany and Mediterranean floating tenders
- Principle Power on EFL, (30 MW)
- Principle Power and Equinor involved in California lease. RWE too (behind TetraSpar and DEMOSATH)
- But also Korea, Japan, UK, Norway



WFO - THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

21

Onsite repair: add-on crane



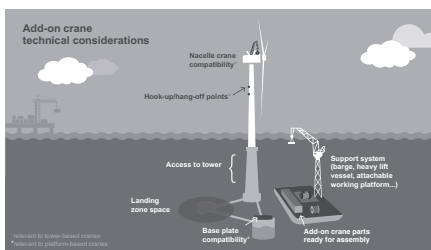
Number of technical considerations:

- Hook-up/hang-off points
- Nacelle crane compatibility
- Base plate compatibility
- Access to the tower
- Landing zone space
- Ballasting
- Support vessel
- Motion compensation
- Control system

Right now:

Technology suppliers making strategic decisions to serve the floating wind turbines of 2030 and beyond, considering the priorities of:

- Project developers
- Floater designers (👉)
- Turbine OEMs



Source: WFO/PEAK Wind



WFO - THE GLOBAL WIND OFFSHORE BUSINESS PLATFORM

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Government targets 2030-2040 (fixed & floating)

Installed offshore wind capacity targets by countries (fixed and floating)

United Kingdom: 50 GW by 2030, **5 of which is floating**

Ireland: 5 GW by 2030

France: 2.4 GW by 2024; 5-4.2 GW by 2028; 40 GW by 2050

Portugal: 2-3.5 GW by 2030 for first auction, aiming to reach 10 GW

Spain: 3 GW by 2030

Norway: 30 GW by 2040, parts able to facilitate 5 GW by 2030

Greece: 4.9 GW by 2032 **mainly floating**

Turkey: 5 GW by 2035

South Korea: 14.3 GW by 2030, **half of which is floating**

Japan: 10 GW by 2030, 30-45 GW by 2045; 4 sea areas identified for next auction of FOW demos; Goto project delay because of defect in the spar

Taiwan: 5.7 GW by 2025; 13 GW by 2030; 55 GW by 2050

Victoria State (Australia): 2 GW by 2032, 4 GW by 2035, 9 GW by 2040

United States: 30 GW bottom-fixed by 2030 + **15 GW of floating by 2035**, by state: Oregon: 3 GW by 2030, Louisiana: 5 GW by 2035, California: 3 GW by 2030



Installed capacity projections (fixed-bottom & floating wind)
180 GW by 2030 (low scenario)
500 GW by 2030 (high scenario)
Westwood

Floating wind installed capacity projection
= 6.8-11 GW by 2030



More markets: Large projects announced in **Italy**; more demonstrations in **China**; 2 GW of projects announced in **New Zealand**; 3 offshore wind zones announced in **Australia**

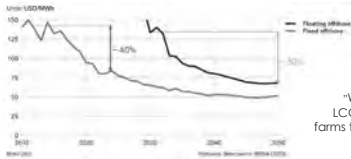
Emerging markets: World Bank/ESMAP published offshore wind roadmaps for **Vietnam**, the **Philippines**, **Sri Lanka**; **Colombia** is preparing offshore wind tender; **Romania** published draft law for offshore wind framework; **India** introduced 37 GW of bids between 2024-2030; **Brazil** proceeds to environmental licensing agency

23

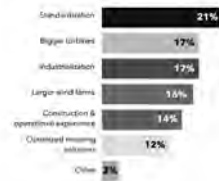
Market outlook 2050

DNV 2024: Floating wind reaches a global installed capacity of 289 GW by 2050 equivalent to 17% of offshore wind capacity out of almost 1700 GW in total.

IRENA 2021: The world needs 2000 GW offshore wind by 2050 to achieve carbon neutrality and a 1.5°-compliant pathway.



Where will the LCOE reduction come from?



"Wind farm and turbine size increase to be the biggest driver of LCOE reduction as we move from pilot to commercial sized wind farms this decade, with standardization becoming a key enabler for industrialization, which will drive cost reduction post 2030."

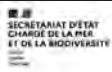
DNV - Floating Wind: Turning Ambition Into Action (2023)



FRENCH LEGAL FRAMEWORK

REGULATORY INITIATIVES FOR THE
IMPLEMENTATION OF A NEW LEGAL
FRAMEWORK FOR FLOATING MULTI-PURPOSE
PLATFORMS (FLOATING MPPS)

LUCIE SADOUN



French Legal Framework

Regulatory initiatives for the implementation of a new legal framework for Floating Multi-Purpose Platforms (Floating MPPs)





CMI Colloquium, Göteborg, 22 May 2024

DOAMPA – DIRECTORATE GENERAL FOR MARITIME AFFAIRS AND FISHERIES

MAY 2024

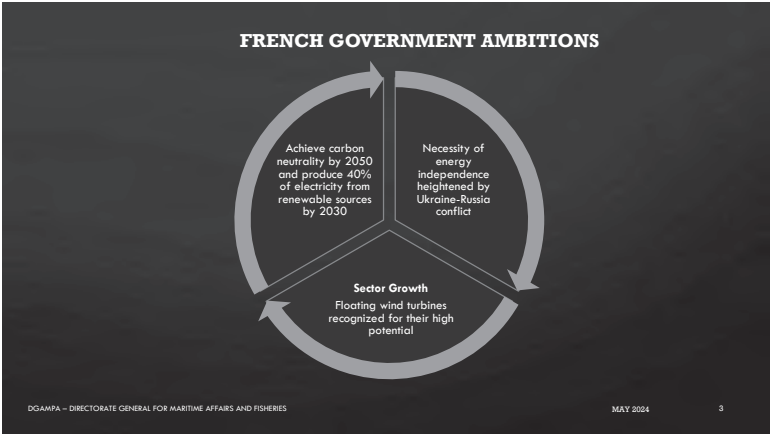
1

WHAT ARE OUR AMBITIONS ?

DOAMPA – DIRECTORATE GENERAL FOR MARITIME AFFAIRS AND FISHERIES

MAY 2024

2



STRATEGIC INITIATIVES : ONGOING OR FUTURE OFFSHORE WIND PROJECTS

	Authorization Acquisition Timeframe	Litigation duration	Duration of works	Commissioning
A01 Saint Nazaire	4 years and 10 months	2 years and 2 months	3 years and 3 months	November 2022
A01 Saint Brieuc	4 years and 10 months	3 years and 8 months	3 years	In 2024
A01 Fécamp	4 years and 10 months	2 years and 4 months	3 years and 5 months	In 2024
A01 Courseulles	4 years and 10 months	2 years and 4 months	3 years and 8 months	In the horizon 2025
A02 Dieppe-Le Tréport	2 years and 10 months	3 years and 8 months	3 years and 8 months	In the horizon 2026
A02 Yeu-Noirmoutier	2 years and 10 months	4 years	2 years and months	In the horizon 2025
A03 Dunkerque	4 years	1 year	2 years and months	In the horizon 2028 (January)
A04 Normandie	4 years	1 year and 8 months	5 years and months	In the horizon 2031
A05 Bretagne-Sud	5 years	1 year and 8 months	2 years and 6 months	In the horizon 2031
A06 Méditerranée	7 years	1 year and 8 months	2 years and 6 months	In the horizon 2031
A07 Oléron	7 years	1 year and 8 months	3 years	In the horizon 2032
A08 Normandie	4 years and 6 months	1 year and 84 months	4 years and 6 months	In the horizon 2032

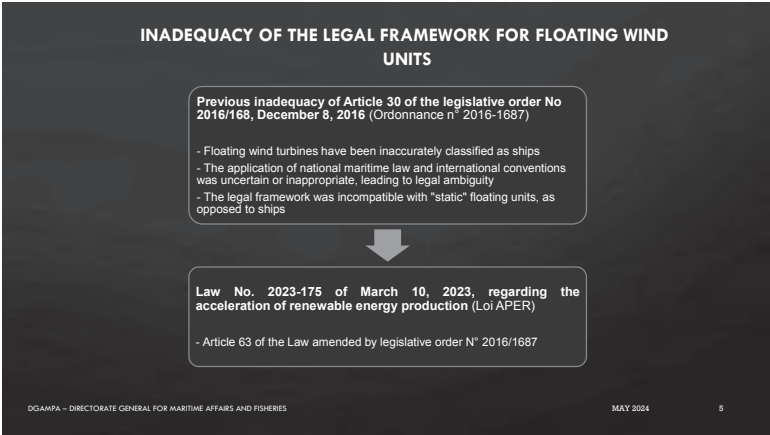
INCREASING OUR CAPACITY

- Objective : Achieve 40% renewable electricity by 2030
- Acceleration Strategy : Implementation of tender calls for projects A05 Bretagne-Sud and A06 Méditerranée (250 MW each)
- In May 2024, Bruno Lemaire, French Minister of Economy and Finance announced tender calls for projects A09 (2.5 GW) and A010 (10 GW) to be launched in 2024

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CURRENT LEGAL FRAMEWORK: OBJECTIVES

Article 63 of Law No. 2023-175 regarding the acceleration of renewable energy production

1° Exclusion from ships status

2° Tailored regulations to suit the "stationary" nature of floating units compared to ships

3° Address specific operational requirements of these installations

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WHAT ARE FLOATING MULTI-PURPOSE PLATFORMS IN FRENCH LEGISLATION ?

DGAMPA – DIRECTORATE GENERAL FOR MARITIME AFFAIRS AND FISHERIESMAY 20247

What are we talking about ?

"Artificial island, Installation and Floating Structure"

Connected permanently to a fixed point

Not primarily constructed and equipped for maritime navigation or intended for such use

Floating wind turbines

Floating substations

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Any vessel

Involvement in close-to-shore operations

Primarily operating at anchorage or dock

Designed for residential, tourist or recreational purposes

Examples of assimilated units: restaurant, tourist village, or floating hotel



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1° Installations and structures primarily dedicated to maritime navigation safety

2° Facilities and structures dedicated to technical and environmental studies related to offshore renewable energy production installations and their connection to public electricity grids





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REGISTRATION AND FRENCH FLAG

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REGISTRATION AND FRENCH FLAG

Art. 40-2, Ordonnance n° 2016-1687 du 8 décembre 2016: "Artificial islands, installations, and floating structures operated in maritime areas under French sovereignty or jurisdiction are registered. Artificial islands, installations, and floating structures may be flagged as French. In this case, they shall be registered in the registration register of artificial islands, installations, and floating structures, registered under the French flag and subject to mortgages under the conditions provided by the Customs Code."

Mandatory registration for floating units

Option to choose French flag registration

In such case: Registration through a dedicated registry at the French International Registry Office (GURIF):

- Registry for artificial islands, installations, and floating structures under French flag

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SAFETY CONTROL

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Law No. 2023-175 of March 10, 2023, regarding the acceleration of renewable energy production (Loi APER)

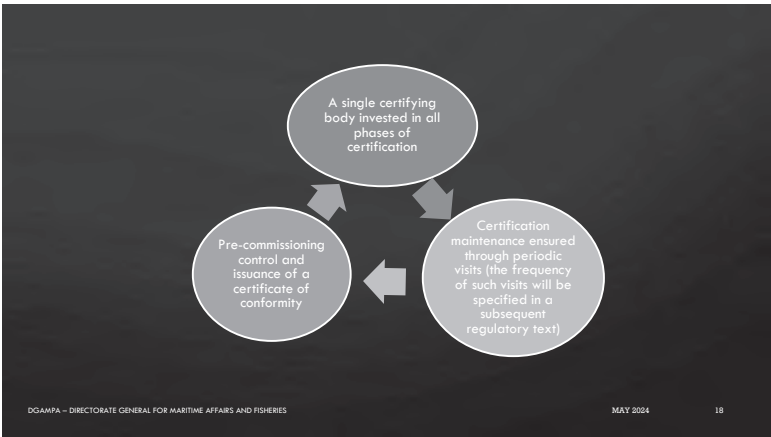
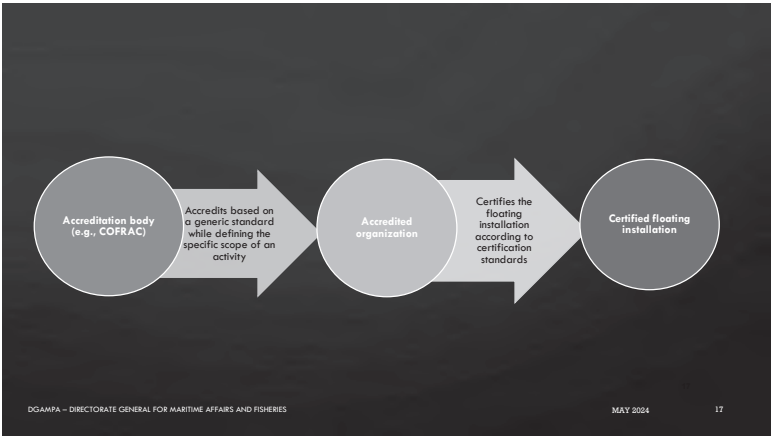
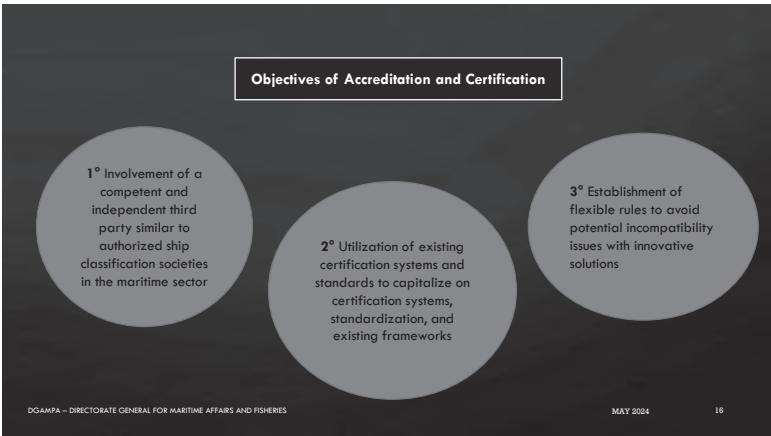
Article 40-3 : Artificial islands, installations, and floating structures may be subject to controls, conducted by an approved body, to ensure compliance with the rules for maritime safety, the security of their operation and pollution prevention.

Compliance with these rules is certified by a certificate issued by the approved body. These controls and the issuance of the certificate are carried out at the expense of the owner or the operator.

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PENALTY REGIME

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PENALTIES

Article 40-4: An administrative fine of up to €100,000 may be imposed by the competent administrative authority against an accredited organization if it fails to carry out the mission for which it is accredited with the diligence required for its proper execution

```
graph TD; A([The accreditation can be suspended or revoked at any time by the Ministry of the Sea]) --> B([1° If there is a failure to pay the administrative fine]); A --> C([2° If the organization fails to meet the criteria on the basis of which it was accredited]); A --> D([3° In case of serious or repeated breaches by the organization in fulfilling its assigned mission]);
```

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PENALTIES TARGETING THE OWNER OR THE OPERATOR OF THE FLOATING UNIT

Article 40-5 : Gradual penalties

Phase	Penalty
Formal notice	•When obligations are not met, the competent administrative authority shall formally notify the owner or operator of the unit to comply with them. • If the party fails to comply within the deadline set by the competent administrative authority, it may impose one or more administrative penalties
Penalty (phase 1)	•1° Require the party served with the formal notice to pay to a public accountant, an amount corresponding to the cost of the works or operations to be carried out.
Penalty (phase 2)	•2° Ensure on behalf of the party served with the formal notice and at their expense, the implementation of the prescribed measures.
Penalty (phase 3)	•3° Suspend the operation of the unit's activities until the complete fulfillment of the imposed conditions, and take necessary interim measures, at the expense of the party served with the formal notice

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ABS FLOATING OFFSHORE WIND

ANTON JANSSENS



Who and What is ABS?

- **Our Mission:** To serve the public interest as well as the needs of our members and clients by promoting the security of life and property and preserving the natural environment.
- **Our Vision:** Safety drives us. We are global innovators turning tools and practices into practical solutions to support the industries we serve.

- Founded in 1862 by 9 U.S. marine insurance companies.
- 'Not-For-Profit' Marine Classification Society.
- No owners/shareholders, ABS Board of Directors are appointed from its Membership.
- ABS Members are the owners, operators, designers and builders of ships, offshore units and associated equipment.
- ABS as a class society represents industry and helps develop standards related to:
 - Design
 - Construction
 - Operational maintenance

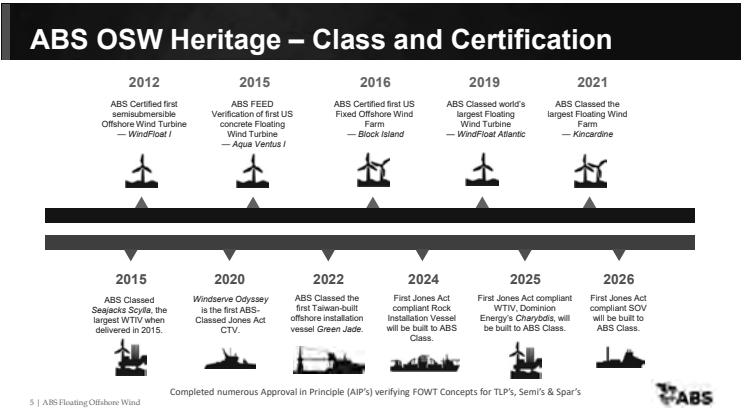


CVA on the US OCS Experience



Floating Wind Experience

- We certified the first ever SEMI based FOWT
- We have classed close to 80 MW of Floating Wind
- We have experience from reviews of many different type of concepts



ABS Experience of Installed Offshore Floating Wind

- **WindFloat 1 (Worlds First Large-Scale SEMI FOWT)**
 - Installed in 2012 offshore Portugal
 - Relocated to Scotland in 2018
 - ABS Certified Design, Fabrication, Installation, Recommissioning and Relocation
- **WindFloat Atlantic (Largest Floating WTG 8.4MW)**
 - Designed, fabricated and installed for compliance with the [ABS Guide for Building and Classing Floating Offshore Wind Turbines](#)
 - ✖ A1 , Offshore Wind Turbine Installation (Floating), FL(25) 2044, 20km Offshore Viana do Castelo, UWILD
- **Kincardine (Largest Floating Windfarm 50MW)**
 - Designed, fabricated and installed for compliance with the [ABS Guide for Building and Classing Floating Offshore Wind Turbines](#)
 - ✖ A1 , Offshore Wind Turbine Installation (Floating), FL(25) 2045, (location), UWILD

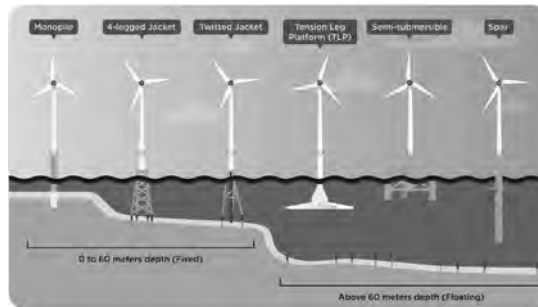


© Artist Dock90, Principle Power

6 | ABS Floating Offshore Wind



Offshore Wind Turbine Types



7 | ABS Floating Offshore Wind



Early Engagement with ABS

Preliminary Planning and Advice (PPA)

- ABS personnel will discuss the design item in question and provide input as to the potential conformance with the design standards and other agreed requirements

Workshops/HAZID/HAZOP

- To detect any issues in an early stage and have a register of what should be addressed in the more detailed phases of a project

Approval in Principle (AIP)

- ABS will perform design review of significant design documents to verify the feasibility of the concept

New Technology Qualification (NTQ)

- ABS will perform a systematic and consistent evaluation of new technologies as they mature from a concept through confirmation of operational integrity



8 | ABS Floating Offshore Wind



Preliminary Planning and Advice (PPA)

- PPA is an optional service that begins early in the project and may extend well into detailed design.
- Examples of items that can be addressed in a PPA are:
 - Resolution of technical queries
 - Review of specific design solutions
 - Rule Interpretations and application
 - Review of design basis
 - Review of preliminary plans
 - Meeting / HAZID attendance
- The PPA services will be performed under the same unit ID as the following services, i.e. any issues that have been discussed and resolved during the PPA phase can be easily found and referenced in the more detailed phases.

9 | ABS Floating Offshore Wind



Approval in Principle (AIP)

- Traditionally, an AIP design review is conducted for a new or novel concept with no previous experience in the environment being proposed with the intent to verify the feasibility of the design. The process is less formal than the NTQ process and the scope can be customized to each individual project.
- The deliverables are:
 - AIP letter attesting to feasibility of design and approval in principle granted as class issues are concerned, allowing project to move into next approval phase
 - Approval Road Map, outlining list of submittals and conditions to be satisfied (as identified in this phase) to achieve full class approval
 - Approval in Principle Certificate
- More details regarding this service can be found in the [ABS Guidance Notes on Review and Approval of Novel Concepts](#).

10 | ABS Floating Offshore Wind

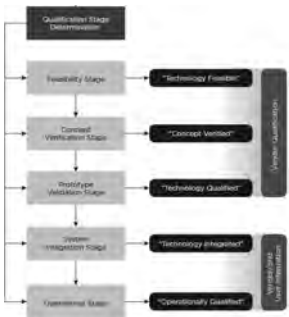


New Technology Qualification (NTQ)

- The [ABS Guidance Notes on Qualifying New Technologies](#) outlines an approach for qualification of new technologies to confirm their ability to perform intended functions in accordance with defined performance requirements.
- Upon satisfactory completion of each of the steps, ABS will issue a statement of maturity.

ABS Qualification Stage	AIP RP K76G TRL	ISO 2282 TRLs	ISO 2282 TRLs
Feasibility	0	1	1
	1	2	2
Concept Verification	2	3	3
	3	4	4
Prototype Verification	4	5	5
	5	6	6
System Integration	6	7	7
	7	8	8
Commissioning	8	9	9

11 | ABS Floating Offshore Wind



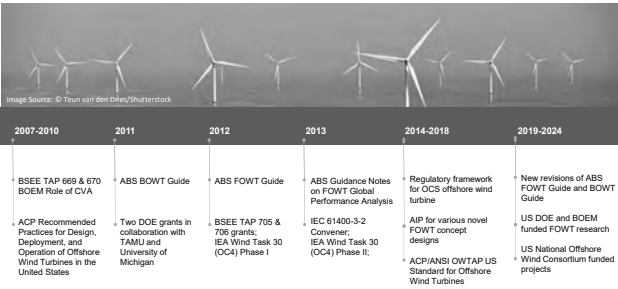
Concepts ABS been involved with



12 | ABS Floating Offshore Wind



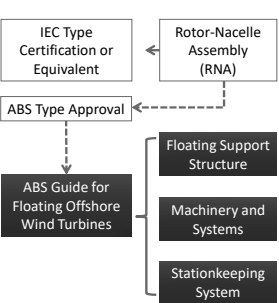
ABS Offshore Wind Research & Development



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ABS Guidance Notes for FOWT



- Integrated Load Analysis(ILA)
- Global response parameters
- Environmental load calculation
- Global motion analysis
- Air gap analysis
- Mooring strength analysis
- Mooring fatigue analysis



14 | ABS Floating Offshore Wind



What is different from Class, as we know it - Design

- Exposure level aligned with the safety margins for land-based wind turbines
- Lower return period – 50 years
- Reduced safety factors
- Reduced mooring requirements
- Reduced stability requirements

15 | ABS Floating Offshore Wind



What is different from Class, as we know it - Survey

Multiple identical subject to the same environment units with a lower risk profile than traditional offshore units

- Reduced survey during fabrication
- Reduced survey during installation
- Risk based inspection during operations aligned with the maintenance schedule of the turbines
- Reduced physical attendance utilizing remote and drone-based techniques



16 | ABS Floating Offshore Wind



OSW Certification Options

IECRE OD-502

- Project Certification may be needed for insurance and finance
- The risk profile of the installation is dependent on the Basis of Design only
- **Important not to mix and match standards to reduce conflicting requirements**

Class

- **Class can be part of the Project Certification**
- Class does not address;
 - Inter array cable
 - Export cable
 - Inspection of WTG
- Substations can have own Classification for compliance with ABS OSS Guide
- Class can be seen as another layer to de-risk the installation with **consistent set of requirements**
- Class may be beneficial to reduce insurance and interest rates

Flag

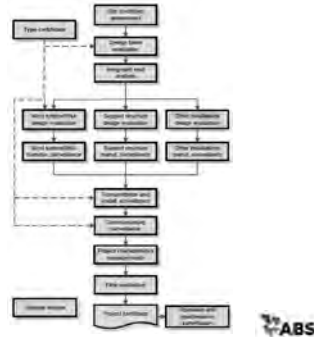
- **The level of statutory requirements varies from country to country**
- For Kincardine, ABS issued a total of 7 certificates on behalf of Marshall Island Flag
- ABS has delegated authority to act as a Recognized Organization on behalf of more than 120 governments.

17 | ABS Floating Offshore Wind



IECRE Project Certification per OD-502

- Project Certification based on Design Basis approach
- During fabrication, the inspection/audit activities **focus on quality system implemented during manufacturing and evaluate that the quality system is appropriate.**
- **The Certification Body will tailor a scope of work for inspection activities.** The exact scope should be defined during the project design basis phase.
- Operation and maintenance inspections shall be carried out at **regular intervals based on an agreement between applicant and Certification Body.**



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ABS FOWT Class, IECRE Project Certification & CVA

ABS Class

ABS FOWT Guide compatible with IEC 61400-3-2		
Full Engineering Plan Review	Survey of Fabrication, Installation & Commissioning	Periodic Survey during life-cycle operations
Additional support from ABS Class		
- Approves-in-Principle (AIP) - New Technology Qualification (NTQ) - Vendor/Product Qualification - Condition-Based Class Program - Cyber Safety, Digital Solutions, etc.		

19 | ABS Floating Offshore Wind

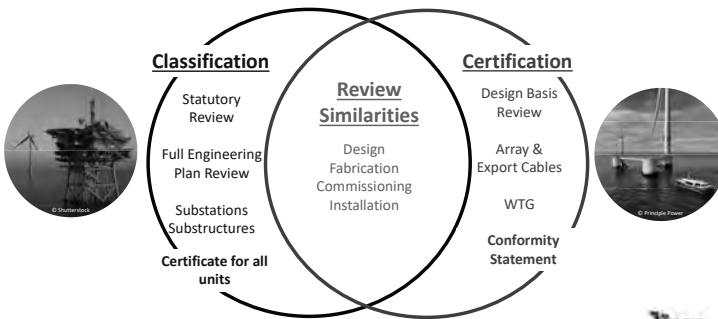
IECRE Project Certification

Design Basis approved by the Certification Body		
Site Assessment Load Analysis Evaluation & Design Evaluation	Inspection of Manufacture, Transportation, Installation, Commissioning	Operation and Maintenance Inspection at regular intervals (Optional)

Class can work as a cornerstone in the project
certification scheme



Design – Class and Certification Summary



20 | ABS Floating Offshore Wind

Certification of Offshore Wind Globally

Legal Requirement	Informal Requirement	Under Development	No Requirement
Denmark	Belgium	Australia	Brazil
Germany	★ France	Norway	China
Japan	Ireland	Portugal	Italy
Poland	United Kingdom	South Korea	
Taiwan	Vietnam	Spain	
The Netherlands			
United States			

★ = Informal Requirements in place but Legal Requirements under development

21 | ABS Floating Offshore Wind



Vessels – Global and US

Jones Act Compliant



Charybdis WTIV
First Jones Act Wind Turbine Installation Vessel
12MW+, 2,200-T Crane
ABS Class Selected



ECO SOV
First Jones Act SOV Customized for US Market
ABS Class Selected



WindServe Odyssey CTV
First ABS-Classed Jones Act Crew Transfer Vessel

Global

Approval-in-Principle (AIPs)

ABS has also provided AIPs for a series of wind support vessels from European and Asian designers



Seajacks Scylla WTIV
Largest WTIV when delivered in 2015
ABS Class Selected



Green Jade WTIV
First Taiwan-built DP3 heavy lift & installation vessel
ABS Class Selected



Maersk WTIV and Feeder Concept – Maersk WTIV combined with Eco tugs and barges
ABS Class Selected

22 | ABS Floating Offshore Wind



Offshore Wind Rules and Guides

- *ABS Requirements for Offshore Substations and Electrical Service Platforms*
- *ABS Guide for Floating Offshore Wind Turbines*
- *ABS Guide for Bottom-Founded Offshore Wind Turbines*
- *ABS Guide for Building and Classing Windfarm Support Vessels*
- *Guidance Notes on Global Performance and Integrated Load Analysis for FOWT*
- *ABS Fatigue Assessment of Offshore Structures*
- *ABS Requirements for Position Mooring systems*
- *ABS Requirements for the Certification of Offshore Mooring Chain*



23 | ABS Floating Offshore Wind



Anton Janssens



MORUS AND CLASS

DAG ERLING ENGBERG



WHEN TRUST MATTERS

MORUs and class

CMI Gothenburg

Dag Erling Engberg
22 May 2024



Mobile Offshore Renewable Unit (Wind, Current, Tidal, Wave, Solar)



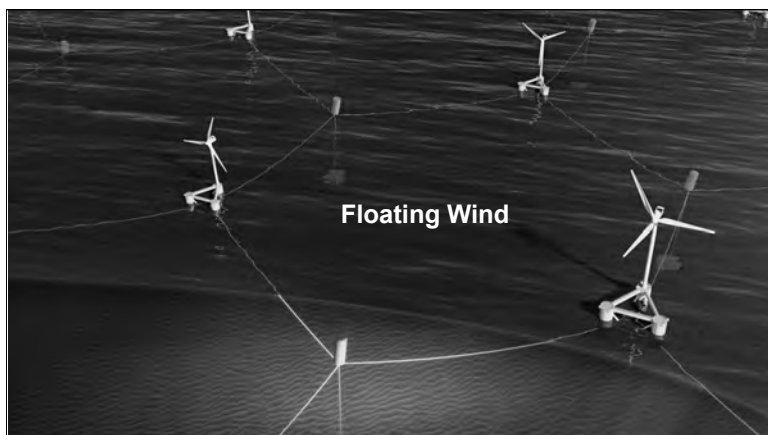
- How DNV handle MORUs:
- Self-propelled unit or offshore installation?
- 1A Column-stabilised unit vs OI Column-stabilised installation
- Permanent station keeping (mooring)
- Flag or no flag?
- MORUs deployed within EEZ → National shelf/ coastal state authority
- DNV certificate works as a standalone technical assurance covering the minimum technical safety (structure, mooring, stability, watertight integrity, marine systems, electrical, fire safety, escape).

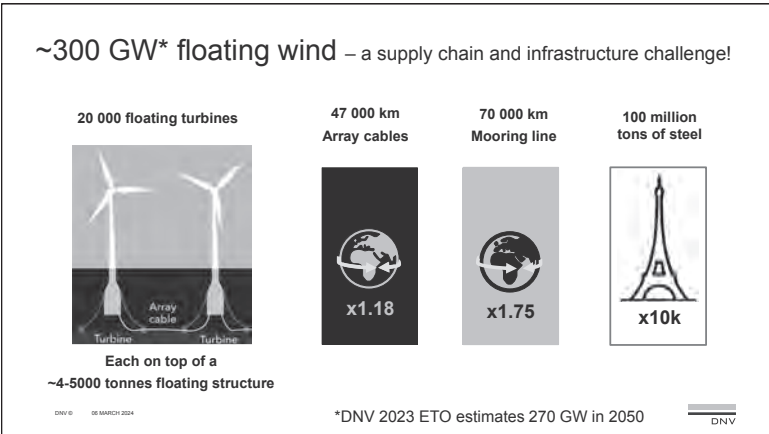
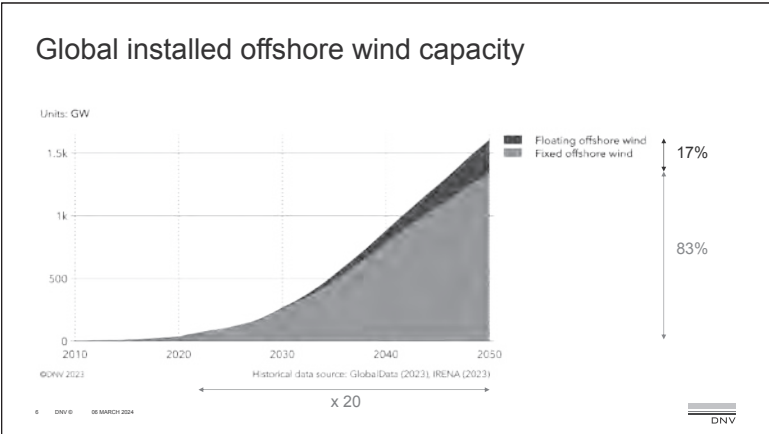
MODU vs MORU



1 DMV © 22 MAY 2024

DNY





Floating wind is complex – both technically and commercially

- The technical complexity involved should not be underestimated:
 - The added complexity of going from bottom-fixed to floating (fatigue, mooring)
 - To couple the dynamic thrust from the turbine with a dynamically moving foundation
 - Optimized power production (LCOE)
 - Uninterrupted power production (energy security)
 - 20+ years' service life

14

DNV

Classification vs Project Certification in DNV

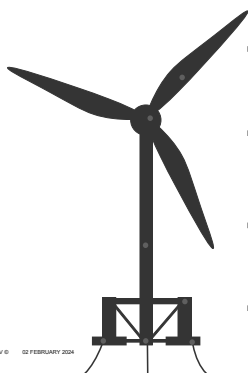


- Project certification is an established assurance scheme in the wind industry
- Classification is the global maritime certification scheme (ships and floating structures)
- Project certification covers the entire wind farm including cables
- Classification covers the floating structure and the mooring system
- Project certification in DNV integrates the relevant parts from classification (floater, mooring, in-service)
- Best practise from the wind and maritime industry combined
- Optimized, Standardized and Industrialized - yet flexible and robust
- Weld procedures, acceptance criteria, utilizing best practise, removing uncertainties

9 DNV © 22 MAY 2024



In-service maintenance, testing and inspection



Condition monitoring
Condition based maintenance

Structure monitoring
Structural integrity management

Mooring monitoring
Mooring integrity management

Data management
Data collection, security and quality

- Class/Certification on a continuous basis
- Use sensor data to optimise inspection and maintenance
- Field approach - sample check on individual installations to assess condition of field
- Utilize alternative and remote survey methods

DNV © 02 FEBRUARY 2024



11 DNV © 31 AUGUST 2023



FLOATING OFFSHORE WIND ASPECTS

JOANA ALBUQUERQUE



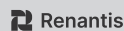
CMI IWG Workshop MORUs

Floating Offshore Wind Aspects

Göteborg, Sweden

22.05.2024

Joana Albuquerque



The Renantis/Ventient combined organisation (soon to be named nadara)

Renantis and Ventient Energy have joined forces to form one of the largest renewable independent power producers (IPPs) in Europe. With a 4.2 GW installed capacity and an 18 GW pipeline, the newly combined company will rebrand within 2024 under the name **Nadara**.

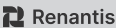
Total number of employees – **ca. 1,000**

Total number of plants – **Over 200**

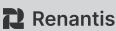
Total installed capacity – **4.2 GW**

Total pipeline capacity – **18 GW**

Core countries the combined company operates in – **UK, Italy, Portugal, Spain, France**



Renantis' Floating Offshore Wind Projects



UK PORTFOLIO



Project Information

Bellrock*	1,200 MW
Broadshore*	900MW
Stromar**	1,000MW
Sinclair*	100MW
Scaraben*	100MW
Llywelyn/Petroc*	Round 5 auction will support one project up to 1.5GW

*Projects in Partnership with BlueFloat Energy
** Project in Partnership with BlueFloat Energy and Orsted



TOPICS FOR DISCUSSION

1. The International Legal Uncertainty related to MORUs

2. Potential Disputes Related to MORUs and FOWTs in particular

3. Definition of MORUs

4. Definition of Various types of MORUs

5. What is a FOWT?

6. Defining a FOWT Unit
7. Registration of FOWTs

8. Advantages of Mobility of Floating Offshore Wind Farms

9. Limitation of Liability for FOWTs

INTERNATIONAL LEGAL UNCERTAINTY RELATED TO OFFSHORE RENEWABLE MOBILE UNITS (MORU)

Existing International Conventions

Existing maritime conventions apply to “ships” and “vessels”, some with broader and others with more limited definitions. No specific definition of MORUs exist.

The variety of existing international conventions, with differing numbers of contracting states, and undefined as to which extent a MORU would apply to each respective convention and how, will undoubtedly lead to a chaotic situation in case of any international disputes related to MORUs.

The example of Floating Offshore Wind Turbines (FOWT)

A FOWT unit may:

- run its lifetime moored, transiting, being assembled, installed and maintained in the same producing coastal State;
- most likely, and even more so as the industry develops, that FOWT units will be towed through and taken to different coastal States.

For instance, it can be assembled in one port State, transported to another producing coastal State, while passing through other coastal States. It may have to be towed to another port State for maintenance and repair services, again passing through other coastal States.

The international legal uncertainty of MORUs will affect not only the offshore wind developers but the maritime community as a whole.

POTENTIAL DISPUTES RELATED TO MORU AND FOWT IN PARTICULAR

- a. **Enforcement lawsuits/arrests**
- b. **Collision of vessels** flying various states occurring in producing states, port states and other coastal states through which floating platforms may be transported;
- c. **Collisions/allisions of FOWT units that are snapped from their mooring lines** and float uncontrollably in the high seas (there is very little chance, if any, of that happening when the FOWT, mooring systems and cables are properly engineered and installed, but we cannot guarantee that that will always be the case);
- d. **Criminal and civil claims** (i.e. unlawful entry, destruction of property, death and injury of workers or people on board the units etc)
- e. **Conflicts of law issues** – private international law
- f. **Public international law issues** – different states imposing differing mandatory legal regimes on MORUs in their EEZ/Continental Shelf.

DEFINITION OF MORU

We need a definition of MORU that is internationally accepted and uniform.

It does not properly fit into the definition of “ship” or “vessel” in many international conventions and there is uncertainty as to its applicability in others.

The lack of international recognition of a uniform definition of MORUs will surely create conflicts when different states take different approaches to MORU definitions (i.e. a flag state may define a MORU as a “ship” or “vessel”, and a producing state may define it as an “installation” or something else, not accepting it as a ship, nor the applicability of the flag state law in respect of such MORU).

DEFINITION OF MORU AND VARIOUS TYPES OF MORUS

Even though internationally recognised uniformity of treatment is needed for MORUS, **there will be differences in impacts, benefits and consequences depending on the type of MORU.**

For instance, a Floating Measurement Unit (floating lidars) may be simpler to regulate, may have easier logistics than a FOWT, or a floating solar module, or floating energy converters etc. The evolution of each market will also differ.

The definition of MORUs needs to be precise and take into account the specificities of each type of MORU. There will be commonalities in many respects, but they will also differ in usage and in physical and practical ways.

I will limit my discussions to FOWT units, but many aspects may impact and benefit all types of MORUs.

WHAT IS A FOWT?

A FOWT can be comparable to a **barge** in many ways.
It is an **unmanned, unpowered barge** when it is being towed, and an **anchored barge** when it is *in situ*.

*Picture: one of the WindFloats, an innovative Wind Farm, courtesy of Principle Power



DEFINING A FOWT UNIT

In many ways, for regulatory and maritime purposes, FOWT units are currently being treated as barges.

However, many times the specificities of a FOWT unit are not taken into account.

One of these differences is the existence of a **turbine** on top of the **floating offshore wind platform**. Unlike a barge, the floating offshore wind platform does not carry cargos, but a turbine. The turbine is as an intrinsic and integral part of the floating offshore wind platform. The floating offshore wind platform is designed specifically for a turbine size and particularities.

Therefore, the definition of a Floating Offshore Wind Turbine Unit needs include **the platform and the turbine**. Even if the turbine can be detached from the platform, for the purposes of legal treatment they should be considered as a single unit.

REGISTRATION OF FOWTS

International maritime law should regulate the registration of MORUs, preferably with an internationally recognised centralised public registry for MORUs in general, including, obviously, FOWT units. The **advantages** of registration and its **international recognition** are clear:

- a. Secure and **clear title to ownership** of the MORUs
- b. Possibility to **create a leasing market** (a secondary market for MORUs)
- c. MORUs **offered as collateral in financing structures**.
- d. Clear **title to security interest for lenders** throughout the lifetime of the asset and the possibility create priority demand
- e. Provide clean title to the purchaser in the event a **judicial sale** is needed (arrest scenarios)
- f. Certificate that they are **stable and seaworthy**
- g. Ability to **obtain conventional marine insurance** instead of bespoke (read: expensive) policy for FOWTs.

 Renantis

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ADVANTAGES OF MOBILITY OF FLOATING OFFSHORE WIND FARMS

Owners, lenders and lessors will need to consider the **logistical and engineering** aspects (complexities) of moving not only a whole array of FOWT units forming a floating offshore wind farm, but also those relating to even a single FOWT unit. The costs can also be very high.

However, all the advantages and usage of the mobility of the FOWTs are possible, and it creates **clear benefits that fixed-bottom offshore wind farms cannot enjoy**.

 Renantis

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ADVANTAGES OF MOBILITY OF FLOATING OFFSHORE WIND FARMS

For instance, FOWT units may be **sold and used in different floating offshore wind farms**. A **whole array of FOWT units** (effectively, a floating offshore wind farm) may be detached and **moved from one State and installed in another**.

Older floating offshore wind farms with less value in advanced offshore wind markets may also be **sold to countries where the offshore wind industry is not yet as well developed** and, due to the lack of sufficient technical and financial resources, have more difficulty to develop greenfield floating offshore wind projects.

 Renantis

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However, the advantages of mobility will not be fully realised without an internationally recognised public registration system.

LIMITATION OF LIABILITY FOR FOWTS

Ship owners have long had the ability to limit their liability on a pre-casualty basis under existing international maritime conventions. Clarity and definition of a limitation of liability is **vital for the expansion and bankability of the floating offshore renewable industry**.

Without a limitation of liability benefiting FOWT owners/operators, which gives a **quantifiable certainty on maximum risk**, insurance against third-party risks may be extremely expensive, if available, and could make the financing process more complex.

Equally, a limitation of liability **tied to mandatory insurance** up to such maximum limitation secures the rights of affected third parties, who will have the guarantee of recovery in case of damages.

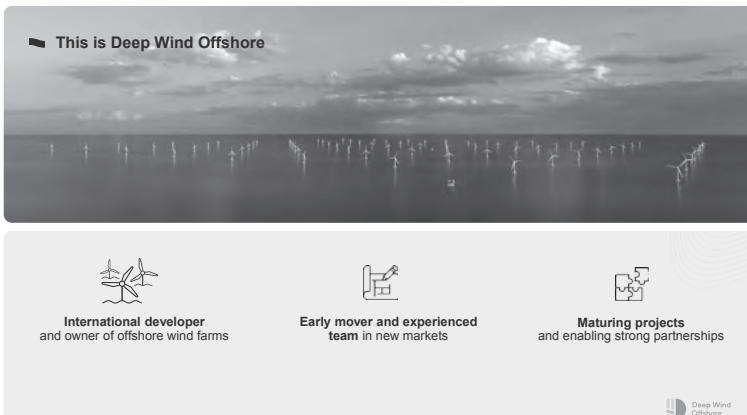
LIMITATION OF LIABILITY FOR FOWTS

Some positive impacts: (i) it will benefit the **expansion of the FOWT industry**; (ii) **reduction of LCOE to consumers**; (iii) **viability of large commercial scale arrays worldwide**; (iv) **protection of third parties** if tied to mandatory insurance.

Calculation method: it should be based on **units of account per mass tonnage**, similar to a ship limitation of liability, not on the value of the asset.

FLOATING OFFSHORE WIND GOALS AND STRATEGIES – CHALLENGES AND OPPORTUNITIES

ANDREAS SKJEVIK JACOBSEN



Company strategy

10 GW Pipeline

10 TWh Net Capacity

10 Years



We make clean electricity and empower coastal communities by harnessing the ocean winds

50+

Employees

3+

Markets

10+ GW

Pipeline

2 GW

Exclusivity



Our owners



Knutsen Group

World leading offshore infrastructure partner
Extensive newbuilding program



Haugaland Kraft

Leading utility in the Southwest of Norway
Local grid operator with over 100 years' experience



Sunnhordland Kraftlag

Owner and operator of major hydropower projects across Norway
Doubled production over the last 20 years



Octopus Energy

One of Europe's largest renewable energy investors
Managing £6 billion of green energy projects across the globe



Andreas Skjevik Jacobsen



Our team

- More than 50 employees
- Broad network of local experts
- Extensive knowledge of the energy and offshore sectors
- Experience within key technical disciplines and project development



Markets

Norway



- Headquarter in Haugesund
- Combining unique local presence and global experience
- Developing the first offshore wind projects

Sweden

- Local offices
- Three projects under development
- Capacity of up to 8 GW

South Korea



- Local offices
- Four projects under development
- Capacity of up to 6 GW, including 2 GW under exclusive development

New Markets

- Opening new markets
- Project development
- Maturing projects



Sustainability

Deep Wind Offshore is committed to sustainable development across all projects and works to minimise and mitigate environmental impacts wherever possible

Technology and innovation

Our project-specific approach enables us to choose the most appropriate technology for each initiative, encouraging local content and fostering innovation

Supply Chain Development

We are committed to supporting the development of a supply chain providing opportunities for new and existing companies

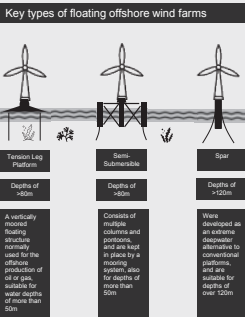
Competence development

Deep Wind Offshore drives competence development by actively engaging with local schools, students, universities, and suppliers to nurture expertise and knowledge



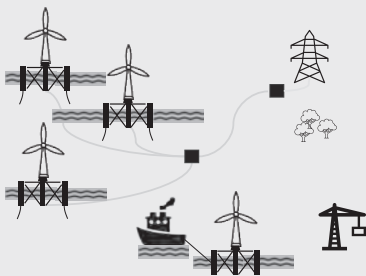
Floating offshore wind in brief

- Today, most offshore wind farms use fixed- foundation wind turbines in shallow water. However, floating wind is proven technology and ideally suited for deeper waters
- Bottom fixed technology is likely to remain relevant up to and potentially beyond 80m. Floating technology will harvest wind resources at deeper waters
- Floating wind turbines can harness stronger, more frequent wind speeds further offshore, leading to higher capacity factors and less visual impact
- LCOE of offshore wind is expected to continue the downwards trend following decreased capex figures upon overcoming recent pressure from rising interest rates and raw material costs. Floating wind costs are also expected to become more competitive as the industrialization and scale is realized during the 2030s
- The difference between floating and fixed-bottom offshore wind turbines will narrow, but fixed-bottom turbines is expected to remain as the more cost-competitive alternative



Deep Wind Offshore

Offshore floating wind farm - at a glance



- Floaters can be transported to the assembly site by a heavy transport vessel (HTV)
- Many floating structures can be assembled at port, and towed to their installation location, eliminating the need for crane vessels
- Floating wind turbines are held in position by a system of mooring lines
- The mooring lines 'anchor' the structure to the seabed, reducing surface movement and improving stability
- Array cables and export cables connected to each turbine – the turbines are either interconnected directly or through a substation

Deep Wind Offshore

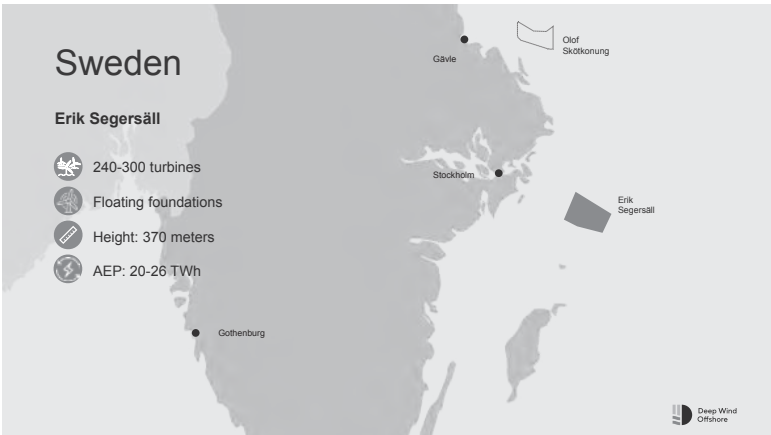
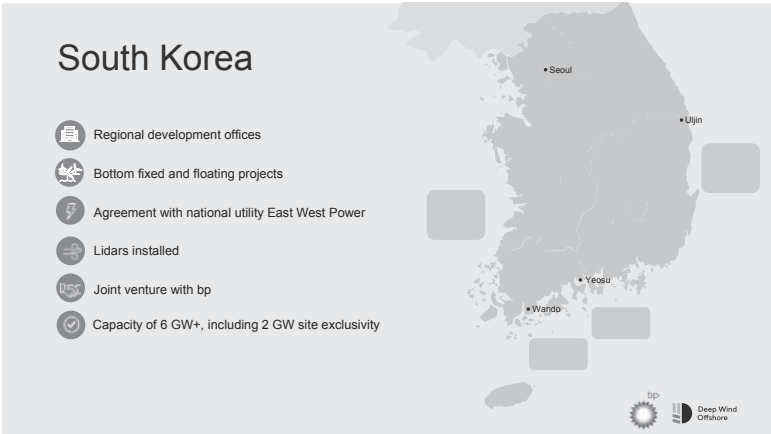
Norway

- Reduce emissions by 55 % within 2030
- Increase from 140 TWh to 260 TWh by 2050
- Award 30 GW offshore wind by 2040
- Green industry initiative



Source: The Norwegian Water Resources and Energy Directorate

Deep Wind Offshore





Financial and legal challenges – and opportunities

- Government led processes for floating projects are going (too) slow
- Costs and (perceived) risk needs to come down
 - Legal framework at national level may form a key part in decreasing financing cost
- Clear framework for registration of ownership and security in key assets believed to be a key part:
 - WTG and balance of plant
 - The concession itself
- Can a uniform approach across jurisdictions help speed up deployment of floating offshore wind, and thus the energy transition?



Deep Wind
Offshore



deepwindoffshore



deepwindoffshore.com

Andreas Skjevik Jacobsen

Important information

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SPEECH AT CMI 2024 MORU IWG OPEN SESSION

RUI ZHEN

Dear Colleagues,

I joined the group a little late so my talk was not on the agenda. Thanks to Alexander for arranging this, I am delighted to be here to give this 5-minute talk. I am a law professor, so my talk will purely on the legal side and because my time is short, I do not have a PowerPoint slide.

I would like to start my talk by introducing a famous Chinese MORU, which has been widely reported in the Chinese media. In June 2022, China's first deep-sea floating wind turbine, also the largest floating power plant, "Fuyao" has started her work in the deep waters of the South China Sea. "Fuyao" is equipped with 6.2-megawatt typhoon-proof wind turbines. So far, she has been through at least four typhoons and is still working well. In Chinese mythology, "Fuyao" means a magical sea wind that has the power to transform a fish into a fabulous bird that can fly far. It is a beautiful and fitting name for this unit.

So what is the legal status of "Fuyao" in the Chinese Maritime Code? Article 3 of the Code states: "'Ship' in this Code means seagoing vessels and other mobile units". In a ruling by the Shanghai Maritime Court in 2020, the court stated that "mobility" does not require the unit to be self-propelled or manned. Accordingly, I may say that the meaning of "other

mobile units" in the Chinese maritime law is broad enough to cover MORUs provided that their tonnage is at least 20 gross tonnes. This is a good start.

In addition, the Chinese Maritime Traffic Safety Law defines "offshore facilities" as all types of surface and underwater installations, whether fixed or floating. Literally, this definition is also broad enough to cover MORUs, and therefore safety issues and standards of MORUs such as search and rescue have some rules to follow in China.

Second, the issue of registration. "Fuyao" is not registered before her voyage and operation. A special permission to operate was granted to her. The main reason is that there is some debate in our registration authority whether "Fuyao" should be registered as a ship or as an offshore facility or as a facility of its own kind. This is yet to be settled, but I will surely bring Norway's experience back to our registration authority.

Rui Zhen

Third, last year, a marine insurance case involving an offshore floating unit came before the Shanghai Maritime Court. The unit was insured under standard hull clauses in the Chinese market, which are very similar to the Institute clauses in the London market. The unit was involved in an accident that took 2 months to salvage and a further 4 months to repair.

The insured claimed approximately 33 million US dollars from the insurer for towage, salvage and repair costs. The court identified at least three issues: (1) whether the unit was a “vessel” under the hull policy; (2) whether the accident was covered; (3) how to determine thousands of items for repair costs. After an enormous effort by the judges, the claim was eventually settled for 26 million US dollars. I suspect that this judicial experience will shed some light on the MORU marine insurance case that may arise in the future.

In conclusion, I may say that the current Chinese law has provided a basic legal framework for MORUs to operate but there is still a lot of work to be done. China has a huge demand for renewable energy, which provides a wide market space for the development of MORUs. Of course, China’s development will certainly include cooperation with other countries and international organisations to share knowledge and experience in both technical and legal aspects, and we are ready to contribute in any way we can.

That is all I want to say. Thank you again for your attention.

MORUS IN PRACTICE: ARRESTS AND COLLISIONS

SEAMUS RYDER

MORUs in Practice: Arrests and Collisions

Seamus Ryder
Halifax, Nova Scotia, Canada

METCALF & COMPANY
BARRISTERS AND SOLICITORS

Agenda

- Introduction
- Background: Increasing Use of MORUs in Atlantic Canada
- Case Studies
 - The Arrest of the “Falcon”
 - Collision (Allision) with Floating Platform “PLAT-I”
- Takeaways for other MORUs Worldwide

“Life is demanding without understanding”

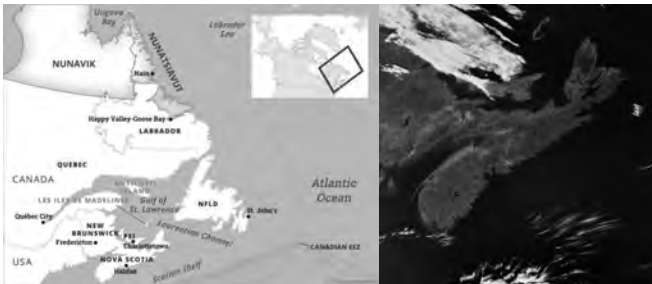


Introduction

Metcalf & Company

- Leading boutique law firm in the shipping, transportation, and insurance industries
- Acting for clients involved in the marine and aviation business, and increasingly, the renewable energies sector
- Representing and advising ship-owners and operators, ship financiers, shipbuilders and repairers, classification societies, ports, insurers, P&I clubs, businesses, municipalities and government agencies, amongst others
- Located in Halifax, Nova Scotia, Canada with work throughout Atlantic Canada and beyond

Introduction



Background: Increasing Use of MORUs in Atlantic Canada



Background: Increasing Use of MORUs in Atlantic Canada



Background: Increasing Use of MORUs in Atlantic Canada





The Arrest of the “Falcon”

- Dispute over the construction costs of a tidal power barge pursuant to a shipbuilding contract
- Plaintiff shipyard claimed not paid in full for building and delivering vessel
- Defendant barge owners claimed shipyard paid in full, shipyard failed to fulfill contract

The Arrest of the Falcon

- Barge arrested in the “normal” fashion
 - Plaintiff shipbuilder relied on Canadian maritime law and statutory right *in rem* against the Defendant Barge, including, without limitation, sections 22(1), 22(2)(m) and (n) of the *Federal Courts Act*, R.S.C., 1985, c. F-7
 - claim in respect of goods, materials or services supplied to a ship for operation or maintenance of the ship;
 - claim arising out of a contract relating to construction, repair or equipping of a ship
- Statement of Claim and Affidavit to Lead Warrant filed with Federal Court of Canada (FCC)
- FCC then issues Warrant, which gives local Sheriff authority to arrest ship until security/bail posted or claim disposed of

The Arrest of the Falcon

- Key Legal Issue: Is the Falcon a “ship” capable of arrest?
 - Arguments against:
 - The Falcon is a “water wheel”, not a ship
 - The Falcon is not “used in navigation” – to be moored permanently as an electrical generation object
 - Arguments for:
 - The Falcon is “plainly and obviously” a ship
 - Designed to be, and is capable of, navigation
 - sufficiently tight, staunch and seaworthy in order to withstand the ordinary weather conditions expected at the worksite,
 - two rudders for navigation, steering gear and a navigation system, including automatic navigation
 - designed to be towed into its operating area and into any shipyard for repairs or maintenance
 - designed and built to navigate within its work-site; not fixed to seabed
 - rudders controlled by an Automatic Navigation Control System (“AUTONAV”) that is controlled remotely by operators
 - rudders are designed and built to be ballasted so that Barge is properly trimmed to control its power generation capability
 - equipped with navigation lights and a weather station and other equipment to monitor the sea-state, position and navigation of the Barge
 - space for personnel to attend on board regularly to conduct maintenance and/or repairs, including ballasting

The Arrest of the Falcon



The Arrest of the Falcon



The Arrest of the Falcon



The Arrest of the Falcon

- Takeaways for other MORU's worldwide?
 - Key issue remains whether a particular given MORU can be seen as a ship capable of navigation
 - The Falcon is particularly "shippy" – barge-like, rudders, "AUTONAV" etc.
 - Other MORUs less-so – can they still be arrested?



Collision (Allision) with Floating Platform "PLAT-I"

- Fishing vessel collided with tidal power generation platform; insurer sought repair costs from fishing vessel
- PLAT-I owners argued fishing vessel bore all responsibility for allision and resulting damages
- Fishing vessel attempted to rely on platform's status as "vessel" to invoke shared liability under the COLREGS; argued platform failed to display required lights

Collision (Allision) with Floating Platform "PLAT-I"

- Key Legal Issue: Is the PLAT-I a vessel for the purpose of COLREGS?
 - Designated a "work" under Canadian *Navigable Waters Protection Act* (NWPA) and therefore not a vessel
 - Lighting requirements only applied to "exploration or exploitation vessel", further defined elsewhere as engaging in the production, conservation or processing of oil or gas – not the case here
 - Clearly not a vessel!!!

Conclusions

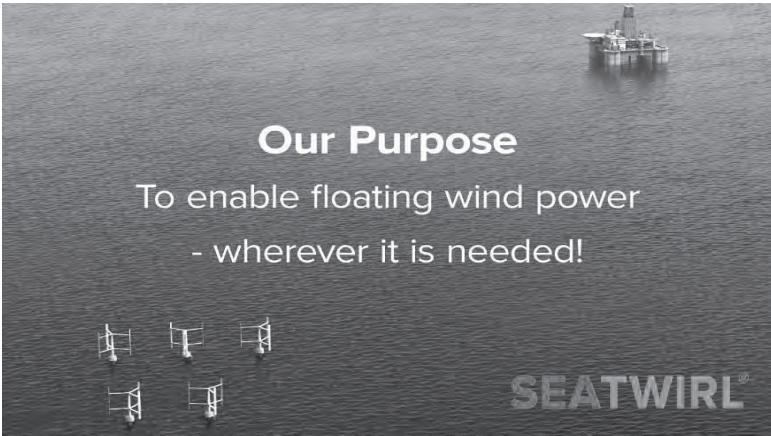
- Application of maritime laws and admiralty procedure to MORUs will continue to be determined on a case-by-case basis
- That said, if a given MORU can be deemed a “ship” or a “vessel”, likely no reason maritime laws and admiralty procedure should not apply
- Look for “the Sign” that your MORU is or is not a ship!



Johan Sandberg

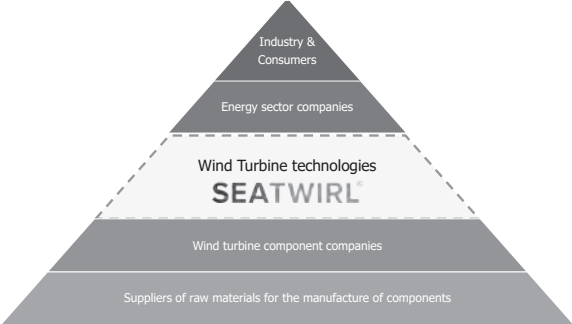
**OUR PURPOSE
TO ENABLE FLOATING WIND POWER
– WHEREVER IT IS NEEDED!**

JOHAN SANDBERG



Business model

Develop, produce and sell floating offshore wind turbines





Why SeaTwirl’s solution? – Three key advantages

\$
Lower
COSTS

#1 Lower Foundation Weight

#2 Easy to access for maintenance

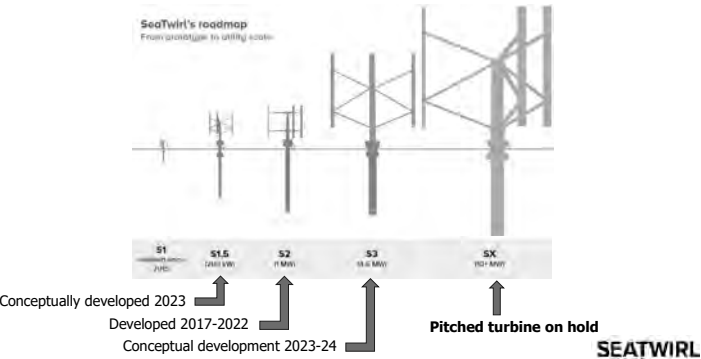
#3 Integrated foundation and Turbine

SeaTwirl 200kw, 1MW, and 4MW

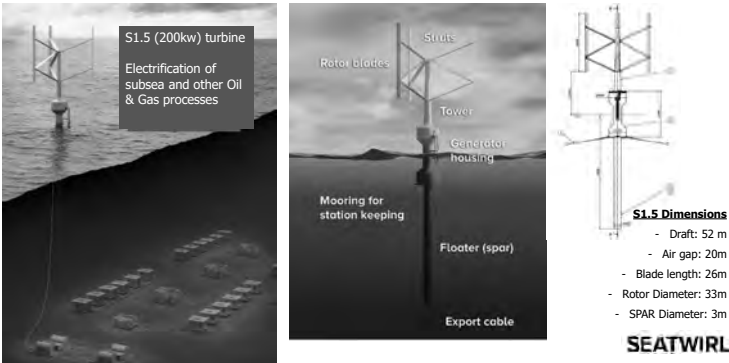


SEATWIRL

Technology Roadmap



SeaTwirl S1,5 application for subsea processes



MET-Center, Norway 2026



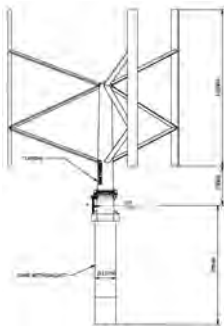
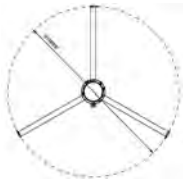
BoD and Advisory Board visit to S2 blade fabrication



Dimensions S3 (4-6 MW)



Blade length 102m
Rotor Diameter 128m
Draught 77m
Air Gap Clearance 25m



Spar Steel Weight[mT]	Gen House Steel Weight [mT]	Mooring [MBL kN]
1405	211	21 757

Generator Housing



- **Spacious** -> Easier to maneuver inside
- **Multiple Generators** -> Redundancy
- **Smaller components** -> easier to lift and handle
- **Standardized components** -> easier to obtain, maintain, and replace
- **Located at the surface** -> Less movements and risk of motion sickness
- **Located at the surface** -> Safer and easier to evacuate

SEATWIRL

Large rotor configuration – access with small cranes



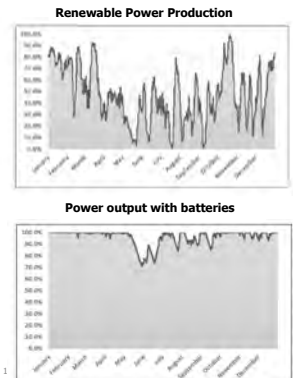
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Turbine access with OSV's



SEATWIRL

Strategic collaboration with battery supplier Verlume



SEATWIRL

Electrification of a 25-30 MW platform



SEATWIRL

Johan Sandberg

Purpose and Vision



SEATWIRL

Purpose and Vision



SEATWIRL

Thank you!

- Johan Sandberg, CEO
- Johan.Sandberg@seatwirl.com
- Tel: 0047-91877047



INTERNATIONAL MARITIME ORGANIZATION UPDATE ON MASS

DOROTA LOST SIEMINSKA



DR DOROTA LOST SIEMINSKA
DIRECTOR
LEGAL AFFAIRS AND EXTERNAL RELATIONS DIVISION



LEG 111 Substantive Legal Issues Considered

1. Liability and compensation issues with respect to MASS
2. Guidance on the implementation of LEG instruments with respect to MASS
3. UNCLOS and MASS



LEG 111: Liability and compensation issues with respect to MASS

LEG's regulatory scoping exercise (RSE) concluded (in 2022) that MASS can be accommodated under existing LEG instruments without significant modifications

Points of Discussion:

- The need for a uniform liability regime
- Equal treatment of victims of maritime casualties involving MASS and conventional ships

Further Work and Outcome:

- Further consideration on a general liability regime for MASS, including the liability of shipowners is required
 - A roadmap was proposed and adopted to help facilitate this work

3

**LEG 111 Guidance on the implementation of LEG instruments with respect to MASS**

- Considered a proposal for the development of non-mandatory guidelines on the implementation of LEG instruments for MASS operations
 - Proposal was supported by the Committee: the development of such guidelines to be included in a road map on the Legal Committee's work on MASS



4

**LEG 111: UNCLOS and MASS**

- Previously: strong majority agreement that UNCLOS does not prevent the regulation of MASS by the IMO
- Considered a proposal for the inclusion of text stating that the Code and use of MASS are to conform with the rules of international law, including UNCLOS and generally accepted regulations, procedures and practices developed by the IMO
 - Committee demonstrated general support for the proposal, noting that there is customary language in IMO instruments on their relationship with other international legal instruments, and agreed to forward the proposal to MSC

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LEG 111: UNCLOS and MASS

- Discussed whether prospective modalities for ROCs, particularly for ROCs outside of the flag State, satisfies obligations in Article 91 and 94 of UNCLOS
 - Agreed that these issues need to be considered in the development of MASS and that such situations require appropriate arrangements between the flag State and host State of an ROC
- Considered a proposal for an oversight mechanism for MASS and associated ROCs based on the ISM Code as a model
 - No legal obstacles were identified for applying the ISM Code as a model for addressing ROCs
 - A proposal by Belgium, Liberia and Republic of Korea on an oversight mechanism based on the ISM model has been submitted to MSC for further consideration

6

**Application of ISM Code Model**

1.1.2 "Company" means the Owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the Shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code.

1.1.3 "Administration" means the Government of the State whose flag the ship is entitled to fly.

13.2 The Document of Compliance should be issued by the Administration, by an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government to the Convention to any Company complying with the requirements of this Code for a period specified by the Administration which should not exceed five years. Such a document should be accepted as evidence that the Company is capable of complying with the requirements of this Code.

15.1 All verifications required by the provisions of this Code should be carried out in accordance with procedures acceptable to the Administration, taking into account the guidelines developed by the Organization

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**Application of ISM Model**

- Flag State Administration is to have oversight of a "company" (ROC) located outside its territorial jurisdiction
 - Includes oversight of the ships under the control of the "company"
- This oversight mechanism will allow flag States to audit a "company" and issue certificates (ie Document of Compliance)



8



LEG Road Map for MASS	LEG session	Work plan
Adjustments will be made to the workplan to ensure that consideration of proposals on the implementation of LEG instruments remains as broad as possible	LEG 112 (Spring, 2025)	1. Assess the finalized non-mandatory MASS Code and consider a need for amendments to, or interpretations of, treaties under the purview of the Legal Committee based on the outcomes of the MASS-JWG, MSC and FAL; 2. Consider proposals [to develop guidelines] on the implementation of LEG instruments by MASS; and 3. Update this road map as may be necessary.
	LEG 113 (Spring, 2026)	4. Assess the approved mandatory MASS Code and consider a need for amendments to, or interpretations of, treaties under the purview of the Legal Committee; and 5. Update this road map as may be necessary.
	LEG 114 (Spring, 2027)	6. Adopt or approve amendments to, or interpretations of, treaties under the purview of the Legal Committee.



MASS-JWG 3: Common Issues Considered

1. The role and responsibilities of the MASS master and MASS crew;
2. Certificates and other documents
3. Sharing of information as part of the obligation to communicate with coastal and port States, port authorities, etc.
4. Issues relating to connectivity, cybersecurity and remotely controlled operations
5. Issues associated with the "remote operations centre" and "remote operator", including situations when the ROC is located outside of the flag State



MASS-JWG 3: Role and responsibilities of the master and crew of MASS

Crew

- Agreed that substantive consideration on competencies, qualifications and training of crew of MASS is within remit of MSC and HTW Sub-Committee and discussion on this topic prior to finalization of non-mandatory MASS Code would be premature

Master

- Working Paper with a list of relevant provisions on the role of the master in UNCLOS and selected IMO instruments prepared by the Secretariat
 - Agreed the list and regulatory scoping exercises would be useful as a reference in the development of the MASS Code; Committees invited to consider the list in their future work
- Agreed that the overriding responsibility and authority of the master cannot be delegated, but certain tasks and functions of a master may be delegated
 - Issue of how a master can fulfill their role in ensuring the safety of the ship, crew on board, and protection of the environment when they are at an ROC is a matter for MSC to further consider

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MASS-JWG 3: Consideration of Common Issues

Certificates and Documents

- Considered a proposal on what types of certificates and documents should be kept on board and in what format to ensure compliance with requirements and to support safe operations
- Topic be considered in MSC

Sharing of Information

- Consideration should be given to the appropriate way for PSC Officers to access information on certificates, documents, and other relevant system records, especially in cases of a MASS with no crew on board
 - To be considered by MSC
- Considered proposal on including information and data (concept of operation basic information on ROC(s) and remote operators) in the general declaration and crew List and on including identified data elements and data sets in IMO Compendium on Facilitation and Electronic Business.
 - To be considered by the FAL Committee

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MASS-JWG 3: Consideration of Common Issues

Connectivity, cybersecurity and remotely controlled operations

- Discussed concerns and solutions on connectivity and network governance
- Network governance will be considered in MSC 108
- Technical aspect of connectivity to be considered in MSC
- Potential implications for liability to be considered by LEG

Issues associated with "remote operations centre" and "remote operator" including when the ROC is located outside of the flag State

- Recalled discussions in various IMO bodies and particularly LEG 111 on issues with flag State oversight over ROC
- Given prior discussions in various IMO bodies and LEG 111 the Group did not see the need to further address these matters

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MASS-JWG 3: Workplan and Fourth Session

- Group concluded that no further work needed to be undertaken as further consideration of common issues requires more progress on the MASS Code
 - Update of Work-plan was unnecessary
 - Committees invited to consider the Group's Work Plan as completed
 - Fourth session to only take place at the request of any of the three committees in consultation among the three Chairs



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**QUESTIONS AND ANSWERS**

THANK YOU FOR YOUR ATTENTION!

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THE CMI IMO PAPER ON LIABILITY

HENRIK RINGBOM

The CMI's Paper to IMO/LEG on Liability Issues Linked to MASS

Henrik Ringbom

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Professor II, Scandinavian Institute of Maritime Law, University of Oslo, Norway

CMI Colloquium Gothenburg

23 May 2024

Outline

- **Background**
- **Content of the submission** (IMO Doc. LEG 111/10/2)
 - Liability issues
 - Strategies to deal with them
- **Reception at LEG**
- **Future work in the area?**

Background

Why?

- Involvement by CMI since 2017
- RSE does not offer a complete review of liability issues
- Request by JWG

What?

- Not a blueprint for a particular approach
- A look at existing liability rules with new eyes, since role of technology changes in MASS
 - New types of tasks for technology
 - Often highly complex IT behind tasks
 - Increased dependence on technology

General

Starting points of submission

- Regulatory perspective, tort law
- MASS should not make things worse for (third party) victims
- Fairness aspects
- Raises important issues of principle: not necessarily far in the future
- Risk of proliferation – uniformity of rules

Some caveats

- Not as harmonized as safety rules
- No particular jurisdiction selected (generalizations)

Key questions on liability (national variations)

• Starting point

Shipowner is liable, based on fault/negligence, also for errors of employees (vicarious liability)

• Whose errors are covered?

• What is fault in an automated context?



Whose errors are covered?

- Broad range of helpers covered (location does not matter, but link to shipowner's activities)
- "In the service of the ship", "typical activities"
- New entities:
 - ROC? (Yes, in principle)
 - Shipyards, equipment manufacturers, programmers etc.? (Usually depends on link to shipowners' 'core' activities)



Fault in an automated context

- Starting point: human behaviour
- Who is 'in charge'? (Human error/technical failure, shift in MASS)
- Duty of care
- Where no one linked to the ship has acted negligently? (E.g. latent defects)
- Remote operation (communication, data quality)
- Negligence presumes availability of knowledge and alternatives
- Risks of liability gaps



Strategies to regulate the matter

- No action
- Anonymous, cumulative culpa (still requires fault)
- Focus on shipowner's own actions. E.g. technical failure = fault by owner (safety, choice of equipment or yard).
- Raising threshold for care (e.g. sufficiently tested?)
- Presumption of fault (reversal of burden of proof)
- Could MASS *itself* be at fault?
- Strict liability (for technical failures on MASS) (fairness)
- What would be the object of regulation?
MASS-ships? Operation in MASS mode? Technical failure in technology-driven navigation? General liability regime for shipping?

Reception at LEG

- CMI paper welcomed
- Not much discussion on substance
- Some considered it to be premature
- Position of the 1910 Collision convention unclear
- To be continued, but after the MASS Code has been completed
- 'Roadmap' to be developed

Concluding thoughts

- No simple solution, not even the 'do nothing'-option
- A fault-based regime is problematic for MASS operations, both with respect to parties covered and for establishing negligence
- Exposes many types of gaps in maritime liability, which will be addressed differently in different jurisdictions → new liability regime?
- Strict liability (with contributory negligence and other relevant exceptions) would close several gaps, but requires regulatory intervention and involves fairness considerations
- None of the 'in-between' solutions discussed are easy either
- Is the 1910 Convention the right tool for MASS?
- Regulatory challenges (What would be the object of regulation?)

Future work of the CMI in the field?



**AUTONOMOUS TECHNOLOGY IN SHIPPING:
A NEW ROLE FOR PRODUCT LIABILITY?**

ROBERT VEAL

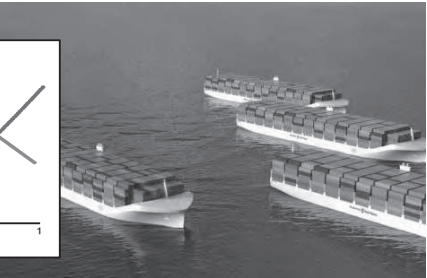
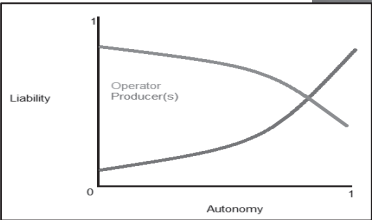
*Autonomous Technology in Shipping:
a new role for product liability?*

CMI Colloquium, Gothenburg, May 2024

Robert Veal
Associate, Winter & Co Solicitors

Winter & Co
Solicitors

Impact of autonomy on liability – more product suits?

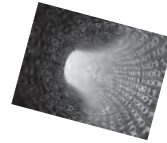


Unique technology?

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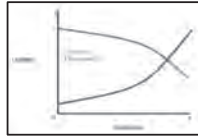
Product Liability in Europe

- EU Product Liability Directive 85/37 concerning liability for defective products
- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products ([COM\(2022\)0495](#) (Sept 2022))
- European Parliament legislative resolution of 12 March 2024 on the proposal for a directive of the European Parliament and of the Council on liability for defective products



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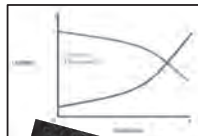
New Product Liability Directive (2024)



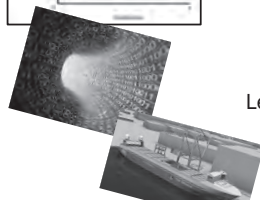
An increased role for product liability?

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New Product Liability Directive (2024)



An increased role for product liability?



Lessons for shipping from law reform?

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New Product Liability Directive (2024)

Article 5 (Right to Compensation) – “strict” liability

1. ... any natural person who suffers **damage** caused by a **defective product** ... is entitled to compensation in accordance with this Directive.

- 1) What “products” are included?
- 2) What “**damage**” is to be compensated?
- 3) When is a product “**defective**”
- 4) Any rules / guidance on “**causation**”

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New Product Liability Directive (2024)

Article 4 (Definitions) – What is a “Product”?

(1) ‘product’ means all movables, even if integrated into, or inter-connected with, another movable or an immovable; it includes electricity, digital manufacturing files, raw materials and software;

- “Moveable” would include ships and shipborne equipment
- Express inclusion of software

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New Product Liability Directive (2024)

Article 6 – What “damage” does PLD compensate?

1. The right to compensation shall apply [to] the following types of **damage**:
 - (a) death or personal injury ... ;
 - (b) damage to, or destruction of, any property, **except**:
 - (i) the defective product itself;
 - (ii) a product damaged by a defective component that is integrated into, or inter-connected with, that product by the manufacturer of that product or within that manufacturer’s control;
 - (iii) property used exclusively for professional purposes;
 - (c) destruction or corruption of data that are not used for professional purposes.

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New Product Liability Directive (2024)

Article 7 – When is a product “defective”?

1. A product shall be considered defective if it does not provide the safety that a **person is entitled to expect** or that is required under Union or national law.
2. In assessing the defectiveness of a product, all circumstances shall be taken into account, including (selection):
 - (a) the **presentation of the product**, including the instructions for installation, use and maintenance;
 - (b) the reasonably **foreseeable use** and misuse of the product;
 - (c) the effect on the product of any ability to **continue to learn after deployment**; ...
 - (f) **product safety requirements**, including safety-relevant cybersecurity requirements;

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New Product Liability Directive (2024)

Article 9 – Disclosure of Evidence

- (1) ... at the request the claimant who has **presented facts and evidence** sufficient to support the **plausibility of the claim** ..., the defendant is required to **disclose relevant evidence** that is at the defendant's disposal.
- (3) [The disclosure shall] be limited to what is necessary and proportionate.

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New Product Liability Directive (2024)

Article 10 – Burden of Proof

- (1) ... a claimant is required to prove the defectiveness of the product, the damage suffered and the causal link between that defectiveness and that damage.

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New Product Liability Directive (2024)

Article 10 – Burden of Proof – Presumption of Defectiveness

(2) The **defectiveness** of the product shall be **presumed** where ...:

- (a) defendant **fails to disclose** relevant evidence pursuant to Article 9(1);
- (b) claimant demonstrates product does **not comply** with **mandatory product safety requirements** in Union law or national law [(safety)]; or
- (c) claimant demonstrates that damage caused by **obvious malfunction** of product during **reasonably foreseeable use** or **under ordinary circumstances**.

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New Product Liability Directive (2024)

Article 10 – Burden of Proof – Presumption of Causation

(3) The causal link between the defectiveness of the product and the damage shall be **presumed** where it has been established that the product is defective and that the **damage caused is of a kind typically consistent with the defect in question**.

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New Product Liability Directive (2024)

Article 10 – Burden of Proof – Presumption of Defectiveness and Causation

(4) court shall presume defectiveness of product or causal link between its defectiveness and damage, or both, where, despite disclosure of evidence ... and taking into account all relevant circumstances ...:

- (a) **claimant faces excessive difficulties**, in particular due to technical or scientific complexity, in proving the defectiveness of the product or the causal link ... , or both; and
- (b) the claimant demonstrates that it is **likely** that the product is defective or that there is a causal link between the defectiveness and the damage, or both.

(5) [Defendant may rebut any of the presumptions with evidence]

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New Product Liability Directive (2024)

Article 11 – Exemptions from liability (selection) - protecting innovation

(1)) [Producer] shall not be liable for damage caused by a defective product if it proves that:- ...

(e) the objective **state of scientific and technical knowledge** when product placed on the market / put into service or during period product within manufacturer's control was not such that the **defectiveness could be discovered**

["development risk" defence: Member States have a right to derogate from this defence]

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Summary: the New PLD and digitization

- ✓ "Strict liability" subject to proof "defectiveness" and causation
- ✓ Defined liability exceptions to ensure balance protect innovation
- ✓ **Software expressly included and addressed**
- ✓ **Disclosure obligations placed on producers / manufacturers**
- ✓ **Evidential presumptions of defectiveness and causation to assist claimants**

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Conclusions: more product suits in shipping?

- ✓ Exclusion of damage to professional property limits application
- ✓ Defectiveness concept imports considerations similar to negligence
- ✓ Defectiveness and causation likely to be key determinants
- ✓ Claimant incentive: manufacturers not entitled to tonnage limitation
- ✓ Unique reliance and societal expectation of automated technology

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Conclusions: reform lessons for shipping?

- ✓ Express addressing of software / digital domain
- ✓ Creative solutions to assist to claimants / balance framework
 - ✓ Absence of need to prove negligence*
 - ✓ Early disclosure duties on producers
 - ✓ Evidential presumptions (rebuttable)
 - ✓ Defectiveness*
 - ✓ Causation*
- ✓ **Many nuanced reform options available to achieve aims**

For any questions, queries or further information –
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 **Winter & Co**
Solicitors

MASS: INSURANCE ANGLES

TIM HOWSE



MASS: Insurance Angles

CMI, Gothenburg Colloquium 23 May 2024
Tim Howse, Head of Industry Liaison, Gard



Agenda

Update from an insurers' perspective

Feedback and possible way forward



Update from an insurers' perspective

Some thoughts on risk



2

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Update from an insurers' perspective

Availability of insurance



Mostly small craft now
Less than 24m



Suitable for H&M
Often perils based



Some larger craft
IMO levels 1 & 2 only,
domestic, levels 3 & 4
being tested



Suitable for P&I
Often result based



Class & Flag State
Fundamental Requirements



History of adapting
Sail to steam etc.

3

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Update from an insurers' perspective

Potential barriers



"Ship"
Compatible with MASS



ROC / RCC
Ship to the shore



"Crew", "seafarer"
Generally, 'onboard'



Malicious Cyber
Resilience



"Operator"
Commercial v navigation



Claims experience
So far...

4

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Tim Homse



Feedback and possible way forward

5

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Outcome of the Regulatory Scoping Exercise (RSE)



LEG 110/11, 23 December 2022, Annex 1, Broad issues identified:-

MASS master	
1.	Role of
2.	Responsibilities of
3.	Competence of and requirements for
MASS crew	
1.	Role of
2.	Responsibilities of
3.	Competence of and requirements for
Remote Control Station/Centre	
1.	Identification and meaning of the term
2.	Requirements for
Remote Operator	
1.	Identification and meaning of the term
2.	Responsibilities of
3.	Competence of and requirements for

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JWG on MASS on its second session



LEG 111/10 19 January 2024, High level summary of the proposed solutions:-

MASS master/crew:	
A human master should be responsible for a MASS, regardless of its mode of operation or level of autonomy.	
The master may not need to be on board, depending on the technology used.	
The master should have the means to intervene when necessary.	
A master could be in charge of more than one MASS at the same time, but some situations may not allow this.	
Several masters may be responsible for a MASS on a single voyage, under certain conditions, but only one master should be responsible at any given time.	
The qualification of the master and crew should be based on the STCW Convention and Code, and additional or modified requirements may be necessary.	
The crew of MASS could include both remote and onboard crew.	
Role and responsibilities of a Remote Operations Centre:	
"Remote Operations Centre means a location remote from the MASS that can operate some or all aspects of the functions of the MASS"	
A Remote Operations Centre can operate some or all aspects of the functions of a MASS. Need further consideration on the issues of ROC location and Flag State	
Remote Operator	
"Remote operator means a qualified person who is employed or engaged to operate some or all aspects of the functions of a MASS from a Remote Operations Centre."	

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JWG on MASS on its third session

MASS-JWG 3/WP.1, 10 May 2024 (draft minutes)

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"...the Group agreed that there was no further work to be undertaken at this stage and concluded that any further consideration of the common issues warrant further progress on the MASS Code." (Para 36)

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Outcome of LEG 111

Work of the Legal Committee on MASS, draft minutes dd 30th April 2024



- No need to amend or significantly modify instruments under Legal Committee (10.10)
- Development of MASS Code is the sole responsibility of MSC (10.20)
- Road map set out for dealing with liability issues (10.14) (paraphrased on next slide)
- Committee approved roadmap for work on MASS (10.32) (paraphrased on next slide)
- General support for inclusion of text referring to UNCLOS in MASS Code (10.21)
- Support for using ISM Code as a model for dealing with ROCs (10.26)
- Concerns about flag state oversight and meeting UNCLOS obligations can be addressed as situation develops (10.27)

Paragraph references refer to LEG 111/WP.1/Rev.1 30 April 2024

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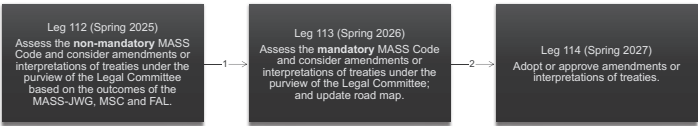
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Outcome of LEG 111

Roadmap, paraphrased from LEG 111/WP.6 24 April 2024



"to ensure that the delivery of the task is harmonized across all Committees"



10

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OPEN IWG MEETING: MASS

SALVAGE AND AUTONOMOUS MARITIME NAVIGATION

CECILIA SEVERONI

1. The concept of «autonomous transport» in the international regulatory framework

On a global level, there is a growing awareness that technological progress will bring great opportunities to the shipping industry for simplifying processes and generating greater automation, as well as is clear that “new, emerging and advancing technologies will foster a more digitalized, interconnected and efficient industry closely integrated with the global supply chain”¹. The principal international organizations have embarked on a process of analysis of the phenomenon and of introduction of specific regulations for autonomous transport, which, according to the European Parliament “covers all forms of remotely piloted, automated, connected and autonomous ways of road, rail, waterborne and air transport”².

There is a growing commitment to balancing the benefits derived from new technologies with maritime safety and security concerns, including cybersecurity, with costs and the impact on work and with the environmental sustainability concern.

As far as this examination is concerned, we can also add that the ultimate goal of autonomous ships will be the total replacement of seafarers with on-board software that allows a lower number of accidents caused by human error, especially in hostile environments where assistance is required for men, things and vessels in the water environment³.

¹ See in this regard the IMO Assembly Resolution A.1173(33), adopted on 6 December 2023 (Agenda item 8), *Strategic Plan for the Organization for the Six-Year Period 2024 to 2029*, 11 December 2023, p. 6.

² European Parliament resolution of 16 February 2017 with recommendations to the Commission on *Civil Law Rules on Robotics* (2015/2103(INL)).

³ See on this topic M. SURI, *Maritime Autonomous Surface Ships (MASS) and the Salvage Convention*, NUS Centre for Maritime Law Working Paper 22/05 NUS Law Working Paper No 2022/016, 2022, p.2. For the Author “However, there will inevitably be occasions where

In this regard, already in June 2017, the Maritime Safety Committee noted that the maritime sector was witnessing an increased deployment of Maritime Autonomous Surface Ships (MASS) to deliver safe, cost-effective and high-quality results. But there was still a lack of clarity on the correct application to them of existing IMO instruments.

To this end, MSC 98 included in its 2018-2019 biennial agenda an output on Regulatory scoping exercise (RSE) for the use of MASS, and at MSC 99 (May 2018), and the Committee started to develop a framework for the RSE and defined the aim, the objective, the preliminary definition of MASS and degrees of autonomy, the list of mandatory instruments to be considered, including mandatory and non-mandatory conventions, codes, guidelines, recommendations, etc.

MSC 100 (December 2018) approved the framework for the RSE, which contained definitions, a methodology consisting of a two-step approach and a plan of work and procedures (MSC100/20/Add.1, annex 2), while MSC 103 (May 2021) finalized the RSE and approved the outcome of the Regulatory Scoping Exercise for the use of Maritime Autonomous Surface Ship.

On 2 May 2023 the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session issued a report focused on the role and the responsibilities of the master of a MASS. Finally, the MSC, at its 107th session, established the Correspondence Group on Development of a goal-based instrument for Maritime Autonomous Surface Ships (MASS) (the Group), under the coordination of the Marshall Islands. Taking into account the comments and decisions made at MSC 107, the Group continued the development of the non-mandatory goal-based MASS instrument (MASS Code).

2. The definition of MASS

As mentioned above, the Maritime Safety Committee, at its 103rd session (5 to 14 May 2021), approved the Outcome of the Regulatory Scoping Exercise for the use of Maritime Autonomous Surface Ships (MASS)⁴, acronym constantly used as a technical term to indicate the categories of remotely operated ships or fully autonomous ships⁵. In this regard, For the

MASS will still require external help, which brings to the fore the issue of maritime salvage, as well as the applicability of the International Convention on Salvage 1989 (the Salvage Convention) to salvage operations involving MASS”.

⁴ MSC.1/Circ.1638 3 June 2021, *Outcome of the Regulatory Scoping Exercise for the use of Maritime Autonomous Surface Ships* (MASS).

⁵ The IMO LEG.1/Circ.11 15 December 2021 presented an *Outcome of the Regulatory Scoping Exercise and Gap Analysis of Conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships* (MASS). The aim of the LEG RSE was to determine how safe, secure and environmentally sound MASS operations and the related legal matters might be addressed in IMO instruments. IMO found that MASS is an acronym that includes ships with different levels of automation, from partially automated systems, which assisted the human crew, to fully autonomous systems, which are able to undertake all aspects of a ship's operation without the need for human intervention. According to the more recent MSC 108/4, 13 February 2024, *Development of a goal-based instrument for Maritime Autonomous Surface Ships* (MASS), providing a report of the Correspondence Group on Development of a goal-based instrument for MASS, “The term ‘MASS’ is used extensively

purpose of the RSE, “MASS” is defined as a ship which, to a varying degree, can operate independent of human interaction.

Another definition is the one related to the generic category of the Unmanned Maritime Systems (UMS), which includes all systems, associated components and subsystems needed to operate these systems and covers a full UMS system with control system, vehicle, logistics and interacting personnel.

As highlighted by EDA, UMS may in principle contain any surface vehicle, underwater vehicle, amphibious vehicle or combinations of these or hybrid in combination with UAV or other⁶. The UMS can then be distinguished according to the way of control, size, endurance, application and degree of autonomous functionality, further divided into Unmanned Surface Vehicles (USV) and Unmanned Underwater Vehicles (UUV)⁷.

According to this classification, Unmanned Maritime Vehicles (UMV) are defined as remotely controlled or autonomous craft, vessel or ship with the ability to function without a bridge crew on board. It can be designed to operate on the surface, semi-submerged and/or underwater; an Unmanned Surface Vehicle (USV) is a vehicle which operates autonomously or is controlled and commanded remotely. It operates with continuous or near continuous contact with the water surface and, when at rest, displaces water and is buoyant; an Unmanned Underwater Vehicle (UUV) is a submersible unmanned maritime vehicle which is operating autonomously or being controlled and commanded remotely. It is able to move with both horizontal and vertical components relative to the surrounding water mass.

MASS is controlled by a “Remote Operations Centre” (ROC), intended as a location remote from the MASS that can operate some or all aspects of the functions of the MASS⁸.

Other sources refer to the concept of “Remote Control Centre” (RCC), which identifies the same concept of a site off the ship from which control of an autonomous ship can be executed. It may be located either ashore or afloat and may exercise varying degrees of control; and they also add reference to remote control, understood as operational control of some or all ship operations or functions, at a point remote from the ship, and to the Remote Monitoring, i.e. the monitoring of some or all ship operations or functions at a point remote from the ship⁹.

when referring to a ship with remotely operated or autonomous functions. If the term is to be used in this way, it was felt that it should be understood that a ‘MASS’, in this case, is a ship to which the MASS Code is applied in part or in whole”.

⁶ European Defence Agency (EDA), *Best Practice Guide for Unmanned Maritime Systems Operations, Design and Regulations*, 2022, p. 16.

⁷ European Defence Agency (EDA), *Best Practice Guide for Unmanned Maritime Systems Operations, Design and Regulations*, 2022, p. 15. In addition, NATO defines Maritime Unmanned Systems (MUS) as “systems operating in the maritime environment (subsurface, surface, air), whose primary component is at least one unmanned vehicle. An unmanned vehicle is defined as a powered vehicle that does not carry a human operator and can: a) be operated autonomously or remotely, b) be expendable or recoverable, c) carry lethal or non-lethal payloads” (p. 15).

⁸ IMO Maritime Safety Committee, 108th session, Agenda item 4, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the Correspondence Group Submitted by Marshall Islands, MSC 108/4 13 February 2024.

⁹ Maritime UK, *Maritime Autonomous Ship Systems (MASS) UK Industry Conduct Principles and Code of Practice, A Voluntary Code*, Version 6 November 2022, p. 22.

In the draft of a MASS Code¹⁰, the Maritime Safety Committee talks about Remote Control, “when the ship, or functions within the ship, are operated from outside the [controller area network of the] ship without interference from anyone on board the ship. Remote control may have direct control of actuators on board, or may just give functional commands to an autonomous function (system). Remote control may have varied complexity, from simple communication of setpoints to full real time control including full virtual feedback from the ship/function. (Denmark suggestion from 1.2 (application))”.

MSC also identifies further definitions for the Remote Control Station, which means a system connected to MASS for its remote control; for the Control stations, which are spaces in which the ship’s radio or main navigating equipment or the emergency source of power is located or where the fire recording or fire control equipment is centralized (SOLAS Chapter II – 18). Further definitions identified are those of the Control and monitoring equipment, i.e. the equipment installed for the effective operation and control of the BWMS and the assessment of its effective operation (Ballast Water Management System (BWMS) Code, and of Control Station, i.e. the space in which the craft’s radio or navigating equipment (main displays and controls for equipment specified in 13.2 to 13.7) or the emergency source of power and emergency switchboard is located, or where the fire recording or fire control equipment is centralized, or where other functions essential to the safe operation of the MASS craft such as propulsion control, public address, stabilization systems, etc., are located (High Speed Craft Code).

Moreover, Operating station means a confined area of the operating compartment equipped with necessary means for navigation, maneuvering and communication, and from where the functions of navigating, maneuvering, communication, commanding, conning and lookout are carried out.’ (High Speed Craft Code); Control station means a single or multiple position including all equipment such as computers and communication terminals and furniture at which control, and monitoring functions are conducted. (ISO 11064-3); Remote Control Station means a place from which MASS, or functions of a MASS can be operated. A ROC may have multiple control stations within its facilities.’ (MASS Code Remote Operation Section 3.2).

Finally, the draft MASS code identifies the Remote Operator as a qualified person who is employed or engaged to operate some or all aspects of the functions of a MASS from a Remote Operations Centre.

3. The degrees of autonomy of a MASS for the MSC

As mentioned in the previous paragraphs, MSC 98 included in its 2018-2019 biennial agenda an output on “Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)” and MSC 103 (May 2021) approved the Outcome of the Regulatory Scoping Exercise for the use of Maritime Autonomous Surface Ships (MASS). In the above-mentioned

¹⁰ The MASS Code Draft will be discussed in the following paragraphs.

context, the aim of the regulatory scoping exercise was to determine how safe, secure and environmentally sound MASS operations might be addressed in IMO instruments, while the objective of the RSE on MASS conducted by MSC was to assess the degree to which the existing regulatory framework under its purview might be affected in order to address MASS operations¹¹.

For the purpose of RSE, “MASS” is intended as a ship which, to a varying degree, can operate independent of human interaction, and the different degrees of autonomy are so identified: degree one, relating to a Ship with automated processes and decision support: Seafarers are on board to operate and control shipboard systems and functions. Some operations may be automated and at times be unsupervised but with seafarers on board ready to take control; degree two, related to Remotely controlled ship with seafarers on board: The ship is controlled and operated from another location, but Seafarers are available on board to take control and to operate the shipboard systems and functions; degree three, encompassing the Remotely controlled ship without seafarers on board: in this case the ship is controlled and operated from another location. And there are no seafarers on board; degree four, related to Fully autonomous ship: in this case the operating system of the ship is able to make decisions and determine actions by itself. The list is not in a hierarchical order, since MASS could be operating at one or more degrees of autonomy for the duration of a single voyage. Based on this distinction, Member States conducted, on a voluntary basis, a review of international conventions and juridical instruments in two steps, the first of which is an initial review of each article or sub-paragraph of each instrument and, for each degree of autonomy, one of the following answers was allocated to each provision: A: apply to MASS and prevent MASS operations; B: apply to MASS and do not prevent MASS operations and require no actions; C: apply to MASS and do not prevent MASS operations, but may need to be amended or clarified, and/or may contain gaps; D: have no application to MASS operations¹². As a second step, an analysis was conducted to determine the most appropriate way of addressing MASS operations, taking into account the human element, by: (I) developing interpretations; and/or (II) amending existing instruments; and/or (III) developing new instruments; or (IV) none of the above as a result of the analysis¹³.

In the case of the International Salvage Convention 1989 (Salvage 1989) it was considered that no modification or interpretation is necessary for degrees one and two, while for degrees three and four of autonomy it is necessary to develop an interpretation of the Convention under analysis¹⁴.

¹¹ Maritime Safety Committee (MSC), 100th session, 3–7 December 2018.

¹² IMO LEG.1/Circ.11 15 December 2021, p. 4.

¹³ IMO LEG.1/Circ.11 15 December 2021, p. 5.

¹⁴ IMO LEG.1/Circ.11 15 December 2021, p. 38. Some Authors, such as M. SURI, *Maritime Autonomous Surface Ships (MASS) and the Salvage Convention*, NUS Centre for Maritime Law Working Paper 22/05 NUS Law Working Paper No 2022/016, 2022, p.4, take an orientation contrary to that advocated by IMO: “This approach, which focuses on merely plugging existing gaps, rather than developing the existing Salvage Convention framework to accommodate future developments in MASS, seems not to have been informed by a firm understanding of MASS operations.12 Additionally, the Scoping Exercise seems to have

4. The level of control definition developed by the European Defence Agency Safety and Regulations for European Crewless Maritime Systems (SARUMS) group/1

A further classification of the different degrees of autonomy of a MASS has recently been proposed by the European Defence Agency Safety and Regulations for European Crewless Maritime Systems (SARUMS) group, which has adopted a MASS categorising System based on level of control of the means of transport.

The level of control definition has five different degrees: the 0 crewed MASS, controlled by operators aboard; the Operated control, where all cognitive functionality is within the human operator. The operator has direct contact with the MASS over e.g., continuous radio (R/C) and/or cable (e.g., tethered UUVs and ROVs). The operator makes all decisions, directs and controls all vehicle and mission functions; the Directed control, where some degree of reasoning and ability to respond is implemented into the MASS. It may sense the environment, report its state and suggest one or several actions. It may also suggest possible actions to the operator, such as e.g. prompting the operator for information or decisions. However, the authority to make decisions is with the operator. In this case, the MASS will act only if commanded and/or permitted; the Delegated control, under which the MASS is authorised to execute some functions. It may sense environment, report its state and define actions and report its intention. The operator has the option to object to (veto) intentions declared by the MASS during a certain time, after which the MASS will act. In this hypothesis the initiative emanates from the MASS and decision-making is shared between the operator and the MASS; the Monitored control, where the MASS will sense environment and report its state. The MASS defines actions, decides, acts and reports its action. The operator may monitor the events; the Autonomous level, for MASS that senses environment, defines possible actions, decides and acts. In this last stage the Crewless Vessel is afforded a maximum degree of independence and self-determination within the context of the system capabilities and limitations. Autonomous functions are invoked by the on-board systems at occasions decided by the same, without notifying any external units or operators.

The levels of control indicated here should be considered alongside the degrees of autonomy mentioned above. The document considers that the levels of control may be different for different functions aboard the same MASS, and they may change during a voyage. Take, for example, a cargo ship voyage, which might comprise loading, departure, voyage, arrival and unloading. These phases might each be subject to different levels of control (LoC), of speed or maneuvering.

ignored the significant proviso in the Finland document: 'if the issue of a master is dealt with in a separate instrument'. The Scoping Exercise should arguably at least have assessed the issue of a separate MASS instrument by giving an opinion on this issue. The replacement of the words 'separate instrument' in the Finland document with 'all instruments in coordination with all responsible committees' in the final Scoping Exercise report further fudges the issue".

5. The draft of MASS code

The Maritime Safety Committee Correspondence Group on Development of a goal-based instrument for Maritime Autonomous Surface Ships (MASS), in 108th session, developed a draft of a non-mandatory goal-based MASS Code, which should be non-mandatory but developed such as to facilitate its eventual transfer to a mandatory code; be supplementary to existing instruments (not “standalone”) and only address matters that are either not addressed in existing instruments or that require alternative approaches due to the nature of the MASS mode of operation; be goal-based and take account of the Generic guidelines for developing IMO Goal-based Standards (MSC.1/Circ.1394/Rev.2) and the Principles to be considered when drafting IMO instruments (resolution A.1103(29)); and address the impact of autonomy on critical “functions” rather than attempting to address the ship as a whole.

The purpose of this Code is to provide an international regulatory framework for the remote control and autonomous operation of key functions and ensure safe, secure, and environmentally sound MASS operations. It further aims to support the safe adoption and integration of new technology for ship operations and provide for consistency of approach to the design, build and operation of MASS.

MASS Code is developed for cargo ships: nevertheless, the Committee is called upon to consider extending the application of the MASS Code to passenger ships immediately after the non-mandatory MASS Code is approved and, using the regulation developed for cargo ships, regulating autonomous passenger ships in terms of the same functions.

With reference to the functions of Search and Rescue, of interest to this survey, the draft of the MASS Code clarifies that “Every MASS should be able to provide assistance to persons in distress at sea as far as such action may reasonably be expected of it¹⁵”. To achieve this, “the ship should be able to receive distress information from any source, included search and rescue service information and means should be provided to correlate the MASS own status and any given distress signal, and its ability to render assistance. MASS should be able to coordinate with coastal State SAR service if its cooperation is required or participation is necessary”. Particular attention is paid to the ability of the MASS to recognize signals and objects at sea and to communicate their presence and any risk inherent to the ROC. To this end, “every MASS should be able to detect distress signals, MASS sensors should be able to collect environmental data and share them with the Remote Operations Centre (ROC), MASS should be able to detect, recognize, and identify objects and lights, MASS should be able to identify distress signals of COLREGs Annex IV. If within its operational envelope, MASS should be able to establish relative bearing and distance to detected objects. MASS should be able to locate distress signals. MASS should be able to locate

¹⁵ IMO Maritime Safety Committee, *Development of a goal-based instrument for maritime autonomous surface ships (MASS)*, Report of the Correspondence Group Submitted by Marshall Islands, 108th session, Agenda item 4, MSC 108/4 13 February 2024, p. 50.

distress signals with bearing and distance or with latitude and longitude, according to the detection system. If within its operational envelope, MASS should be able to trace a course to the point where distress signal is located”¹⁶.

The part of the draft relating to the rescue of people in danger is also important: for the draft, indeed, “Every MASS should proceed with all possible speed to the rescue of persons in distress”, and, in this perspective, it should be able to identify the possible speed to go to the area where persons in distress. To this end, MASS, with or without crew on board, should have means to recover persons in distress, and it should have, included in the emergency management system, specific plans, procedures and training and drills for the rescue of persons in distress, as well as manuals available to the master and officers in charge of the MASS.

In the event of a collision with other ship, MASS is required to render assistance and provide information, and means to address the capability of ship to render assistance to the other ship, its crew and its passengers after a collision should be provided, included damage sustained and environmental factors. MASS should have a sheltered space on board from harsh meteorological conditions to accommodate retrieved persons in distress until is able to deliver them to a place of safety.

The contribution that the remote master can provide is also important: in fact, he is required to lead on-scene SAR activities, and in order to conduct SAR activities means to ensure that master is able to lead SAR activities, including communication and coordination of surface search, should be provided, as well as master’s authority and responsibility to make decisions on SAR operations, should be assured.

In any case, MASS, with or without crew on board, should be able to maintain distress communications (directly and through ROC), and it should be able to emit and to receive distress communications, including ship to shore distress alerts.

Finally, the draft of MASS Code provides that every MASS vessel with persons on board should have a responsible master on board for leading activities on board MASS during distress situations. Master of the vessel shall also facilitate safe access and guidance of external rescue staff on board¹⁷.

6. The integration of MASS under the Salvage Convention

It is generally considered that soon the presence of MASSs in the seas will increase, and that the transport of goods, and afterwards of people, could be entrusted to totally autonomous ships and led by an artificial intelligence¹⁸.

¹⁶ IMO Maritime Safety Committee, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the Correspondence Group Submitted by Marshall Islands, 108th session, Agenda item 4, MSC 108/4 13 February 2024, p. 51.

¹⁷ IMO Maritime Safety Committee, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the Correspondence Group Submitted by Marshall Islands, 108th session, Agenda item 4, MSC 108/4 13 February 2024, p. 58.

¹⁸ As highlighted by A. WEIGER and S. PRIBYL, *The future is now: unmanned and autonomous surface vessels and their impact on the maritime industry*. Blank Maritime Bulletin, 2017.

The benefit in terms of environmental protection is clear: an unmanned ship can use alternative sources of energy supply to power itself and, in any case, it produces a lower fuel consumption. The use of MASS can also reduce the risk of human error that can be identified in many maritime accidents¹⁹.

It is believed that Maritime Salvage law generally applies to MASS²⁰, without any modification or interpretation for the MASS presenting degrees one and two of autonomy, while for degrees three and four of autonomy it is necessary to develop an interpretation of the Convention under analysis²¹.

¹⁹ See the report of Allianz (2019) *Shipping safety – Human error comes in many forms*. Agcs.allianz.com. On the human error in the road traffic incidents, see also the Report of the eSafety Working Group (2002), reported by the Commission to the European Parliament and the Council (2016) *Saving Lives: Boosting Car Safety in the EU – Reporting on the monitoring and assessment of advanced vehicle safety features, their cost effectiveness and feasibility for the review of the regulations on general vehicle safety and on the protection of pedestrians and other vulnerable road users* [SWD(2016) 431 final]: 4.

²⁰ On this subject, allow us to refer to C. SEVERONI, *Salvage and Autonomous Maritime Navigation, The Regulation of Automated and Autonomous Transport*, Springer, 2022, 167 ss. Other scholars (B. SOYER, A. TETTENBORN, G. LELOUDAS, *Remote controlled and Autonomous Shipping: UK based case study*, 2022, p. 16) argue that “In fact a good deal of it carries across quite neatly to autonomous (...). For example, this is certainly true as regards subject-matter. Under the 1989 Convention salvage applies to any “vessel” or “property”, a “vessel” being defined as “any ship or craft, or any structure capable of navigation”. There can be no serious doubt that this includes a MASS. Again, if an abandoned vessel is found and brought safely to port, it fairly clearly makes no difference to the nature of the services, or the remedy available to the person providing them, whether was originally crewed or uncrewed”.

²¹ IMO LEG.1/Circ.11 15 December 2021, p. 4. On this topic in general, see L. ANCIS (2019) *Navi pilotate da remoto e profili di sicurezza della navigazione nel trasporto di passeggeri*. Dir. trasp.: 460; S. ARDITO, D. LAZAREVS, B. VASILINIUC, ZK. VUKIC, ZK. MASABAYASHI, M. CACCIA, *Cooperative Autonomous Robotic Towing system: definition of requirements and operating scenarios*, 2013 <https://doi.org/10.3182/20120919-3-IT-2046.00045>; FG. ATTARD, R.L. KILPATRICK, *Reflections on the Maersk Etienne Standoff and its Ramifications for the Duty to Render Assistance at Sea*, 2020; R.A. BARNES, *Article 18 United Nations Convention on the Law of the Sea. A Commentary*, edited by A. Proelß, 2017, 185; H.C. BURMEISTER, WCØ BRUHN, J. RODSETH, T. PORATHE, *Can unmanned ships improve navigational safety?*. Transport Research Arena, 2014; A. CALANTROPIO, *The Use of UAVs for Performing Safety-Related Tasks at Post-Disaster and Non-Critical Construction Sites*, 2019. MDPI 5, 64; doi:10.3390/safety5040064; J.P. CRAVEN, *Technology and the law of the sea: the effect of prediction and misprediction*, Louisiana Law Rev., 1985, 1143–1159; S. CRISAFULLI BUSCEMI, *Alcune considerazioni sulla situazione giuridica della nave manovrabile da lontano*. Studi in onore di Francesco Berlingieri, 1933, 191-204; M. DAVIES, *Obligations and implications for ships encountering persons in need of assistance at sea*. Pac Rim Law Policy J 2003, 109; H. GHADERI, *Autonomous technologies in short sea shipping: trends, feasibility and implications*. Transport Rev 2019, 39:152 ss.; KAS KA, G.K. JOHNSON, *Using unmanned aerial vehicles and robotics in hazardous locations safely*. Process Saf Progr, 2020, 39: <https://doi.org/10.1002/prs.12096>; FJ JR KENNEY, V. TASIKAS *The Tampa incident: IMO perspectives and responses on the treatment of persons rescued at sea*. Pac Rim Law Policy J, 2003, 12:151; R. L. KILPATRICK *The “Refugee Clause” for commercial shipping contracts: why allocation of rescue costs is critical during periods of mass migration at sea*. Georgia J Int Comp, 2010; M. KUROWSKY, H. KORTE, B. P. LAMPE, *Search-and-Rescue-Operation with an Autonomously Acting Rescue Boat. Autonomous and intelligent Systems: third international Conference*, in Lecture Notes in Artificial Intelligence, 2012, AIS; S. LAGRONE *Ghost Fleet Ship ‘Nomad’ Arrives in California After 4,421 Nautical-Mile, ‘98 Percent’ Autonomous Trip*, 2021; D. MANDRIOLI, *The international duty to assist people in distress at sea in the era of unmanned navigation: no place for people on board*. Rivista multidisciplinaria humanidades e tecnologia, 2020, 91; N. NEVEJANS *European Civil Law Rules on Robotics*, 2016; R. O’ROURKE, *Navy Large Unmanned Surface and Undersea Vehicles: Background and Issues for Congress*, 2022, available at <https://www.google>.

In that regard, the IMO Legal Committee (LEG – 108th session (26 to 30 July 2021)) approved the above-mentioned *Outcome of the Regulatory Scoping Exercise and Gap Analysis of Conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships* (MASS), clarifying that the most appropriate way to apply the Salvage Convention to MASS was to develop interpretations for degrees of autonomy three and four, while no changes are planned for degrees one and two.

In detail, art. 1(b) of the Salvage Convention refers to vessel, and «Vessel means any ship or craft, or any structure capable of navigation». This definition is considered to include MASS, that is a general term used to refer to systems of a remotely operated, semi-autonomous, or autonomous nature. The rule does not expressly provide for the hypothesis of a remotely operated or autonomous ship, but it is believed that the definition is sufficiently generic to also include the salvage carried out with MASS.

It is also considered that the Salvage Convention covers both the case of a salvage to a MASS, that the salvage rendered with a MASS. In this second case, the lack of crew on board may reduce the risk to life of the crew.

Remotely piloted MASS, capable of bringing assistance at sea, are already on the market. Specific examples are the Autonomous emergency response vessels²², among which we can mention projects of vessels, whose aim is to replace, also partially, humans' intervention in dangerous or repetitive scenarios, developed by naval architects, as for example an unmanned fire-fighting vessel, deployed to be used in case of fire or gaseous conditions, highly dangerous to human.

There are also projects for the use of MASS in the case of oil spill,

com/url?sa=t&rct=j&q=&esrc=s&source=; I. PAPANICOLOPULU, *International law and the protection of people at sea*, Oxford, 2018, 187; H. Ringbom *Regulating autonomous ships—concepts, challenges and precedents*, Ocean Dev Int Law, 2019, 50(2-3):141-169; R. SAHA *Mapping competence requirements for future shore control center operators*, Maritime Policy Manage, 2021; SI SAVITZ, P. BLICKSTEIN, RW BURYK, P. BUTTON, J. DELUCA, J. DRYDEN, J. MASTBAUM, P. OSBURG, A. PADILLA, CC. POTTER, L. PRICE, SK THRALL, RJ. WOODWARD, J. YARDLEY, YUCHAK U.S. Navy *Employment Options for Unmanned Surface Vehicles* (USVs), Rand – National Defense Research Institute, 2013; C. SEVERONI, *La remunerazione del soccorso tra interesse pubblico ed interessi privati – Premesse storico-dogmatiche*, 2005 a, vol. I; Id., *La remunerazione del soccorso tra interesse pubblico ed interessi privati – Profili sistematici e lineamenti evolutivi*, 2005b, vol. II; Id., *Soccorso e mezzi di trasporto autonomi*. Dir Trasp. 2018, 31(1), 67-85; B. SOYER, A. TETTENBORN, *Artificial intelligence and autonomous shipping: developing the international legal framework*, Bloomsbury Publishing, 2021, 63-89; M. STARITA, *Il dovere di soccorso in mare e il diritto di obbedire al diritto (internazionale) del comandante della nave privata*. Diritti um. Dir. Intern., 2019, <https://doi.org/10.12829/93310>; R. VEAL, *Maritime surface ships: autonomy, manning and the IMO*, Lloyd's Ship Trade Law, 2018, 18(5):1-4; R. VEAL, M. TSIMPLIS, A. SERDY, *The legal status and operation of unmanned maritime vehicles*. Ocean Dev Int Law, 2019, 50, 23-48; AM. WEIGER, ST. PRIBYL, *The future is now: unmanned and autonomous surface vessels and their impact on the maritime industry*, Blank Maritime Bulletin, 2017; R-J YAN, S. PANG, H-B SUN, YJ. PANG, *Development and missions of unmanned surface vehicles*, J Mar Sci Appl, 2010, 451; J. YOO, F. GOERLANDT, A. CHIRCOP, *Unmanned remotely operated search and rescue ships in the Canadian arctic: exploring the opportunities, risk dimensions and governance implications*, In: Chircop A, Goerlandt F, Aporta C, Pelot R (eds) *Governance of arctic shipping*. Springer Polar Sciences. Springer, 2020.

²² Source: rivieramm.com and others.

integrated with technology developed by Sea Machines Robotics and others. Autonomous vessels are also projected for offshore and marine survey by Ocean Infinity and others: these are Shell multi-client seep hunter projects involving unmanned vessels with clean power and intelligent navigation to locate and identify oil and gas seeps in the world's oceans²³. Another example are the autonomous tugs, whose operation led to the decrease of onboard personnel from 50 to 15 on the 78m vessels, resulting in a notable reduction in associated costs such as flights for crew turnover, hotel loads on the ships and a decrease in fuel consumption²⁴.

7. Specific issues that arise from the application of the Salvage Convention to the MASS

The provision of the use of MASS in a salvage event entails the need to clarify some aspects that emerge from the SALVAGE Convention²⁵. In the event of a Salvage operation involving a MASS there are no elements in principle that indicate the absolute incompatibility of the current regulatory system with the presence of it, although in some cases it will be necessary to develop a broad interpretation of the current law to also include MASS.

The concept of salvage operation refers to an activity performed on a ship in distress. However, if, in the assessment of the danger, reference has traditionally been made to the direct eyewitness of the crew, as well as documentary evidence, in the unmanned MASS on board the danger is identified exclusively by cameras and sensors that report to the ROC through a communication system²⁶.

Regarding the concept of salvage operation, under art. 1 (a) of the Salvage Convention it means «any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever». There is no specific reference to the human intervention, and it can also cover the hypotheses of a salvage to a MASS in danger in navigable

²³ Source: Oceaninfinity.com.

²⁴ There are various projects related to autonomous tugboats. See also the study conducted by J. H. CHOI, J. Y. JANG, J. WOO, *A Review of Autonomous Tugboat Operations for Efficient and Safe Ship Berthing*, Journal of Marine Science and Engineering, May 2023, 11(6), 1155

²⁵ For questions relating to the applicability of the Salvage Convention to assistance operations involving a MASS, please refer to C. SEVERONI, *Salvage and Autonomous Maritime Navigation*, The Regulation of Automated and Autonomous Transport, Springer, 2022, 167 ss. and other authors referred to here.

²⁶ Connectivity may be provided by sensors and technology connecting to Global National Satellite Systems. On this topic see S. KRAUSE *et al.*, *Development of an Advanced, Efficient and Green Intermodal System with Autonomous Inland and Short Sea Shipping – AEGIS*, 2022 J. Phys.: Conf. Ser. 2311 012031, p. 12: “Autonomous sailing and vessel operations can be described with several actions that need to be performed for secure and safe sailing. First steps are condition detection and condition analysis. Further steps are action planning, action execution and action control. After executing these steps, the circle of actions is reapplied. For these actions, appropriate sensors and fast decision algorithms are needed. The more and divers the sensors are installed on the vessel, the better and more secure will be the condition detection and action control. Appropriate sensors are optical sensors, e.g. camera and LIDAR (light imaging, detection and ranging) systems as well as other sensors, e.g. radar, etc. Additionally, sensors and technology for GNSS (global national satellite system) are essential for autonomous sailing”.

waters or in any other waters, or a salvage operation undertaken by a remotely controlled/ or autonomous ship. Indeed, it is a broad definition that contains the concept of action by the salvor, whose nature is that of assistance²⁷.

As the concept of salvage operation includes “any act or activity” there is no express requirement that the assistance rendered be of physical character. Thus, also the electronic restoration of a system from land could be intended as a salvage operation, as long as the vessel is in danger, in navigable waters or in any other waters of navigation. In the same way, an entirely shore-based IT-expert who helps to reestablish communication and command of an unmanned ship could be entitled to a salvage award²⁸. Companies such as Inmarsat²⁹ or Spire Global will be able to enter into agreements of various nature with the owners of the MASS to implement connectivity with the ship in distress.

It is also possible to hypothesize a voluntary salvage of a MASS in danger, or with the assistance of a MASS. In this perspective, a borderline case is represented by the hypothesis of a salvage operation spontaneously rendered by a hacker, who blocks the harmful effects of an act of piracy on the MASS management software or its communication system. We should then ask ourselves whether it can be considered a salvage operation according to the Salvage Convention. In this hypothesis, if there is no express and reasonable prohibition of the owner or master of the vessel (art. 19 of London Conv.), we may consider that it is an «act or activity» undertaken to assist a vessel and the salvor will be entitled to a salvage reward if it had a useful result and according to art. 12: «Salvage operations which have had a useful result give right to a reward» (no cure no pay rule).

²⁷ See also M. SURI, *Maritime Autonomous Surface Ships (MASS) and the Salvage Convention*, NUS Centre for Maritime Law Working Paper 22/05 NUS Law Working Paper No 2022/016, 2022, p. 5, for which “Assistance may be either active or passive, such as ‘comfort that its presence provided the passengers and crew’ (as in *Dorothy J v City of New York* 749 F Supp 2d 50 (ED NY 2010), or even merely allowing the use of vessel space (as in *Sunglory Maritime Ltd v Phi Inc* 212 F Supp 3d 618 (ED La 2016). The proposition that MASS in danger, and unable to extricate themselves from that situation, may require help or aid, is uncontroversial”.

²⁸ CMI IWG submission to the MSC 99th session. See also B. SOYER, A. TETTENBORN, G. LELOUDAS, *Remote controlled and Autonomous Shipping: UK based case study*, p. 17. For the Authors “The 1989 Salvage Convention defines salvage services is “any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.” With autonomous vessels, the saving of the vessel from danger might well entail entirely land-based operations. Examples might include the hiring of IT consultants to sort out an onboard computer failure, or to rescue a vessel under computer control from the clutches of cyber-hackers intent on taking her over. Such operations deserve to be treated as salvage. We take the view that the Merchant Shipping Act 1995 should be amended to ensure that they are, despite the fact that they may be entirely land-based”.

²⁹ As highlighted by Inmarsat, The future of Maritime Safety Report 2023, p. 26: “Shipping recognizes the potential of automation and autonomous technologies. Maritime autonomous surface ships (MASS), collision avoidance systems, advanced navigation aids, real-time monitoring of vessel/equipment performance, and others can improve safety and efficiency. Embracing technology, while addressing attendant cyber security risks, is key. If shipping can strike the right balance between human oversight and control on the one hand and machine precision and reliability on the other, it can reap the benefits of enhanced safety management, dynamic risk assessment, and evidence-based decision-making”.

8. The Salvage reward of a MASS operation

The rules of the Salvage Convention on salvage reward are also applicable to cases of a salvage operation involving a MASS. However, the absence of crew on board for levels three and four of autonomy poses pressing problems of adaptation of the discipline provided for by the Salvage Convention in cases where a MASS is involved³⁰.

Under art. 12 “Salvage operations which have had a useful result give right to a reward” (Art. 12), except in the case of a salvage of persons, where “No remuneration is due from persons whose lives are saved” (Art. 16). Nevertheless, “A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to Salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment” (Art. 16, para. 2).

It is generally recognized that the determination of a salvage reward does not respond to strict rules, but to a principle that can be defined “liberal,” i.e., not closely related to the evaluation of the actual costs, nor to a sum that represents the simple consideration (*quantum meruit*) of the salvage services rendered³¹, but it is added a component of prize, peculiar element of the salvage reward, which responds to incentive reasons for the assistance rendered.

Even if the aforementioned rules have been foreseen for the hypothesis of a salvage rendered by manned ships, also considering the fact that “the reward shall be fixed with a view to encouraging Salvage operations” (Art. 13), the criteria for determining the remuneration set by Art. 13 should also apply in the case of an autonomous salvage ship, even if these criteria are provided for a traditional salvage operation, such as indicated by the criterion of “the skill and efforts of the salvors in salvaging the vessel, other property or life” (letter e), or by the reference to the risk of liability or other risks run by salvors (letter g).

There are, however, rules that must be interpreted in order to be applied to salvage operations involving MASS, such as the duty of the salvor to operate with *due diligence* in assisting a ship in danger, even in the specific case of environmental salvage (Art. 8.1 (b) of the Salvage Convention), also seeking assistance and accepting the contribution of other salvors reasonably requested by the shipowner or by the owner of other property at risk (Art. 8.1 (c) and (d)).

Art. 8 of the Salvage Convention provides a detailed list of the main duties of the salvor, which the heading of the article also extends to the ship’s

³⁰ On this topic see M. SURI, K. WRÓBEL, *Identifying factors affecting salvage rewards of crewless vessels — lessons from a case study*, WMU Journal of Maritime Affairs (2022) 21:213-232.

³¹ *The Nagasaki Spirit*, Court of appeal, 4, 5, 6 e 21 dec. 1995. In: Lloyd’s Law Reports, 1996 (I): 459. For the Court “The need to encourage salvors to undertake unusual risks in the general public interest, combined with recognition of the fact that unsuccessful services or ones where no property was saved resulted in payment of any kind, meant that the rewards for success were generous. The jurisdiction was equitable, and it took account of these factors which were extraneous to the individual case.”

master, among which undoubtedly the obligation to operate “with due care” is highlighted: “The salvor shall owe a duty to the owner of the vessel or other property in danger: (a) to carry out the Salvage operations with due care; (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment; (c) whenever circumstances reasonably require, to seek assistance from other salvors; and (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.” In the hypothesis of salvage carried out by a MASS, it is necessary to reformulate these due diligence obligations in view of the fact that the master operates remotely, as well as the operator and other crew members.

According to art. 8.2, the master of the vessel, together with the owner of the vessel and the owner of other property in danger, has a duty to the salvor to also co-operate fully with him/her during the course of the salvage operations; in doing so, to exercise due care to prevent or minimize damage to the environment; and when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so. In the event that the rescue is carried out to a MASS, it is necessary to identify who is responsible for the duty to cooperate with the salvor during the course of the salvage operations, exercising due care to prevent or minimize damage to the environment. In the assistance to a MASS, it can be assumed that such obligations are attributable to the shore-based master/operator or/and to the shipowner of the ship in danger.

With particular regard to the classification of MASS according to the degree of autonomy, for ships with second degree of autonomy it is still necessary to clarify, according to the Salvage Convention, whether a shore-based operator can be considered as master, or if the role can be attributed to somebody else on board the ship.

For ships with a third degree autonomy, where there is no crew on board, it should be clarified if the shore-based operator can be considered as master, and in this sense there are important clarifications in the draft of the MASS code that will be dealt with in the following paragraphs, while in totally autonomous ships, with an autonomy of fourth degree, it is necessary to further clarify, in the absence of personnel on board and of a remote control, whether, in the case of a salvage operation with a MASS, the role of salvor can be assumed by other figures such as the programmer of the piloting and management software or the ship or system builder.

As regards the determination of the salvage compensation in the event of a salvage carried by a totally autonomous MASS, we should consider that the skills and efforts are no longer those of the master and crew on board the rescue ship, but hypothetically those of the shore-based operator, of a remote master, or of the shipowner who provides for autonomous management software and adequate equipment on the ship.

If the salvage operation is then carried out by a MASS professionally equipped for the salvage operation, it can increase remuneration under Art. 13 (i) and (j), which sets the salvage compensation on “the availability and

use of vessels or other equipment intended for Salvage operations and the state of readiness and efficiency of the salvor's equipment and the value thereof." This item can include the investments and economic efforts made by professional salvors in the purchase of equipment and software of a MASS, which are supposed to reach high costs.

An interpretation of the legal text is also required for the reference to the concept of salvor's negligence or fraud.

In this regard, article 18 of the Salvage Convention states that "a salvor may be deprived of the whole or part of the payment due under this Convention to the extent that Salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct." In a salvage operation carried out by a remotely controlled ship with crew on board, it is necessary to ascertain who can be held responsible for the negligent conduct. But, if the ship is totally autonomous (fourth degree), it could be necessary to examine the negligent conduct of other professional figures, such as the programmers who support the remote operator in the management of the MASS management software, or the shore-based operator.

9. The role of the master of a MASS in the Salvage Convention

The IMO has delved into the issues arising from the different functions performed by the ship's master of a MASS, who is still present for levels one and two, while like the rest of the crew, he is no longer on board in levels three and four.

In particular, the Regulatory Scoping Exercise has raised the issue of who can exercise the functions of master if he is no longer present on board, and also if an owner (or charterer) would have additional duties or liabilities when operating a semi-autonomous or fully autonomous vessel³²; or if certain responsibilities that would normally belong to the master, would transfer to those actually on board a vessel in cases of semi-autonomous vessels with limited crews, or could be carried out by personnel not on board the MASS³³.

³² Some scholars believe that in the case of a remotely controlled MASS the remote operator is the "functional equivalent to the master": N. KLEIN, *Maritime Autonomous Surface Vehicles within the International Law Framework to Enhance Maritime Security*, 95 *Intn'l L. Stud.*, 244 (2019); while other scholars say that the task of a shore-based vessel controller is not entirely similar to that of a ship's master (E. VAN HOOYDONK, *The Law of Unmanned Merchant Shipping – an Exploration*, *Journal of International Maritime Law*, 2014, 403 ss., p. 410).

³³ IMO LEG. 1/Circ. 11, Annex, p. 6. With reference to the Salvage Convention, the IMO considered that for grade three and four MASSs "The issue of the remote operator/master is an overriding issue that needs to be solved taking into account all instruments in coordination with all responsible committees". Other figures arise in the management of a MASS: among these, the figure of the remote operator emerges: "The RSE also showed that it may be necessary to clarify the role and responsibility of the remote operator. In particular, it may be necessary to clarify whether the remote operator might fall within the scope of the terms, including but not limited to, "operator" or "servant or agent", which are used within the liability and compensation regime, in order for the liability, channelling and subrogation provisions in those conventions to clearly accommodate MASS. While the view was expressed that the term "operator" used in the conventions was intended to refer to the commercial operator of a

In the draft of a MASS code, the remote master is intended as a master who is in a Remote Operations Centre outside the MASS, and in this perspective the IMO Maritime Safety Committee raised some general issues on the role and responsibilities of the master of a MASS, considering that «there is no need for a new definition for the master of a MASS as MASS are ships and the role of the master is the same as for conventional ships; the functions of the master of a MASS operating MASS require detailed consideration before deciding on his or her roles and responsibilities; consideration of the definition of the master of a MASS would be premature at this stage as it is unclear how fully autonomous ships will be operated and how it will allow for human intervention; the person in charge of MASS operations has to have overall responsibility of a MASS, even for those operating in fully autonomous mode; reference to the terms “command” and “control” when defining the role of the master of a MASS needs to be thoroughly considered; if there is a crew or persons on board, a master should be on board as well, to ensure their safety; and a master of a MASS may not need to be on board, depending on the technology»³⁴.

Other key principles provided by the draft of the MASS Code the points hereinafter highlighted: there should be a human master responsible for a MASS, regardless of mode of operation; such master may not need to be on board, depending on the technology used on the MASS and human presence on board, if any; and regardless of mode of operation, the master of a MASS should have the means to intervene when necessary. Moreover, several masters may be responsible for a MASS on a single voyage, under certain conditions do be defined, and only one master should be responsible at any given time³⁵.

The Master appears in some provisions of the Salvage Convention: under art. 6 .2: «The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel»; under Art.8.2, “The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor (a) to co-operate fully with him during the course of the salvage operations; (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so”. Under Art.10.1, “Every master is bound, so far as he can do so without serious danger to his vessel and

ship, and not a remote operator in the context of MASS, it appears that a clarifying discussion on this issue may be needed. It was noted in document LEG 106/8/4 that the role of the remote operator within the liability regime would have to be considered by the Legal Committee at some stage but was not considered as part of the RSE” (p. 7).

³⁴ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 4 and 11.

³⁵ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 9.

persons thereon, to render assistance to any person in danger of being lost at sea”. Under Art.15, “The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel”. Under Art.19, “Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention”.

It was anticipated that the MSC-LEG-FAL Joint Working Group agreed on a number of points: “there should be a human master responsible for a MASS, regardless of mode of operation or degree or level of autonomy; such master may not need to be on board, depending on the technology used on the MASS and human presence on board, if any; and regardless of mode of operation or degree or level of autonomy, the master of a MASS should have the means to intervene when necessary”.

In the case of a MASS with no master on board, especially degree three MASS (remotely controlled ship without seafarers on board), and degree four MASS (fully autonomous ship) it is necessary to clarify who, if anybody, would have to satisfy the role of the master. Considering that in these cases there is a Remote Operating Centre (ROC), the command, control, and monitoring of ships will take place from the ashore or afloat ROC, and in the absence of a master or crew on board.

In this regard, Regulation 2, e (i) of SOLAS Convention generally refers to the «master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship». He should be officially designated by the owner of the MASS as discharging the responsibilities of the Master of the MASS; he may be located anywhere, as long as he can ensure that an appropriate level of communication and control over the MASS can be maintained.

There is also the possibility that the master of a MASS is responsible for multiple MASS at the same time³⁶, but this should be ruled out in cases of emergency situations and navigation in congested areas or in locations where the marine environment is at risk. It has also been questioned whether several masters can be responsible sequentially for a MASS operation over a single voyage, but it has been underscored the importance of having only one master at any given time, and that further clarification is required as to the timing when handing over command takes place³⁷.

³⁶ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 5.

³⁷ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 5. At the end the Group agreed that several masters may be responsible for a MASS on a single voyage, under certain conditions, and that only one master should be responsible at any given time. Regarding the master's competences and Responsibilities the Group also agreed that the required qualification should be based on the STCW Convention and Code, and that additional requirements or modifications of the requirements of the STCW Convention may be necessary, depending on the roles of the master and crew of a MASS that will be identified. In addition, the Group agreed that the applicability of the Maritime Labour Convention (MLC) to the master and

For other scholars, however, it is difficult to identify the characterizing elements of the figure of the master understood as “person having the command or charge of the vessel for the time being” in the case of a master of a MASS. In this case, it would be preferable that the owners or operators of a MASS be required by law to nominate a person to fulfil the statutory role of “master”, to whom notices required to be sent to the “master” can be communicated³⁸. In other words “There is a need for legislative intervention (i) to state that, for the purposes of the Salvage Convention, where a ship is uncrewed or under RCC control the term “master” shall include the person from time to time in control of her at a relevant control station; and (ii) to make it clear that operations carried out entirely on land may in a suitable case be classified as salvage”³⁹.

Moving on to the other professional figures involved in the management of a ship, the concept of crew must also be considered, which also operates remotely in degrees three and four of autonomy. Especially, the concept of crew of a MASS should consider either “remote crew” and “onboard crew”.

In a MASS, the figures of the following are highlighted, as involved in the responsibility for the MASS activity: the Shipowner, “the subject who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the Owner or Operator”; the Operator, i.e., “An entity (e.g. a company) that discharges the responsibilities necessary to maintain the MASS in a seaworthy condition and compliant with all relevant IMO Instruments and national legislation. The operator is also responsible for ensuring that all staff concerned with the control of MASS hold appropriate qualifications as required by IMO instruments and national legislation”; the MASS Watch Officer, intended as “the individual who has responsibility for the MASS when it is operational”, and the Ship Security Officer, which is “a person accountable to the master, designated by the Company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for liaison with the company security officer and port facility security officers”⁴⁰.

10. The authority to conclude contracts for salvage operations

In general terms «The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such

crew of a MASS would need to be considered at the appropriate forums.

³⁸ B. SOYER, A. TETTENBORN, G. LELOUDAS, *Remote controlled and Autonomous Shipping: UK based case study*, p. 11. For the Authors “It should be provided in law that, in the case of a MASS, any legal penalty or liability attaching to the “master” should attach to the above person, and should also attach to the registered owner of the vessel. This could be done by a general legislative provision stating that wherever effective control of a vessel was being exercised by a person not on board, then any legal penalty or liability arising under any enactment should, unless the context required otherwise, attach to that person”.

³⁹ B. SOYER, A. TETTENBORN, G. LELOUDAS, *Remote controlled and Autonomous Shipping: UK based case study*, p. 39.

⁴⁰ Maritime UK, *Maritime Autonomous Ship Systems (MASS) UK Industry Conduct Principles and Code of Practice – A Voluntary Code*, Version 6, 2022.

contracts on behalf of the owner of the property on board the vessel» (art. 6.2). For MASS with third or fourth degree of autonomy, without crew or master on board, we believe that also the shipowner or other shipping agents ashore can conclude the salvage contract⁴¹, since nowadays the reception of instructions and communications from the ground is instantaneous.

However, the perception of the dangerous situation can be somewhat distorted in the assumption that the master is not on board the ship: in this case, either the salvor and the salvaged vessel, her master and shipowner are distant from the danger and from the perception of it and they must examine the existence and degree of danger via the Communication System to the remote location. The degree of perception is unlikely to be the same as that of a master on board the ship.

11. Service rendered notwithstanding the prohibition of the master

Under Art.19 of the Salvage Convention “Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention”.

Even in this hypothesis, we must consider that in a MASS the master and the crew may not be on board, and it may be more difficult to prohibit a salvage operation due to more limited communication facilities. In addition, it may happen that the salvor considers that the salvage should be carried out, while the remote operator, which is on the ROC and not on the scene of the danger is unable to assess. In this case, the problem of the vulnerability of the crewless MASS should be addressed.

As indicated above, there may be the hypothesis of a salvage operation spontaneously rendered by a hacker, who blocks the harmful effects of an act of piracy on the MASS management software or its communication system. In this case, the express and reasonable prohibition of the owner or master of the vessel (art. 19 of London Conv.), may prevent the salvage reward.

12. The role of the Remote Operation Centre (ROC)

The master of a MASS, in degree three and four of autonomy is placed on the ROC. For the MSC-LEG-FAL Joint Working Group the “Remote Operations Centre means a location remote from the MASS that can operate some or all aspects of the functions of the MASS⁴²”. In the identification of specific rules on the ROC, the Group also considers that “apart from an ROC that has overall control of the operation of MASS, it is possible to have

⁴¹ A separate case is represented by the hypothesis that for some reason the communication between ROC and MASS is interrupted, and, in this case, it is doubtful that the MASS can have an autonomous authority to conclude the contract, given that it is believed that a machine cannot have the full capacity to act and to carry out legally binding acts.

⁴² MSC, *Development of a goal-based instrument for maritime autonomous surface ships (MASS)*, Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 6.

a workstation controlling MASS within that ROC, which may also be set up on another ship; the interaction of MASS with Vessel Traffic Services (VTS) needs to be considered when defining an ROC; the Group should only look into the overarching high-level aspects relating to ROCs, as the technical work or further definition of relevant terms was a matter for MSC; reference to real-time control should be included in the definition; the definition of an ROC should not only relate to safety functions, but also to other functions such as the provision of cargo information; the definition should include text that clarifies that an ROC is “under the effective jurisdiction of the flag State”; and an ROC is not to operate some systems but instead, some functions”.

We can, further, consider that a MASS may be operated from different ROCs during a single voyage. In this case, only a single ROC must be responsible for a MASS at any one time, and there should be further consideration on the conditions that may allow for the handover of responsibility for a MASS from one ROC to another ROC, and the issues that will arise when the ROC is located outside of the flag State of a MASS⁴³.

13. The role of the remote operator in the salvage operation

The term “remote operator” includes a remote master and remote crew, and it is linked with an ROC⁴⁴.

Any other person not directly taking part in the operation of the MASS, e.g. persons undertaking marine research operations from MASS working at an ROC, should not be considered as remote operators.

The crew of the salvaging vessel is generally considered by the Salvage Convention in the generic meaning of “salvor and servants” for the purposes of the apportionment of the reward: pursuant to art. 15.2, “the apportionment between the owner, master and other persons in the service of each salvaging vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants”.

In a general sense, the remote operator is “a qualified person who is employed or engaged to operate some or all aspects of the functions of a MASS from a Remote Operations Centre”. The same operator can therefore be assigned tasks related to the remote assistance operation.

14. The duty to Assist Persons in Distress at Sea in a salvage operation with MASS

There are many examples of salvage operations in commercial transport are the cases of salvage of passengers from a fire, towage of the ship with

⁴³ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 6.

⁴⁴ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 7.

passengers on board to a safe port, assistance to passengers on the ship by providing food or other supplies. In these cases, the master, either of container vessels or bulk carriers, tankers, cruise liners or fishing vessels, has the same obligation to assist people in danger at sea⁴⁵.

In all the mentioned hypotheses, large-scale salvages with commercial ships can be costly and dangerous for the salvors in terms of increased direct costs, such as extra fuel consumed, port charged assessed during disembarkation of salvaged people, additional wages or repairing or cleaning the vessel, as well as in terms of indirect costs, such as the delay, if the vessel is obliged to deviate from its intended voyage, to embark rescued persons, up to the final destination to a safe port.

The use of MASS in a salvage operation can be a possible answer to the need to limit the danger for the crew employed in the salvage operation, and a part of the costs of the salvage activity.

15. The Legal sources of the obligation to provide assistance

Under rule 33 of the SOLAS Convention “The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance,” thereby giving the master the possibility of evaluation of the most appropriate conduct to follow.

Under Art. 98 of the Montego Bay Convention, the State shall require the master of a ship flying its flag to render assistance to any person found in danger at sea, if there is no serious danger for the ship, the crew and passengers, or to proceed with all possible speed to the rescue of persons in distress in so far as such action may reasonably be expected of him.

Article 10 Salvage Convention states that «Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea». However, we have to ask ourselves whether this provision also applies to MASS, especially the three and four degree of autonomy ones.

Generally, MASS is not designed to host people on board and its capability to render assistance is limited.

In this regard, safety spaces and safety devices could be foreseen to provide hospitality to people rescued by the mass.

To achieve such a capability, an initial predisposition by design would be necessary and the provision of an obligation on the part of the flag state to indicate ship construction standards to guarantee assistance to people in distress.

⁴⁵ On this topic, referred to the US legal system see most recently J. COITO, *Maritime Autonomous Surface Ships: New Possibilities—and Challenges—* in *Ocean Law and Policy*, 97, Int'l L. Stud., 2021, 259 ss., p. 264. For the Author “Indeed, it is the master at sea that heretofore has been the “eyes and ears of the global SAR system.” This duty applies in like manner to commanding officers of warships of the U.S. Navy and Coast Guard. This conclusion leads ineluctably to the pivotal question of who, if anyone, is the “master” of a MASS? And if there is no “master” of a MASS, can the legal duty to render assistance—the thrust of which falls upon the master—continue to exist?”.

The shore-based operator should make his best endeavors to request assistance from ships that are in the proximity of the one to be assisted, send out a distress signal, or inform the competent authorities that a ship is in danger.

A MASS should be equipped with suitable instrumentation to provide assistance to persons in distress to the extent that such behavior can reasonably be expected from it. Moreover, a MASS should be able to identify and locate distress signals and communicate with ROC.

There are still some critical aspects to be clarified: should the MASS's technical capabilities define the nature and the requirements of the duty to render assistance or vice versa? From this point of view, it was anticipated, in the preceding paragraphs, that, with reference to the functions of Search and Rescue, the draft of the MASS Code clarifies that "Every MASS should be able to provide assistance to persons in distress at sea as far as such action may reasonably be expected of it"⁴⁶.

To do this, the MASS should also be suitably equipped to deal with the hypothesis of having to accommodate rescued people on board. This can pose problems of increased costs and changes to the design of considerable criticality for shipyards and for shipowners who want to purchase a MASS.

We think that the provision of salvage equipment suitable to assist people in danger should be accompanied by economic support measures or tax benefit in the preparation by design of the instruments necessary to arrange a permanent state of readiness of the MASS, just as we believe that the crew, whether on board, ashore or on the ROC, should be adequately trained to conduct salvage operations with a MASS.

16. Jurisdiction

Article 2 of the Salvage Convention states that "This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party". In this way, the salvage convention applies as *lex fori*.

However, the identification of the jurisdiction may be more difficult where the salvage operation is rendered by a ROC, plausibly located in a completely different location than the one where the assistance operation occurs. In fact, the applicability of national laws is predominantly determined by the geographical position and use of the MASS, and the location of ROC may give rise to complex legal issues on jurisdiction and the responsibility of the flag State, in particular the concurrence of the territorial jurisdiction of the State in which the ROC is located and flag State jurisdiction.

Under art. article 92 1 UNCLOS 1982, the flag state has only exclusive jurisdiction over ships that sail under the flag of that state on the high seas and only a MASS that is registered as a ship will fall under the jurisdiction of the chosen flag state.

⁴⁶ IMO Maritime Safety Committee, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the Correspondence Group Submitted by Marshall Islands, 108th session, Agenda item 4, MSC 108/4 13 February 2024, p. 50.

A jurisdictional issue could arise for the ROC, which can be ashore or afloat, and controls MASS from a separate country to the location of the ship.

The MSC-LEG-FAL Joint Working Group has recently argued that the definition of ROC should include text that clarifies that an ROC is under the effective jurisdiction of the flag State.

The Group agreed that “exercising of effective flag State jurisdiction and control is of paramount importance, consistent with article 94 of UNCLOS and that it may be necessary to establish a “genuine link” in a situation where an ROC is located in a place other than the flag State of a MASS”⁴⁷.

In relation to the “genuine link” requirement one delegation proposed that the “genuine link” required under article 91 of UNCLOS between the flag State and the ship, where the ROC is located outside the jurisdiction of the flag State, could be addressed by establishing a “contractual link” between the ship, the shipowner/ship operator, and the ROC, according to a practice which is well-established in merchant shipping, to include a contractual clause dealing with the proposed jurisdiction and proper law of the contract in the event of any dispute between the relevant parties: “This approach may address the challenge posed for a flag State in permitting an ROC to operate one or more of its MASS outside the jurisdiction of the said flag State, under UNCLOS as the “umbrella treaty” and under customary international maritime law for those flag States who have not ratified UNCLOS; while others delegations observed that articles 91 and 94 of UNCLOS require a high degree of responsibility from the flag State and Remote Operations Centres situated outside the territory of the flag State would create insurmountable legal challenges in light of UNCLOS and general international law, and that such responsibility cannot be replaced by a contractual link”⁴⁸.

⁴⁷ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 9.

⁴⁸ MSC, *Development of a goal-based instrument for maritime autonomous surface ships* (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session 107/5/1, p. 10.

AUTONOMY AND AI IN SHIPPING

ØYSTEIN ENGELHARDTSEN



WHEN TRUST MATTERS

Autonomy and AI in shipping

MASS IWG Meeting 22 May
CMI Colloquium 2024, Gothenburg

Øystein EngelhardtSEN, Group Leader Ship Autonomy, Maritime Program - GRD
22 May 2024



WHEN TRUST MATTERS

About DNV

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~15,000
employees

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countries

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Ship and offshore
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monitoring



Software, cyber security,
platforms and
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Management system
certification, supply chain and
product assurance



3

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against standards,
specifications and
regulatory
requirements



Qualify and assure
new technologies,
systems, data,
platforms, supply- and
value chains



Give expert advice
on safety, technology
and commercial risk,
and operational
performance



Co-create and share
new rules, standards,
software and
recommended
practices

4

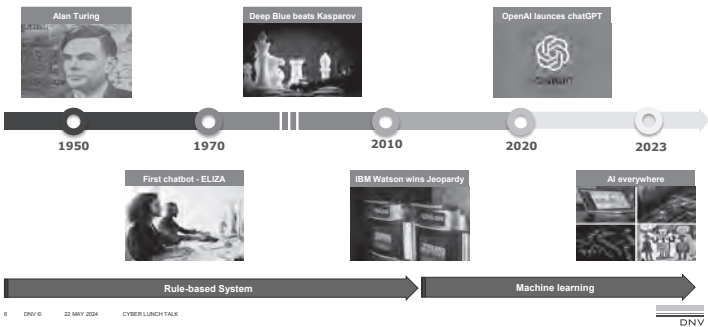
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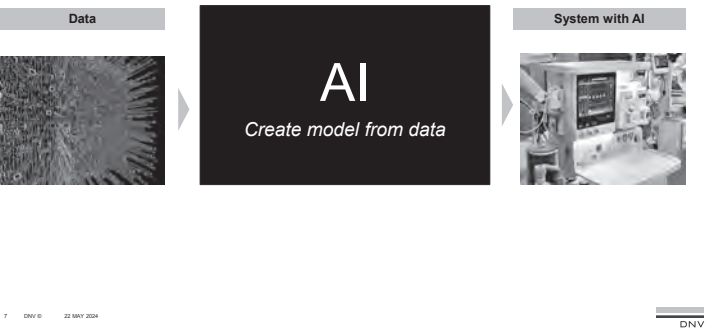


Artificial Intelligence (AI)

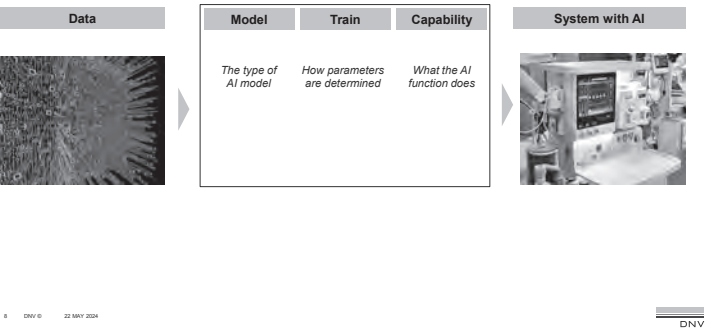
AI is not new — but now we have more data and computing power



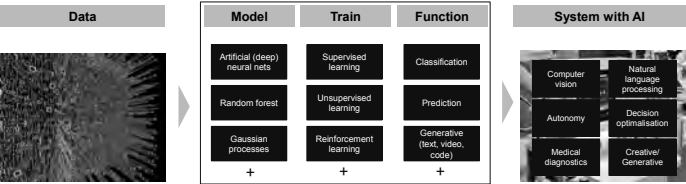
AI / ML are models build from data



AI / ML are models build from data



AI / ML are models build from data



How to trust AI?



There are
risks with
using AI

Safety / Security

Robustness /
Resilience

Fairness / Bias

Explainability /
Transparency

Data + IP
Protection

Sustainability

Ways to ensure trustworthy AI

Steps towards trustworthy AI has been made

One challenge still remains – how to put these legislations into practise

The EU AI Act



Biden's Executive Order



AI Safety Summit



©2023. Meeting, United Kingdom. Prime Minister Boris Johnson poses for a family photo with world leaders and spouses ahead of the first AI Safety Summit in Bletchley Park, England, United Kingdom, 10-12 November 2023.

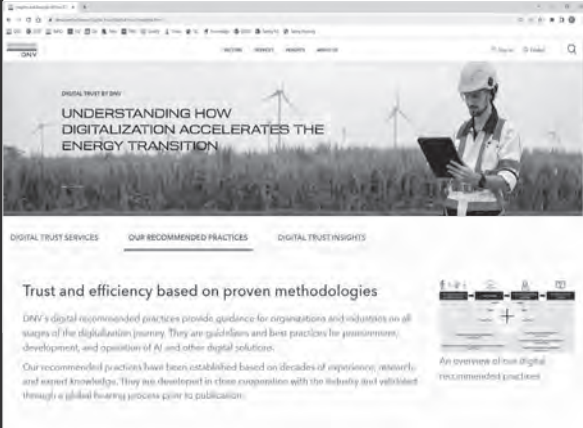
Trustworthy and Responsible AI: *Conformity assessments and testing*

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Digital Trust
by DNV

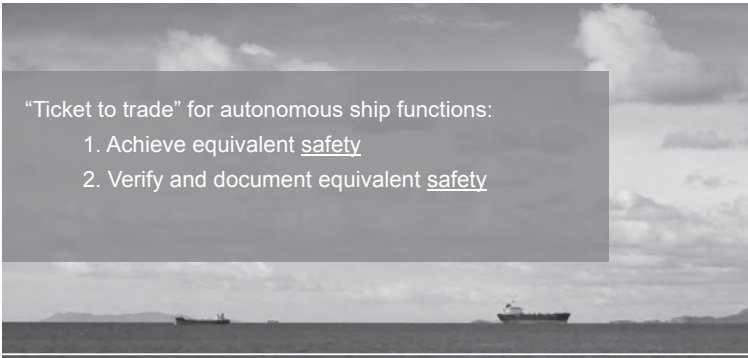


Autonomous ship technology

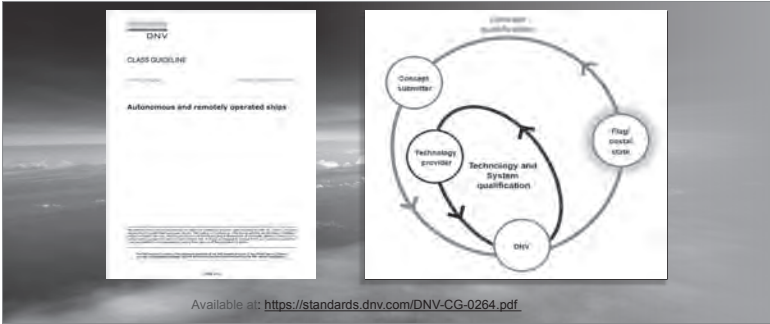
14 DNV © 22 MAY 2024 CYBER LUNCH TALK



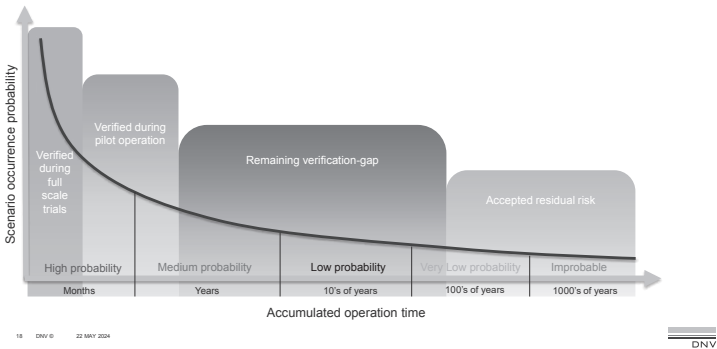
Autonomous ship technology



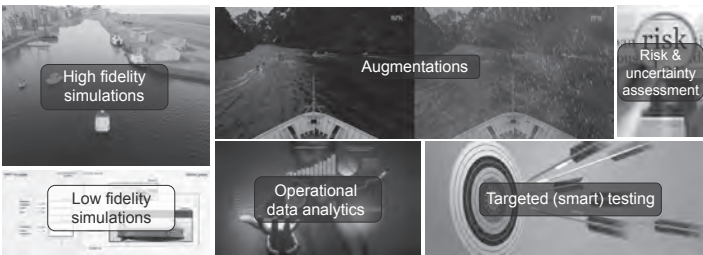
DNV's approach



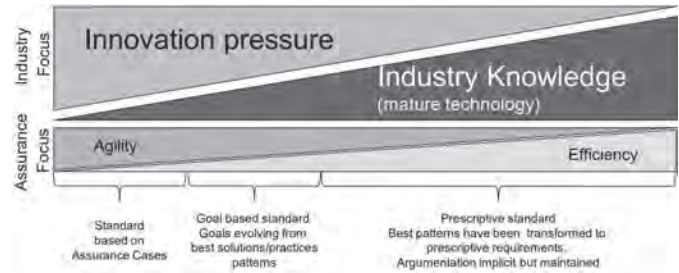
Chasing the hidden failure modes



Tools to explore the scenario space

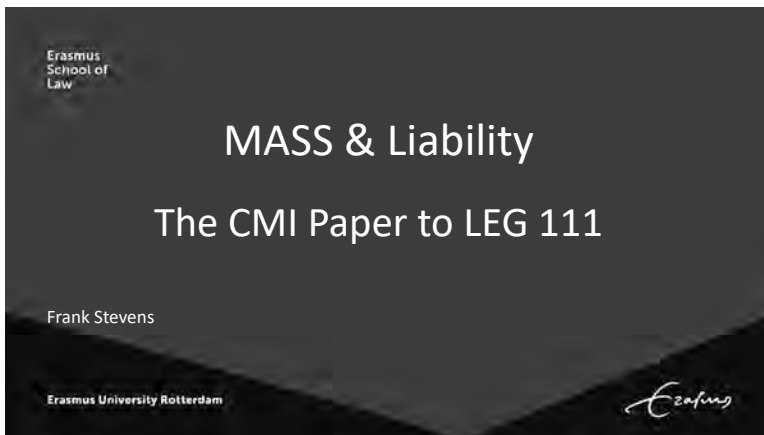


From research to rules



MASS & LIABILITY THE CMI PAPER TO LEG 111

FRANK STEVENS



MASS & Liability

- technology is amazing
 - but not infallible
- there will be (are already) MASS
 - and there will be MASS incidents ...

↳ liability?

- CMI paper to LEG 111



MASS & Liability

- not an issue where liability is strict (not fault based)
 - oil pollution, CLC
 - if a tanker causes pollution, the owner of the tanker is liable
 - regardless of whether the tanker is manned, remotely operated or fully autonomous
 - carriage of goods, H(V)R
 - if the carried goods are lost or damaged, the carrier is presumed liable
 - regardless of whether the carrying vessel is manned, remotely operated or fully autonomous

3



MASS & Liability

- what if liability is fault based?
 - primarily collision law
- 'fault of the vessel'
 - traditional construction
 - fault, negligence of an identified human being (crew member)
 - **remotely operated:** people are running the show (ashore, not on board)
 - proving negligence of an identified human being *should* be possible
 - BUT: jurisdiction issues, practical issues: in which State is the ROC located?

4



MASS & Liability

- 'fault of the vessel'
 - traditional construction
 - fault, negligence of an identified human being (crew member)
 - **fully autonomous:** software is running the show
 - proving negligence of an identified human being may become very difficult, if not impossible
 - option 1: accept this outcome, innocent party in a MASS collision will probably not be able to get compensation ...
 - ⇒ unattractive option

5



MASS & Liability

- option 2: specific liability regime for fully autonomous vessels (MASS in general)
⇒ also unattractive option
- creating a new convention is very difficult and time consuming
- position of the innocent party depends on whether the colliding vessel is a manned vessel or a MASS

6



MASS & Liability

- option 3: strict (presumed) liability of the MASS
 - in case of an incident with a MASS, the MASS is presumed to be at fault
- why?
- what in case of collision between 2 MASS?

7



MASS & Liability

- option 4: alternative grounds of liability, new interpretations, new approaches to liability
 - vicarious liability
 - crew members
 - shore controllers?
 - software / system developers??
 - product liability ⇒ tomorrow, Robert Veal
 - 'negligent' software, software 'at fault'

8



MASS & Liability

- 'negligent' software, software 'at fault'
- compare with the *concept* of product liability:
 - product is "at fault" (defective) if it does not provide the safety the public is reasonably entitled to expect from it
- humans/systems are never infallible
- which mistakes are we prepared to tolerate?



**THE GOTHENBURG DECARBONISATION
DISCUSSION PAPERS
NOTE FROM THE CHAIR OF THE
INTERNATIONAL WORKING GROUP ON
MARITIME DECARBONISATION**

CMI IWG DECARBONISATION



COMITE MARITIME INTERNATIONAL

NOTE FROM THE CHAIR OF THE INTERNATIONAL WORKING GROUP ON MARITIME DECARBONISATION

When the Comité Maritime International was founded, the transition from wind to steam was not yet complete. We are now on the cusp of a third energy transition, and decarbonisation is one of the most significant challenges of our era.

The maritime industry has increasingly become aware of the role it's called upon to play, mostly as a result of regulatory initiatives of the International Maritime Organisation and the European Union.

Overwhelmingly, attention is focused on the technical aspects of alternative fuels and energy efficiency, and on the policy ramifications, especially as those inform the regulatory environment.

This International Working Group was set up a year ago on a simple premise: maritime law has been largely absent from the decarbonisation debate, despite its unquestionable importance as a foundation of the entire edifice of maritime trade. And central in any discussion regarding maritime law is the CMI. It has been an honour and a privilege to chair this IWG, which brought together colleagues from several maritime jurisdictions.

The work of this IWG is summarised in the attached three draft Discussion Papers, that cover three separate, but related, areas:-

1. **"Green Vessels"**: reconciling their long lifespan with the uncertainty around future energy sources not only gives rise to technical dilemmas, but also creates contractual uncertainties. The industry participants discuss ships that may be "ammonia-ready" or "methanol-ready", but both the technical meaning and the legal content of such descriptions are debatable. The attached draft Discussion Paper represents the work of the IWG in collaboration with the Lloyd's Register Maritime Decarbonisation Hub to produce a set of definitions for the various states of readiness, accompanied by technical notes and an outline of legal issues in selected jurisdictions.
2. **"Green Fuels"**: the technical and regulatory challenges of new fuels attract ample attention. Equally important is the fundamental legal question of liability, in circumstances where the present regime was designed for hydrocarbons. It took several catastrophic oil pollution incidents for the international community to create compensation structures and a liability framework. It would be a paradox and, potentially, a tragedy, if the deployment of zero-emission fuels is not informed by that experience, so that the appropriate civil liability regime is put in place at the appropriate

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Ernest van Dijckkaai 8, 2000 Antwerp, Belgium

time. The attached draft Discussion Paper describes the present civil liability regime and proposes a series of possible adaptations.

3. **"Green Contracts"**: the decarbonisation journey requires contractual adaptations. Indeed, it seems inevitable that certain age-old notions of maritime law will need to be reconsidered, in view of the imperative of reducing GHG emissions. For example, performing voyages with utmost despatch, or the very principle of seaworthiness, which may need to be expanded to something akin to "greenworthiness". The attached draft Discussion Paper outlines some of the issues.

The work presented in the attached papers represents the first phase of this IWG. Our proposal is to publish the attached papers and continue working on these three areas, involving – as and where appropriate – associations and organisations that can work with the CMI to address the issues identified.

I am grateful to the members of the IWG for their time and efforts, and to the members of the Steering Committee (Jolien Kruit, Neil Henderson and Charles Debattista) for their support and dedication. We very much look forward to discussing with our colleagues from all over the world in Gothenburg.

London, 12 May 2024

Haris Zografakis
Partner, Stephenson Harwood LLP
Chair
CMI International Working Group on Maritime Decarbonisation

DRAFT DISCUSSION PAPERS
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COMITE MARITIME INTERNATIONAL

COMITE MARITIME INTERNATIONAL

INTERNATIONAL WORKING GROUP ON MARITIME DECARBONISATION

ZERO-READY FRAMEWORK

CONTRACTUAL & TECHNICAL CONSIDERATIONS

GREEN VESSELS WORKSTREAM

DRAFT DISCUSSION PAPER¹

Introduction

1. Zero-carbon or low-carbon fuels, especially those of a provenance other than from conventional hydrocarbons, require adaptations to vessels' machinery and equipment. Over the last few years, an increasing number of ships are being designed, ordered and constructed as "ready" for using new fuels.
2. There are varied and potentially incompatible understandings of what such "Readiness" may entail, and this is an area that needs to be addressed both from a technical, as well as a contractual perspective. Moreover, the content and substance of such Readiness will continue to evolve, as new technologies emerge and mature, and the regulatory framework develops.
3. Neither the IMO, nor any other supranational legislative body, so far has set standards. In an effort to bring a degree of clarity and assist the industry in reaching a common understanding as to what is meant by, and the various levels of, zero-carbon fuel readiness, CMI's International Working Group on Maritime Decarbonisation ("IWG") has worked with the Lloyd's Register Maritime Decarbonisation Hub ("MDH") in introducing a coherent

¹ The authors are the following members of the Comité Maritime International's International Working Group on Maritime Decarbonisation: Mark Broekhuizen (Van Traa Adkokaten, Netherlands), Niko Oertel (Damen Naval, Netherlands and Germany), C W Lee (Kim & Chang, Korea), Andrew Rigden Green (Stephenson Harwood LLP, England and Hong Kong), Shohei Tezuka (Higashimachi LPC, Japan), Henry Zhu (Wei Tu, China), with comments and feedback from the Chair, Haris Zografakis (Partner, Stephenson Harwood LLP, London).

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approach to zero-readiness. This Discussion Paper outlines both the technical, as well as the contractual issues. Ultimately, common standards will need to be developed, and it is hoped that this Discussion Paper will assist.

4. The approach adopted was twofold:
 - (a) The MDH defined the technical issues and relevant technical terms to describe the attributes necessary for a vessel to use a low or zero carbon fuel. The essence of that is summarised in the Zero Readiness Level Grid ("ZRLG"), with further explanations in MDH's Accompanying Notes. By way of illustration, a vessel is described as having Zero Readiness Level 5 (ZRL5), if the key components (main engine, fuel supply and containment systems etc.) only have Class Approval in Principle. By contrast, a vessel is described as ZRL2 if such systems are installed, and ZRL1 if commissioning trials have successfully been completed.
 - (b) The second step involved legal and contractual input from the perspective of major maritime jurisdictions.
5. The ZRLG and MDH's Accompanying Notes appear as Annexes to this Discussion Paper, and the two documents are cross-referred, where necessary.
6. It is not IWG's intention to create either technical standards or contractual templates of clauses. These will be matters for organisations such as the IMO, IACS and BIMCO, the work of whom the CMI will of course support.
7. As shipping is a global business, the Discussion Paper is a synthesis of contributions from various jurisdictions with heavy influence on shipbuilding, ship sale & purchase and charterparties (i.e., England, China, Germany, Japan, South Korea, Hong Kong, the Netherlands), which have been collected and distilled. Naturally, the intention is not to provide legal advice, but to outline the issues we have identified. A more detailed exposition of national laws appears in Annex Three².

The contractual context

8. The contractual context for addressing Readiness is primarily within shipbuilding contracts ("SBC"), where most of the activity has focused until now. However, Readiness will also become increasingly relevant in ship sale & purchase agreements/memoranda of agreement ("MOA") and Time Charterparties ("TC"). Moreover, financial arrangements that are linked to the construction and operation of vessels (loan agreements, leasing contracts, etc.), will equally require guidance as to the types of Readiness. Similar considerations arise for insurance contracts. Even beyond these types of transactions, defining Readiness will be relevant to the entire supply chain of services and materials, for example with original equipment manufacturers.
9. SBCs and MOAs are both contracts of sale for goods by description in common law jurisdictions respectively – SBCs a contract for work in some civil law jurisdictions. The key difference between an SBC and an MOA is that under an MOA the ship is already built and may be available for inspection. Thus, many of the issues highlighted below may be of less relevance to an MOA if the purchaser has had the opportunity to inspect the ship.
10. TCs are generally considered to be contracts for hire and services. In a similar way to SBCs and MOAs, the quality of the ship hired is set out in the description of the ship. The failure of the ship to meet those standards can have significant consequences on the charter.

² Additional input on national law of CMI members is welcome prior to the publication of this paper.

Outline of the contractual issues in relation to Readiness*Incorporation of Zero Readiness Levels Grid (ZRLG)*

11. Where the parties want to include zero-readiness capabilities of ships in the contract, they can use the ZRLG as a starting point for their negotiations. Regardless of whether the contract is subject to a common law jurisdiction or a civil law jurisdiction, the ZRLG can be incorporated pursuant to the conditions set by the applicable law. The choice of the particular box of the ZRLG must always be clear and unambiguous and include the title and applicable version (as it is anticipated that ZRLG will be updated over time). Often a mere cross-reference will be sufficient to include them. Parties are strongly encouraged, however, to consider not only the ZRLG, but also the Accompanying Notes in detail and set out relevant definitions and consequences of breach in the contract. Against this background, parties may consider attaching the applicable ZRLG as an annex to the agreement or include wording from the ZRLG directly in the contract for reasons of clarity and unambiguity and to prevent potential incorporation problems under the applicable law.
12. Civil law jurisdictions usually provide for a detailed regime to handle the (interpretation of) agreements and dealing with non-conformities. But just like common law jurisdictions, they also usually grant parties extensive freedom to deviate from, specify, and modify this regime. In the shipping industry for each SBCs, MOAs and TCs certain standard form contracts are widely used in both common law and civil law jurisdictions as the base contract in the market, which are then modified for the specific project and jurisdiction. For SBCs the Shipowners of Japan, CSTC or CMAC (SBC) forms; for MOAs, Norwegian Saleform or NIPPONSALE and for TCs NYPE (most commonly the 1946 version), but also the 1993 and 2015.
13. In this context, it is noteworthy that in South Korea, for example, several shipbuilding projects under a Green Ships policy have been initiated by governmental authorities, among others for survey, patrol and fishery guidance ships with small and mid-sized South Korean shipyards. These projects would not be contracted under the aforementioned widely used contract forms but under public procurement contracts with the Green Ships policy implemented in them.
14. Contract clauses regarding the ZRLG should be carefully drafted and, in all parties' (shipbuilder-buyer-financier, seller-purchaser, owner-charterer) interest, be clearly addressed during the contract negotiations. In the case of more substantial contracts that have been extensively negotiated, parties may consider documenting and retaining the various intermediate proposals and keep minutes of what the parties discussed (although bear in mind that in some jurisdictions these may not be legally relevant).
15. When drafting, parties should bear in mind that ambiguities in drafting of a limitation or exclusion will often be construed against the person seeking to rely on it. The definitions in the ZRLG and any references to it should clearly and accurately reflect the intention and interest of the contractual parties so as to minimise ambiguity and room for disputes for interpretation of the contract.

Description of the ship, fitness for purpose

16. Close attention needs to be paid to the description of the ship.
17. The UN Convention on the International Sale of Goods (CISG) does not apply to ships. Reference will need to be made to the applicable law in relation to any compulsory regime, implied terms or requirements. Generally, for SBCs and MOAs, the parties should ensure that (i) the goods will correspond to their description and (ii) the goods will be of satisfactory quality. Especially in SBCs, the zero-readiness level notation designated by the parties must be aligned with the ship's specifications. Parties must be particularly careful to include wording on each component/provision/design marked "Y" in the ZRLG for the designated zero-readiness level notation. Such wording should address the topics raised in the respective subsections of the Accompanying Notes. These subsections name the relevant

technical topics the parties should consider in the (design) negotiations and drafting process.

18. In respect of TCs, in addition to the contractual requirement that the vessel must correspond to its description, there may be an implied term that the vessel will be seaworthy. There are frequently modifications to this by the incorporation of the Hague/Hague-Visby Rules into the TC. The question of whether there is an obligation of "Greenworthiness" has not yet been explored by the courts. However, if the vessel is said to be zero-carbon fuel ready, and is not, there would be a breach of contract. It is paramount to ensure that the vessel corresponds to the notation as described in the relevant zero-readiness level. The parties are advised to include wording on the components/provisions on board of the ship and respectively its design which lead to the agreed ZRLG notation.
19. Especially in civil law jurisdictions such as Germany and the Netherlands, the description of the vessel with a certain zero-readiness level notation may be interpreted as an "agreed quality" of the vessel which shall be delivered. The agreed quality can be the basis for potential non-conformity claims in connection with e.g., acceptance, defaults, damages, termination and warranty. Parties should therefore pay attention with regard to wording on the intended use of the vessel by the buyer, purchaser or charterer: Wording on the intended flag state, class notation or similar may indicate, depending on the grade of detail, a certain responsibility of the builder, seller or charterer for the vessel's fitness for such purpose under the concept of "agreed quality", possibly even for future changes in regulation.

Warranties

20. SBCs, MOAs and TCs have slightly different approaches to warranties given by reason of the nature of the subject matter of the contracts.
21. With MOAs and TCs there is an existing ship. Therefore, the warranties given by the seller or owner as the case may be can be verified against an existing ship. The breach of such warranties may give rise to claims in damages. These damages would have to be shown to be caused by the breach. If the breach is such that it goes to the "heart" of the contract, it may entitle the innocent party to terminate the contract and claim damages for having lost that contract.
22. In an SBC, the situation is different as the warranties given cannot be verified until sea trials, or in some cases, some months after delivery. There are accordingly several things to consider when contracting for the construction of a ZRLG vessel:
 - a. Whether the failure of the builder to achieve the relevant ZRLG notation will be something that gives rise to damages alone, or whether it would give the buyer the right to walk away from the contract.
 - b. Whether a failure to meet the ZRLG falls with the remedial regime of the SBC.
 - c. Whether a liquidated damages regime may be appropriate for the failure to meet the ZRLG notation set out in the specifications.
 - d. Whether the ZRLG vessel is capable of conversion to actually using zero-carbon fuel, when in the lifetime of the vessel is that contemplated, whether the warranty of the builder as to the convertibility or "readiness" decays over time (this may only become discoverable at the time of the proposed conversion).
 - e. Whether warranties over third party supplied materials (valves, engines, OEM) assigned on delivery, expire.
23. In terms of remedial warranty, parties are encouraged to consider applicable warranty periods. Statutory warranty periods for remedial work may vary between different

jurisdictions and may affect the contractual agreement. It is inherent to some of the ZRLG zero-readiness equipment on board to become operational sometimes only years after delivery. The question should be asked when the warranty period for such equipment shall commence. In this respect, under Japanese law, for example, a warranty claim for latent defects is subject to a one-year time bar, but this period is generally counted from when such defect is known to the buyer. Regarding zero-readiness levels, however, an argument may be that any defect in relation to the equipment which will be used for complying with regulations which will come into force in some future should not be subject to the one-year time bar from delivery on the grounds that any such equipment will not be used at all right after her delivery and the buyer has no chance to be aware of any such defect within the agreed period. The court or tribunal may manipulate the time bar clause to read that, to the extent any such equipment is concerned, the one-year time bar may apply as from when the equipment has begun (or should have begun) to be used, but the prospect of such argument would highly depend upon the specific facts and agreed terms of the contract.

24. By contrast, under English law, the time-bar is either six years from the time when the cause of action accrued, or (if later) three years from the time when the defect became known, or ought to have become known.
25. MOAs often provide for a delivery "as is" regarding its condition and thus as the basis for potential warranty claims.
26. A further consideration in TCs will be whether during the lifetime of the TC either of the parties can require the vessel to be converted to zero-carbon fuel. Whether the owner can take the vessel out of service during the life of the TC, or whether the charterer can demand the vessel be converted. The other consideration will be who will pay for the conversion, and who will bear the risk of delay, or dysfunction.

Regulations

27. Given the rapidly changing regulatory environment, it is not inconceivable that the IMO, flag states or littoral states will implement legislation that requires action to be taken, whether that is that ships built after a certain time must meet certain levels of zero-readiness, or whether certain fuel types are mandated, or others banned, or more stringently regulated. Parties are strongly encouraged to consider how these changes may affect the construction costs, warranties and trading patterns and how the liabilities should be apportioned in the contractual relationship.
28. Under general principles, for example, neither English nor Hong Kong law will impose laws retroactively. However, consideration of the ability to in fact convert the ships to zero-carbon fuel, may be necessary in the event that nations pass laws that restrict the trading of hydrocarbon powered ships in their waters, or that impose strict limits on greenhouse gas output (even for onshore trading companies) that make hydrocarbon powered ships commercially unattractive. Particular consideration should be given to the ever-diminishing permitted outputs of greenhouse gas by Emissions Trading Systems and regulations such as FuelEU Maritime.
29. In the greater context of zero-readiness of ships it is worth noting that the China Classification Society (CCS) released their Rules for Green-Eco Ships 2022 on 30 December 2022, which took effect on 1 January 2023. The CCS Rules provide a very sophisticated and detailed system of definitions and rules for green-Eco ships, which covers detailed technical specifications and requirements to grant CCS notations on green-Eco ships. The green-Eco ships mentioned in the CCS Rules already include low carbon and zero carbon fuels, e.g., LNG, ammonia, methanol, fuel cell, hydrogen fuel cell and biofuels, etc.
30. On 26 December 2023, five ministries of the Chinese central government jointly published the Action Plan for Green Development of Shipbuilding Industry (2024-2030), which provides high-level guidelines and targets of green-Eco shipbuilding industry.

Conclusion and next steps

31. While the ultimate destination of zero-carbon shipping has been set by the IMO, as well as individual countries, the path is uncertain, and many obstacles stand in the way. Alongside the painstaking technical work required, a multitude of contractual arrangements will need to be reconsidered and adapted. The CMI IWG on Decarbonisation is hopeful that this Discussion Paper and the Zero Readiness Levels Grid will assist in the delineation of issues.

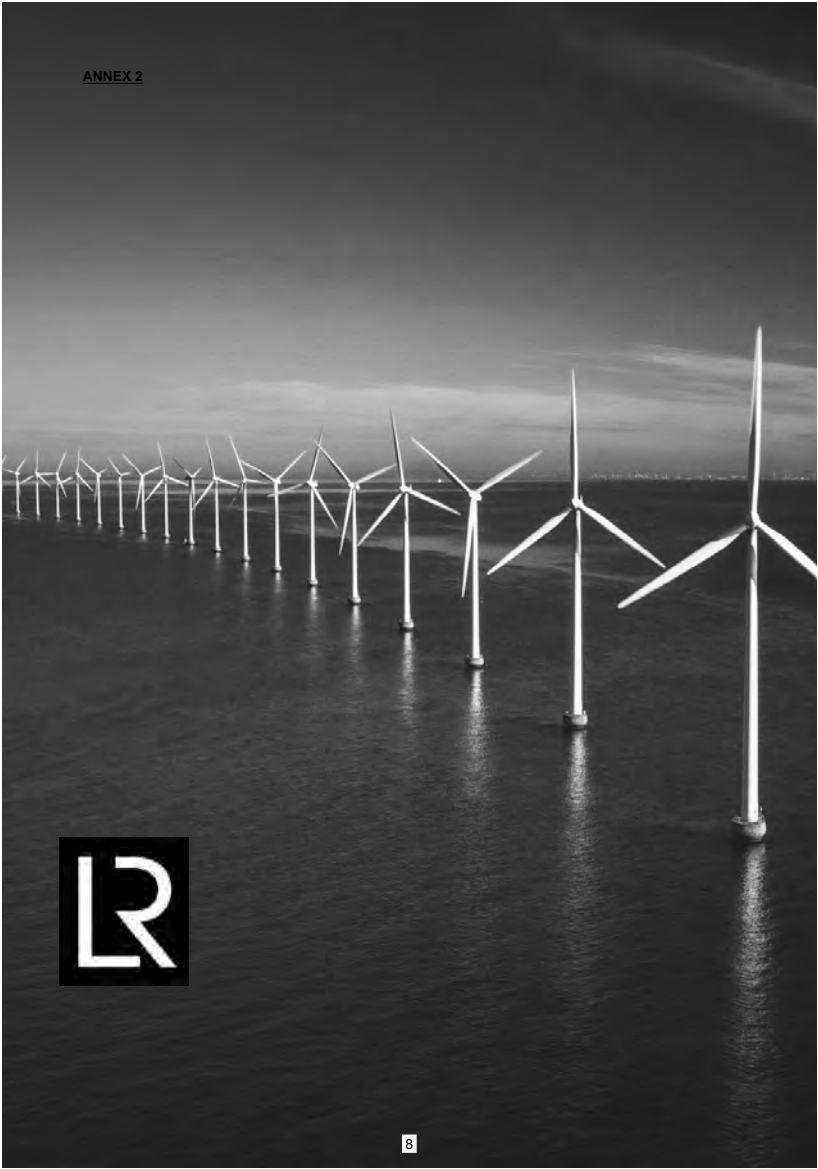
May 2024**Comité Maritime International
International Working Group on Maritime Decarbonisation –
Green Vessels Workstream**

ANNEX 1

ZERO READINESS LEVELS GRID

Designated fuel:		(Insert fuel here)				
Component (as defined above)	Criteria	ZRL 1	ZRL 2	ZRL 3	ZRL 4	ZRL 5
Entire vessel	Commissioning trials successfully completed.	Y				
Main engine(s)	Engine installed onboard	Y	Y			
	Engine designed & tested for designated fuel(s).	Y	Y	Y		
	⁽²⁾ AiP obtained	Y	Y	Y	Y	Y
Auxiliary engine(s)	Engine(s) installed onboard	Y	Y	Y		
	Engine designed & tested for designated fuel(s).	Y	Y	Y		
	AiP obtained	Y	Y	Y	Y	Y
FSS	Fuel supply components Installed	Y	Y			
	Provisions made for FSS components	Y	Y	Y		
	⁽³⁾ Concept/design approved & tested	Y	Y	Y	Y	
	AiP obtained	Y	Y	Y	Y	Y
Fuel containment	Fuel storage systems installed	Y	Y			
	Space provided for fuel storage systems	Y	Y	Y		
	⁽³⁾ Concept/design approved & tested.	Y	Y	Y	Y	
	AiP obtained	Y	Y	Y	Y	Y

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1. Introduction

While Classification Societies have for many years offered notations, descriptive notes or recognitions of the 'ready' status of a vessel to use a range of alternative fuels, there is limited harmonization and uptake, together with limited recognition or understanding of the real status of the 'ready' capability in the wider marine community.

This challenge has been recognised by the Comité Maritime International (CMI) which has established an International Working Group (IWG) on decarbonisation. This working paper has been prepared for the purposes of, and in collaboration with the CMI IWG on Decarbonisation. For more information see the CMI discussion paper¹.

The paper defines generic language and terms that can be used by the shipping industry to describe alternative fuel readiness, i.e. the ability to clearly identify and recognise that a vessel can use a low or zero carbon fuel once operation using this fuel becomes feasible for the operational profile of the vessel. These definitions will provide the clarity over zero-carbon fuel readiness needed to enable a successful energy transition, by

- Providing a common language for use by shipping in analysis of the status of shipping fleets and in contracts related to specific vessels.
- Providing clarity to investors over the status of assets being invested in.
- Supporting charterers, insurers, prospective owners and shipyards with decision making on the path to decarbonisation.
- Enabling the industry to communicate its decarbonisation progress to other industry sectors and to the general public.
- Providing clear criteria against which to evaluate claims made about the alternative fuel readiness of vessels.

¹ Zero Ready Framework, Contractual and Technical Considerations, Discussion Paper, Comité Maritime International (CMI) International Working Group (IWG) on decarbonisation.

We define readiness level by major components required onboard the vessel, for use with a recognised alternative fuel. The recognised alternative fuel may be the only fuel used by the vessel or may be one of the fuels used, for example in a vessel powered by dual fuel engine(s).

2. Recognised alternative fuel

The term 'recognised alternative fuel', in the ambit of this framework, refers to a fuel that serves as a substitute for fossil fuels (currently used in shipping) and potentially contributes to shipping's decarbonisation. This document is intended to support the introduction of alternative fuels with zero or near-zero Greenhouse Gas (GHG) emissions. Although certain low-carbon fossil fuels, such as natural gas, can assist in decarbonisation, these could only act as short or medium-term solutions. Moreover, the technologies to use LNG or LPG as fuel to power ships are well established and not new to the maritime industry. Hence, there is no strong case to include these fuels in the scope of this framework.

To clearly layout the objective of this framework, only new and emerging alternative fuels in the maritime landscape are considered. Fuels that can meet these criteria, with a suitable supply chain based on renewable energy, include:

- Ammonia
- Hydrogen
- Methanol

Descriptions of these fuels and an explanation of production processes and supply chains to achieve zero or near zero GHG emissions can be found in Zero Carbon Fuel Monitor:

<https://www.lr.org/en/expertise/maritime-energy-transition/maritime-decarbonisation-hub/zcfm/>

The United States Department of Energy has further recognised the above fuels as alternative fuels through their Alternative Fuels Data Center, mentioned in its website:

[Alternative Fuels Data Center: Alternative Fuels and Advanced Vehicles \(energy.gov\)](https://www.energy.gov/eere/alternative-fuels/alternative-fuels-and-advanced-vehicles)

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This document describes vessel equipment and functionality in relation to these recognised alternative fuels, but not how the vessel is operated. A separate operational readiness framework will be required for assessing the readiness of a ship operator to deploy the vessel.

It is appreciated that the fuel development is a constantly evolving domain and hence, this framework is not limited to the above-mentioned alternative fuels. As technology and processes develop, a fuel that is deemed fit to achieve the decarbonisation goal could be included in the scope of this framework.

3. Definition of fuel capability

3.1 Alternative fuel capable vessel

A vessel that is proven to be capable of bunkering and operating using the designated alternative fuel for all onboard energy usage in all operating modes for which the vessel is designed, including operating at sea and whilst in port. All the components and systems defined separately (below) have been tested and proven to work together and the vessel has been tested, commissioned, and proven to be seaworthy with the designated alternative fuel.

4. Criteria used in readiness levels

4.1 Engine model designed & tested for designated fuel

The manufacturer has designed, built and tested a similar engine from the same series using the designated alternative fuel. The similar engine may already be operational and engine performance figures have been published (this provides a clear pathway to conversion).

(Applies to components: (i) Main engine, (ii) Auxiliary engines)

4.2 Alternative fuel components installed

The required major components for operation on the designated alternative fuel have been installed on the vessel, are complete and are ready for operation as part of a fully integrated

system. The vessel continues to operate with this component in place without any adverse effects.

(Applies to components: (i) Fuel tanks/containment, (ii) Fuel Supply System (FSS))

4.3 Space provided for alternative fuel components

The space and structural support and/or reinforcement for the required components is present within the vessel enabling the component to be installed without structural changes to the vessel. The vessel continues to operate without any adverse effects.

(Applies to components: (i) Fuel tanks/containment, (ii) FSS)

4.4 Conceptual design for alternative fuel

A conceptual design for the component or system has been carried out and documented to current ship design standards. Evidence to show this criterion has been met could include an Approval in Principle (AiP) from a Classification Society for the component or system under question.

(Applies to components: (i) Fuel tanks/containment, (ii) FSS)

5. Component definitions

5.1 Entire Vessel

A ship fitted and integrated with all the systems and components required to safely use a designated alternative fuel, in all relevant operation modes.

5.2 Main engine(s)

The primary propulsion power unit(s) that provides power to the machinery that drives the ship through the water.

5.3 Auxiliary engine(s)

A secondary power unit that provides electrical power to the ship's various ancillary systems and equipment, beyond propulsion.

5.4 Fuel Supply System (FSS)

A suitable FSS (Fuel Supply System) for the designated alternative fuel has been installed. The system includes all the functions necessary to maintain operation of the fuel consumers using the designated fuels. This includes but is not limited to bunkering capability, pumps, heating, cooling, valves, pipework, monitoring, alarm and process control systems.

5.5 Fuel containment

The arrangement for the storage of the designated fuel including tank connection space, pressure relief venting systems, spill handling arrangements and, as applicable, cofferdams. It includes where fitted, a primary and secondary barrier, associated insulation and any intervening spaces, and adjacent structure if necessary for the support of these elements.

6. ⁽¹⁾Zero Readiness Levels (ZRL)

Designated fuel:		(Insert fuel here)				
Component (as defined above)	Criteria	ZRL 1	ZRL 2	ZRL 3	ZRL 4	ZRL 5
Entire vessel	Commissioning trials successfully completed.	Y				
Main engine(s)	Engine installed onboard	Y	Y			
	Engine designed & tested for designated fuel(s).	Y	Y	Y		

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	⁽²⁾ AiP obtained	Y	Y	Y	Y	Y
Auxiliary engine(s)	Engine(s) installed onboard	Y	Y	Y		
	Engine designed & tested for designated fuel(s).	Y	Y	Y		
	AiP obtained	Y	Y	Y	Y	Y
FSS	Fuel supply components Installed	Y	Y			
	Provisions made for FSS components	Y	Y	Y		
	⁽³⁾ Concept/design approved & tested	Y	Y	Y	Y	
	AiP obtained	Y	Y	Y	Y	Y
Fuel containment	Fuel storage systems installed	Y	Y			
	Space provided for fuel storage systems	Y	Y	Y		
	⁽³⁾ Concept/design approved & tested.	Y	Y	Y	Y	
	AiP obtained	Y	Y	Y	Y	Y

1. This table is aligned to new constructions alone and not for retrofits at this moment.

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2. AiP: Approval in Principle of the concept/design, as provided by a Classification Society. It is assumed that an AiP indicates the demonstration of 'capable of conversion to operate on alternative fuels' requirement.
3. The existing Class mechanisms allow for design appraisal and approval through issuing a Machinery General Design Appraisal certificate. To induce a higher level of confidence in the design, it is proposed to conduct prototype testing and subsequently submitting the test result reports to the Class Society for appraisal. This is a step further to Approval in Principle (AiP) and is deemed to be a minimum requirement for this readiness table.

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ANNEX 3**NOTES ON NATIONAL LAW IN RELATION TO THE ZERO READY FRAMEWORK****A. German/Dutch law**

1. As a starting point, it should be noted that both German and Dutch law provide for a complete regime to handle the (interpretation of) agreements and dealing with non-conformities. Parties have great freedom to deviate from, specify, and modify this regime.
2. Contract clauses regarding the Zero Readiness Level (ZRL) of vessels should be carefully drafted and, in both parties' (shipbuilder-buyer, seller-purchaser, owner-charterer) interest, be clearly addressed during the contract negotiations. In the case of more substantial contracts that have been extensively negotiated, parties may consider documenting and retaining the various intermediate proposals and keeping minutes of what the parties discussed.
3. The implementation of a ZRL in a German or Dutch law contract can be considered as an "agreed quality" (DE: vereinbarte Beschaffenheit, NL: garantie) of the vessel which shall be delivered. The agreed quality can be the basis for potential non-conformity claims in connection with e.g., acceptance, defaults, damages, termination and warranty. Parties should pay attention with regard to wording on the intended use of the vessel by the buyer, purchaser or charterer: Wording on the intended flag state, class notation or similar may indicate, depending on the grade of detail, a certain responsibility of the builder, seller or charterer for the vessel's fitness for such purpose under the concept of "agreed quality", possibly even for changes in regulation.
4. When drafting shipbuilding or ship sale & purchase contract parties should be aware that legal warranty periods for the vessel including all equipment on board will generally start with successful delivery. This will also apply for equipment on board which serves a certain readiness level but may only be put into service a considerable time after delivery. Should the parties – especially buyer or purchaser – want to have a custom-made solution for such equipment, this must be addressed explicitly in the contract for example by extended warranty periods for such equipment.
5. Against this background, parties are advised to use the ZRL as a starting point for their negotiations. A ZRL can be included in the agreement with reference to the LR Zero Ready Framework. The reference must be clear and unambiguous and include the title and applicable version (if more than one will have been released) of the LR Zero Ready Framework. Parties may consider attaching the applicable LR Zero Ready Framework as an annex to the agreement.
6. German law makes an important distinction between guaranteed quality (Garantie, strict liability) and general quality to be delivered (Gewährleistung, fault-based liability). Parties should consider which liability regime the ZRL shall be subject to. Dutch law on the other hand does not make such a clear distinction. Dutch contract law is generally based on a fault-based liability system, but parties are usually free to agree on a different system.
7. Especially for shipbuilding contracts: The ZRL designated by the parties must be aligned with the vessel's specifications. Parties are strongly advised to include wording on each component/provision/design marked "Y" in the table under no. 6 of the LR Zero Ready Framework for the designated ZRL. Such wording should address the topics raised in the respective subsections of art. 3-5 of the LR Zero Ready Framework. These subsections name the relevant technical topics the parties should consider in the (design) negotiations and drafting process.

8. Especially for ship sale & purchase contracts: The Parties are advised to include wording on the components/provisions on board of the vessel respectively its design which lead to the agreed ZRL qualification.

B. English and Hong Kong law

The following comments apply to both English and Hong Kong law unless otherwise specified.

Overview

1. Shipbuilding Contracts ("SBC") and Memoranda of Agreement ("MOA") (contracts for the sale and purchase of ships) are both contracts of sale for goods by description. The key difference between a Shipbuilding Contract and an MOA is that under an MOA the ship is already built and may be available for inspection. Thus, many of the issues highlighted below may be of less relevance to an MOA if the purchaser has had the opportunity to inspect the vessel.
2. Time Charters ("TC") are considered to be contracts for hire and services. In a similar way to SBCs and MOAs, the quality of the vessel hired is set out in the description of the vessel. The failure of the vessel to meet those standards can have significant consequences on the charter.
3. In order to ensure common standards and understanding of levels of zero-carbon fuel readiness ("ZRL"), certain notations have been developed by the MDH to bring clarity to a developing market. These drafting notes are to assist parties in considering adopting the MDH ZRL notation in SBCs and MOAs.

Form of Contract

4. Party autonomy is given very high precedent and there is no prescribed form for SBCs, MOAs or Time Charters. However, there is a strong preference for the Shipowners of Japan ("SAJ") form as the basis for SBCs and the Norwegian Saleform and less frequently the Nipponsele form for MOAs. Invariably these are adapted and amended for each transaction. Under the usual rules of contractual interpretation, specifically negotiated terms are given precedence over standard terms, and the principle of *contra proferentem* governs – that is any ambiguity in drafting of a limitation or exclusion is construed against the person seeking to rely on it.
5. These principles also apply to TCs. Again, there is no required format for a TC, however, the NYPE 1946 remains the most widely used form. This form is significantly out of date for zero-carbon fuels and will require significant modification in the event that it is used for a vessel capable of using zero-carbon fuels.
6. As such, there is no conceptual problem in referring to ZRL as drafted, even if it is a document that has not been included in the suite of documents during negotiation. Provided the parties can access ZRL, those terms can be incorporated simply by cross referring to them. Parties are strongly encouraged to consider them in detail and include relevant definitions and consequences of failure in their contracts.

Description of the vessel

7. Close attention needs to be paid to the description of the ship. Although Hong Kong has recently enacted the Convention on the International Sale of Goods, this law does not apply to the sale and purchase of ships, therefore the Sale of Goods Ordinance (which is materially identical to the English Sale of Goods Act) will continue to apply. Generally, there are very few terms implied into SBCs or MOAs, which are: (i) the goods will correspond to their description and (ii) the goods will be of satisfactory quality.

8. In respect of TCs, in addition to the contractual requirement that the vessel must correspond to its description, there is an implied term that the vessel will be seaworthy. There are frequently modifications to this by the incorporation of the Hague/Hague-Visby Rules into the TC. The question of whether there is an obligation of "Greenworthiness" has not yet been explored. However, if the vessel is said to be zero-carbon fuel ready, and is not, there would be a breach of contract. It is paramount to ensure that the vessel corresponds to the notation as described in the relevant ZRL.
9. In SBCs and MOAs, the tension that parties need to be particularly aware of is the difference between the general description of the vessel in the preamble and the technical specification of the vessel. There is no regime at law that will say which takes precedence, and frequently it is the description of the ship such as: *"this is a contract for a ship ready to burn zero carbon fuel" v. a ZRL3 notation, which has some of the components for zero-carbon fuel installed, but not yet operational.*
10. Given party autonomy and the vast implications of vessels not meeting their description, parties are encouraged to consider carefully each particular notation and whether it is appropriate to their transaction. They are encouraged to define as precisely as possible the expectations of both parties to minimise conflicts.
11. English and Hong Kong law will not step in to make parties agree something they have not agreed to. Therefore, leaving issues to be decided at a later stage, such as the level of readiness to be agreed is strongly discouraged. If a future decision needs to be put in a contract, parties must put in place a mechanism for the decision to be made, otherwise no decision will be made at all as the courts will consider such a term unenforceable.

Warranties

12. SBCs, MOAs and TCs have slightly different approaches to warranties given by reason of the nature of the contracts.
13. With MOAs and TCs, there is an existing vessel and the warranties given by the seller or owner as the case may be can be verified against an existing vessel. The breach of such warranties may give rise to claims in damages. These damages would have to be shown to be caused by the breach. If the breach is such that it goes to the "heart" of the contract, it may entitle the innocent party to terminate the contract and claim damages for having lost that contract.
14. In an SBC there are several things to consider when contracting for the construction of a ZRL vessel:
 - a. Whether the failure of the builder to achieve the relevant ZRL will be something that gives rise to damages alone, or whether it would give the buyer the right to walk away from the contract.
 - b. Whether a liquidated damages regime may be appropriate for the failure to meet the ZRL set out in the specifications.
 - c. Whether the ZRL vessel is capable of conversion to actually using zero-carbon fuel, when in the lifetime of the vessel is that contemplated, whether the warranty of the builder as to the convertibility or "readiness" decays over time.
 - d. Whether warranties over third party supplied materials (valves, engines, OEM) assigned on delivery, expire.
15. A further consideration in TCs will be whether during the lifetime of the TC either of the parties can require the vessel to be converted to zero-carbon fuel. Whether the owner can take the vessel out of service during the life of the TC, or whether the charterer can demand the vessel be converted. The other consideration will be who will pay for the conversion, and who will bear the risk of delay, or dysfunction.

Regulations

16. Given the rapidly changing regulatory environment, it is not inconceivable that the IMO, flag states or littoral states will implement legislation that requires action to be taken, whether that is that vessels built after a certain time must meet certain levels of zero-readiness, or whether certain fuel types are banned, or more stringently regulated. Parties are strongly encouraged to consider how these changes may affect their construction costs, warranties and trading patterns and how the liabilities should be apportioned.
17. Under general principles, neither English nor Hong Kong law will impose laws retroactively. However, consideration of the ability to in fact convert the vessels to zero-carbon fuel, may be necessary in the event that nations pass laws that restrict the trading of hydrocarbon powered vessels in their waters, or that impose strict limits on GHG output (even for onshore trading companies) that make hydrocarbon powered vessels commercially unattractive. Particular considerations should be given to the ever-diminishing permitted outputs of GHG by Emissions Trading Systems and regulations such as FuelEU.
18. Parties to SBCs may consider, if future conversion is possible or necessary, whether options may be considered with the original builder.
19. Parties to TCs may consider how their trading patterns may be affected by the availability of zero-carbon fuels. Parties to TCs will have to carefully consider the changing Emissions Trading Systems globally and FuelEU in particular.

Other potential claims

20. In the changing world of zero-carbon, it is possible that claims may arise from other rights and obligations than the contracts. For example, claims may arise from third parties claiming that the zero-readiness claims are insufficient – essentially greenwashing claims. As countries impose stricter regulations on Scope 3 emissions reporting, consideration may need to be given to the construction process, to the lifetime of the vessel prior to its acquisition and to how the vessel is traded. All of these considerations will need to be factored in. Under both English and Hong Kong law, the principles of tort may allow third parties to make against vessels and their owners.

C. Japanese law*Overview of Japanese law*

1. Japan is a civil law jurisdiction, the law of which stipulates a complete set of contractual terms for sale and construction of goods such as ships. However, Japanese law adopts the principle of freedom of contract. The terms in the law codes can therefore be deviated or modified unless such deviation or modification is against public policy in Japan or mandatory provisions of applicable codes.

Form of contracts, governing law and dispute resolution

2. It is understood that most shipyards in Japan use so-called SAJ form as the basis of their shipbuilding contract for commercial vessels. Japanese law and arbitration in Tokyo Maritime Arbitration Commission of The Japan Shipping Exchange Inc. ("TOMAC") are widely adopted as the governing law and dispute resolution.
3. For sale and purchase of ships, whilst SALEFORM is the most common standard form in the global market, NIPPONSALE is also widely used by Japanese shipowners as sellers, where Japanese law and TOMAC arbitration are often agreed as the shipbuilding contracts based on the SAJ form.

Regarding charterparties, NYPE and other standard form for each type of vessel is commonly used for ocean going vessels, where English law and London arbitration are often agreed to except some charterparties between Japanese owners and operators, where Japanese law and TOMAC arbitration are sometimes selected.

Definitions

4. Terms used in shipbuilding and S&P contracts are normally defined in various provisions in the contract, rather than being gathered in a set of definition clauses. The SAJ form and NIPPONSALE do not include reference to the Zero Readiness Level (ZRL) of vessel, so parties are free to negotiate and agree to adopt any definitions in their own contracts. The definitions should clearly and accurately reflect the intention and interest of the contractual parties so as to minimise ambiguity and room for disputes for interpretation of the contract.
5. As regards the set of definitions currently considered in LR, there should be no problems in adopting these in a contract governed by Japanese law unless such definition(s) is/are against public policy in Japan. That said, such issues/disputes are practically unlikely to arise in relation to public policy in Japan.

Warranty / Fitness for purpose

6. It is not currently common to have a warranty or fitness for purpose clause which specifically refers to ZRL in shipbuilding and S&P contracts.
7. In shipbuilding contracts, a standard warranty clause in the SAJ form is widely used as the basis instead, where the warranty of the builder expires within one year of the delivery.
8. In this respect, warranty claim for latent defects under Japanese contract law is subject to one-year time bar too, but this period is counted from when such defect is known to the buyer rather than the time of delivery as provided for in the SAJ form. Assuming the warranty under Japanese contract law applies, then a claim for breach of warranty concerning equipment related to ZRL shall be subject to a one-year time bar from when the shipowner is aware of any such defect.
9. Regarding ZRL, however, an argument may be that any defect in relation to the equipment which will be used for complying with regulations which will come into force in some future should not be subject to the one-year time bar from delivery on the grounds that any such equipment will not be used at all right after her delivery and the buyer has no chance to be aware of any such defect within the agreed period. The court or tribunal may manipulate the time bar clause to read that, to the extent any such equipment is concerned, one-year time bar may apply as from when the equipment has begun (or should have begun) to be used, but the prospect of such argument would highly depend upon the specific facts and agreed terms of the contract.
10. The SAJ form expressly excludes any other warranties which are not expressly provided for in the contract. General warranty for fitness for purpose would therefore be excluded in a shipbuilding contract based on the SAJ form unless the same is stipulated therein.
11. If the contract is interpreted that the builder warranted the vessel's fitness for purpose (i.e., she will comply with the relevant regulations which will become in force in the future), then unfitness which will appear in the future may be subject to claim. However, the interpretation will be made very carefully and all circumstances such as the industry standard, prospect of future regulation and the parties' act/omission as of the time of contract will be taken into account in determining breach of warranty.
12. As regards S&P contracts, a ship shall be delivered on an "as is" basis under the standard terms of SALEFORM and NIPPONSALE. Thus, no warranty issue should arise in respect of ZRL unless the parties specifically agree to a warranty term for ZRL.

Claim in tort and other grounds

13. A buyer of a ship may claim in tort in addition to or instead of a contractual claim if there is negligence on the part of the builder in the design, material or workmanship of the ship. Under Japanese law, a claim in tort is subject to the following time bar: the earlier of (i) three years from when the loss or damages and the injuring party are known to the innocent party or (ii) twenty years from the time of the tortious action/omission.
14. A buyer may also claim pursuant to Product Liability Act for defect which caused loss of or damages to human or property within the earlier of (i) three years from when such loss or damage and the injuring party are known to the innocent party or (ii) thirty years from delivery of the goods in question. However, this Act does not apply if the latent defect merely causes incompliance with relevant regulations but no loss of or damages to human or property arose.

D. Observations on practice in the PRC*Format*

1. In addition to many ship building projects adopting common law contract terms and applying English / HK / Singapore law, many Chinese shipyards also use Ship Building Contract (SBC) terms basing on CSTC or CMAC forms or even other forms on project basis, applying Chinese law and through dispute resolution methods of arbitration before Chinese arbitration institutes such as CMAC, CIETAC or litigation before Chinese courts, particularly those projects between Chinese shipyards and Chinese owners.
2. Similar to SBC, there are many ship sale and purchase (S&P) forms used by Chinese sellers or buyers applying Chinese law with arbitration or court litigation in China as dispute resolution.
3. In the business of ship chartering, often English/HK/Singapore law and arbitration could be adopted by international business for Charter Parties (CP), however, for Chinese domestic trades in particular, Chinese law and Chinese arbitration/court litigation are very commonly used.

Framework/Structure of definitions

4. In all areas of contracts, there is no unified definition system, definitions are included in various provisions. Usually, parties will agree on definitions contract by contract, though they may refer to specific industrial or state standards, where definitions could be provided for.
5. It is worth noting that the China Classification Society (CCS) released their Rules for Green-Eco Ships 2022 on 30 December 2022, which took effect on 1 January 2023. The CCS Rules provide a very sophisticated and detailed system of definitions and rules for green-Eco ships, which covers detailed technical specifications and requirements to grant CCS notations on green-Eco ships. And the green-Eco ships mentioned in the Rules already include low carbon and zero carbon fuels, e.g., LNG, ammonia, methanol, fuel cell, hydrogen fuel cell and biofuels, etc.
6. Then on 26 December 2023, five ministries of the Chinese central government jointly published the Action Plan for Green Development of Shipbuilding Industry (2024-2030), which provides high-level guidelines, targets of green-Eco shipbuilding industry.
7. Such CCS Rules and Action Plan will at some point need to be in line with the ZRL system or its definitions.

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Warranty issues?

8. Normally for PRC parties, warranty issues mainly rely on contractually agreed specifications or industrial/state standards.
9. So far, it is not common to have a specific warranty clause for ZRL.
10. However, with CCS Rules and other possible state or industrial standards in place, it is possible that the Chinese parties will need to adopt the specifications and requirements as in the Rules and/or the standards so as to qualify the ship's green-Eco notations or quality standards.
11. As for the time bar relating to possible latent defects, the basic rules under the Product Quality Law is that the claimant shall make such claims for personal or property damage within 2 years starting from the time that the damage is known or should have been known. On top of such 2-year limit, the maximum time period for filing claims is 10 years commencing from when the defected product was delivered to the consumer for the first time unless the expressly warranted safe use period has not yet expired. However, it might be questionable whether the rules under the Product Quality Law facing consumers are applicable to SBC as relating to industrial products all the time. If not, then the general time bar of 3 years under the Civil Code regulating including contract disputes should apply.
12. For that equipment installed for future use, it is advisable that the parties shall take into considerations as of how to manage the warranty issues at the contract negotiation stage.

Fitness for purpose issues? Or right to reject and refund?

13. Normally any warranties which are not included in the SBC or compulsory industrial / state standards are not binding or applicable.
14. With CCS Rules and other possible state or industrial standards in place, it is possible that the Chinese parties will need to adopt the specifications and requirements as in the Rules and/or the standards. In any case if the Rules and/or national/industrial standards will be of compulsory effect, then the same must be applied.

Upgradability and rework?

15. Upgradability would always be an issue per agreement between Builder and Buyer subject to adjustment of price, delivery schedule and other terms. Normally, upgradability would not necessarily just be limited to ZRL matters but could also be according to other possible change of rules and standards, industrially, commercially, or compulsorily.
16. The Action Plan is a high level guidance on Chinese shipbuilding industry, it might be recognized as a guideline for parties to negotiate their SBC, in which the shipbuilding works might be completed at later stage of the 5 year plan or even later, under such scenario and as the legislation and regulation are progressing very fast, the parties will need to take into considerations how to comply with such guidance as in the Action Plan as the rules/standards might be changed/upgraded as time goes by, and the parties will need to make advance arrangement for possible compulsory upgrades.

Adoption of these definitions under non-English/common law?

17. There should be no problems in adopting these in a contract governed by Chinese law unless such definition(s) is/are against public policy in China. That said, we consider such issues/disputes may practically arise as far as the contract is governed by Chinese law.

E. Observations on practice in Korea

What "base" SBC?

1. Even for Green Ships (eco-friendly vessels), when built by a large Korean shipbuilder, it is generally understood that the so-called Shipbuilders Association of Japan ("SAJ") form based shipbuilding contract ("SBC") are executed.
2. Most of the newbuilding projects for commercial vessels in Korea are SBCs based on the SAJ form, with exceptions for orders specified by buyers requiring in house forms, such as LNG carriers for the Qatar Energy/Qatar Gas's North Field Expansion Project or ice breaking LNGCs. These standard forms appear to be used for Green Ship SBCs, including those for dual-fuel propulsion vessels in most cases.
3. However, in Korea, following the Ministry of Oceans and Fisheries' recent policy on Green Ships, the Korean government has been actively replacing older government vessels (such as those operated by the Korea Coast Guard, the Ministry of Oceans and Fisheries, and local governments, including survey ships, patrol ships, fishery guidance ships, training ships, etc.) with Green Ships. Many new design/building projects have been actively initiated in recent years, primarily involving small and medium-sized Korean shipyards. Unlike commercial ship contracts, these public vessel contracts are not based on the SAJ form but follow the terms and conditions of public procurement contracts under the "THE ACT ON CONTRACTS TO WHICH THE STATE IS A PARTY."

Framework/Structure of definitions?

4. To date, we have not found any specific case where definition of the "Green Ships" is stipulated within the SBC signed by Korean shipbuilders.
5. It appears that the parties attempt to make reference of the equipment and systems related to eco-friendly fuel and systems in the Technical Specification of the SBC. Otherwise, the parties make reference to the compliance with the relevant rules such as International Maritime Organization's (IMO) eco-friendly regulations (such as the Energy Efficiency Design Index (EEDI) regulation). The notation of the classification society is also used.
6. In Korea, progress has been made in the context of the legislation compared to contractual terms and conditions. A statute has been enacted to define "Green Ships" in order to support the development and enhance the use of Green Ships and to introduce certification of the Green Ships and equipment.
 - a. According to Article 2 of the Act on Promotion of Development and Distribution of Environment-Friendly Ships (abbreviated as the "Green Ships Act"), "Green Ships" refer to the following types of ships:
 - (1) A ship designed using technology that reduces marine pollution or increases ship energy efficiency (measured in terms of energy used by a ship in connection with transportation expressed as a percentage of CO₂ generation), complying with the standards set by Joint Ordinance of the Ministry of Trade, Industry and Energy and the Ministry of Oceans and Fisheries (hereinafter referred to as "Joint Ordinance");
 - (2) A Ship using environmentally friendly energy sources prescribed by Joint Ordinance, such as liquefied natural gas, as their power source;
 - (3) An electric propulsion ship that uses electric energy charged from an electricity source as its power source;
 - (4) A hybrid ship using a power source by combining gasoline, diesel oil, liquefied petroleum gas, natural gas, or fuel prescribed by Joint Ordinance with electric energy (including electric energy charged from an electricity source);
 - (5) A fuel cell propulsion ship powered by electric energy generated through the

use of hydrogen, etc. as its power source;

Warranty issues / Fitness for purpose issues

7. For SBCs based on the SAJ form, requirements for the "Green Ships" will ultimately be addressed as issues of compliances with the rules & regulations and/or satisfaction of the Technical Specifications.
8. In case the requirements for "Green Ships" specified by the rules & regulations or Technical Specifications are not satisfied at the time of delivery, such non-compliance can become a ground for rejection at the time of delivery depending on the approval of the classification society and/or the seriousness of the non-compliance.
9. In cases where equipment or systems using eco-friendly fuel fail to operate after the delivery, the SAJ form-based SBCs will address the issue through warranty claims. From the buyer's perspective, a back-to-back warranty claim can be filed against the supplier of the said equipment or system.
10. After the delivery, a warranty issue may arise in case the delivered vessel fails to meet the required or expected level of Technical Specifications in relation to the assessment of carbon emissions or energy efficiency index or grade. We could not confirm any case where warranty claim was raised for the above reason. Presumably, this would be attributable to the very recent introduction of the EEXI and CII regulations.
 - a. In theory, disputes over such warranty claims could be raised in the future.
 - b. However, unlike other defects related to the breakdown of general equipment or lack of performance, it will be difficult for the buyers to support warranty claim based on the failure to meet the energy efficiency. This is because the above failure can be significantly influenced by post-delivery operation conditions, such as the quality of the fuel used, the vessel speed, the sailing conditions, etc. Thus, conducting a root cause analysis for such warranty claims shall be considerably more complex, making it difficult for the buyer to argue or prove the defect.
 - c. Even if the claim pertains to a breach of fitness for purpose under English law, rather than a warranty issue, the technical and practical challenges previously mentioned still apply.
 - d. Unlike speed warranty claims and/or fuel consumption warranty claims, it would not be easy to verify energy efficiency performance during commissioning. Therefore, performance guarantees/performance liquidated damages within SBCs may not be an appropriate tool in order to allocate the risk between the parties at the time of the delivery.
 - e. For instance, verification of the boil-off gas (BOG) rate of LNG carrier's cargo containment system (CCS) can be confirmed at the time of the actual operation of the vessel after the delivery. This is because the performance of BOG rate heavily depends on actual operating conditions by each voyage.
 - f. Moreover, while SAJ form-based SBCs include contractual termination provision in case performance liquidated damages surpass a specific threshold prior to the delivery, this may not apply in terms of the eco-friendly fuel capacity warranty as the measure of such capacity can be confirmed only after the delivery.

Upgradability / Rework Obligations

11. At this stage, the technically foreseeable upgradability requirement involves substitute of the ship's fuel by the eco-friendly energy source and/or installing additional carbon capture

and storage (CCS) equipment.

12. When it comes to either changing the ship's fuel or installing CCS equipment, it is impractical to incorporate a reserve design at the time of the conclusion of SBC. Moreover, it is highly impractical for buyers to commission the construction of such ships with allowances for extra space, displacement, and capacity of commercial vessels.

Converting Ship Fuel to Eco-friendly Alternatives

- a. It is widely recognized that converting a vessel's fuel to eco-friendly alternatives typically necessitates a retrofitting process, lasting over a year and incurring significant cost.
- b. Some shipowners are considering the retrofit (instead of replacing existing ships by newbuilding ships) of their operational fleet to use eco-friendly fuel, in collaboration with ship classification and shipyards.
- c. However, this approach is not deemed commercially or technically viable for all shipowners to consider and implement.

Plan to install CCS equipment

- d. Given that the CCS technology is still in its early stages, it remains difficult to ascertain which CCS equipment/system will become commercially viable for ships.
13. Regarding the low sulphur regulation, existing ships were required to make changes such as switching to low sulphur fuel or installing desulphurization scrubbers, while new ships were built to meet the new regulations at the time of the conclusion of the SBC. Similarly, the IMO regulations on carbon emissions can be introduced in a phased, step by step manner, without retroactive application. Therefore, the regulatory framework may differ between the newbuilding vessels and those already employed in operation. As such, it would be highly challenging to enact a statute or even to agree among the parties to the SBC, in the case of newbuildings, that builders should be obliged to retroactively implement environmental regulations that were not introduced or foreseen at the time of construction, simply because they have been introduced after completion or delivery.
 14. Consequently, it seems impractical to require that the builders incorporate eco-friendly regulations to be introduced ex post facto in the ships that have completed construction, unless such requirements were already reflected in the technical specifications or the rules & regulations which were effective at the time of construction. Even in case design changes should be made during construction due to the change of the law and regulation in this regard, this should be treated as change orders, with builder being compensated for the cost impacts and/or time impacts through additional payments and extension of the delivery dates.
 15. If new or stricter eco-friendly regulations on carbon emissions after a ship's completion and delivery, retrofitting work would need to be carried out at the shipyard that built the ship or at another shipyard. This means that such post-delivery regulations fall outside the standard scope of builder obligations under the SBC.

Adoption of these definitions under non-English/common law

16. See the Definitions of the Green Ships Act introduced in Section 2 above.

17. NATIONAL LAW STATUTORY ISSUES - PUBLIC POLICY?

- a. Even if certain national laws and regulations become mandatory, a SAJ form-based SBC (subject to English law) cannot retroactively impose burden to meet such regulations on builders. Instead, if the parties agree, then these regulations should be incorporated into the specifications or the rules & regulations at the time the SBC is executed.
- b. Since the risk ultimately lies with the buyer/owner, it is necessary for the

buyer/owner to sufficiently review and anticipate in advance the national law that will apply to the ports where the newly built vessels will enter. Therefore, if there is a national law stricter than the IMO regulation standards, such stricter national standard should be referred to in the specifications of the SBC.



COMITE MARITIME INTERNATIONAL

COMITE MARITIME INTERNATIONAL INTERNATIONAL WORKING GROUP ON MARITIME DECARBONISATION

LIABILITY AND COMPENSATION REGIMES FOR INCIDENTS ON BOARD VESSELS INVOLVING THE CARRIAGE OR CONSUMPTION OF ALTERNATIVE FUELS

GREEN FUELS WORKSTREAM

DRAFT DISCUSSION PAPER¹

1. Introduction

- 1.1. IMO's revised strategy of July 2023 includes an enhanced common ambition to reach net-zero GHG emissions from international shipping close to 2050.² In order to meet this goal, shipping needs to move away from fossil fuels. The revised strategy *inter alia* contains a commitment to ensure an uptake of alternative zero and near-zero GHG fuels by 2030. The most mentioned alternative fuels are LNG (as transition fuel), biofuels, hydrogen, methanol and ammonia. Technology and the order book for vessels with the

¹ The authors are the following members of the Comité Maritime International's International Working Group on Maritime Decarbonisation: Jolien Kruit (Attorney at Law Van Traa Advocaten, Rotterdam), Hannah Mosmans (Researcher, Erasmus University Rotterdam), Nick Gaskell (Emeritus Professor of Maritime and Commercial Law, University of Queensland), and Neil Henderson (Industry Liaison, Gard, London), with comments and feedback from the Chair, Haris Zografakis (Partner, Stephenson Harwood LLP, London). The authors have had the benefit of views from a number of interested parties.

² Resolution MEPC.377(80), adopted on 7 July 2023, '2023 IMO Strategy on Reduction of GHG Emissions from Ships'.

capacity to operate on an alternative fuel are advancing fast³; the international civil law framework is not.

- 1.2. There is currently no international civil liability regime in force to deal with incidents involving alternative fuels when being used as fuel, or when carried as cargo.⁴ Whilst we understand that considerable work is currently being undertaken at the IMO and elsewhere on crew training requirements and technical/design aspects to reduce risks and that changes are needed to MARPOL and SOLAS to regulate the safe use of alternative fuels, such efforts are separate from the question of civil liability (and these subjects therefore also fall outside the scope of this discussion paper).
- 1.3. This Discussion Paper analyses the gaps in the current civil liability regimes. The Paper first sets out the civil liability system that has been developed to deal with oil pollution incidents involving a ship. Following that, it shows that no such regime is in force to deal with incidents involving alternative fuels and sets out some of the consequences of not having such a regime in place.⁵ Additionally, it discusses potential options to cover the liability gaps. It is argued that there is a clear need for a wide international discussion on the necessity for a legal regime to deal with civil liability and compensation in case of an incident involving alternative fuels. This Discussion Paper concludes that there are strong arguments supporting a compelling need for the implementation of such a regime. No disaster involving alternative fuels should be necessary before the establishment of an appropriate legal framework.

2. Civil liability systems for oil pollution

- 2.1. The civil law on liability for environmental pollution caused by ships has developed over the last 50 years mainly in response to disastrous accidents.
- 2.2. The first steps to regulate civil liability for the consequences of polluting incidents were taken after the oil spill of the oil tanker "Torrey Canyon" in 1967. This accident exposed the insufficiency of general national liability regimes and thereby the necessity of specific regulations, both regarding the establishment of liability and the actual compensation of victims that had suffered damage. International and national regimes were created - and thereafter regularly updated - which effectively regulated these issues.
- 2.3. At international level, for oil carried in bulk and bunkers on board such vessels, the International Convention on Civil Liability for Oil Pollution Damage, 1992 ("CLC") now combines strict liability of the shipowner with limitation, compulsory insurance and direct action for victims against the shipowners' insurers. In addition, the International

³ In 2023, a total of 539 ships, equivalent to 45% of all newbuild orders placed by gross tonnage, could run on alternative fuels. In 2022, 55% of all newbuild orders by gross tonnage were alternative fuel capable, up from 27% in 2020 and 8% in 2016. Source: Offshore Energy.biz [Clarksons: 45% of ships ordered in 2023 embrace alternative fuels, with LNG still in the lead - Offshore Energy \(offshore-energy.biz\)](https://www.offshore-energy.biz).

⁴ For further detail on the not yet in-force HNS Convention, see Section 3, below.

⁵ The risks presented in this paper include worst case scenarios, but a realistic risk assessment will naturally take account of data and analysis still to be made available.

Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ("Fund Convention") 1992 adds an additional layer of compensation paid by the oil receivers, in case the limitation amount proves to be insufficient to make good damage caused. In 2003, a third layer of compensation was added by the International Oil Pollution Compensation Supplementary Fund, 2003 ("Supplementary Fund Protocol").⁶

- 2.4. 'Oil' is defined in Art.1 of the CLC as "any persistent hydrocarbon mineral such as crude oil, fuel oil, heavy diesel oil and lubricating oil whether carried as cargo or bunkers". This would not presently cover alternative fuels, including biofuels.
- 2.5. For pollution caused by bunker oil of 'non-CLC-vessels', the International Convention on Civil Liability for Bunker Oil Pollution Damage ("Bunkers Convention"), 2001 was created. Bunker oil is defined in Art. 1(5) of the Bunkers Convention as "any hydrocarbon mineral oil, including lubricating oil, used, or intended to be used for the operation or propulsion of the ship, and any residues of such oil". As with the CLC, this would not presently cover alternative fuels, even biofuels.
- 2.6. In the Bunkers Convention, strict liability of the shipowner is accompanied - again - by compulsory insurance. However, unlike the CLC and Fund Convention, the Bunkers Convention does not provide for a specific limitation amount and/or an additional compensation fund. It merely provides that limitation of liability under any other regime is not precluded.⁸ This means that claims deriving from bunker spills will, in principle,⁹ fall within the limitation regime either of the Convention on Limitation of Liability for Maritime Claims 1976, whether or not amended by the 1996 Protocol (jointly the "LLMC 1996")¹⁰, or domestic law together with non-loss of life or personal injury claims. The result is that the ship's LLMC limitation fund will be exhausted sooner¹¹
- 2.7. As such, whilst there are civil liability systems in place for oil and bunker oil-caused pollution, neither the CLC (and Fund Convention) nor the Bunkers Convention apply to alternative fuels. However, it is readily apparent that the needs that dictated the adoption

⁶ The maximum compensation payable by the 1992 Fund is 203 million SDR for incidents occurring on or after 1 November 2003, irrespective of the size of the ship. For incidents occurring before that date, the maximum amount payable is 135 million SDR. These maximum amounts include the sums actually paid by the shipowner under the 1992 CLC. The Supplementary Fund provides additional compensation beyond the amount available under the 1992 Fund Convention in 1992 Fund Member States which are also Parties to the Protocol. The total amount available for compensation for each incident is 750 million SDR, including the amounts payable under the 1992 Conventions. [IOPC FUNDS | 1992 Fund Convention and Supplementary Fund Protocol](#).

⁷ Vessels that do not fall within the definition of a ship of the CLC (art. 1(1) CLC 1992) and hence fall outside the CLC's scope and within the Bunker Convention's scope.

⁸ Art. 6 Bunkers Convention. No separate limitation provisions were added to the Convention as no provision had been made in the LLMC 1996 for a separate limitation for bunkers and it was considered that a clash of conventions was to be prevented. N. Gaskell, 'The Bunker Pollution Convention 2001 and limitation of liability', 15 *Journal of International Maritime Law*, 2009, p. 478.

⁹ Whether environmental pollution claims come within the scope of the LLMC will depend upon national law, which varies between nations.

¹⁰ References in this paper are to the LLMC 1976 as amended by the 1996 Protocol; Art. 6(1)(b) LLMC 1996.

¹¹ N. Gaskell, 'The Bunker Pollution Convention 2001 and limitation of liability', 15 *Journal of International Maritime Law*, 2009, p. 478.

of those conventions are present in the case of alternative fuels. Indeed, the features described in para. 2.3 above would be wholly desirable in the case of alternative fuels, especially in relation to those that potentially pose risks to health and the environment.

3. Civil liability for HNS incidents?

- 3.1. When the liability regime for oil spills was developed, it was generally acknowledged that a spill of hazardous and noxious substances ("HNS") carried as cargo have a greater potential than oil to cause greater threat to life and substantial property damage, but lesser pollution-related damage and clean-up costs. To address these risks, the HNS Convention was developed and adopted in 1996. However, it never entered into force due to lack of sufficient ratifications, in particular because of the practical difficulties of establishing the HNS Fund. In a 2010 Protocol, practical amendments¹² were made to facilitate adoption of an "HNS Convention 2010"¹³. Both the IMO¹⁴ and the European Council¹⁵ have urged (member) states to ratify the convention. It is currently anticipated that the HNS Convention 2010 may enter into force in 2025/2026, but past experience suggests that even this may be optimistic.¹⁶
- 3.2. The HNS Convention 2010 is modelled on the CLC and Fund Convention (discussed in section 2 above).¹⁷ In addition to pollution damage, it will also cover damage caused by other risks, including fire and explosion. The wide variety of HNS translates itself to a multiplicity of risks¹⁸: 1) death and personal injury and evacuation of local population, 2) economic losses (property damage as well as impact on fisheries, tourism and interruption of navigation and port traffic), and 3) clean-up costs and impacts on the environment.
- 3.3. Just as under the CLC, the shipowner is to be strictly liable for loss or damage caused by the transported HNS up to a certain amount, in respect of which it will be obliged to have insurance cover. If the damage is higher than the prescribed limits, which vary pursuant

¹² Packaged cargo does not need to be reported, or contribute to the fund; contributions for LNG are to be paid by the receiver; and states that do not submit reports will be unable to join/claim compensation. See also: [HNS-Convention-Overview_e.pdf](#) ([hnsconvention.org](#)).

¹³ The 2010 HNS Protocol will enter into force 18 months after the date on which it was ratified by at least 12 states. Among these twelve, there must be four States with not less than 2 million units of gross tonnage. Furthermore, contributors in the States that have ratified the Convention must, between them, have received during the preceding calendar year a minimum of 40 million tonnes of cargo consisting of bulk solids and other HNS liable for contributions to the general account. 2010 HNS Protocol, Article 21.

¹⁴ IMO Resolution, A.932(22).

¹⁵ Council decisions 2017/769 and 2017/770.

¹⁶ An agreement was made by Belgium, Germany and the Netherlands to ratify HNS 2010 jointly; Travaux Préparatoires to the Approval Act for the Dutch ratification and implementation of the HNS Convention, Parliamentary Papers 36 323-3, p. 2-3.

¹⁷ Under the 2010 HNS Convention, the shipowner is liable for the loss or damage up to a certain amount, which is covered by insurance (1st tier). A compensation fund (the HNS Fund) will provide additional compensation when the victims do not obtain full compensation from the shipowner or its insurer (2nd tier). The HNS Fund will be funded by those companies and other entities which receive HNS after sea transport in a Member State in excess of the thresholds laid down in the Convention. [HNS-Convention-Overview_e.pdf](#) ([hnsconvention.org](#)).

¹⁸ International Maritime Organization, 'The HNS Convention: why it is needed' (IMO, n.d.) < <https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/HNS%20ConventionWebE.pdf>> accessed 6 November 2023.

to the size of the ship, a second tier HNS Fund paid for by HNS receivers will provide additional compensation. The HNS Fund, when fully operational, will have four accounts: oil, LNG, LPG and a general account with two sectors (bulk solids and other HNS). In case there is insufficient contribution in the early years of the HNS Fund, the separate accounts may be postponed, and the HNS Fund may, therefore, have only two accounts: one separate account for oil and one general account including four sectors (LNG, LPG, bulk solids and other HNS).¹⁹

- 3.4. Whilst alternative fuels will be covered by the HNS Convention 2010 when being transported as cargoes, because the Convention applies only to the "carriage of goods as cargo" it will not cover bunker oil or alternative fuels onboard a ship as bunkers.

4. The risks associated with the carriage and use of alternative fuels

- 4.1. The alternative fuels that are currently expected to be most suitable (at least temporarily and/or partially) to replace oil as main shipping fuel are e-LNG, bio-LNG, biofuels, green ammonia, green methanol, green hydrogen. These all have their own characteristics and risk profile.²⁰ As concluded in the 'Future Fuels Risk Assessment 2022', prepared by the Together in Safety coalition: "Out of the fuels reviewed, methanol poses the least risk, followed by LNG, hydrogen and ammonia risk ratings increasing."
- 4.2. The principal characteristics and risks associated with each of the alternative fuels are briefly considered in turn (more detailed descriptions can be found in Annexe I). These vary in nature and in the event of an incident, so too does the potential financial impact:
- 4.3. **Ammonia:** a highly toxic chemical which, in ambient conditions, is a toxic gas. In liquid form, risks of exposure increase if under pressure, as large volumes can be rapidly released into the air. Even though established industry best practices can safely handle ammonia, it remains corrosive, toxic and potentially life-threatening upon inhalation in high concentrations (more than 0.1 volume-percent).²¹ Ammonia can cause serious damage to biodiversity: spills of ammonia into seawater can cause increased growth of bacteria, plankton and macrophytes, potentially smothering habitats; the toxicity of ammonia can alter the dynamics of food chains, which is expected to have a greater impact on fish than oil spills, but a lesser (but still serious) impact on invertebrates and birds.²²

¹⁹ Non-pollution damage caused by persistent oil, e.g. damage caused by fire or explosion, is covered by the 2010 HNS Convention. Pollution damage caused by persistent oil is covered by the CLC-IOPC regime.

²⁰ We have specifically not included nuclear fueled ships in this Discussion Paper.

²¹ Z. Wan, Y. Tao, J. Shao, Y. Zhang, H. You, 'Ammonia as an effective hydrogen carrier and a clean fuel for solid oxide fuel cells' (2021) 228 Energy Conversion and Management, 113729.

Although a land-based example, the 1992 explosion and consequent ammonia vapour cloud in Dakar, Senegal killed 129 and injured 1,150 is indicative of the potential risk to life in the event of a serious incident in a populated area, such as a city port. Fuller details of the incident can be found at: [Process Safety Beacon: Learning from the Worst Ammonia Accident | AIChE](#)

²² Report by the Environmental Defense Fund, 'Ammonia at Sea: studying the potential impact of ammonia as a shipping fuel on marine ecosystems', 2022

- 4.4. **Methanol**: a colourless liquid which is highly flammable.²³ Methanol is toxic: exposure can cause lethal consequences by ingestion of more than 20 milliliters; lesser amounts can cause irreversible blindness. Unlike ammonia, methanol is water soluble and readily biodegradable.²⁴
- 4.5. **Hydrogen**: a flammable, potentially explosive, non-toxic gas in ambient conditions. The main hydrogen risk is explosion as a result of medium-pressure leaks. This can be a particular challenge where dispersal space is constrained, such as on board ships.²⁵
- 4.6. **Biofuels**²⁶: these fuels are produced from biomass, which can include biological waste and crops.²⁷ In case of a bunker tanker rupture, there is a substantial risk of pollution at sea, including forming slicks and coating and/or poisoning aquatic life. Biofuels are generally biodegradable, lessening long-term impacts.^{28,29} Otherwise, risks of damage to life and property are similar in profile to traditional bunker fuels.
- 4.7. **LNG**: a significant spill can cause large-scale evaporation upon contact with water, resulting in explosion without combustion and pressure-wave damage.³⁰ Conventional ignition of LNG vapours can put nearby humans and property at risk.³¹
- 4.8. Available incident data on the carriage of HNS cargoes shows that to date serious incidents involving alternative fuel cargoes have fortunately been limited³², although it should be noted that the usage of HNS as alternative fuels may have a differing risk profile to the carriage of HNS cargoes.
- 4.9. The significant difference between alternative fuels and mineral oil bunkers is the greater risks of injury, death and property damage from alternative fuels, due to their higher toxicity and/or flammability. Whilst there are still serious environmental risks in the event of a spill of alternative fuels, based on current evidence these would appear to be lesser

²³ P. Balcombe, J. Brierley, C. Lewis, L. Skatvedt, J. Speirs, A. Hawkes, I. Staffell, 'How to decarbonise international shipping: Options for fuels, technologies and policies' (2019) 182 Energy Conversion and Management 72, 78.

²⁴ John J Clary, 'General Animal and Aquatic Toxicity' in John J Clary (eds), *The Toxicology of Methanol* (Wiley) 73.

²⁵ DNV, 'Hydrogen Forecast to 2050 – Energy Transition Outlook 2022', DNV Høvik 2022, 21.

²⁶ Microsoft Word - HNS Finder - Guidance notes (hnsconvention.org)

²⁷ In this Discussion Paper, the term biofuels does not include methanol, which is considered separately.

²⁸ [Qiuwen Wang et al.], 'The use of alternative fuels for maritime decarbonization: Special marine environmental risks and solutions from an international law perspective' (2023) Front. Mar. Sci., Sec. Marine Affairs and Policy, Volume 9 – 2022 <https://doi.org/10.3389/fmars.2022.1082453>

²⁹ European Maritime Safety Agency, 'Update on Potential of Biofuels for Shipping [updated]', 2023, available at: Latest News - Update on Potential of Biofuels for Shipping [updated] - EMSA - European Maritime Safety Agency (europa.eu).

³⁰ Cheng Wang, Yonglin Ju, Yunzhun Fu, 'Dynamic modeling and analysis of LNG fuel tank pressurization under marine conditions' (2021) 232 Energy 121029.

³¹ Laurens Vandebroek, Jan Berghmans, 'Safety Aspects of the use of LNG for Marine Propulsion' (2012) 45 Procedia Engineering 21, 22.

³² Incident data relating to the carriage of HNS cargoes collated by the International Group of P&I Clubs for the period January 2010 to September 2019, which was submitted to the 107th session of the IMO Legal Committee, records 220 incidents for damage governed by the HNS Convention. Of these, only 6 incidents were attributable to products that could be used as an alternative fuel. Only 1 incident of the 220 would have exceeded the shipowner's limit of liability (and this did not relate to an alternative fuel product).

than those posed by bunker oil. This brings into focus the need for a civil liability regime which reflects the potentially greater 'human losses' and the need for adequate and guaranteed compensation for the victims of such an incident.

5. Civil liability for alternative fuels under existing law?

- 5.1. The five types of alternative fuel covered in this Discussion Paper (LNG, methanol, ammonia, hydrogen, and biofuels) do not fall within the Bunkers Convention or the CLC³³. That is because the definitions in the two conventions are limited to mineral oils³⁴, meaning that not even biofuels are covered.³⁵
- 5.2. Those alternative fuels will fall within the scope of the HNS Convention 2010, but only when carried in bulk as cargo and not when carried as maritime fuel (i.e. as bunkers).³⁶
- 5.3. If the HNS Convention 2010 enters into force, this does not mean that all issues concerning alternative fuels will have been solved. Many countries will not (yet) have acceded to the HNS Convention 2010. In addition, the convention does not cover all potential incidents. First, its scope is geographically limited; it does not cover, for example, spills on the high seas. Secondly, the HNS Convention 2010 does not include HNS for all ships and/or for all purposes. Exceptions are possible for, inter alia, small and special purpose vessels. Thirdly and most notably, the convention does not relate to HNS which are on board vessels as 'bunkers'.³⁷
- 5.4. It follows that any incident involving the five types of alternative fuel onboard a vessel as bunkers will not be covered by an existing IMO regime creating strict liability with compulsory insurance and rights of direct action. There will be a need to rely on existing national law with many of the pre-Torrey Canyon disadvantages, or to risk a lack of uniformity through the creation of regional laws (e.g. in the EU).
- 5.5. In case of a shipping incident involving alternative fuel, a party that suffered damage would need to establish that a ship-interested party was liable for the incident (i.e. that the party was at least negligent) in the relevant jurisdiction under the applicable law. This may not be straightforward. If that hurdle is cleared, a shipowner may be entitled to limit its liability under the LLMC 1996 (so long as the relevant State is a party to the LLMC) or a national regime. Existing limits may prove to be insufficient to compensate all damage suffered and costs incurred to mitigate such damage, especially in the case of a large incident involving a smaller ship³⁸. Moreover, a suit against a single ship

³³ Notably, biofuels do not come within the definition of "persistent hydrocarbon mineral" or "hydrocarbon mineral oil" used respectively in the CLC and the Bunkers Convention.

³⁴ See para 2.4 and 2.5 above.

³⁵ Biofuels do not come within the definition of "persistent hydrocarbon mineral" or "hydrocarbon mineral oil" used respectively in the CLC and the Bunkers Convention.

³⁶ Art. 1(5)(a) 2010 HNS Convention.

³⁷ The Bunkers Convention does not cover alternative fuels either.

³⁸ The LLMC limits were last increased in 2012 under the tacit amendment procedure; further work is needed to determine the potential liabilities in the event of a significant incident involving alternative fuels when being used as bunkers.

company with no other assets could be unattractive in the absence of a right of direct action against an insurer.

- 5.6. The history of oil pollution incidents shows that having a civil liability regime in place, comprising strict liability, mandatory insurance and insurance certification, a right of direct action and tiered funds, helps to mitigate the consequences of an incident. At present, no such regime is available at an international level for alternative fuels³⁹. As well as the environmental pollution risks of alternative fuels, the greater risks vis-à-vis injury, death or property damage, as compared to traditional mineral oil bunkers, means that this could significantly disadvantage victims of an incident involving alternative fuels. A lack of robustness in the liability and compensation arrangements may harm confidence and may therefore represent a barrier in the adoption and uptake of alternative fuels.

6. Possible ways forward

6.1. Compelling need for action

- 6.1.1. As alternative fuels become more widely used as fuel,⁴⁰ the volume of alternative fuels on board vessels at sea will increase, and with it the risk of an alternative fuel spill⁴¹ – either as cargo or as fuel. The cost of damage to life and property caused by such a spill (even regardless of the potential ecological damage) may be very high. If an incident occurs with an alternative fuel, at present there is no special international civil liability regime in place. This would mean that liability would need to be proven under the applicable domestic law regime, which may be difficult and may lead to forum shopping. Even if liability is established, this does not guarantee recovery since there is no general overall obligation for shipowners to ensure that adequate insurance is in place.⁴² Affected third parties may not be adequately compensated, as LLMC or domestic law limits may well be insufficient and there is no second-tier fund for major incidents which exceed existing limits⁴³. As well as the unsatisfactory situation of potentially inadequate compensation of the victims of such an incident, this will also likely cause negative publicity for the use of alternative fuels. This potential barrier would not be ideal as it may result

³⁹ Although insurance already provides cover for HNS substances which are carried as cargoes under the existing regime of the LLMC and national laws, the propensity or ability of insurers to pay out compensation to victims of incidents can vary.

⁴⁰ IRENA estimates that the demand for ammonia would increase fourfold by mid-century to 688 million tonnes — with 197 million tonnes of that used as a shipping fuel and 127 million tonnes as a hydrogen carrier. Report IRENA and Ammonia Energy Association, 'Innovation Outlook: Renewable Ammonia', International Renewable Energy Agency, Abu Dhabi, Ammonia Energy Association, Brooklyn 2022.

⁴¹ R. Parkes, 'SPECIAL REPORT | Burns, blindness and agonising deaths: is it safe to ship hydrogen-derived ammonia around the world?', *Recharge* 27 July 2022.

⁴² Whether such insurance is in place depends on the tortfeasor and the applicable regime. The EU has obliged its member states to arrange insurance at least up to the amount of LLMC limits; Directive 2009/20/EC of 23 April 2009 on the insurance of shipowners for maritime claims. See on the topic of compulsory insurance in general E. Rosaeg, 'Compulsory Maritime Insurance', Scandinavian Institute of Maritime Law Yearbook 2000, 2000, Compulsory Marine Insurance.

⁴³ Whether these limits are under the LLMC or national laws.

in reluctance amongst owners, operators, insurers and financiers to support greater adoption of alternative fuels at a time when shipping needs alternative fuels to decarbonize soonest.

6.1.2. It follows that maintaining the status quo does not appear to be an attractive option. Leaving it to the various nation states to legislate is likely to lead to uncertainty, fragmentation, forum shopping and the absence of a level playing field.

6.1.3. This begs the question as to what international framework could be put in place to deal with civil liability issues deriving from alternative fuel incidents. If and when the HNS Convention 2010 enters into force, incidents involving alternative fuels carried as cargo will be duly regulated. It is therefore, first of all, recommended that the ratification of the HNS Convention 2010 is actively promoted. But this does not solve the question of finding an appropriate regime for alternative fuels being used as bunkers.

6.1.4. For the situations not already covered by the HNS Convention 2010, several possibilities to regulate the civil liability are set out and briefly discussed below. It is assumed that an international alternative fuel regime should be similar to and build upon the existing civil liability regimes as these have found (varying levels of) acceptance in the market. Any solution should, at least, provide for strict liability, with limitation for the shipowner, as well as compulsory insurance and a right of direct action against the vessel's insurers.

6.2. It will be for member states of the IMO to decide upon the need for, and content of, any possible changes to existing international law. The possibilities discussed below are intended to create awareness, encourage discussion and are offered as part of the CMI's function of providing assistance to the international legal community in identifying challenges and possible solutions.

6.3. Include alternative fuels in the Bunkers Convention

6.3.1. Alternative fuels could be included in the Bunkers Convention by way of a protocol. Alternative fuels would need to be included either in the definition of Article 1, paragraph 5, possibly by way of an annex, as the list of alternative fuels may be long. It would also require amendments to other articles. A protocol would require states to also ratify the Bunkers Convention if they would like to implement a civil liability regime for alternative fuels.

6.3.2. A disadvantage of bringing alternative fuels under the Bunkers Convention would be that the Convention only deals with pollution damage. In case of an alternative fuel spill, personal injury and loss of life claims should also be covered comprehensively by an international regime.

6.3.3. Another general disadvantage of inclusion of alternative fuels in the Bunkers Convention is that it does not provide for a separate limitation of liability regime,

unlike the CLC and the not yet in-force HNS Convention. This leads to legal uncertainty on the compensation level and the risk of forum shopping. In addition, LLMC and national limits may provide insufficient compensation in case of a serious incident involving alternative fuels.⁴⁴ If an alternative fuels protocol to the Bunkers Convention were to be developed, it might be appropriate for the IMO to consider this alongside its next periodic consideration of the LLMC limits.

- 6.3.4. Lastly, the Bunker Convention's official name, i.e. "International Convention on Civil Liability for Bunker Oil Pollution" would not reflect an amended convention covering alternative fuels, liability beyond pollution damage, and would need to be changed.

6.4. Include alternative fuels (as fuels) in the HNS Convention 2010

- 6.4.1. Alternative fuels on board vessels as fuels could be included in the HNS Convention 2010 by way of a new protocol.

- 6.4.2. Alternative fuels (when used as bunkers) could be added to the definition of Article 1, paragraph 5. This would require parties that have already ratified HNS to ratify the amended version, which may lead to delayed implementation. To circumvent this problem, a (short) protocol could be designed to supersede the HNS Protocol 2010. States could be advised not to ratify the HNS Convention 2010, but only to accede to the new protocol which would create a composite HNS Convention [202x], replacing all previous versions. However, the use of a protocol would require states to also ratify HNS, which may negatively impact the number of ratifications for an alternative fuel regime (to date the HNS Convention 2010 has not proved to be popular amongst states) and further delay the HNS Convention coming into force.

- 6.4.3. It should also be noted that without further amendment, inclusion of alternative fuels in the HNS Convention 2010 would result in the two-tier compensation regime applying to alternative fuels (when used as bunkers). If so, a funding mechanism would need to be put in place for the alternative fuels, which might be based on contributions from the owners of the alternative fuel or perhaps the suppliers. This would introduce extra complexity, but without it cargo receivers (who contribute to the second-tier fund) are likely to be reluctant to pay into a fund that also covers alternative fuels. Notably, attempts to include bunkers within the scope of the HNS Convention when it was originally drafted were rejected by states and so a similar approach might be taken for alternative fuels used as bunkers.

- 6.4.4. To avoid this issue, the HNS Protocol [202x] could be formulated to only include alternative fuels in the first tier and not the second-tier fund. The first-tier limits would be considerably higher than existing LLMC limits.

⁴⁴ N. Gaskell, 'The Bunker Pollution Convention 2001 and limitation of liability', 15 *Journal of International Maritime Law*, 2009.

6.4.5. An advantage of including alternative fuels in the HNS Convention 2010 is that the scope of damage in the HNS Convention 2010 is much wider than that in the Bunkers Convention, covering inter alia damage due to fire and explosions in addition to pollution damage.⁴⁵

6.5. *A separate civil liability system for alternative fuels: an Alternative Fuels Convention*

6.5.1. A new convention could be developed to regulate the civil liability of incidents involving alternative fuels. Such a convention would complement the existing regimes, but being free-standing would not depend on/impact their ratification. Basing an Alternative Fuels Convention on the Bunkers Convention has the advantage that the approach taken in that Convention is widely accepted. A separate regime may mean it is easier to apply a similar regime to non-HNS covered situations.⁴⁶

6.5.2. A separate convention could provide for limitation based on any applicable national or international regime (in line with art. 6 of the Bunkers Convention). This would create the same level of compensation as for bunker spills which, as identified above, might be inadequate in some circumstances and would need to be increased substantially. If instead an Alternative Fuels Convention were to provide for limits other than those in the LLMC, this would require amendment of the LLMC in any event.⁴⁷

6.5.3. Because of the greater risks to life (and property) posed by alternative fuels, an Alternative Fuel Convention should not be limited to pollution damage (as the CLC and Bunkers Convention are), but should also include loss of life and personal injuries.

6.6. *A Voluntary International Agreement solution*

6.6.1. An option may also be to opt for a voluntary international agreement, possibly on an interim basis whilst awaiting a permanent convention solution. There have been a number of such voluntary agreements in respect of oil pollution to provide interim or additional insurance-backed compensation to victims. Following the Torrey Canyon Spill in 1967, two voluntary agreements, TOVALOP and CRISTAL were set up by tanker and oil industries to encourage prompt and effective compensation for clean-up and damages, even before the CLC 1969 and the Fund Convention 10971 entered into force.⁴⁸

⁴⁵ Art. 1(6) cf. Art. 3 2010 HNS Convention.

⁴⁶ In view of the advantages of the HNS Convention 2010, including the higher compensation levels for victims and the second tier, it does not seem sensible to also include alternative fuels carried as cargo within the scope of a new regime.

⁴⁷ LLMC 1976 nor 1996 provides for a reservation for a separate liability system for alternative fuels outside the scope of the HNS Convention.

⁴⁸ Catherine Redgwell 'Compensation for oil pollution damage: Quantifying environmental harm' (1992) 16 Marine Policy 2 90, 91.

6.6.2. A similar industry-led international solution could be taken for alternative fuels. Care would be needed to ensure that the agreed liabilities were fully backed by appropriate insurance. An agreement could potentially be implemented sooner than the time necessary to agree a treaty -based solution (and for it to enter into force).

6.6.3. In principle, it does not seem ideal to make adequate compensation permanently dependent upon a voluntary agreement, rather than a treaty. An agreement is naturally confined to the terms of those creating it and there can be uncertainty, e.g. as to those entitled to claim and the extent of any loss covered. This would not create an internationally negotiated level playing field. However, in the absence of any other option, one or more voluntary international agreements to provide the necessary compensation structure might be a last resort or serve as a temporary bridging mechanism until an international regime has been implemented. If such a voluntary scheme is created it should be designed only as an interim measure before any treaty solution and its terms should not be drafted unilaterally by one sector (e.g. shipowners and insurers) but be subject to wider discussion, for example at the IMO Legal Committee.

7. Recommendations

7.1 There is clearly a need for wide international discussion on the necessity for a legal regime to deal with civil liability and compensation in case of an incident involving alternative fuels. This Discussion Paper concludes that there are strong arguments in favour of there being a compelling need for such a regime. The CMI IWG on Maritime Decarbonisation recommends that:

1. CMI supports the IMO in relation to legal aspects of alternative fuels, including the issues raised in this Discussion Paper.
2. CMI contributes to creating awareness as to the current lack of a suitable international civil liability and compensation framework in place to deal with the consequences of shipping incidents involving alternative fuels, either on board vessels as cargo or as fuel;
3. CMI actively promotes adoption by states of the HNS Convention 2010;
4. CMI promotes discussion of the need to consider the development of an international civil liability regime for alternative fuels which are on board vessels to be used as fuel (bunkers)⁴⁹ including through the wider circulation of a finalized Discussion Paper.
5. The CMI IWG on Maritime Decarbonisation continues to work with interested parties, including the ICS and IG, to work on an aligned approach that could be of use to the international community.

⁴⁹ The IRENA report (fn 3) does not mention the lack of a liability and compensation framework.

9 May 2024
Comité Maritime International
International Working Group on Maritime Decarbonisation –
Green Fuels Workstream

Annexes:

1. Characteristics and risks of alternative fuels.
2. Overview of ratifications.
3. Comparison of liability and compensation systems for vessel source pollution.

ANNEX 1: Characteristics and risks of alternative fuels

- 1.1. **Ammonia:** a highly toxic chemical which, in ambient conditions, is a toxic gas. Ammonia can be used as a gaseous or liquid fuel and can be made from coal (brown ammonia), natural gas (grey ammonia), natural gas with carbon capture and storage (blue ammonia) and from renewable energy sources (green ammonia). Due to lower volumetric efficiency and energy density, ships using ammonia need higher fuel storage capacity. In liquid form, risks of exposure increase if under pressure, as large volumes can be rapidly released into the air. Ammonia has a relatively low reactivity and narrow flammability range compared to other toxic gasses.⁵⁰ Even though established industry best practices can safely handle ammonia, it remains corrosive, toxic and potentially life-threatening upon inhalation in high concentrations (more than 0.1 volume-percent).⁵¹ In the case of spills into water, ammonia can cause severe pH changes, which disrupts marine life.⁵² Spills into seawater can cause increased growth of bacteria, plankton and macrophytes, potentially smothering habitats. The toxicity of ammonia can alter the dynamics of food chains, which is expected to have a greater impact on fish than oil spills, but a lesser impact on invertebrates and birds.⁵³ In case of an explosion on board, the damage figures would likely be very high, especially if the incident occurs in a port. Although a land-based example, the risk to human life is illustrated by the 1992 accident in Dakar, Senegal involving the release of 22 metric tonnes of anhydrous ammonia from a tanker truck at a peanut processing mill. Debris from the explosion pierced other nearby process equipment also containing ammonia. The dense ammonia cloud quickly spread over the oil mill, surrounding businesses and the nearby community. Ultimately, 129 people were killed and 1,150 were injured.⁵⁴
- 1.2. **Methanol:** a colourless liquid and can be produced from the same sources as ammonia. Methanol as a fuel is highly flammable, burning with a low-temperature clear blue flame and is smokeless.⁵⁵ Methanol is toxic: exposure can cause lethal consequences by ingestion of more than 20 millilitres; lesser amounts can cause irreversible blindness. Methanol vapour dispersion and cloud behaviour can cause toxic exposure. Unlike ammonia, methanol is water soluble and readily biodegradable.⁵⁶

⁵⁰ A. Valera-Medina, H. Xiao, M. Owen-Jones, W.I.F. David, P.J. Bowen, 'Ammonia for power' (2018) 69 Progress in Energy and Combustion Science 63.

⁵¹ Z. Wan, Y. Tao, J. Shao, Y. Zhang, H. You, 'Ammonia as an effective hydrogen carrier and a clean fuel for solid oxide fuel cells' (2021) 228 Energy Conversion and Management, 113729.

⁵² Report IRENA and Ammonia Energy Association, 'Innovation Outlook: Renewable Ammonia', International Renewable Energy Agency, Abu Dhabi, Ammonia Energy Association, Brooklyn 2022, 30.

⁵³ Report by the Environmental Defense Fund, 'Ammonia at Sea: studying the potential impact of ammonia as a shipping fuel on marine ecosystems', 2022.

⁵⁴ Fuller details of the incident can be found at: Process Safety Beacon: Learning from the Worst Ammonia Accident | AIChE.

⁵⁵ P. Balcombe, J. Brierley, C. Lewis, L. Skatvedt, J. Speirs, A. Hawkes, I. Staffell, 'How to decarbonise international shipping: Options for fuels, technologies and policies' (2019) 182 Energy Conversion and Management 72, 78.

⁵⁶ John J Clary, 'General Animal and Aquatic Toxicity' in John J Clary (eds), *The Toxicology of Methanol* (Wiley) 73.

- 1.3. **Hydrogen**: a flammable, potentially explosive, non-toxic gas in ambient conditions. Hydrogen can be burned in combustion engines, blended with other fuels, or used in fuel cells. Explosion can occur as a result of medium-pressure leaks; in a worst-case scenario, hydrogen flames can burn an order of magnitude faster than natural gas and significantly faster than most commonly used hydrocarbons. If concentrations of hydrogen are maintained below 15% in the air, nonetheless, explosion risks are relatively low. This is a particular challenge, however, where dispersal space is constrained such as onboard ships.⁵⁷
- 1.4. **Biofuels**⁵⁸: these produced from biomass, which can include biological waste and crops. Unlike fossil fuel bunkers, biofuels can exhibit instability and microbe growth, which can result in corrosion to vessels' tanks and equipment caused by microbes (microbial corrosion) and the presence of water in the biofuel (causing chemical corrosion). In the event of a rupture of the bunker tankers, there is a substantial risk of pollution at sea. This is initially similar to a fossil fuel spill, including forming slicks and coating and/or poisoning aquatic life, although the particular consequences will depend upon the type of biofuel. In the longer term, the outcome is likely to be less harmful than a fossil fuel spill since biofuels are generally biodegradable.⁵⁹ ⁶⁰ The dangers of biofuels in terms of risks of damage to life and property are otherwise similar in profile to traditional bunker fuels.
- 1.5. **LNG**: liquified natural gas (-162 degrees Celsius). Compared to other fuels, it has the highest energy density and is not toxic or corrosive. A significant spill can cause large-scale evaporation of LNG upon contact with water, resulting in explosion without combustion and damage caused by the consequent pressure waves.⁶¹ If LNG vapours are ignited upon release, a pool fire will result, putting nearby humans and property at risk; ⁶² if ignition of vapours is slower, the vapour cloud will cause a flash fire upon ignition.

⁵⁷ DNV, 'Hydrogen Forecast to 2050 – Energy Transition Outlook 2022', DNV Høvik 2022, 21.

⁵⁸ Microsoft Word – HNS Finder – Guidance notes (hnsconvention.org).

⁵⁹ [Qiuwen Wang et al.], 'The use of alternative fuels for maritime decarbonization: Special marine environmental risks and solutions from an international law perspective' (2023) *Front. Mar. Sci.*, Sec. Marine Affairs and Policy, Volume 9 – 2022 <https://doi.org/10.3389/fmars.2022.1082453>.

⁶⁰ European Maritime Safety Agency, 'Update on Potential of Biofuels for Shipping [updated]', 2023, available at: [Latest News - Update on Potential of Biofuels for Shipping \[updated\]](#) - EMSA - European Maritime Safety Agency ([europa.eu](https://emsa.europa.eu))

⁶¹ Cheng Wang, Yonglin Ju, Yunzhun Fu, 'Dynamic modeling and analysis of LNG fuel tank pressurization under marine conditions' (2021) 232 *Energy* 121029.

⁶² Laurens Vandebroek, Jan Berghmans, 'Safety Aspects of the use of LNG for Marine Propulsion' (2012) 45 *Procedia Engineering* 21, 22.

ANNEX 2: Overview of ratifications and accessions

Only the CLC, Fund Conventions and Bunkers Conventions are currently in force. Table 2 displays the number of ratifications and accessions per convention.

There are 32 States party to the 1969 CLC, which is the older version of the 1992 CLC. These Member States are mostly located in the Arabian and Asian subcontinents. 26 States are a party to the 1992 CLC, but not to the 1992 Fund Convention. By far the most States are a party to the 1992 CLC and the Fund Convention: 121 countries. Of those 121 countries, 32 States are a party to the Supplementary Fund. Most notably, the first three most oil importing countries, i.e., China, India and the USA, have not ratified either CLC-Fund regime.

The Bunkers Convention has been ratified by 109 countries.

The HNS Convention was adopted in May 1996, but had not entered into force by 2009 due to an insufficient number of ratifications. In April 2010, a Protocol to the HNS Convention was adopted, that was designed to address the practical problems that had prevented many States from ratifying the original Convention.⁶³ The 2010 HNS Protocol will enter into force 18 months after the date on which it was ratified by at least 12 states. In October 2023, France became the seventh State and in November 2023, Slovakia became the eight State to ratify the 2010 HNS Protocol, joining Canada, Denmark, Estonia, Norway, South Africa and Turkey, who have already deposited instruments of ratification to the Protocol. Belgium, Germany, the Netherlands, Sweden and Finland are involved in the ratification process.

Table 2 Number of ratifications per liability convention⁶⁴

Convention	Number of Ratifications
Oil	
Civil Liability Convention 1992 and the Fund Convention 1992	121
Supplementary Fund Protocol 2003	34
Civil Liability Convention 1992 but not to the Fund Convention 1992	26
Civil Liability Convention 1969	32
Bunker oil	
Bunkers Convention	109
Hazardous and noxious substances	
HNS Convention 1996	14
HNS Protocol 2010	8

⁶³ 2010 HNS Protocol.

⁶⁴ International Oil Pollution Compensation Funds, 'Parties to the international liability and compensation Conventions' (IOPC Funds, 2023) < <https://iopcfunds.org/membership-map/> > accessed 13 December 2023; International Maritime Organization, 'Status of Conventions' (IMO, 2023) < <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx> > accessed 13 December 2023

CMI IWG on Decarbonization

ANNEX 3: Comparison of liability and compensation systems for vessel source pollution

Regime	CLC-Fund Conventions	Bunkers Convention Definitions	HNS Convention
Vessel	any seagoing vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is provided that it has no residues of such carriage of oil in bulk aboard	any seagoing vessel and seaborne craft, of any type whatsoever	any seagoing vessel and seaborne craft, of any type whatsoever
Type of system	Three tiers 1. Shipowner 2. Fund 3. Supplementary Fund	Single tier 1. Shipowner	Two tiers 1. Shipowner 2. HNS Fund
Coverage	Oil, meaning any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship	Bunker oil, meaning any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship and any residues of such oil	Hazardous and noxious substances, meaning any substances, materials and articles carried on board of ship as cargo and residues from the previous carriage in bulk of substances referred to in (a) (i) to (iii) and (v) to (viii) of HNS 2010, including various types of LNG, methanol and ammonia.
Who	Shipowner, meaning the person registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company in which that State is registered as the ship's operator, "owner" shall mean such company	Shipowner, meaning the owner, including the registered owner, bareboat charterer, manager and operator of the ship	Shipowner, meaning the person registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company
Damages covered	a) loss or damage caused outside the ship by contamination, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and b) costs of preventive measures (i.e. any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage) and further loss or damage caused by preventive measures	Compensation coverage a) loss or damage caused outside the ship by contamination, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and b) costs of preventive measures (i.e. any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage) and further loss or damage caused by preventive measures	a) loss of life or personal injury on board or outside the ship b) loss of or damage to property outside the ship c) loss or damage by contamination of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and d) costs of preventive measures (i.e. any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage) and further loss or damage caused by preventive measures.

Regime	CLC-Fund Conventions			Bunkers Convention			HNS Convention		
(Limitation of liability)									
Liability	Strict			Strict			Strict		
Limitation based on	Type	Ship size	Compensation limit	Type	Ship size	Compensation limit	Type	Ship size	Compensation limit
	Shipowner's liability (CLC)	< 5,000 GT 5,000 – 140,000 GT	4,510,000 SDR 4,510,000 SDR + 631 SDR per ton	Shipowner's liability (LLMC)	< 500 GT 501 – 30,000 GT	167,000 SDR 167,000 SDR + 167 SDR per ton	Shipowner's liability (HNS)	< 2,000 GT 2,001 – 50,000 GT	10,000,000 SDR 10,000,000 SDR + 1,500 SDR per ton
		> 140,000 GT	89,770,000 SDR		30,001 – 70,000 GT >70,000 GT	+ 125 per ton 83 SDR per ton		> 50,000 GT	+ 360 SDR per ton (maximum 100,000,000 SDR)
	1992 Fund (including maximum payable by shipowner)		203,000,000 SDR	Limitation can also be based on national law.					
	Supplementary Fund (shipowner's liability + Fund)		750,000,000 SDR						
Insurance and direct action against the insurer									
Insurance based on	To cover his liability for pollution damage under this Convention			To cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under LLMC			Cover maximum liability that may be incurred by the shipowner under the HNS limitation regime		
Direct action	Yes			Yes			Yes		



COMITE MARITIME INTERNATIONAL

COMITE MARITIME INTERNATIONAL INTERNATIONAL WORKING GROUP ON MARITIME DECARBONISATION

GREEN CONTRACTS WORKSTREAM

DRAFT DISCUSSION PAPER¹

1. The purpose of this Discussion Paper is to present to the CMI Colloquium in Gothenburg this year the current intentions of the IWG on Maritime Decarbonisation with regard to future work in the particular context of Green Contracts. The hope is that the CMI Conference will give a green light to the IWG to carry its work forward across the IWG's work remit. The Discussion Paper has been produced by a small group of experts, whose names appear at its end, in contracts for the carriage of goods by sea and for the sale of such goods. This group is one of three "workstreams" in the IWG, chaired by Haris Zografakis of Stephenson Harwood. The other two workstreams have looked at decarbonisation from the perspective of Green Fuels and Green Vessels.
2. It will cause no surprise that the IWG has organised three workstreams. A move as close to 0% carbon as possible in shipping has obvious implications for the development of greener fuels and for the construction and sale of vessels. The groups working on those two workstreams will be exploring what changes those developments may require or suggest in the context of regulations and contracts regarding, say, bunker supplies, pollution, warranties in the construction and sale of ships. Within such a greener shipping space, however, the actual *users* of ships also need to acclimatise the contracts under which those ships are used to make those contracts reflect the new realities,

¹ The authors are the following members of the Comité Maritime International's International Working Group on Maritime Decarbonisation: Charles Debattista, Alexandra Couvadelli, Helen Barden, Daniel-Luc Farrugia.

opportunities, and rights and obligations presented by a greener environment in commercial shipping.

3. Neither would it be right to assume that such contractual adaptations are a matter for the future. While further developments are needed in the areas of fuels and ships, decarbonisation is already with us: carbon efficiency. Through regulatory pressure (including, but not limited to the IMO and the EU), the existing fleet must reduce its carbon footprint today. The era of energy efficiency has already begun, and this has immediate contractual repercussions. Thus, for example, are warranties as to speed and consumption fit for the purpose of energy efficiency today, and will they be geared towards the same objectives once greener fuels are used on greener ships? Again, are laytime and demurrage clauses in voyage charterparties and in sale contracts appropriate in a world where the urgency of arrival is replaced by today's imperative of carbon efficiency and when tomorrow's fuels and vessels put a premium on environmental considerations?
4. The dual nature of the contractual challenge of decarbonisation (immediate reduction in carbon intensity and the fitness for purpose for tomorrow's Green Fuels and Green Ships) means that the work of *this* workstream, Green Contracts, must progress in parallel with that of the Green Fuels and Green Vessels.
5. We should like to stress that the finished product of the workstream on Green Contracts will *not* take the form of draft clauses for use in charterparties, bills of lading or sale contracts. The world of international trade already has the benefit of many organisations, on international and on the national planes, whose upfront task it is precisely to draft such clauses. Moreover, many of the major commodity and chartering players already have enormous experience in drafting their own carriage and sale contracts – and it would be presumptuous for us to tread where commercial entities will want to lead in order to safeguard their interests and that of international trade. The finished product of the Green Contracts workstream would, rather, be more in the nature of an agenda suggesting the direction in which the (further) drafting of contract clauses might helpfully point, having regard to the overall objective of a greener shipping environment in the context of the proposals emanating across the piece from the Green Fuels and Green Vessels workstreams.
6. The Green Contracts workstream has identified four classes of contract which, in the view of our group, will need to be considered as we move together towards the greener shipping environment which is the objective of the IWG. These classes of contract are:

[a] Time and Voyage Charterparties;

- [b] insofar as the Rules are regularly incorporated in whole or in part into charterparties, the Hague-Visby Rules;
 - [c] Bills of Lading (encompassing container bills, bulk bills and charter bills); and
 - [d] sale contracts.
7. We list below particular aspects of such contracts or instruments which immediately obviously would require re-visiting in a greener commercial shipping environment. We stress again
- [i] that we are not seeking to propose draft clauses, but to identify the concepts which may need to be considered to underpin any such re-drafts undertaken by others; and
 - [ii] that the areas we list below are not set in stone, given that other areas might need to be looked at as well as the work of the other two workstreams within this IWG proceed with their work on Green Fuels and Green Vessels.

Time and Voyage Charters

Time charterparties

8. In a time charterparty there is usually an obligation around delivery of the vessel in a "good" or "efficient" condition and then an ongoing obligation to maintain the ship in a something like "a thoroughly efficient state". In a greener world, we would expect that "good" or "efficient" in this context will garner a new or wider meaning. We are entering a world where vessel efficiency is in particularly sharp focus and to understand a vessel's efficiency, data is key. Will a vessel be capable of being termed "efficient" if it does not have the requisite sensors on board to gather the necessary data? Will the ability to connect to shore power become a standard expectation? These are just a couple of preliminary questions that spring to mind; however, what is clear is that a vessel considered "efficient" now is unlikely to be considered "efficient" in a few years' time, without change being made.
9. The concept of "due despatch" or "utmost despatch" is a common notion found in charterparties. However, in a "greener" world, is there a place for such a concept, or should it be changed or broadened in some way? Optimising a vessel's efficiency, whether to reduce emissions or to reduce fuel costs due to the high cost of future fuels, may include operational changes such as slow steaming, giving orders in compliance with the Ship Energy Efficient Management Plan (SEEMP), or taking a more efficient route. In addition, we cannot forget that such operational changes also have other positive environmental consequences such as reducing underwater radiated noise and lowering the risk of whale strikes. Such operational changes may be driven by regulation (take

the IMO's MARPOL and the provisions for a Carbon Intensity Indicator, or the EU Emissions Trading System, for example), or by a company's own net zero/environmental agenda, or, most likely, both. The utmost or due despatch obligation will often work against such an environmental or "greener" agenda – and needs therefore to be revisited.

10. Speed and consumption warranties are found in most time charterparties, and in some voyage charterparties. There are a few reasons why the traditional view of a speed and consumption warranty may need re-thinking in a greener context. First, eco speeds are very often un-warranted and yet we find more ships being ordered at eco speeds for efficiency purposes. There is also an inevitable link between the data used to determine efficiency and the use of that data for speed and consumption claims. How does the link work between speed and consumption claims and environmental regulations, e.g. CII and EU ETS?
11. In a "greener" world, will Charterers have the same freedoms when it comes to giving commercial orders to the ship? We are already seeing this questioned in the context of the CII regulations. Will Charterers' orders be subject to certain environmental considerations, such as in compliance with the SEEMP?

Voyage charterparties

12. In voyage charterparties, there is an obligation to proceed to the loadport with reasonable or due despatch and without deviation. That duty, combined with being "expected ready to load" means that the approach voyage must be timely commenced, so that it can reasonably be expected that the vessel, proceeding normally, will be ready to load at the date specified in the charterparty. Bespoke clauses can be added to charterparties to implement, for example, just in time provisions (see for example the BIMCO Just in Time Arrival Clause 2021). However, in a greener world, should the default position not be to optimise the efficiency of the approach voyage?
13. The laytime and demurrage regime of voyage charterparties does not fit in a greener world. Demurrage incentivises carbon inefficiency and so is directly at odds with minimising carbon intensity, maximising energy efficiency and reducing emissions. Is the demurrage regime quite simply out of date? Should it be replaced with an alternative where both parties are rewarded for efficiency/the benefit of efficiency is shared between the parties?

The incorporated Hague-Visby Rules

14. It is well-known that charterparties routinely incorporate certain parts of the Hague or the Hague-Visby Rules which adopt through such incorporation the nature of contractual

riders to standard charterparties. The Rules have benefited from detailed interpretation in the context of contractual relationships governed by bills of lading, to which the Rules apply in many jurisdictions as part of the law applicable to such bill of lading contracts. When the Rules are incorporated into charterparties, however, whether in part or in whole, and where those charterparties exist in the greener era of decarbonised shipping, how will traditional concepts, in common currency in the shipping world for more than a century since the Hague Rules were agreed, fall to be interpreted and applied?

15. Most obviously, for example, will the duty to “handle, stow, carry, keep, care for” the goods operate where goods are carried on a greener vessel using greener fuel? Will newer fuels require different checks to be made to ensure that goods with certain physical properties are not at risk of damage by newer, more eco-friendly fuels? Finally, will the exception of liability for losses caused “in the navigation and management of the ship” look or sound different where vessels make slower progress than might otherwise have been expected because of greener imperatives?
16. Moving from the goods to the vessel itself, what price now the duty of making the ship seaworthy before and at the beginning of the voyage? Does the concept import into the charterparty new duties of providing a “green”-worthy ship? And what will the duty “properly” to “equip and supply” the vessel mean in a greener environment?

Bills of Lading

17. **Container Bills of Lading** provide much room for essential revision in anticipation of the broader integration of greener ships and fuels. Currently, these documents often overlook critical factors such as fuel consumption, emissions reduction, and compliance with environmental standards. Updates will be needed to embed provisions necessitating the use of eco-friendly fuels, conducting thorough environmental impact assessments, and fostering the adoption of green ship technologies. Additionally, there is a movement towards incorporating measures for carbon offsetting to address emissions.
18. **Bulk Bills of Lading** will also need to be looked at in the context of the availability of greener ships and fuels. At present these bills overlook key areas such as fuel efficiency standards, alternative fuel options, and sustainable cargo handling practices. Fuel efficiency, the promotion of alternative fuels like LNG or biofuels, and incentivization of emission-reducing technologies all require a hard look at the existing grammar of bulk bills. Furthermore, clauses may need to be geared towards sustainable cargo handling and storage, alongside measures for managing environmental risks associated with bulk shipping activities.

19. **Charter Bills of Lading** likewise need re-visiting in response to evolving environmental standards. Charter bills currently lack clauses addressing vessel selection, environmental monitoring, and green chartering practices in the context of green chartering practices. Additionally, there is a call for ensuring environmental compliance throughout charter periods and specific provisions for green chartering agreements. Finally, where greener terms are used in charterparties, would some care be needed to ensure to iron out any possible inconsistencies between such incorporated terms and express terms in the charter bill?

Sale contracts

20. The central concepts which will immediately obviously be likely to need close consideration here are two, namely times of arrival and delay; and the obligation to make and tender a reasonable contract of carriage.

Timely arrival

21. It is well-known that international sale contracts come broadly in two shapes and sizes, shipment and arrival contracts. The first group, exemplified in the purely maritime field by the CIF/FOB terms and in the multimodal world by the CIP/FCA terms, impose no obligation on the Seller to guarantee arrival at the intended destination by a particular time – or indeed at all. The second, on the other hand, the “D” terms to use Incoterms 2020 language, *do* impose on the seller the duty to ensure that the goods arrive at their intended destination by a certain date, with risk of loss or damage residing with the seller until that date. If a seller who has chartered a vessel on greener terms than are typical at the moment cannot, as the journey has gone, reach destination on time, what does that do to its arrival obligation under the sale contract? Will arrival dates – and the obligations surrounding them – need to be attenuated in some form so as to reduce exposure under the sale contract to losses or liabilities arising under the charterparty? What happens under the sale contract to the risks of delay in a greener shipping world?

22. Closely related to that issue is another, namely laytime and demurrage clauses. It is well-known that voyage charterers who have sold, whether under shipment or arrival terms, will want to pass to their buyers any liabilities they incur towards owners under their voyage charterparty caused by congestion at discharge ports. However, if charterparties are modified and adapted to a world where carbon intensity and energy efficiency become a priority preferred to fast arrival, quicker NORs and therefore more demurrage), what impact might that have on the incidence of demurrage as between the seller/charterer and the buyer? In essence, how will delay at either end, loading or discharge, be dealt with in greener charterparties and, further down the chain of

contracts, in greener sale contracts? Also, who pays now for ballast voyages, whether within the charterparty or a sale context?

23. Finally, this link between charters and sale contracts brings us to the third concept which will clearly need to be explored. Sellers CIF/CIP (or FOB/FCA who have undertaken to the buyer that they will organise the carriage of the goods) are typically under an express or implied duty to tender a "reasonable" contract of carriage. In a greener commercial shipping world, what content will that adjective "reasonable" contain? If a buyer were to face import difficulties in port States setting a premium on environmental considerations, would that buyer have cause for complaint against the seller (possibly against a falling commodity market) or would the buyer only have cause for complaint if the sale contract had imposed an express duty on the seller in respect of any particular environmental requirement regarding the vessel engaged by the seller? In other words, will we get used to the inclusion of such requirements in sale contracts in the same way we are currently used to terms in sale contracts regarding the age or flag of the vessel engaged?

Conclusion

24. It is hoped that this Discussion Paper will have persuaded those attending the Gothenburg Colloquium of this reality: a greener shipping world with greener ships using greener fuels can only work if the important players in international trade, sellers and buyers who charter vessels, are comfortable using charter and sale contracts which respond to the needs caused and expectations raised by environmental considerations. If this Discussion Paper has succeeded in that task, we look to the CMI to give the green light we need to carry that work forward.

6 May 2024
Comité Maritime International
International Working Group on Maritime Decarbonisation –
Green Contracts Workstream

EU MARITIME LAW

HIGHLIGHTING SOME OF THE MORE IMPORTANT RECENT DEVELOPMENTS...

HENNING JESSEN



EU Maritime Law

—
highlighting some of the
more important recent
developments...

Prof. Dr. Henning Jessen, LL.M. (Tulane)
World Maritime University, Malmö, Sweden



Title I of Part I of the Consolidated TFEU (Competences)

Exclusive competence

"The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act."

- the customs union
- establishing the **competition rules** necessary for the functioning of the internal market
- monetary policy for the Member States whose currency is the euro
- the conservation of marine biological resources under the common fisheries policy
- common commercial policy
- conclusion of certain international agreements

Important Development Steps for the EU Maritime Transport Policy						
Policy measure	1974 ECJ confirms general applicability of general principles of EC law to maritime transport	1979 EC joins UNCTAD Liner Code of Conduct with reservations (no application among industrialised countries)	1985 ECJ concluded that the Council had failed to ensure freedom to provide transport services, including cabotage, within the Community	1986 EC adopts four regulations: - freedom to provide services - rules for the application of Articles 85 and 86 of the Treaty (including block exemption for liner conferences) - unfair pricing practices - and coordinated action to safeguard free access to cargoes in ocean trades	1992 Agreement to a phased liberalisation of cabotage	2006 Repeal of block exemption for liner conferences from EU's competition policy (general enforcement regime from 2008, incl. tramp market and cabotage)
Main legislation	Case 167/73	Regulation 954/79	Case 13/83	Regulation 4055/86 Regulation 4056/86 Regulation 4057/86 Regulation 5058/86	Regulation 3577/92	Regulation 1419/2006
Main reason	ECJ activism	Response to international developments	ECJ activism	Spill-over from internal market and efforts to deal with external unfair competition	Step to finalise internal market for shipping services	Step to extend competition policy to whole sea transport sector

Consortia Block Exemption Regulation expired
(25 April 2024)

Carriers lose fight to keep consortia block exemption regulation

Container lines will now face the same antitrust regulations as other sectors after failing to persuade regulators of benefits of block exemption

10 Oct 2023 NEWS

Fears of unintended consequences from removal of block exemption

Outcome of endings of consortia exemption regulation far from certain

11 Dec 2023 ANALYSIS



Title I of Part I of the consolidated TFEU
(Competences)

Shared competence	
"Member States cannot exercise competence in areas where the Union has done so."	"Union exercise of competence shall not result in Member States being prevented from exercising theirs in" ...
•the internal market •social policy, for the aspects defined in this Treaty •economic, social and territorial cohesion •agriculture and fisheries •consumer protection •transport •trans-European networks •energy •the area of freedom, security and justice (CFSP) •common safety concerns in public health matters, for the aspects defined in this Treaty •research, technological development and (outer) space •development cooperation, humanitarian aid	

Title I of Part I of the consolidated TFEU (Competences)

Supporting competence

"The Union can carry out actions to support, coordinate or supplement Member States' actions in"

- the protection and improvement of human health
 - industry
 - culture
 - tourism
 - education, youth, sport and vocational training
 - civil protection (disaster prevention)
 - administrative cooperation

EU Environmental Law



TFEU - TITLE XX ENVIRONMENT - Article 191

1. **Union policy on the environment** shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, **and in particular combating climate change.**

2. **Union policy on the environment shall aim at a high level of protection** taking into account the diversity of situations in the various regions of the Union.

It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source **and that** the polluter should pay.

PRIMARY LAW

EU Environmental Objectives and Principles

- ***Integration***
- ***Precaution / Prevention***
- ***Polluter pays***

Henning Jessen



Accidents:
The main
driver for
EU maritime law
from 1999-2019



WORLD
MARITIME
UNIVERSITY

IMO Regulatory Action vs. EU Maritime Law Divergence or Convergence?

TAGS: EU, IMT, Regulation EMAIL

IMO and EU eye convergence of regional and global regulation

While a theoretical merger of EU and IMO approach could be initiated by 2030, the commission's support for an IMO fuel levy, rather than an ETS solution has left it unclear how the realignment of regional measures with global standards would work in practice.

05 Jun 2023 NEWS

Climate Change:

The main driver for EU maritime law from 2020 and beyond

European Commission Communication and Roadmap on "The European Green Deal"

(first released on 11 December 2019)

Green Deal 'man on the moon moment' for Europe COMMENTS



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ROADMAP as initially announced in late 2019 (!)

***“...to increase the EU’s [GHG] reductions
target for 2030 to at least 50%***

and

***towards 55% compared with 1990 levels
in a responsible way.***

“The European Green Deal” - COM(2019) 640 final, page 4.

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Delayed but - EU Update in mid-2021

Regulation (EU) 2021/1119 → ‘European Climate Law’

**made 55% reduction target by 2030 mandatory
(compared with 1990...)**

**amounts to 62% reduction target by 2030... (compared
with 2005...)**

HOW? “FIT for 55” Package

**→ ETS as the key regulatory instrument across ALL
industrial sectors...**

WMU WORLD MARITIME UNIVERSITY

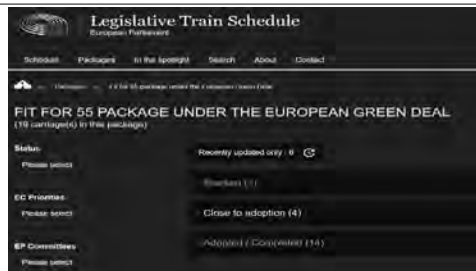
Legal Background

EU ETS

- introduced in **2005** (Directive 2003/87/EC, as amended)
- based on the accord of the Kyoto Protocol on Climate Change (1997)
- includes 30+ countries (EU + EEA + UK similar ETS)
- covers 11,000+ power stations and industrial plants
- covers 500+ airlines (for intra-EU/EEA flights)
- “*cap and trade*” system



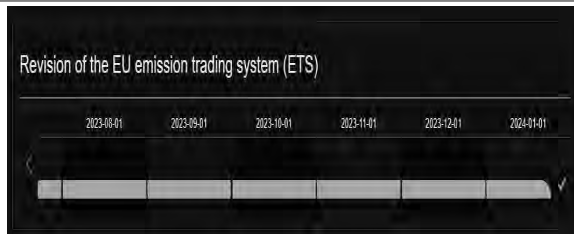
<https://www.europarl.europa.eu/legislative-train/package-fit-for-55>



- including “Fuel EU Maritime” – Sustainable Maritime Fuels
- including a comprehensive reform of the EU ETS
- including ideas for taxation and CBA (“carbon border adjustments”)



<https://www.europarl.europa.eu/legislative-train/package-fit-for-55>



EU ETS phasing in international shipping
from 2024 (40%) to 2025 (70%) to 2026 (100%)



EU ETS –
phasing in international shipping by 2027

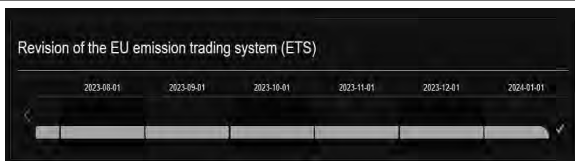
**Revisions to
Emissions Trading Scheme (ETS) Directive
→ Directive (EU) 2023/959**

and

**EU Monitoring Reporting and Verification
(MRV) Regulation
→ Regulation EU 2023/957**



<https://www.europarl.europa.eu/legislative-train/package-fit-for-55>



January / February 2024:

**→ additional implementation legislation
on ETS and MRV-specific**



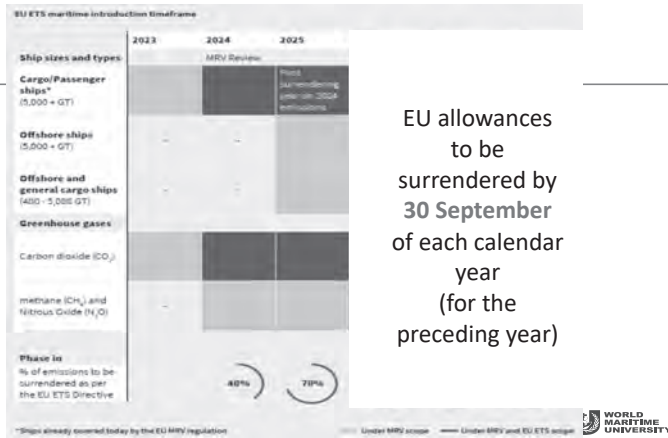
MRV Delegated Acts / Implementing Act

1. **Rules and methods for monitoring** GHG emissions (updating Annexes I & II of Regulation (EU) 2015/757 on the MRV of GHG emissions from maritime transport)
2. Rules on **verification and accreditation**
3. Rules on the **reporting of aggregated emissions data at company level**
4. Implementing act **templates** for monitoring plans, emissions reports and reports at company level

ETS Implementing Acts

5. Rules for the administration of shipping companies by **administering authorities**.
6. List of shipping companies which perform a maritime service under ETS → **attribution to responsible administering authorities**.
7. List of non-EU neighbouring container **transshipment** ports
8. List of **islands** and **trans-national maritime routes** under public national service contract or obligation subject to ETS derogations.

Henning Jensen



EU allowances to be surrendered by **30 September** of each calendar year (for the preceding year)

EU ETS

- **Initial problems** (Phases 1 and 2) + **Phase 3 (2013-2020)**: Developing into a “real” incentive scheme, regulatory corrections, some market intervention
 - **now: PHASE 4 (2021-2030)**
- “A well-functioning, reformed Emissions Trading System (ETS) with an instrument to stabilise the market [...] will be the MAIN European instrument to achieve [...] [reduction] target[s].”

quote from 23/24 October 2014 (!!!) [EU Council Conclusions]

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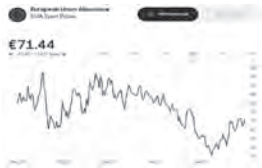
FIGURE 1 EUA futures prices and major events Source: European Energy Exchange (EEX) and EEA for EUA Futures 2007, ICAP Allowance Price Explorer and Member for EUA Futures Series

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EU emission allowance prices in 2024

- EUA prices have remained around **€70 per tonne of CO2** for most of the first half of 2024
- NOTE: a **€10** change in the EUA price has nearly a **€1 bn** impact on the total cost for shipping



PHASING IN 2024-2027

“the EU ETS will cost the maritime sector \$ 9.2 billion in 2026...”

(estimate by Hecla Emissions Management, July 2023)

<https://www.europarl.europa.eu/legislative-train/package-fit-for-55>



WMIU WORLD MARITIME UNIVERSITY

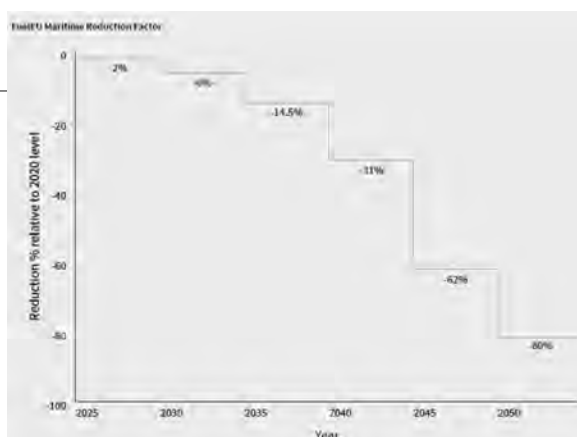
FuelEU Maritime – RFNBO incentives

The maritime sector (ships above 5.000 gt) must reduce GHG intensity for energy used on board ships by:

- 2% from 2025
- 6% from 2030
- 14.5% from 2035
- 31% from 2040
- 62% from 2045
- 80% from 2050

(reduction targets are all set against 2020 levels of 91,16 grams of CO₂ equivalent per megajoule)

WMIU WORLD MARITIME UNIVERSITY



WMIU WORLD MARITIME UNIVERSITY

<https://www.europarl.europa.eu/legislative-train/package-fit-for-55>



Nevertheless, thank you very much for your attention...

CAN THE SEA CARRIER INVOKE THE RED SEA CRISIS AS A CASE OF FORCE MAJEURE TO LIMIT OR EXCLUDE ITS LIABILITY IN THE EVENT OF DELAY OR NON-PERFORMANCE OF ITS OBLIGATIONS?

MORGANE ROUSSEL

Introduction

The crisis in the Red Sea which has seen attacks on international shipping by Houthi rebels continues to disrupt supply chains globally and across industry sectors.

By February 2024, over 40 vessels had been targeted already in the region of the Red Sea which is one of the world's busiest shipping routes.

Indeed, any vessel transiting through the Suez Canal to or from the Indian Ocean must pass the Red Sea.

The Suez Canal is the shortest and the fastest sea route between Asia and Europe and 30 % of the world's container traffic passes through this route.

But as the Suez Canal cannot be used anymore the map of the maritime shipping has completely changed. Maritime carriers had to divert their vessels by the longer Cape of Good Hope route.

This alternative shipping route avoiding the Red Sea takes 2 more weeks and implies significant extra costs.

One of the largest shipping companies, the French company CMA CGM tried to resist, and until the beginning of February continued to navigate through the canal with the escort of the French navy.

But faced with escalating attacks and missile strikes on its cargo ships, CMA CGM, like others before it, had no choice but to interrupt and/or divert its operations in the Red Sea.

The re-routing of shipping around the Cape of Good Hope rather than using the Suez Canal obviously leads to disruptions or failures in the delivery of goods. Some companies have already declared force majeure, to try to excuse delays in their performance or non-performance of their obligations.

This brings into focus the liability of maritime carrier when faced with such events and the resulting disruptions while performing the contract of carriage.

The underlying question is: *Can the sea carrier invoke the Red Sea crisis as a case of force majeure to limit or exclude its liability in the event of delay or non-performance of its obligations?*

As I am from Normandy in France, I give you the Norman(d) answer “maybe yes maybe no”.

Indeed, and as often, it depends.

In fact, whether you can rely on the concept of force majeure will depend mostly on the applicable governing law (I), the specific wording of the clause of force majeure in the carriage contract(s) and also the circumstances (II).

I. The applicable governing law:

While Common law often requires contractual force majeure provisions for effective remedies, in others civil law jurisdictions Force Majeure considerations exist as legal rules and are codified in their legal system.

If the contract does not include any force majeure provision, the law governing the contract becomes relevant.

Indeed, in legal systems that provide for a legal defense in the event of force majeure, force majeure can be invoked despite the silence of the contract.

However, the scope of force majeure application and whether a particular event – such as hostilities from Houthi – can be considered as an event of force majeure may vary from jurisdiction to jurisdiction.

Under French law, force majeure is defined by and codified in the 2016 French Civil Code¹ but the concept has been existing for decades, and its scope and characteristics were defined by case law.

Force majeure has been presented academically as an irresistible, unforeseeable event outside the control of the person invoking it.

Consequently, 3 conditions must be met to receive the qualification of force majeure:

1. Irresistibility: *this is an essential criterion of force majeure, described as the “hard core of force majeure”.*

In contractual matters, irresistibility means total impossibility of performance and must be assessed at the time of the event.

In reality, it is a double impossibility: impossibility of preventing the event from occurring and of performing the contractual obligation once the event has occurred, leaving the maritime carrier deprived of any material or legal means of remedying its consequences”².

¹ Article 1218 which defines force majeure and its effects:

“Force majeure in contractual matters occurs when an event beyond the debtor’s control, which could not reasonably have been foreseen when the contract was concluded and the effects of which cannot be avoided by appropriate measures, prevents the debtor from fulfilling his obligation.

If the impediment is temporary, performance of the obligation is suspended, unless the resulting delay justifies termination of the contract. If the impediment is definitive, the contract is terminated ipso jure and the parties are released from their obligations under the conditions set out in articles 1351 and 1351-1.”

² Court of Appeal of Douai, Sept. 5. 1991, no. 7134/90, BTL 1993, p. 148

NB : French Supreme Court (“Cour de cassation”) refuses to qualify an event as irresistible if the obligation to be fulfilled has simply *become more difficult or onerous* and so requires “insurmountable character”.

2. Unpredictability: *it means the event must be unforeseeable.*

In contractual matters, unpredictability is assessed at the time of the contract formation, since the risk accepted must be verified and measured.

3. Exteriority: *It is in application of this criterium that an event resulting from the act of the maritime carrier, his agent or substitute cannot be characterized as force majeure.*

However, and under French law, the parties are not bound by the legal definition of force majeure and therefore they are allowed to reduce or extend the cases of force majeure and their effects.

It means the maritime carrier can tailor the wording of the clause, provided it does not infringe other principles (such as, under French law, e.g breach of an essential obligation, unfair terms).

In consequence, whatever the law applicable to the contract, the specific wording of the force majeure clause is recommended.

II. The specific wording of the force majeure clause in the carriage contract:

Careful drafting of the definition and description of circumstances qualifying as a force majeure event (1) and effects on the performance of the carriage contract (2) could enable the maritime carrier to limit or exclude its liability in the event of non-performance of the contract of carriage. I shall illustrate with 2 examples of clauses (3).

1. Definition and description of circumstances or events qualifying as a force majeure events:

Generally contractual definitions of force majeure point to the occurrence of an unforeseeable event preventing a party from performing one or more of its obligations, provided that such impediment is beyond its reasonable control as previously presented.

The clause must clearly specify the circumstances which will qualify as force majeure events to ensure sufficient legal certainty in case of court or arbitration proceedings.

Force majeure provisions usually contain a list of presumed force majeure events which may include “war, hostilities, invasion, and acts of terrorism”, thus potentially encompassing the armed hostilities involving the Houthi missile attacks.

If some events can be covered by the definition of force majeure such as missile attacks, subsequent events shall not be.

Therefore, it is essential to consider what kind of event or specific circumstances have impacted performance of the contract, for instance is it an attack on a particular vessel or is it an ancillary event such as the continuing diversions of commercial shipping routes, sanctions, legislation or other acts of government.

Once the disruptive events fall within the definition of force majeure the next step is to check whether the event has caused the non-performance of the contract of carriage.

2. *Effects on the performance of the contract of carriage:*

First, it is necessary to see if the force majeure event has impacted the performance of the contract and whether performance of the contract is rendered impossible or whether performance is merely hindered.

Some contracts adopt a high threshold, requiring force majeure events to “prevent” performance – i.e. making it impossible rather than merely more expensive. In other contracts the threshold is lower, thus a “hindered” or “delayed” performance would be deemed sufficient.

These considerations are all relevant in this context, since the question is whether the disruptions in the Red Sea are really preventing shipping companies from reaching Europe, when there is other, admittedly longer and more costly routes available.

Indeed, and so far, we can see that following Houthis’ attacks, some carriers have re-routed to the Cape of Good Hope, and others have decided to suspend the voyage until further notice.

Once again, whether it is sufficient to excuse a party from fulfilling its obligation will depend on the governing law but above all the specific scope of the force majeure clause.

Also, the qualification of the non-performance or delayed performance will depend on the *specific circumstances of the cargo*, e.g. the type of goods transported. For perishable goods such as food – a delay in delivery may, in certain circumstances, be considered a non-performance of carrier’s obligations.

As already said, according to French law and French case law the performance of the contract must be impossible to be considered as an event of force majeure indeed the irresistibility means *total impossibility of performance*.

Here the key question is thus to establish when exactly performance truly became impossible.

In a rapidly changing context, like the Houthi escalation or more broadly the current Middle East crisis, this might not be straightforward.

3. *Examples of clause of force majeure:*

3.1 CMA CGM has declared the red sea crisis as a case of force majeure and refers in its notice to the clause no.10 of its general terms and conditions called “matters affecting performance”.

10. MATTERS AFFECTING PERFORMANCE

If at any time the Carriage is or likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods safely or properly to be carried or carried further which is provided for in Clause 24 infra) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time

this contract was entered into or the Goods were received for Carriage), the Carrier (whether or not the Carriage is commenced) may, without prior notice to the Merchant and at the sole discretion of the Carrier, either:

- (a) carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, either by the intended or the alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery. If the Carrier elects to invoke the terms of this Clause 10 (a) hereof, he shall be entitled to charge such additional Freight, including extra war risk charge as the Carrier may determine, or
- (b) suspend the Carriage of the Goods and store them ashore or afloat upon the Terms and Conditions of this Bill of Lading and endeavour to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the Terms and Conditions of this Clause 10 (b) then, he shall be entitled to charge such additional Freight as the Carrier may determine, or
- (c) abandon the Carriage of the Goods and place the Goods at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs of the Carriage to, and delivery and storage at, such place or port.

If the Carrier elects to use an alternative route under Clause 10 (a) or to suspend the Carriage under Clause 10 (b) this shall not prejudice its right subsequently to abandon the Carriage under Clause 10 (c).

This clause – which is probably closer to the English frustration³ as it does not correspond to the French law perspective on force majeure – stresses that “any hindrance, risk, delay, difficulty or disadvantage” – without any precision – gives CMA CGM the right to carry, suspend or even abandon the ongoing carriage of goods.

The drafting is very large and could include therefore armed hostilities involving Houthi missile attacks.

- BIMCO's force majeure clause:

BIMCO provides for an example of force majeure clause to insert in maritime contracts:

(a) Definitions – “Force Majeure” means the occurrence of an event or circumstance as defined in (b) below (“Force Majeure Event”) that prevents a party from performing one or more of its contractual obligations (“the

³ Frustration operates to discharge or terminate a contract if circumstances arise or events occur which (i) make performance of the contract physically impossible or illegal; or (ii) render the obligation to perform radically different from that contemplated by the parties at the contract's formation.

In practice, English courts and arbitral tribunals apply the doctrine of frustration narrowly. Discharge or termination of a contract by frustration is therefore extremely rare.

Affected Party”), provided that such party proves:

- (i) the existence of a Force Majeure Event;*
- (ii) that such Force Majeure Event is beyond its reasonable control;*
- (iii) that the Force Majeure Event could not reasonably have been foreseen at the time of the conclusion of the contract; and*
- (iv) that the effects of the Force Majeure Event could not reasonably have been avoided or overcome by the Affected Party.*

(b) Force Majeure Events – For the purpose of this Clause the following shall be Force Majeure Events:

- (i) actual, threatened or reported war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines;*
- (ii) act of piracy and/or violent robbery and/or capture/seizure; act of terrorists; act of hostility or malicious damage;*
- (iii) blockade, generally imposed trade restriction, embargo;*
- (iv) act of government or public authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;*
- (v) plague, epidemic, pandemic;*
- (vi) act of God, natural disaster or extreme natural event such as earthquake, landslide, flood, or extraordinary weather condition;*
- (vii) explosion; fire; destruction of equipment; destruction of port facilities; obstruction of waterways; cyber security incident; break-down of transport, communication, information system or power supply; in each case unless caused by negligence of the Affected Party;*
- (viii) ionising radiation or contamination by radioactivity, chemical or biological contamination;*
- (ix) general labour disturbance such as boycott, strike and lock-out, occupation of factories and premises; in each case unless limited to the employees of the Affected Party or a third party engaged by it; or*
- (x) any other similar event or circumstance unless caused by negligence of the Affected Party.*

We can see that the clause corresponds to the traditional definition of force majeure and sets a high threshold for invoking it in order to avoid abuse.

To be able to invoke the clause, a party has to be prevented from performing one or more of its obligations under the contract. In addition, it has to prove that there is a Force Majeure Event as defined in the clause; that the event is beyond its reasonable control; that it could not reasonably have been foreseen at the time of the contract; and that the effects of the event could not reasonably have been avoided or overcome.

The clause contains also a long list of events presumed to be force majeure, including “actual, threatened or reported war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations”

and “act of piracy and/or violent robbery and/or capture/seizure; act of terrorists; act of hostility or malicious damage” and “act of government or public authority whether lawful or unlawful, compliance with any law or governmental order”.

This appears to include armed hostilities involving Houthi missile attacks. However, it is specified that “there will be no Force Majeure if the Force Majeure Event could “reasonably” have been avoided or overcome.”

Final Thoughts

The Red Sea crisis is just the latest geopolitical event to have an impact upon international trade, rendering performance of contractual obligations more difficult, or perhaps impossible.

We have understood from this presentation that exoneration of the maritime carrier’s liability by means of force majeure is not certain, and that it depends on the applicable law and the wording of the clause.

If no solution can be found regarding force majeure, it can be sought in the exonerating circumstances provided for by specific laws and international conventions, which do not meet the criteria of force majeure.

In fact, exonerating circumstances differ from cases of force majeure in that they are categories of events *that automatically exonerate the carrier from liability*.

Under the Hague Rules the article 4.2 states that the carrier shall not be liable for loss or damage resulting from or arising from:

- e) *Acts of war;*
- f) *Acts of public enemies;*
- g) *A decree or constraint by a prince, authority or people, or by a judicial authority;*
- q) *Any other cause not arising from the act or fault of the carrier or from the act or
or fault of the carrier’s agents or servants, but the burden of proof shall rest with the person claiming the benefit.*

French law has incorporated the exonerating cases of the Brussels Convention into article L. 5422-12 of the Transport Code and has gathered some of exonerating cases under the category of “3. *Events not attributable to the carrier*”

We believe that the maritime carrier could invoke these exonerating case(s) to exclude its liability in the context of the Red Sea Crisis.

To be followed closely !

IMPACT OF THE RED SEA CRISIS ON GLOBAL SUPPLY CHAINS AND LESSONS LEARNED

KIERSTAN L. CARLSON



Impact of the Red Sea Crisis on Global Supply Chains and Lessons Learned

Comité Maritime International Colloquium 2024

Kierstan L. Carlson

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Göteborg, Sweden

The information contained herein is abridged and summarized from numerous sources, the accuracy and completeness of which cannot be assured. This should not be construed as legal advice or opinion and is not a substitute for the advice of counsel.

Introduction

- **Origins of the Red Sea Crisis**
- **Industry Response**
- **Implication of Adjusting Transits to Avoid the Suez Canal**
 - *Increased fuel consumption and emissions*
 - *Financial impacts*
 - *Contractual and legal implications*
- **Conclusion**



Kierstan Carlson

Timeline of Disruption in the Red Sea



Notable Dates

- **November 19, 2023.** Houthis launch an attack the Bahamas-flagged, Japanese/Israeli-owned vehicle carrier *Galaxy Leader* as it was in ballast and en route from Turkey to India.
- **December 15, 2023.** Both Maersk and Hapag-Lloyd announce they instructed a temporary halt of all transits through the Red Sea until further notice. The next day, CMA CGM and MSC each followed suit.
- **December 18, 2023.** Operation Prosperity Guardian announced.
- **On March 6, 2024.** Houthis' attacks turned fatal, with a missile attack on the Barbados-flagged, Liberian-owned bulk carrier *True Confidence* resulting in the death of three crew members.



Red Sea Vessel Traffic Dropped Significantly in Q1 of 2024 Compared to 2023

- Container ship transits → 55.6%
- LNG trade → 84.3%
- Dry bulk ship transits → 20.8%
- Liquid bulk ship transits → 21.6%
- LPG carriers → 12%
- Ro-ro transits → 46%
- Dry break bulk ship transits → 11.8%



Implications of Going the "Long Way Around"

- Diversion can add an **additional two weeks** to a transit and between **3,000 and 6,000 extra nautical miles**.
- **Anticipated Costs Increase.** London Stock Exchange Group calculated that it costs approximately 35% more and takes an additional eight days for large container vessels to travel from Shanghai, China to Rotterdam, Netherlands via the Cape of Good Hope.
- **Environmental, Financial, Contractual, Legal Impacts flow from the Crisis, and route adjustments specifically**



Increased Time Results in Increased Fuel Consumption & Emissions



- **Longer Transit.** As a result of the substantial increase in the journey time, shipping analysts predict the increase of CO₂ emissions between **31% and 66%** for journeys from Asia to northern Europe of the Mediterranean.
- **Faster Ship Speeds.** Increase in vessels' cruising speed of just 1 knot adds another 14% in extra emissions.
- Collectively, smaller ships and faster speeds could result in an increase of emissions between **260% and 354%** for the Mediterranean and Northern Europe routes, respectively.

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Increased Emissions Run Contrary to IMO & EU Goals

- MEPC 80 adopted a Strategy on Reduction of GHG Emissions from Ships aimed at achieving net-zero greenhouse gas emissions around 2050, with milestone checkpoints along the way
 - Envisions a reduction of 40% by 2030, supported by a switch to alternative fuels with low or no emissions
- EU extended its Emissions Trading System to include shipping from 2024
- From 2025, shipping companies are due to pay for 40% of their emissions reported this year, increasing to 70% in 2026 and 100% as of 2027
- At least in part as a result of the Red Sea Crisis, shipping companies can likely expect higher bills in 2025 than initially predicted

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Impacts to Freight Rates



- In the last week of December 2023, average container spot freight rates increased by US \$500, the highest-ever weekly increase and Drewry's World Container Index showed container spot rates on January 25 were nearly 3x higher than the rate just two months prior.
- Initially, with many vessels unexpectedly rerouting to transit past the Cape of Good Hope, the resulting two-week delay prevented those vessels from being available for new work when they otherwise would have been expected to be.
- **Yet, as of recently, the container market seems to have stabilized and begun its return to norm.**
- **Tanker chartering rates seem to have remained elevated.** Aframax day rates surged from about \$39,000 in October 2023 to about \$49,500 per day in March 2024, and have remained roughly at that same amount through mid-April.

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Altered Refueling Patterns

- Surge in demand for bunker fuel at a variety of ports, including Mauritius, Durban, and the Canary Islands. Mauritius, with its strategic location in the Indian Ocean, has experienced an estimated **15-20% increase in bunker sales**.
- One industry executive estimated that rerouting through Cape Town could add around **USD 200,000 - 300,000 fuel cost per trip** from Asia to Europe, assuming 15 extra days of voyage, consumption of 30 tons of fuel per day and \$650-700 per metric ton of fuel
- Singapore, already the world's largest bunkering hub, saw a monthly record of 3,751 vessels calling in January 2024, as operators face longer sailing distances with the Suez Canal and the Red Sea off-limits to most traffic.
 - This represents a 12% year-over-year rise in January 2024.



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Local Winners

- As of March 2024, containership arrivals at South African ports have increased by **328% since early December 2023**.
- Similarly, the ports of Mombasa (Kenya), Dar es Salaam (Tanzania) and Beira (Mozambique) in East Africa have benefitted from increased traffic.



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A Hit To Others

- Egypt's revenues from the Canal was down by 46% in January 2024 compared to the prior year.
 - A trade decrease of this magnitude equates to a loss of about USD 4 billion for Egypt, or about 1% of Egypt's GDP.
- Greek port of Piraeus has seen an overall drop in traffic following the events in the Red Sea.
 - In April 2024, Piraeus Container Terminal in Greece announced that it has recorded a month over month drop in tonnage of 15.4%, and a quarterly drop of 11.4%



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Contractual and Legal Implications Flowing from the Crisis

• Contractual Considerations

- Industry has largely been able to make adjustments to reduce contractual issues created by the Crisis
- War risks premiums spiked in initial aftermath
 - As ships have diverted around Cape of Good Hope, impacts of increased premiums reduced → and ships avoid Suez Canal fees
- Charterparties made after the outside of the Crisis now contemplate the new routing and anticipate enhanced fuel costs
 - Resolves concerns regarding transfer of risk going forward

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Potential Legal Risks

- Industry-wide, there is an expected uptick in contractual disputes, and in the U.S., there is the potential for enhanced oversight by the Federal Maritime Commission (FMC)
- Regarding disputes, colleagues presenting in this session will address:
 - Case law concerning the application of war risks clauses in the context of ships' refusal to transit dangerous areas
 - Whether carriers may invoke *force majeure* to limit or exclude liability for non-performance
- The Crisis has generated attention from the FMC which regulates competition within the context of ocean transportation services and ensures the integrity and security of the U.S. supply chain

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FMC Hearings & Potential Adjustment to "Special Permissions"

- FMC has the power to resolve disputes involving the shipment of cargo, personal, or household goods and to adjudicate complaints relating to rates, charges, classifications, and practice of common carriers, marine terminal operators, and ocean transport intermediaries
- Since outset of Crisis, FMC has closely monitored rates, charges, and rules that carriers – both common carriers and NVOCCs – implemented due to threats from the Houthi attacks



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FMC Hearings & Potential Adjustment to “Special Permissions”



- FMC regulations contain 30-day waiting period for adjustments to tariffs that increase costs to shippers
- Failure to comply can result in fines or civil penalties
- Carriers can bypass by applying for “Special Permission” and showing good cause



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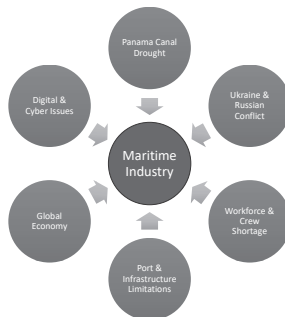
FMC Hearings & Potential Adjustment to “Special Permissions”

- Red Sea Crisis prompted carrier to apply for Special Permissions
- Maersk A/S request on December 29 was approved within 1 day
- Other carriers, such as MSC, also received quick turn around approvals
- Shippers were concerned → FMC was prompted to hold a public hearing on February 7
- FMC has not taken further action, but the hearings certainly informed policy approach
- May lead FMC to require additional evidence for Special Permission applications
- FMC also has the power to investigate deceptive practices



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Red Sea Crisis Does Not Exist in a Vacuum...



- Specific effects of the Red Sea Disruption Cannot Be separated From other Maritime Trade Complications.
- These are only **SOME** notable complications that are also impacting the state of the maritime industry.



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The Bottom Line: Temporary Disruption, Not a Global Crisis

- While the events in the Red Sea in late 2023 were certainly dramatic and caught the attention of the maritime industry and world at large, its ongoing effects appear to less severe than first anticipated → has not completely derailed and disrupted global trade
- Federal Reserve Bank of New York's Global Supply Chain Pressure Index briefly spiked from -0.38 in October 2023 to 0.17 in November, it quickly dipped back down to -0.15 in December, and has remained in the -0.11 to -0.27 range as of March 2024
- Shipping carriers acted swiftly to reroute vessels that had been planning on passing through the Suez Canal to go by way of the Cape of Good Hope, and this appears to be the new status quo.
- All in all, the global supply chain is resilient: it has weathered the Houthi attacks and blockade of the Red Sea with significant but manageable broader effects and is carrying on despite the challenges the Red Sea Crisis has presented

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Thank you and Questions?



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THE RED SEA CRISIS AND THE PROTECTION OF THE RIGHT OF TRANSIT PASSAGE

MASSIMILIANO MUSI

Maritime security represents a priority in light of the recent attacks, perpetrated by the Houthis using missiles and drones, on merchant ships transiting the international strait of Bab el Mandeb (1).

These attacks now represent a threat not only to international trade, but also to the lives of civilians on board ships crossing the strait: just think of the fact that one of the most recent attacks which hit the bulk carrier *True Confidence* owned by a Greek shipowner, but flying the flag of Barbados, resulted in the death of three crew members.

It is clear that such attacks, breaching the right of continuous and expeditious transit, defined in the Art. 38 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), are in violation of the principle of freedom of navigation (also guaranteed by the right of innocent passage referred to in Art. 45 of the same Convention (2)).

Through Resolution 2722 (2024) adopted on 10 January 2024, the United Nations Security Council condemned in the strongest terms the Houthi attacks in the Red Sea, underlining that the exercise of navigational rights

¹ In this regard, it should be noted that Section 2 – Transit Passage of the 1982 United Nations Convention on the Law of the Sea applies, in light of its Art. 37, to the “straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone”.

² Among the first in Doctrine, on the right of transit passage in international straits, see: M. GIULIANO, *The Regime of Straits in General International Law*, in *IK Italian Yearbook of International Law*, 1975, Napoli, 1975, pp. 16-26; H. CAMINOS, *The Legal Regime of Straits in the 1982 United Nations Convention on the Law of the Sea*, in *RCADI*, 1987, 5, p. 137.

³ The right of transit passage provided by Art. 38 of the UNCLOS 1982, allows submarines to navigate submerged and extends, unlike the so-called right of innocent passage, referred to in Art. 45, also to the right of overflight.

⁴ In Doctrine, on the right of transit passage see: S. BLACKWELL, *UNCLOS and the Straits of Hormuz*, in *UNCLOS and the Protection of Innocent and Transit Passage in Maritime Chokepoints*, B. Spaier, O. Shefler, E. Rettig (edited by), Haifa, 2021; S. MAHMOUDI, *Transit Passage*, in *Max Planck Encyclopedia of Public International Law*, Oxford, 2008, at the website: <https://opil.ouplaw.com/> (lastly accessed on 23 April 2024); E.J. FRANK, *UNCLOS III and the Straits Passage Issue: The Maritime Powers' Perspective on Transit Passage*, in *NYLS J. Int'l Comp. L.*, 3, 2001, p. 243; B.H. OXAM, *Transit of straits and Archipelagic Waters by Military Aircraft*, in *Singapore J. Int'l Comp. L.*, 4, 2000, p. 377.

and freedoms of merchant and commercial vessels sailing in the Baab al Mandab Strait shall be fully respected.

In the same Resolution, the UN Security Council also specified that international law, as resulting from the UNCLOS, sets out the legal framework applicable to activities in the oceans, including countering illicit activities at sea.

Upon closer inspection, however, the Convention provides scant indications regarding the instruments for protecting freedom of navigation and the right of transit passage, just providing for certain specific obligations for coastal States and ships and aircrafts in transit.

By way of example, reference is made to art. 44 of the Convention which places the obligation on States bordering straits not to hamper transit passage and to “*give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge*”.

Furthermore, letter c) of the first paragraph of the Art. 39 of the Convention places the obligation on ships and aircraft transiting international straits to refrain from carrying out activities not inherent to normal modes of continuous and expeditious transit, unless reasons of force majeure or distress arise.

This last provision can be interpreted as meaning that States, in accordance with international law, have the right to defend their ships from attacks, such as those by the Houthis, which undermine the rights and freedoms of navigation, however, it is not clear which are the measures that can be adopted by States in response to attacks and what is the perimeter within which such defense actions are to be considered legitimate.

Before entering into the merits of the topic, it must first of all be underlined that the Houthi attacks do not seem to be able to be classified as acts of piracy in the strict sense (3).

What makes us lean towards this interpretation is the analysis of the subjective element of the *factispecies*: in fact, there is no discernible private purpose, nor, above all, an indication that could lead us to believe that said actions are driven by an *animus furandi*.

The need for the presence of a profit motive or the intent to plunder for the purposes of qualifying an act as a pirate act is also imposed by some national legislation: for example, in the Italian one, Art. 1135 of the Navigation Code makes the constitutive element of the crime of piracy coincide with depredation or with violence against the ship or people for the purpose of depredation.

The nature, methods and extent of the Houthis' actions together constitute elements that are difficult to reconcile with the concept of piracy contemplated by law, also in light of the definition of piracy provided by the Art. 101 of the UNCLOS (4).

³ Although an Author considered the Houthi attacks attributable to the notion of piracy. On this point, see R.P. PEDROZO, *Securing the Maritime Domain in the Red Sea*, 2023, at the website: <https://lieber.westpoint.edu/securing-maritime-domain-red-sea/> (lastly accessed on 23 April 2024).

⁴ According to which: “*Piracy consists of any of the following acts: (a) any illegal acts of*

If not pirate acts, the Houthi attacks could be said to constitute a violation of the prohibition on the use of force, internationally enshrined in the United Nations Charter.

Such a violation would authorize States to act in self-defense pursuant to Art. 51 of the United Nations Charter (5), however, it would not be a collective defense, so much so that the United Nations Security Council has not authorized the use of force in the manner referred to in Chapter VII of the United Nations Charter (6) (so-called collective security system).

As part of the Common Security and Defense Policy of the European Union (CSDP) (7), the Council of the European Union has established, through Decision no. 2024/583 of 8 February 2024 (8), the diplomatic-

violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)". The Convention therefore presents a particularly stringent definition of maritime piracy, making the qualification of an act as a pirate act subject to the satisfaction of five requirements.

⁵ Which reads: "*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security*".

⁶ Pursuant to Art. 39 of the UN Charter, the Council ascertains whether certain situations constitute a threat to international peace and security or violations thereof. This assessment constitutes the necessary prerequisite for the Council to be able to exercise its coercive powers not involving the use of military force pursuant to Art. 41 or involving the use of armed force pursuant to Art. 42.

⁷ Which is an integral part of the European Union's Common Foreign and Security Policy (CFSP).

The CSDP represents the instrument through which the EU contributes to the maintenance of peace and the strengthening of international security, through the implementation of missions external to the EU territory, united by the general objective of the prevention of international conflicts and crisis management within the framework of the United Nations collective security system. The priority goal of the common defense policy is the construction of an operational capacity, civil and military, to be used in international security operations and crisis management in harmony with the model of regional security partnership and local war threats.

On this point, it should be noted that the dimension of conflict prevention has become one of the main objectives of the EU's external relations and must be considered in a sense that includes activities to be carried out both in situations in which conflict appears imminent (conflict prevention in the strict sense) and in situations where it is possible to avoid the conflict itself (conflict prevention in the broad sense). However, the CSDP is not only used for international peace-keeping or peace-enforcement operations: for example, the EUNAVFOR-Atalanta mission, to combat piracy, was created with the aim of protecting the commercial interests of the Union with third parties States.

⁸ For the implementation of the CSDP, Member States make civil and military capabilities available to the EU, to achieve the objectives indicated by the EU Council and undertake to improve their military capabilities, according to the needs identified by the European Agency for the defence.

⁸ Council Decision (CFSP) 2024/583 was taken on the basis of Artt. 42, par. 4, and 43,

military maritime security operation, known as EUNAVFOR Aspidēs, aimed at safeguarding freedom of navigation in relation to the Red Sea crisis.

As highlighted by the High Representative of the Union for Foreign Affairs and Security Policy, J. Borrell, in the press release of 19 February 2024, the Aspidēs rules of engagement are merely defensive, aimed at protecting the safety of the deployed crews and civilian ships transiting the waters of the Red Sea (9).

According to Whereas no. 8 of the Decision no. 2024/583, the operation in response to Houthi attacks “[...] *should accompany vessels, provide maritime situational awareness and protect vessels against multi-domain attacks at sea. It should remain defensive in nature. Forces deployed for the operation should act in compliance with applicable international law, including customary international law, including self-defence where conditions are met, to defend against an imminent or ongoing attack on their own, or third-party, vessels. The operation should act in full compliance with UNCLOS. The modalities and conditions for the above should be elaborated in the Operation Plan, including the Rules of Engagement, to be approved by the Council*”.

It is possible to deduce, therefore, an implicit reference not only to the articles of the UNCLOS 1982 which regulate the right of transit passage in international straits and its exercise (Articles 38 et seq.), but also to the principle of self-defense, of customary origin, codified in Art. 51 of the United Nations Charter.

A further reference to this last principle is contained in the Art. 1, par. 5, lett. c), of Decision no. 2024/583 which establishes that the EU Forces shall “*protect vessels against multi-domain attacks at sea, in full respect of international law, including the principles of necessity and proportionality,*

par. 2, of the TEU. In more detail, Art. 42, par. 4, provides that: “*Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate*”. Then, Art. 43, par. 2, reads as follows: “*The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks*”.

⁹ In the Art. 6, par. 3, of Decision no. 2024/583/CFSP is clarified that “*EUNAVFOR ASPIDES shall coordinate closely with the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA), established by Council Joint Action 2008/851/CFSP*”. The latter operation was launched as part of the Common Security and Defense Policy of the European Union (CSDP) in order to prevent and repress acts of maritime piracy along the coasts of the Horn of Africa States.

The strategy to combat maritime piracy is based on three pillars: 1) patrolling high-risk areas with military vessels; 2) the adoption of passive defense measures by vessels in transit; 3) the presence on board of armed protection units, military or civil. On the subject of combating piracy, see: M. CORLETO, *Fighting maritime piracy: the “Enrica Lexie Case (Italy v. India)” between law of the sea and jurisdictional challenges*, in *La Comunità Internazionale*, 2022, 2, pp. 275-300.

in a sub-area of the Area of Operation”.

Upon closer inspection, the very contents of the Decision would seem to find a primary foundation precisely in the Art. 51 of the United Nations Charter.

In this context, at least three orders of issues connected to each other arise:

1. the first concerns the definition of the application limits of the use of force by the EU member States in carrying out the European security operation Aspides;

2. the second refers to the use of force necessary to respond to an armed attack not directed against a ship flying the flag of a State participating in the mission, but rather to merchant or military ships flying the flag of other States;

3. the third concerns the admissibility of a unilateral self-defense, in contrast with the instructions received within the mission, carried out by a State which should move within the perimeter of common operational coordination.

With regard to the first point, it is appropriate to underline that practically any use of force by the vessels participating in the Aspides operation is to be considered legitimate if the Houthi attacks are qualified as armed attacks (10). However, nothing regarding extreme situations such as those that lead to the use of force can ever be said to be free of problems: it is, in fact, controversial what should be meant by “armed attack”.

In this regard, it is worth mentioning the decision of a case that has set a relevant precedent, that relating to military and paramilitary activities in and against Nicaragua (27.06.1986, in *ICJ Reports*, 1986, par. 195) (11). In the ruling, the International Court of Justice referred to the definition of act of aggression adopted by the United Nations General Assembly in Resolution 3314 of 14 December 1974 (12) to establish what is meant by “armed attack”.

The letter d) of the Art. 3 of Resolution 3314 includes in the definition of act of aggression “*An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State*”. The same Article

¹⁰ The Art. 51 of the United Nations Charter introduces the theme of armed self-defence according to which the use of military force is not considered illicit when it constitutes the response to an armed attack, without prejudice to the principle that any violations of humanitarian law remain illicit even if committed during an action in self-defence.

¹¹ This is a case on the prohibition of the use of force and the right of self-defence. The story revolved around the financing, training and other forms of support provided by the United States towards the guerrillas in El Salvador and Honduras against Nicaragua. In particular, it was a question of understanding whether these forms of support constituted a violation of the prohibition on the use of force and whether, if so, such behaviors could fall within the scope of self-defence.

The International Court of Justice has stated that the sending of armed gangs or irregular or mercenary armed groups to carry out armed actions against another State is equivalent to an armed attack conducted by regular forces, excluding the simple provision of weapons or logistical support or other nature could be assessed as an armed attack. The Court also specified that irregular military actions can only constitute an armed attack if they are of significant scope.

¹² *Definition of Aggression*, UN Doc, A/RES/3314 (XXIX), 14 December 1974.

identifies other types of attacks, which have in common the fact that they originate from a State and are directed against another State.

The question therefore arises whether we can speak of an armed attack if the aggression comes from non-State actors. The argument according to which States can act in self-defense even against non-State subjects outside their national borders is confirmed in international practice (13).

Furthermore, it must be considered that one of the most critical aspects linked to the effective protection of the right of transit passage in the waters of the Red Sea lies not so much in the fact that the Houthi attacks can be traced back to the definition of armed attack/aggression, but rather in the fact that the methods of carrying out such attacks would seem to require the implementation of preventive, advance defense measures (14).

The possibility of acting in self-defense before the armed attack takes place seems to be excluded precisely by the letter of the Art. 51 of the United Nations Charter. The norm suggests, in fact, that the right of self-defense can be exercised when an armed attack “takes place”, prohibiting any possibility of reaction until the attack is underway. It is clear, however, that this limitation may be inadequate with respect to the defense needs that arise in the specific case. For this reason, over time the thesis has emerged in favor of the expansion *ratione temporis* of the possibility of acting in self-defense (so-called “anticipatory self-defence”).

The notion of anticipatory self-defense has received various interpretations.

A certain consensus within the international community seems to have formed on the legitimacy of defensive action to respond to imminent attacks or threats based on the belief that preemptive self-defense constitutes the only way for the State that adopts it to safeguard its national security against a serious and imminent danger.

However, although some believe that an imminent attack must be understood as an “instant” and “overwhelming” threat that leaves “no choice of means, and no moment for deliberation”, there is currently no unanimous interpretation of the concept of imminence, nor decisive criteria to define it.

¹³ International Court of Justice, “*Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda)”, decision of 19 December 2005: if an armed attack is launched by a group of rebels acting totally independently of activities carried out by a State, the attacked country has the right to resort to self-defense. In Doctrine see: A. MANEGGIA, *Attori non statali, uso della forza e legittima difesa nella giurisprudenza della Corte Internazionale di Giustizia*, in *In.Law*, 2006, p. 17.

¹⁴ The possibility of acting in so-called preemptive self-defense has existed since ancient times. The *Caroline* case of 1842 between the United States and Great Britain is indicative. In those years the rebellion against British colonial rule in Canada was organized on US territory despite the attempts of the US authorities to prevent support activities, such as the sending of aid to the rebels with the ship *Caroline* which set sail from US ports. To prevent this activity, British troops crossed the border into the United States, seized the ship *Caroline*, set it on fire and allowed it to be swept away by Niagara Falls. In response to the British argument that self-defense was invoked, the US Secretary, Mr Webster, stated that to be internationally legitimate such armed action must be dictated by a “*necessity of self-defence [is] instant, overwhelming, leaving no choice of means, and no moment for deliberation*”. Although in that case the damaged State invoked in fact the illicit nature of that action of preventive self-defence, it ended up endorsing the principle, however formulating it in such restrictive terms as to appear absorbed in the principle of the state of necessity.

With specific regard to Houthi attacks, the European Council Decision establishing the Aspides mission refers to both imminent attacks and ongoing attacks, however, it is unclear to what extent the EU considers an attack as imminent and, consequently, how “in advance” it is legitimated to respond to Houthi attacks.

On the contrary, I would not agree with the more extensive reading of the rule in the Art. 51 of the United Nations Charter, which considers as armed attacks also the threats that are only potential, but which can not occur in the immediate future (so-called “preventive self-defense”): I am referring to the so-called “Bush doctrine” on preventive war which allows the use of armed force against non-imminent attacks.

The second problem then arises, namely that of understanding whether the use of force is legitimate not only by a ship to defend itself from a current or imminent danger, but also by a ship (most likely military) to defend another commercial or military vessel (which, moreover, could also fly the flag of a different member State). This possibility seems to be admitted precisely by the Decision establishing the mission, in the part in which the purpose is specified, i.e. “*to defend against an imminent or ongoing attack on their own, or third-party, vessel*” (recital 8).

As for the third issue, the possibility that States use of force outside the perimeter of the European mission’s rules of engagement or common operational coordination can not be excluded.

Significant, in this sense, is what happened on 2 March 2024, when the Italian destroyer *Caio Duilio*, already active in the Red Sea for a few weeks, shot down a drone launched by the Houthis, while it was flying about 4 miles away from the ship. The action of the Italian military vessel, declared “self-defense”, however formally took place outside the precise legal framework of the European mission.

In the recognition of a certain degree of autonomy of the States participating in the mission, the circumstance is not irrelevant, well highlighted in recital 11 (15) of the Decision establishing the European mission, that the expenses deriving from operations that have implications in the military or defense sector, such as that in question, are borne by the participating States.

Furthermore, pursuant to Art. 51 of the United Nations Charter, the right of self-defence is defined as an “inherent right”. This wording, therefore, would seem to support the thesis according to which the right of self-defence belongs to each individual State as such.

In light of the considerations made so far, it is clear that, although the “immediate” legal reference on the subject of navigation in international straits is constituted by the 1982 United Nations Convention on the Law of the Sea, the effective protection of freedom of navigation and of the right of transit passage in the Strait of Bab el Mandeb against attacks, such as those of the Houthis, which are peculiar both in terms of the actors involved and

¹⁵ According to recital 11 of the Council Decision (CFSP) 2024/583 “*Pursuant to Article 41(2) TEU and in accordance with Council Decision (CFSP) 2021/509, the operating expenditure arising from this Decision, which has military or defence implications, is to be borne by the Member States*”.

in terms of the methods and extent of each attack, it is based on the delicate balance between the limits imposed by the international law on the use of force and the needs of collective defense within the European missions falling within the European Union's Common Security and Defence Policy (CSDP).

These latter needs could suggest the opportunity for a progressive broadening of the concept of self-defense in order to protect the European Union and its citizens, strengthening international peace and security.

SHIPPING AND THE RED SEA CRISIS – AN ENGLISH LAW PERSPECTIVE

JOHANNA OHLMAN

Assistance and research provided by Farzin Bakhtiar, HFW

The ongoing Houthis attacks on commercial vessels in the Red Sea have resulted in around 80 vessels being struck by missiles, drones, water-borne explosives and more¹. Shipowners, Charterers, and operators have adopted preventative measures to mitigate such attacks, most commonly rerouting voyages to avoid the Red Sea and proceeding via the Cape of Good Hope. Contractual obligations arising from charterparties pose legal challenges as to whether vessels *can* be rerouted under a charterparty. This paper explores the contractual impact and options available from an English law perspective and the latest case-law developments in this area.

Refusing a port call or route: General position under charterparties

The Red Sea crisis has brought into sharp focus the position of Shipowners and Charterers under the terms of the charterparty (be it a time or voyage charterparty). Shipowners may refuse to call at certain ports or to sail a certain route to avoid the Red Sea.

While charterparty terms vary, the following terms are normally found (if not express, then implied):

- The Vessel / Master / Shipowners should comply with Charterers' employment / voyage orders;
- The Vessel should prosecute the voyage with utmost despatch.

It follows that the Vessel should, in complying with Charterers' orders, take the most direct route and not delay or deviate.

Absent any express provisions, Owners' rights to refuse to proceed to a certain port or to take a certain route are therefore limited in English law.

War Risks: CONWARTIME2013 and VOYWAR2013

Standard form charterparties usually incorporate provisions that apply in the event of 'War Risks' affecting nominated ports, the most notable being

¹ Nicholas Hough, International Marine Contractors Association, '5 February 2024 – Interim Industry Transit Advice, Southern Red Sea and Guld of Aden' 5 February 2024.

BIMCO's War Risk Clause for Time Chartering 2013 (CONWARTIME 2013) and BIMCO's War Risks Clause for Voyage Chartering 2013 (VOYWAR2013)².

'War Risks' is broadly defined in both clauses, encompassing instances of war, war-like operations, rebellions, piracy, robberies, acts of hostilities, malicious damage, blockades and more, which "*in the reasonable judgement of the Master and / or the Owners, may be dangerous or may become dangerous to the vessel, her cargo, crew or other persons on board the vessel.*"³. Under these conditions, the Vessel is not obliged to proceed to any area where it, "*in the reasonable judgement of the Master and / or Owners, may be exposed to War Risks whether such risk existed at the time of entering into this Charter Party or occurred thereafter*" (if not overridden by other contractual terms)⁴.

The contestable element is generally the reasonable judgement formulation, which relies on good faith, as "*otherwise it would not be a judgement but a device to obtain a financial gain*" per Teare J in *The Triton Lark*⁵. Charterers may argue it is *not* in the reasonable judgement of the Master or Owners to reroute the voyage because (a) the exposed danger does not constitute 'War Risks' or (b) if it does constitute 'War Risks', the incident – in the reasonable judgement of the Master or Owners – is not dangerous or may not become dangerous to the Vessel⁶. The latter owing to the fact that it is largely a commercial / operating decision for the Masters / Owners having conducted their own risk assessment for the Vessel.⁷

Specific to the Red Sea attacks, the risk assessment considers amongst others:

Is the decision to reroute the voyage being made in good faith, i.e., have all necessary enquiries been made?

Is the Vessel Israeli, American, or British? Is the Vessel planning to or has the Vessel previously called at Israeli ports?

Does the Vessel have any Israeli-affiliated ownership?

Have the number of attacks in the surrounding areas increased or decreased?

Have the Owner's underwriters declared the affected area a 'war' or 'war-like' zone?

If the Master or Shipowner strongly believe in the likelihood of real danger to the Vessel, her cargo, or her crew when transiting the Red Sea, and if such views are legitimately held and can be evidenced, the Owners are legally entitled to reroute the voyage. Additionally, sub-clause (b) of

² BIMCO, 'War Risks Clause for Time Chartering 2013 (CONWARTIME2013)' 16 July 2013, and BIMCO, 'War Risk Clause for Voyage Chartering 2013 (VOYWAR 2013).

³ CONWARTIME2013 sub-clause (a)-(i), and VOYWAR2013 subclause (a)-(i).

⁴ CONWARTIME2013 sub-clause (b), and VOYWAR2013 subclause (b).

⁵ PACIFIC BASIN IHX LTD v BULKHANDLING HANDYMAX AS (THE "TRITON LARK") [2012] 1 Lloyd's Rep. 151

⁶ CONWARTIME2013 sub-clause (a)-(i) and (b), and VOYWAR2013 subclause (a)-(i) and (b).

⁷ Bennett Howard, Dias Julia, et. al, *Carver on Charterparties* (2nd ed, Sweet & Maxwell 2020), para 449.

CONWARTIME2013 states, should the Vessel be in an area “*which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it*”⁸. It follows that theoretically, the Vessel can transit the Red Sea on a low risk assessment and alter its route if War Risks increase.

The recent Supreme Court judgment in the *POLAR* addresses this issue. While primarily a case considering the ramifications of a pirate seizure in the Gulf of Aden on insurers, Lord Hamblen stated:

*“Against the background of that specially agreed contractual regime for the known piracy risks of transiting the Gulf of Aden I do not consider that it would have been open to the shipowner to contend that such risks were “war risks” for the purposes of clause 39. Having agreed the vessel’s route and the terms upon which the Gulf of Aden would be transited neither the shipowner nor the master could then turn round and say that they had changed their mind and were no longer willing to take on the known piracy risk of transiting the Gulf of Aden on the terms agreed. If different war risks materialised in the Gulf of Aden or there was a change in the nature of the piracy risk, or a change in its degree sufficient to make it qualitatively different, then it may be that clause 39 could be relied upon, but not if there was no change in risk”*⁹.

In other words, in charterparties containing an agreement to proceed via the Gulf of Aden / Red Sea, Owners cannot exercise the liberty to reroute and proceed via the Cape of Good Hope to avoid War Risks *unless* there has been a *qualitative or material change* in circumstances¹⁰.

In the *POLAR*, Lord Hamblen upheld the decision of the Court of Appeal in the *PRODUCT STAR* and dicta contained in the *PAIWAN WISDOM*¹¹. In the *PRODUCT STAR*, the charterparty was concluded at a time when it was common knowledge that the Arabian Gulf was exposed to War Risks stemming from the Iran-Iraq war, and the charterparty contained terms stating that any extra premiums due to trading through the Arabian Gulf were for the Charterers’ account and giving Owners full discretion to decline entry into a dangerous port¹². Before the fourth voyage, the Owners refused to proceed via the Arabian Gulf claiming it was dangerous. However, at the time of the decision, there had been no recent attacks that made the area any more dangerous than it was when the charterparty was concluded. The Court of Appeal held that the Owners’ discretion was not validly exercised, being “*capricious and unreasonable*”¹³.

⁸ CONWARTIME2013 sub-clause (b).

⁹ *Herculito Maritime Ltd and others v Gunvor International BV and others (The Polar)* [2024] UKSC 2 [62].

¹⁰ Andrew Guy Blackwood KC, Quadrant Chambers, ‘Supreme Court Rules on Piracy in Gulf of Aden – Guy Blackwood KC’ 17 January 2024.

¹¹ *Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The Product Star)* (No 2) [1993] 1 Lloyd’s Rep 397, and *Taokos Navigation SA v Komrowski Bulk Shipping KG (The Paiwan Wisdom)* [2012] EWHC 1888 (Comm), [2012] 2 Lloyd’s Rep 416.

¹² *Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The Product Star)* (No 2) [1993] 1 Lloyd’s Rep 397.

¹³ *Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The Product Star)* (No 2)

In the *PAIWAN WISDOM* the charterparty incorporated the CONWARTIME2004 clause which allowed the Owners to refuse transiting dangerous areas susceptible to War Risks and contained a trading limits clause which stated, “*passing Gulf of Aden always allowed with H&M insurance authorisation*”¹⁴. Teare J held *obiter* that this clause indicated that the Owners agreed to pass through the Gulf of Aden “*on account of there being a danger of an attack by pirates*”¹⁵. As CONWARTIME2004 is to be read in light of the charterparty as a whole, and an express agreement to pass through the Gulf of Aden was agreed, it would be inconsistent for the Owners to rely on CONWARTIME2004 to reroute the voyage.

VOYWAR2013 allows Owners to have the same liberty as CONWARTIME2013, with additional provisions covering three specific circumstances. Under sub-clause (b), Owners are entitled to give notice of cancellation or refuse performance of the charterparty if it becomes apparent the Vessel will be exposed to War Risks¹⁶. If visiting various ports, and one or more ports is exposed to War Risks, cancellation is permitted if the Charterers has failed to respond and after the Owners have given notification requiring substitution of a safe port. Sub-clause (c) enables Owners not to proceed with the contractual voyage after loading commences if it appears that performance of the charter will expose the Vessel to War Risks. If triggered, the cargo may be discharged at any safe port the Owners choose, after the Charterer has been notified¹⁷.

Sub-clause (d) is perhaps the most relevant in relation to the Red Sea attacks, allowing Owners to reroute the contractual voyage if the Vessel is exposed to War Risks “at any stage of the voyage after the loading of the cargo commences”¹⁸. Shipowners must notify Charterers of the adoption of an alternate route, and if this route is longer, Charterers shall be entitled to payment of additional freight¹⁹.

Deviation

The obligation to pursue the contractual route is a fundamental term of charterparties in English law. A deviation may either constitute a repudiatory breach of the charterparty, giving the Charterer the right to elect whether to affirm or rescind the charterparty or, as a matter of interpretation, exception clauses will usually be understood as inapplicable to any losses occurring during the deviation²⁰. Accordingly, the specific provisions of the

[1993] 1 Lloyd's Rep 397, [407].

¹⁴ Taikos Navigation SA v Komrowski Bulk Shipping KG (The *Paiwan Wisdom*) [2012] EWHC 1888 (Comm), [2012] 2 Lloyd's Rep 416.

¹⁵ Taikos Navigation SA v Komrowski Bulk Shipping KG (The *Paiwan Wisdom*) [2012] EWHC 1888 (Comm), [2012] 2 Lloyd's Rep 416 [17].

¹⁶ VOYWAR2013 subclause (b).

¹⁷ VOYWAR2013 subclause (c).

¹⁸ VOYWAR2013 subclause (d).

¹⁹ Bennett Howard, Dias Julia, et. al, *Carver on Charterparties* (2nd ed, Sweet & Maxwell 2020), para 456.

²⁰ Bennett Howard, Dias Julia, et. al, *Carver on Charterparties* (2nd ed, Sweet & Maxwell 2020), para 328.

charterparty need examining to determine whether deviation is permitted, and any deviation must be ‘reasonable’ if the Owners are to avoid liability for any losses that result from rerouting via the Cape of Good Hope.

Article IV Rule 4 of the Hague-Visby Rules allows Shipowners to make “any deviation in saving or attempting to save life or property at sea or any reasonable deviation” which “shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage”. Charterparties can also contain express liberty clauses granting Shipowners the right to deviate from the contractual voyage on various listed grounds²¹. In the absence of an express deviation provision, the Shipowners / the Master have an implied right under common law to deviate if necessary to avoid danger to the Vessel and / or cargo²².

Conclusion

The Red Sea crisis tests a number of key charterparty terms that have been well-discussed by the English courts, while exposing new issues and concerns.

Ultimately therefore, parties need to carefully consider their rights and obligations under the charterparties they have entered into. Shipowners and the Vessel’s Master must conduct a risk assessment of the likelihood of risk arising from a prospective voyage through the Red Sea and consider whether (1) rerouting makes practical sense and (2) it is possible under the agreed terms.

Sources

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²¹ Bennett Howard, Dias Julia, et. al, *Carver on Charterparties* (2nd ed, Sweet & Maxwell 2020), para 339.

²² *Phelps, James & Co v Hill* [1891] 1 Q.B. 605 [613].

CONVENTIONS

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MARINE WAR INSURANCE INSIGHTS FROM THE MARKET

MALIN HÖGBERG



Marine War risk insurance

Cover

- Damage due to acts of war and terrorism (named) perils

Purpose

- cover war perils that are excluded from other marine policies

Market Features

- Adaptable
- IWL and AP system
- Appetite for risk



Geopolitical instability - consequences

Change in trading pattern

- Black Sea
- Red Sea

Available insurable objects

- 800 tankers left IGP&I

Parallel insurance market?

The Swedish Club



Sanctions

- political trade restrictions



Sanctions & Insurance cover

- Operational to ensure compliance and lawfulness of trade
- Breach of contract to expose insurer to sanctions risks
- Each party to perform its own due diligence
- Potential conflict of interest
- Risk appetite:
 - ✓ insurer vs assured?
 - ✓ business partners?

The Swedish Club



Expectations: 2020 OFAC Guidance

Guidance to Address Illicit Shipping and Sanctions Evasion Practices

- Marine Insurance
- Flag Registry Managers
- Port State Control Authorities
- Shipping Industry Associations
- Commodity Traders, Suppliers and Brokers
- Financial Institutions
- Shipowners, Operators and Charterers
- Classification Societies
- Vessel Captains
- Crewing Companies

The Swedish Club



Marine Insurers - impact

Due diligence expectations:

- Sanctions compliance program
- Know Your Customer and Counterparty
- AIS tracking - assessment
- Supply chain due diligence: origin of cargo, STS operations
- Exclusion clauses
- Industry information sharing

The Swedish Club



Trends 2021/2022

AIS Manipulation instead of shut off/gaps

- Spoofing or AIS misuse to replicate other vessel's identity

Identity tampering

- Physically altering a vessel's appearance (repainting, tarpaulins) and identity (name & IMO number) or altering the registered identity

False Documents

- False vessel and cargo documentation

Ship to ship transfers

- Disguising the true origin of illicit cargoes

The Swedish Club



2023 All about Russia

– Council Regulation (EU) No 833/2014

Targeting “Financial assistance”

- Oil Price Cap
- Iron and steel
- Coal
- Fertilisers
- Luxury goods
- Dual use goods

The Swedish Club



Due diligence

Legality of trade

- ✓ Understand what you are asked to do
- ✓ Identify cargo via use of CN (HS) code e.g., 2710/2709
- ✓ Determine if the cargo originates in Russia
- ✓ Discharge port outside EU?
- ✓ Signed price cap attestation from contractual counterparty

Risk and legality

- ✓ KYC
- ✓ Do not turn a blind eye to the obvious
- ✓ Avoid clever constructions – circumvention prohibited
- ✓ Extended enterprise’s risk appetite?

The Swedish Club

August 2022



Marine War Insurance – insights from the market

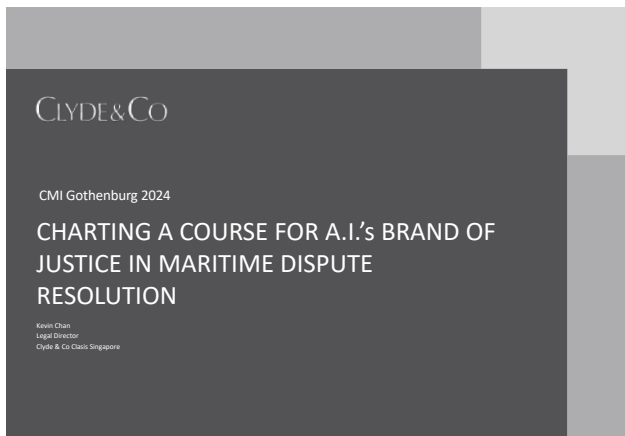
Malin Högberg
Director Corporate Legal, TSC

Christopher Hesselbrandt
Marine Manager Nordics, QBE

CHARTING A COURSE FOR A.I.'S BRAND OF JUSTICE IN MARITIME DISPUTE RESOLUTION

KEVIN CHAN

The full essay can be found on the CMI Website: <https://comitemaritime.org/work/ycmi-essay-prize/>



Outline

- Introduction
- Tests
- Limitations
- Value to maritime disputes

INTRODUCTION



Illustration- a dispute relating to hold cleaning

Prompt presented to ChatGPT – the Facts

"There is a dispute between Owners and Charterers that we need you to make a determination on. We will provide the factual circumstances and submissions made by Owners and Charterers below for your consideration.

Facts:

(1) Owners chartered the Vessel to Charterers under a time charterparty on the NYPE Form 1946. The Charterparty is governed by English law. Clause 1 of the fixture recap states as follows:

"HOLD CONDITION ON ARRIVAL AT 1st LOADING PORT TO BE CLEAN ... AND READY TO RECEIVE CHARTERERS' INTENDED CARGO...ALL RESPECTS SUBJECT TO THE SHIPPERS SURVEYORS' INSPECTION. IF THE VESSEL FAILS SUCH SURVEY, THE VESSEL TO BE PLACED OFF-HIRE FROM TIME OF THE REJECTION UNTIL ACCEPTED IN ALL HOLDS, AND ANY EXTRA DIRECTLY-RELATED COSTS/EXPENSES/TIME THEREFROM TO BE FOR OWNERS' ACCOUNT."

(2) The Vessel arrived at the first loading port and was due to berth immediately.

(3) The holds failed inspection as they did not meet the required cleanliness standards.

(4) The holds were eventually passed on a re-inspection three days later. However, due to port congestion, the Vessel had already lost its slot on the berthing queue and was only able to berth eight days after passing the reinspection.

(5) Owners admit that the Vessel should be placed off-hire for a period of three days from the time that the holds failed the first inspection until the time that the holds were passed on a re-inspection.

(6) On the other hand, Charterers claim that the Vessel continues to be off-hire for the eight days that she waited to berth after passing the re-inspection, or alternatively, that Owners are liable to Charterers in damages for the time lost."

Illustration- a dispute relating to hold cleaning

Prompt presented to ChatGPT – Owners' submissions

"Owners' Submissions:

(1) Under clause 1 of the fixture recap, the parties had agreed a simple period off-hire clause, by which time ceased at the time the holds failed inspection and re-commenced upon their passing the re-inspection. Any additional time lost thereafter was a loss arising directly from congestion in the port, which was a risk to be borne by the Charterers in any event. It was not 'directly related' in the terms of clause 1 to the failure of the holds to pass the initial inspection.

(2) The Vessel continues to be on hire by default and any off-hire provision (i.e., clause 1) is to be construed against Charterers."

Kevin Chan

Illustration- a dispute relating to hold cleaning

Prompt presented to ChatGPT – Charterers’ Submissions

“Charterers’ Submissions:

- (1) If a ship had a slot in a berthing queue, and lost that slot because her holds failed their inspection and then re-entered the queue in a later position and berthed later as a consequence, then that delay was caused by reason of the ship's holds failing, and was nothing to do with congestion.
- (2) Clause 1 does not expressly confine the loss of time to the period between failing and passing inspection.
- (3) It would be superfluous for ‘time’ to be added to the phrase ‘EXTRA DIRECTLY-RELATED COSTS/EXPENSES/TIME THEREFROM TO BE FOR OWNERS’ ACCOUNT’ if it only meant that the Vessel should be placed off-hire in the period between failing and passing inspection. This would have already been covered by the preceding off-hire provision of the clause. Accordingly, the inference to be made is that the Parties intended for ‘time’ to have a different meaning from the preceding provision of the clause (which already placed the Vessel off-hire between failing and passing inspection).’

Illustration- a dispute relating to hold cleaning

Prompt presented to ChatGPT – Questions for determination

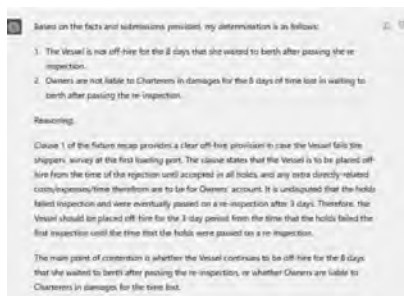
“Questions for your determination:

- (1) Is the Vessel off-hire for the eight days that she waited to berth after passing the re-inspection?
- (2) Alternatively, are Owners liable to Charterers in damages for the eight days of time lost in waiting to berth after passing the re-inspection?

Please let us have the reasons for your decision, citing any relevant authorities that may be applicable.”

Illustration- a dispute relating to hold cleaning

THE DECISION BY CHATGPT



Reasoning continues on next slide

Illustration- a dispute relating to hold cleaning

THE DECISION BY CHATGPT

Charterers' submissions correctly argue that the off-hire provision in clause 1 is a simple period off-hire clause, by which time ceases at the time the hold's failed inspection and re-commenced upon their passing the re-inspection. Any additional time lost thereafter was a loss arising directly from congestion in the port, which was a risk to be borne by the Charterers in any event. It was not "directly related" in the terms of clause 1 to the failure of the hold to pass the initial inspection.

Charterers' submissions argue that the delay in berthing was caused by the vessel's hold's failing inspection and re-inspection, the queue in a later position which was nothing to do with congestion. However, this argument overlooks the fact that the delay was a result of the combination of the vessel's failing inspection and port congestion. It is not disputed that there was congestion at the port, which prevented the vessel from berthing immediately after passing the re-inspection. Therefore, the delay was not solely caused by the vessel's hold's failing inspection, but rather by a combination of factors, including port congestion.

Furthermore, Charterers' submissions argue that "time" should have a different meaning from the preceding provision of the clause, which already placed the vessel off-hire between failing and passing inspection. However, this argument contradicts the fact that the phrase "EXTRA DIRECTLY RELATED COSTS/EXPENSES/TIME THEREAFTER TO BE FOR CHARTERERS' ACCOUNT" is limited to the vessel being off-hire from the time of the rejection until accepted in all holds. Therefore, the phrase "time" in this context should be interpreted as referring to the off-hire period between failing and passing inspection.

Reasoning continues on next slide

Illustration- a dispute relating to hold cleaning

THE DECISION BY CHATGPT

In conclusion, the vessel is not off-hire for the 8 days that she waited to berth after passing the re-inspection, and Owners are not liable to Charterers in damages for the time lost. The off-hire provision in clause 1 applies only to the period between failing and passing inspection, and any additional time lost thereafter is a risk to be borne by the Charterers in any event.



Limitations

- Requires a great degree of coordination/agreement
- Lack of clarity over decision making process
- Inability to assess witness credibility and weight of evidence
- Cannot manage procedural conduct of arbitration
- Confidentiality issues
- Decisions not based on law
- Enforcement /Regulatory issues
- Absence of innovation and creativity



Features of maritime dispute resolution

- Cross-border
- Popularity of arbitration
- Desire for Specialist decision-makers
- Documents-only basis
- Limited discovery
- Less relevance of witness testimony (for most cases)
- Less interest in development of law through setting precedents

disputes

- Speed
- Impartiality?
- Specialist knowledge?
- "Omnipresence"
- Access to justice



CONCLUDING THOUGHTS

- Rapidly evolving landscape
- Limitations (Perceived limitations)
 - Inability to apply law
 - Inability to assess witness credibility
 - Inability to carry out case management functions
 - Confidentiality issues
 - Enforceability – may no longer be a concern in the future
- KEVIN CHAN, "NEW ERA OF MARITIME ARBITRATION: EX MACHINA DETERMINATIONS" (Journal of International Arbitration, Volume 40, Issue 5 (2023))
- An option for the future

PART III

Status of Conventions

(Guidance as to where information can be obtained)

STATUS OF SIGNATURES, RATIFICATIONS, ACCEPTANCES, APPROVALS, ACCESSIONS, RESERVATIONS AND NOTIFICATIONS OF SUCCESSION WITH REGARD TO MARITIME LAW CONVENTIONS

Since 1951 CMI has published information about the status of maritime law conventions in its CMI Bulletins, and later in its CMI Yearbooks. The information was initially limited to the Brussels' conventions which were the result of the work of CMI itself. But over time information about maritime law conventions produced by IMO and other organizations was also published by CMI. For its information CMI relied on the kind co-operation with the Ministry of Foreign Affairs of Belgium (the depositary of the Brussels' conventions), and the secretariats of the relevant international organizations.

Over the years the Belgian Ministry and the international organizations have proceeded to publish information on the status of conventions on the internet. These internet publications are updated as soon as new information becomes available. Therefore, spending a lot of time on the gathering of the same information for an annual publication in a paper yearbook would now seem to serve a very limited purpose. It was therefore decided to stop publishing the status of conventions in the CMI Yearbook and switch to publication on the CMI website. In order to prevent the unnecessary duplication of information already publicly available (and kept up to date) on the websites of the Belgian Ministry of Foreign Affairs and the international organizations, CMI now simply provides a list of the relevant maritime law conventions with links to the websites of convention depositaries and international organizations. References to national treaty databases which provide trustworthy information on the status of multilateral conventions are also included.

The conventions are listed under six headings:

- Status of Brussels (CMI) Maritime Law Conventions
- Status of IMO Maritime Law Conventions
- Status of UN and UN/IMO Maritime Law Conventions
- Status of UNESCO Maritime Law Conventions
- Status of UNIDROIT Maritime Law Conventions
- Status of Antarctic Maritime Law Conventions

*Status of Signatures, Ratifications, Acceptances, Approvals, Accessions, Reservations
and Notifications of Succession with regard to Maritime Law Conventions*

The conventions are listed within these categories in chronological order, but keeping protocols to conventions grouped together with the original convention.

It should be noted that the information provided on the websites referred to may vary in detail and accuracy. Just as in the past, CMI cannot guarantee that all the information is complete and correct. In the end it is advisable to contact the official depositary of each convention. Experience has shown that even then the information provided may be subject to debate.

Taco van der Valk
5 January 2023

Status of Brussels (CMI) Maritime Law Conventions

International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM1.%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*)
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003382>

Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM2.%20A\)%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM2.%20A)%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf)

Protocol to amend the Convention for the Unification of Certain Rules of law relating to Assistance and Salvage at Sea Signed at Brussels on 23rd September 1910, Brussels, 27 May 1967

Entry into force: 15 August 1977

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM2.%20B\)%20Protocole%20de%20modification%2C%20sign%C3%A9%20%C3%A0%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM2.%20B)%20Protocole%20de%20modification%2C%20sign%C3%A9%20%C3%A0%20%5B...%5D.pdf)

International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-going Vessels, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM3.%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280167705>

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20A\)%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20A)%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf)
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801d0f51>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/004127>

Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25th August 1924, Brussels, 23 February 1968

Entry into force: 23 June 1977

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20B\)%20Protocole%20de%20modification%2C%20sign%C3%A9%20%C3%A0%20Bruxelles%20le%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20B)%20Protocole%20de%20modification%2C%20sign%C3%A9%20%C3%A0%20Bruxelles%20le%20%5B...%5D.pdf)
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea4ab>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003112>

Protocol amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 25 August 1924 as amended by the Protocol of 23 February 1968, Brussels, 21 December 1979

Entry into force: 14 February 1984

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20C\)%20Protocole%2C%20sign%C3%A9%20%C3%A0%20Bruxelles%20le%2021%20d%C3%A9cembre%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM4.%20C)%20Protocole%2C%20sign%C3%A9%20%C3%A0%20Bruxelles%20le%2021%20d%C3%A9cembre%20%5B...%5D.pdf)
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d54ea>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/000840>

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 10 April 1926

Entry into force: 2 June 1931

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM5.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20r%C3%A8gles%20relatives.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=080000028016775a>

International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 10 April 1926

Entry into force: 8 January 1937

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM6.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20r%C3%A8gles%20concernant%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (*Verdragenbank*)
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003839>

Additional Protocol to the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 24 May 1934

Entry into force: 8 January 1937

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM6.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20r%C3%A8gles%20concernant%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/005942>

International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952

Entry into force: 14 September 1955

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM7.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338d5>

International Convention for the Unification of Certain Rules Relating to Penal jurisdiction in matters of collision and other incidents of navigation, Brussels, 10 May 1952

Entry into force: 20 November 1955

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM8.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338c3&clang=_en

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952

Entry into force: 24 February 1956

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM9.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/007235>

International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, 10 October 1957

Entry into force: 31 May 1968

- the depositary, the Belgian Government:
[https://diplomatie.belgium.be/sites/default/files/documents/CDM10.%20A\)%20Convention%20internationale%20sur%20la%20limitation%20de%20la%20responsabilit%C3%A9%20%5B...%5D.pdf](https://diplomatie.belgium.be/sites/default/files/documents/CDM10.%20A)%20Convention%20internationale%20sur%20la%20limitation%20de%20la%20responsabilit%C3%A9%20%5B...%5D.pdf)
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea54a>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/006826>

Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships dated 10 October 1957, Brussels, 21 December 1979

Entry into force: 6 October 1984

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/Etats%20li%C3%A9s1979.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d549d>

International Convention relating to Stowaways, Brussels, 10 October 1957

Entry into force: not yet in force

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM11.%20Convention%20internationale%20sur%20les%20passagers%20clandestins%2C%20%5B...%5D.pdf>

International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961

Entry into force: 4 June 1965

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM12.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20r%C3%A8gles%20en%20%5B...%5D.pdf>
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea435>
- Netherlands Treaty Database (in English) (*Verdragenbank*)
<https://verdragenbank.overheid.nl/en/Verdrag/Details/009010>

International Convention on the Liability of Operators of Nuclear Ships, Brussels, 25 May 1962

Entry into force: not yet in force

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM13.%20Convention%20relative%20a%20la%20responsabilit%C3%A9%20des%20exploitants%20de%20%5B...%5D.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*)
<https://verdragenbank.overheid.nl/en/Verdrag/Details/009108>

International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM14.%20Convention%20internationale%20pour%20l'unification%20de%20%5B...%5D.pdf>

Convention relating to Registration of Rights in respect of Vessels under Construction, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM15.%20Convention%20internationale%20relative%20%C3%A0%20l'inscription%20%5B...%5D.pdf>

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government:
<https://diplomatie.belgium.be/sites/default/files/documents/CDM16.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20%5B...%5D.pdf>

Status of IMO Maritime Law Conventions

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969

Entry into force: 19 June 1975

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801083db&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003096>

Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 19 November 1976

Entry into force: 8 April 1981

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e815e&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Treaty/Details/001655>

Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 25 May 1984

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/000115>

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 27 November 1992

Entry into force: 30 May 1996

- The depositary, the (Secretary General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=08000002800a5777>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Treaty/Details/005146>

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, Brussels, 29 November 1969

Entry into force: 6 May 1975

- The depositary, the (Secretary General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801089a9&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003095>

Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, London, 2 November 1973

Entry into force: 30 March 1983

- The depositary, the (Secretary General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ddf24&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/002394>

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971

Entry into force: 16 October 1978

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f5af6&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/002837>

Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 19 November 1976

Entry into force: 22 November 1994

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ad4bc&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/001657>

Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 25 May 1984

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000116>

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992

Entry into force: 30 May 1996

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx)
- the depositary, the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a599a&clang=en>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/012374>

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003

Entry into force: 3 March 2005

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/010844>

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971

Entry into force: 15 July 1975

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Convention-relating-to-Civil-Liability-in-the-Field-of-Maritime-Carriage-of-Nuclear-Material-\(NUCLEAR\).aspx](https://www.imo.org/en/About/Conventions/Pages/Convention-relating-to-Civil-Liability-in-the-Field-of-Maritime-Carriage-of-Nuclear-Material-(NUCLEAR).aspx)
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280107d4b>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002836>

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, Athens, 13 December 1974

Entry into force: 28 April 1987

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx)
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800cddb3>

Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 19 November 1976

Entry into force: 30 April 1989

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800c3599&clang=_en

Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 29 March 1990

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx)

Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 1 November 2002

Entry into force: 23 April 2014

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/011547>

Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976

Entry into force: 1 December 1986

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-\(LLMC\).aspx](https://www.imo.org/en/About/Conventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-(LLMC).aspx)
- the United Nations Treaty Collection:
<https://treaties.un.org/pages/showDetails.aspx?objid=08000002800f9404>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/001656>

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, London, 2 May 1996

Entry into force: 13 May 2004

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Convention-on-limitation-of-Liability-for-Maritime-Claims-\(LLMC\).aspx](https://www.imo.org/en/About/Conventions/Pages/Convention-on-limitation-of-Liability-for-Maritime-Claims-(LLMC).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/007428>

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9bd7&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/002231>

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9af3&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/002232>

Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 14 October 2005

Entry into force: 28 July 2010

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/011471>

Protocol of 2005 to the Protocol for the Suppression on Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, London 14 October 2005

Entry into force: 28 July 2010

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/011470>

International Convention on Salvage, 1989, London, 28 April 1989

Entry into force: 14 July 1996

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Salvage.aspx>
- the United Nations Treaty Collection:
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a58b3>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003805>

International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, London, 30 November 1990

Entry into force: 13 May 1995

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-\(OPRC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-(OPRC).aspx)
- the United Nations Treaty Collection:
https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800aada6&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/004459>

Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000, London, 15 March 2000

Entry into force: 14 June 2007

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/Protocol-on-Preparedness,-Response-and-Co-operation-to-pollution-Incidents-by-Hazardous-and-Noxious-Substances-\(OPRC-HNS-Pr.aspx](https://www.imo.org/en/About/Conventions/Pages/Protocol-on-Preparedness,-Response-and-Co-operation-to-pollution-Incidents-by-Hazardous-and-Noxious-Substances-(OPRC-HNS-Pr.aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/009370>

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London, 3 May 1996

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Liability-and-Compensation-for-Damage-in-Connection-with-the-Carriage-of-Hazardous-and-Noxious-.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/007429>

Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London 30 April 2010

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Liability-and-Compensation-for-Damage-in-Connection-with-the-Carriage-of-Hazardous-and-Noxious-.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/012292>

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, London, 23 March 2001

Entry into force: 21 November 2008

- The depositary, the (Secretary-General of the) International Maritime Organization:
[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx)
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/011005>

**Nairobi International Convention on the Removal of Wrecks, Nairobi,
18 May 2007**

Entry into force: 14 April 2015

- The depositary, the International Maritime Organization:
<https://www.imo.org/en/About/Conventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/009962>

Status of UN and UN/IMO Maritime Law Conventions

United Nations Convention on a Code of Conduct for Liner Conference, Geneva, 6 April 1974

Entry into force: 6 October 1983

- The depositary, the (Secretary-General of the) United Nations:
https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003a445&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/002264>

United Nations Convention on the Carriage of Goods by Sea, Hamburg, 31 March 1978

Entry into force: 1 November 1992

- The depositary, the (Secretary-General of the) United Nations:
<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280042179>

United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) United Nations:
https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025033&clang=_en

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982

Entry into force: 16 November 1994

- The depositary, the (Secretary-General of the) United Nations:
https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5&clang=_en
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/000493>

United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) United Nations:
<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004c485>

United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, Vienna, 19 April 1991

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) United Nations:
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ott_e.pdf

International Convention on Maritime Liens and Mortgages, 1993, Geneva, 6 May 1993

Entry into force: 5 September 2004

- The depositary, the (Secretary-General of the) United Nations:
<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004a70a>

International Convention on Arrest of Ships, 1999, Geneva, 12 March 1999

Entry into force: 14 September 2011

- The depositary, the (Secretary-General of the) United Nations:
<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004ce27>
- United Nations Trade and Development:
https://unctad.org/system/files/official-document/aconf188d6_en.pdf

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea, New York, 11 December 2008

Entry into force: not yet in force

- The depositary, the (Secretary-General of the) United Nations:
<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028021e615>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/010533>

Status of UNESCO Maritime Law Conventions

UNESCO Convention on the Protection of Underwater Cultural Heritage, Paris, 2 November 2001

Entry into force: 2 January 2009

- the depositary, the (Director-General of the) United Nations Educational, Scientific, Cultural Organization (UNESCO):
<https://www.unesco.org/en/legal-affairs/convention-protection-underwater-cultural-heritage?hub=66535>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/010501>

Status of UNIDROIT Maritime Law Conventions

UNIDROIT Convention on International Financial Leasing, Ottawa, 28 May 1988

Entry into force: 1 May 1995

- the depositary, the Government of Canada
<https://treatyaccord.gc.ca/details.aspx?id=104674>
- the originating organization, the International Institute for the Unification of Private Law (UNIDROIT):
<https://www.unidroit.org/instruments/leasing/convention/status/>

Status of Antarctic Maritime Law Conventions

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising From Environmental Emergencies, Stockholm, 14 June 2005

Entry into force: not yet in force

- the depositary, the Government of the United States:
<https://www.state.gov/annex-vi-antarctic-treaty/>
- Netherlands Treaty Database (in English) (*Verdragenbank*):
<https://verdragenbank.overheid.nl/en/Verdrag/Details/010766>

CONFERENCES OF THE COMITÉ MARITIME INTERNATIONAL

I. BRUSSELS – 1897

President:

Mr. Auguste BEERNAERT.

Subjects:

Organization of the International
Maritime Committee - Collision
-Shipowners' Liability.

II. ANTWERP – 1898

President:

Mr. Auguste BEERNAERT.

Subjects:

Liability of Owners of sea-going
vessels.

III. LONDON – 1899

President:

Sir Walter PHILLIMORE.

Subjects:

Collisions in which both ships are
to blame - Shipowners' liability.

IV. PARIS – 1900

President:

Mr. LYON-CAEN.

Subjects:

Assistance, salvage and duty to
tender assistance - Jurisdiction in
collision matters.

V. HAMBURG – 1902

President:

Dr. Friedrich SIEVEKING.

Subjects:

International Code on Collision
and Salvage at Sea - Jurisdiction in
collision matters - Conflict of laws
as to owner-ship of vessels.

VI. AMSTERDAM - 1904

President:

Mr. E.N. RAHUSEN.

Subjects:

Conflicts of law in the matter of
Mortgages and Liens on ships -
Jurisdiction in collision matters -
Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905

President:

Sir William R. KENNEDY.

Subjects:

Limitation of Shipowners' Liability
- Conflict of Laws as to Maritime
Mortgages and Liens - Brussels
Diplomatic Conference.

VIII. VENICE – 1907

President:

Mr. Alberto MARGHERI.

Subjects:

Limitation of Shipowners' Liability
- Maritime Mortgages and Liens -
Conflict of law as to Freight.

Conferences of the Comité Maritime International

IX. BREMEN – 1909

President:

Dr. Friedrich SIEVEKING.

Subjects:

Conflict of laws as to Freight

- Compensation in respect of
personal injuries - Publication of
Maritime Mortgages and Liens.

X. PARIS – 1911

President:

Mr. Paul GOVARE.

Subjects:

Limitation of Shipowners' Liability
in the event of loss of life or
personal injury - Freight.

XI. COPENHAGEN – 1913

President:

Dr. J.H. KOCH.

Subjects:

London declaration 1909 - Safety
of Navigation - International Code
of Affreightment - Insurance of
enemy property.

XII. ANTWERP – 1921

President:

Mr. Louis FRANCK.

Subjects:

International Conventions relating
to Collision and Salvage at sea.
- Limitation of Shipowners'
Liability - Maritime Mortgages and
Liens - Code of Affreightment -
Exonerating clauses.

XIII LONDON – 1922

President:

Sir Henry DUKE.

Subjects:

Immunity of State-owned ships

- Maritime Mortgage and Liens.
- Exonerating clauses in Bills of
lading.

XIV. GOTHENBURG – 1923

President:

Mr. Efel LÖFGREN.

Subjects:

Compulsory insurance of
passengers - Immunity of State
owned ships - International Code
of Affreightment - International
Convention on Bills of Lading.

XV. GENOA – 1925

President:

Dr. Francesco BERLINGIERI.

Subjects:

Compulsory Insurance of
passengers - Immunity of State
owned ships - International Code
of Affreightment - Maritime
Mortgages and Liens.

XVI. AMSTERDAM – 1927

President:

Mr. B.C.J. LODER.

Subjects:

Compulsory insurance of
passengers - Letters of indemnity
- Ratification of the Brussels
Conventions.

XVII. ANTWERP – 1930

President:

Mr. Louis FRANCK.

Subjects:

Ratification of the Brussels
Conventions - Compulsory
insurance of passengers -
Jurisdiction and penal sanctions in
matters of collision at sea.

Conferences of the Comité Maritime International

XVIII. OSLO – 1933

President:

Mr. Edvin ALTEN.

Subjects:

Ratification of the Brussels Conventions -Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS – 1937

President:

Mr. Georges RIPERT.

Subjects:

Ratification of the Brussels Conventions -Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP – 1947

President:

Mr. Albert LILAR.

Subjects:

Ratification of the Brussels Conventions, more especially of the Convention on immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM – 1948

President:

Prof. J. OFFERHAUS

Subjects:

Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) -Combined Through Bills of Lading -Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES – 1951

President:

Mr. Amedeo GIANNINI.

Subjects:

Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID – 1955

President:

Mr. Albert LILAR.

Subjects: Limitation of Shipowners' Liability -Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

Conferences of the Comité Maritime International

XXIV. RIJEKA – 1959

President:

Mr. Albert LILAR

Subjects:

Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS – 1962

President:

Mr. Albert LILAR

Subjects:

Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM – 1963

President:

Mr. Albert LILAR

Subjects:

Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK – 1965

President:

Mr. Albert LILAR

Subjects:

Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO – 1969

President:

Mr. Albert LILAR

Subjects:

“Torrey Canyon” - Combined Transports -Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP – 1972

President:

Mr. Albert LILAR

Subjects:

Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG – 1974

President:

Mr. Albert LILAR

Subjects:

Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

Conferences of the Comité Maritime International

XXXI. RIO DE JANEIRO - 1977

President:

Prof. Francesco BERLINGIERI

Subjects:

Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII. MONTREAL – 1981

President:

Prof. Francesco BERLINGIERI

Subjects:

Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President:

Prof. Francesco BERLINGIERI

Subjects:

Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS – 1990

President:

Prof. Francesco BERLINGIERI

Subjects:

Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading -Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY – 1994

President:

Prof. Allan PHILIP

Subjects:

Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - Special Sessions: Third Party Liability -Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP – 1997
CENTENARY CONFERENCE

President:

Prof. Allan PHILIP

Subjects:

Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI -Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships -Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001

President:

Patrick GRIGGS

Subjects:

Issues of Transport Law - Issues of Marine Insurance - General Average -Implementation of Conventions - Piracy -Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004

President:

Patrick GRIGGS

Subjects:

Transport Law - General Average
 - Places of Refuge for Ships in
 Distress - Pollution of the Marine
 Environment - Maritime Security
 - Marine Insurance - Bareboat
 Chartered Vessels - Implementation
 of the Salvage Convention.

XXXIX. ATHENS 2008

President:

Jean-Serge Rohart

Subjects:

Places of Refuge – Procedural
 Rules Relating to Limitation
 of Liability in Maritime Law –
 UNCITRAL Draft Convention
 on Contracts for the International
 Carriage of Goods Wholly or Partly
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 Judicial Sale of Ships – Charterer’s
 Right to Limit Liability –
 Charterer’s Right to Limit Liability
 – Wreck Removal Convention 2007
 – Draft Convention on Recycling
 of Ships

XL. BEIJING 2012

President:

Karl-Johan Gombrii

Subjects:

Judicial Sales of Ships – Salvage
 Convention 1989 – Rotterdam
 Rules – York Antwerp Rules
 2004 – Offshore Activity – Fair
 Treatment of Seafarers – Piracy
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 Problems and Challenges – Future
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 Arrest of Ships and Judicial Sales
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XLI. HAMBURG 2014

President:

Stuart Hetherington

Subjects:

Judicial Sales of Ships – York
 Antwerp Rules 2004 – Ships in
 hot water: Ship Financing and
 Restructuring; Cross Border
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 classification societies; Wrongful
 arrest of ships; Piracy – Ships
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Conferences of the Comité Maritime International

XLII. NEW YORK 2016

President:

Stuart Hetherington

Subjects:

General Average – Costa Concordia
– Cybercrime in Shipping – Offshore
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XLIII. ANTWERP 2022

President:

Christopher O. Davis

Subjects:

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Shipping – Electronic Transport
Records – Maritime Law Issues
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Interpretation - MASS

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