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 document.[1] 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 to source materials are included in the footnotes.[2] 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

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

[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.

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); 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 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.*

[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.

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 law.*[5] *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 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

[4] **CMI Constitution 2017**, Art. 1.
[5] The legal status of the CMI Lex Maritima is defined in Rule 4 below.

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 subject[6]. 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 matters.[8] 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 judgments.[9] 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 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.

[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.

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 conventions[10] and national (statutory or other) definitions[11], although the formulations there are often accompanied by further

[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

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 sea.[12] *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 sea.*[13] *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 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,

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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.

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 conventions[14] and national maritime laws[15] 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 Contracts[16]. 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 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 1992[17]. 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 both[18]. 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).

[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).

[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 conventions[19] *and national laws*[20] *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).

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 2016.[21] *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 statutes.[22]

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 2016.[23] *With a view to applying the CMI Lex Maritima on a contractual basis, a 'CMI Lex Maritima Clause' could be inserted in maritime contracts.*[24] *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.*

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[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 treaties[25] or the rules governing the interpretation of statutory provisions or contract clauses[26]). 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 uniformity.[27] The same Principle has also been advocated in legal doctrine.[28] It has been claimed that national courts apply this guideline even where the applicable convention does not expressly impose it.[29] 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 is underlined in many maritime law systems and by many authorities on maritime law.[30] 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

[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.

[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; Schultsz 1990, 238-243; Smeele 2006, 248; Van Hooydonk 2011-1, 99-100, para 1.90; Zunarelli-Comenale Pinto 2023, 103.

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 law.[31] In order to make such a uniform interpretation possible, account must be taken of relevant foreign case law and the Travaux Préparatoires of maritime conventions,[32] of the broad international regulatory framework for maritime matters,[33] and also of so-called convention comparison, i.e. comparing the provisions of related conventions.[34] 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 majority.[35] Opening up and disseminating foreign case law is a task of legal science, databases, professional journals and the government.[36] Through its website, the CMI is developing a database on the interpretation of maritime law conventions that is accessible free of charge.[37] 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 activities.[38] In other words, the 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 passage[39] 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

[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://cmlcmidatabase.org/.

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

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 2016[41]. 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.

[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 2016.[42]

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*

[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.

more generally confirm the role of maritime custom as a source of law[45] or refer to it in relation to specific matters.[46] Moreover, the importance of maritime custom is highlighted in an abundant literature.[47] 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 authority.[48] 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 ship[49], the delivery of goods in the port of destination[50], and the documents used to arrange for maritime carriage.[51] For that matter, the Unidroit Principles of International Commercial Contracts 2016 also confirm the role of local port usages.[52]

[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.

[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 UNCLOS[53], and in several national statutory provisions.[54] The ship's name is an essential element in, for example, the registration of ships[55], 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 UNCLOS[56] (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 matter.[57] 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 statutes[58].

[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 laws.[59] *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 mortgages*[60] *and, in addition, in some national statutes*[61] *(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 mortgagor and the mortgagee.*

The specific rule on bareboat charter registration can be supported by some (albeit rather rare) national statutes as well.[62] *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 charter are dealt with in Principle 14, which also contains a definition of this contract.*

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[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).

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-ownership[63], and the concept is also recognised in maritime law systems lacking a comprehensive statutory framework.[64]

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 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.

[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.

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 legislation.[65] *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 frameworks.[66] *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 principle.[67]

[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 Sea.[68] 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 case.[69] 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 vessels.[70] 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 COLREG.[71] 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 masters.[72] *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 regulations[73] as well as in some national statutory provisions[74] and, of course, in case law.[75] More specifically, seamanship is also a requirement under rules on professional qualifications.[76] The second standard concerns conduct towards persons and is in line with contemporary maritime labour law[77] and the protection of human rights. The third standard is consistent with contemporary maritime environmental law.[78]

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 conventions[79] and numerous national laws.[80] 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 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,

[73] **Current law**: Rule 2(a) **COLREG** ('ordinary practice of seamen') and 8(a) ('good semanship'); **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, 10°); **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.

many national laws continue to expressly recognise them.[82] *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 guide[85], assistant[86,87] or expert[88], who contributes to the safety of navigation to, from and in ports[89]. Furthermore, it is confirmed in various countries that the pilot may[90,91] or, by definition, must[92,93] actually take charge of the navigation or

[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° 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, 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

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 require.*[97] *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 nations*[98]*. 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 command.*[99] *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 firmat regulam, *the pilot has, pursuant to express provisions, final responsibility for the decisions.*[101] *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*

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)).

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 liabilities.[102] *In common law countries, the matter is governed by the principles concerning the action* in rem *against the ship.*[103] *Although certain 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.*

[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).

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 worldwide[104] 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 provisions.[105] 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 limitation.[106] 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.

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.

[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).
[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.

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

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 varies,[108] *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 6
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 2016[109]*. 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 ships.*[110] *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 1989.*[111] *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 matters.*[112] *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 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*

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

'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 countries[115].

[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 widely[116] and are always of non-mandatory, supplemental nature; moreover they are usually of limited importance in dispute resolution practice.[117] The recent codification of 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 reality.[118] 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.

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[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.*); **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.*).

The definition of the bareboat or demise charter included in paragraph (1) can be considered universally accepted.[119] *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.

[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 accepted.[120]

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) 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 accepted.[121] *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 relationship between conventions and national law have been ignored.[122] *Nor was further consideration given to the national statutory*

[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

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 applicable.[123]

Also the elementary rules regarding the 'transport document for the carriage of goods by sea' in paragraph (2) can be considered of general application.[124] *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 law and/or a jurisdiction clause. Because positive maritime law*

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 Code, Art. 2.6.2.5, § 3); **Brazil** (Commercial Code, Art. 578; **Brazil** (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).

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 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*

[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)); **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-

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 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]

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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** (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.

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

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 law.[138] *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 law.[139]

[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, 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**

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

(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); **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

Part 7
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 applies.[146] *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 Convention.*[147]

The wording of the Principle presented here is based on a non-authentic translation of the Convention text[148] *(the only authentic version of which is in French). In line with the general methodology*

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).

[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).

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 1910.[149] *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 provisions.*[150] *The rule was also reaffirmed in the 1960 UNECE Convention on collisions between inland waterway vessels in Europe.*[151] *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 1885.[152] *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 several countries*[153] *and replaced several alternative regimes, including the automatic apportionment of liability by halves.*[154] *The scope of this rule of the Convention has also*

[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.

[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.

been extended through national provisions.[155] 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 shipowners.[156] 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 liability,[157] 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 liability.[158] 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 USA,[159] 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. It already appeared in national laws before 1910[160] and continues to be confirmed in the current ones[161] as well as in US case law[162] and the UNECE Convention on collisions in inland navigation.[163]

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[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.

[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.

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 superfluous.[164] *However, it is not incorrect, and given the diversity of liability regimes in history, its express confirmation in earlier*[165] *as well as current*[166] *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 matter.*[167]

[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 salved 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.

Commentary

Whereas in pre-industrial times rules on the seizure of shipwrecks (jus naufragii) *and on compensation for rescuers of shipwrecks can be found,*[168] *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 law.*[170] *The Convention added that when a salvage remuneration is due, it may under no circumstances exceed the value of the property salved.* [171]

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 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

[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.

not exceed the salved 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 them.[172] 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' principle.[173] US case law considers the general maritime law of salvage a part of the jus gentium or *customary international law.[174] 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 mentioned,[175] 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 national maritime laws expressly confirm this.[176] 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 parties.[177] 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

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[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.

[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).

salvage,[178] is confirmed in the convention provisions,[179] national laws,[180] case law[181] and doctrine.[182] 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 claimed.[183] However, national law may provide otherwise specifically with regard to public authorities[184]; 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 out,[185] or whether inland vessels or other property may also be salved.[186] 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 articles[187] and the correlating national laws[188] and has roots in, particularly, English (and

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[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, 1))); **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** (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, §

US) case law.[189] 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.

Paragraph (3) confirms that the salvage reward shall not exceed the salved 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 salved. Again, the principle is explicitly confirmed in the Convention provisions[190] and in national laws.[191]

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 Conventions[192], numerous national laws[193] 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,

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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 salved, 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.

[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).

although the 1989 Convention contains a broader list.[194] 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 exhaustive.[195] 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 as a whole, and is moreover expressly confirmed in the 1989 Convention.[196] 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 mind.[197] The relevant provisions of the Conventions are confirmed in, or have at least inspired, various national laws.[198]

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 environment.[199] In addition, rules to the same or a similar effect have been inserted into various national laws.[200] 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

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[194] See and compare **Salvage Convention 1910**, Art. 8; **Salvage Convention 1989**, Art. 13(1).

[195] On the latter point, see Berlingieri 2015, 102.

[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).

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.

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 interests.[201] 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 Digest.[202] The principle was further elaborated in the Rolls of Oléron and subsequent maritime law compilations and statutes.[203] The first version of the modern international rules was adopted in 1860.[204] 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 sector.[205] General average is as such considered part of the Lex Maritima.[206]

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

[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.

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 law.*[208] *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 Rules.[209]

[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 Convention[210]) 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 Convention[211] has deliberately been stripped to the bone.

On the substance, paragraph (2) contains the basic principles on wreck 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],

[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).

[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 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.*

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 1993.[216] *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 law.*[217] *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 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*

[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(tra) V-1983, 7).

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 claims[218], 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 time[220]. 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 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).

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 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 conventions[221] but also in various national maritime law systems.[222] Seizure is a measure

[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*

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 systems.[224] 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 dues.[225] Proven or suspected infringements which may give rise to detention may relate so safety or environmental laws and regulations[226]. Rights of retention are referred to in the recent Liens and Mortgages Conventions[227] and specifically regulated in some national legal systems.[228]

Paragraph (2) states that the positive maritime law may limit ship arrest to those cases where the arresting creditor has a 'maritime claim'. This restriction is provided for in the two Ship Arrest Conventions[229] and various national laws.[230]

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 Conventions[231] and national legislations.[232]

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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).

[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 conventions[233] and almost countless national statutory provisions[234] 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, *A treatise of the law relative to merchant ships and seamen* (London, 1802)
Allsop 2016	J. Allsop, 'Comity and Unity in Maritime Law', *CMI Yearbook 2016* (Antwerp, 2017), 163-175
Baatz-Debattista-Lorenzon-Serdy-Staniland-Tsimplis 2009	Y. Baatz, C. Debattista, F. Lorenzon, A. Serdy, H. Staniland and M. Tsimplis, *The Rotterdam Rules: A Practical Annotation* (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, *Maritime Law* (Abingdon, 2018)
Berlingieri 1987	G. Berlingieri, 'Uniformity in Maritime Law and Implementation of International Conventions', (1987) *JMLC*, 317-350
Berlingieri 2015	G. Berlingieri, *International Maritime Conventions*, Vol. 2 (Abingdon, 2015)
Bishop	A. Bishop, 'Law of Salvage', in D.J. Attard (Ed.), *The IMLI Manual on International Maritime Law,* Vol. II (Oxford, 2016), 474 *et seq.*
Bonassies-Scapel 2016	P. Bonassies and C. Scapel, *Droit maritime* (Issy-les-Moulineaux 2016)
Bonassies-Scapel-Bloch 2022	P. Bonassies, C. Scapel and C. Bloch, *Droit maritime* (Paris 2022)
Brice	J. Reeder (Ed.), *Brice on Maritime Law of Salvage* (London, 2003)
Bugden-Lamont-Black	P.M. Bugden and S. Lamont-Black, *Goods in Transit and Freight Forwarding* (London 2010)
Bunker Convention or BUNKER	International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
Cachard 2018	O. Cachard, 'La nouvelle *Lex maritima*. A propos de la résurgence d'une source du droit maritime', in M.-E. Ancel *et al.*, *Le droit à l'épreuve des siècles et des frontières. Mélanges en l'honneur du Professeur Bertrand Ancel* (Paris / Madrid, 2018), 335-349
Carbone 2010	S.M. Carbone, *Conflits de lois en droit maritime* (Leiden / Boston 2010)
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale
Chauveau 1958	P. Chauveau, *Traité de droit maritime* (Paris 1958)
Chorley-Giles 1987	N.J.J. Gaskell, C. Debattista and R.J. Swatton, *Chorley & Giles' Shipping Law* (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, *Derecho Marítimo Chileno* (Valparaíso 2003)
Danjon 1926 II	D. Danjon, *Traité de droit maritime*, II (Paris 1926)
De Meij 1998	P. De Meij, 'Interpretatie van verdragen van uniform

	(vervoer)recht', (1998) *European Transport Law*, 607-647
Derrington-Turner	S.C. Derrington and J.M. Turner, *The Law and Practice of Admiralty Matters* (Oxford, 2007)
Douglas-Lane-Peto 1997	R. Douglas, P. Lane and M. Peto, *Douglas & Geen on the Law of Harbours Coasts and Pilotage* (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) *RIDC*, 725-728
Ehlers 2017	P. Ehlers, *Recht des Seeverkehrs* (Baden-Baden, 2017)
Falkanger-Bull-Brautaset	T. Falkanger, H.J. Bull and L. Brautaset, *Scandinavian Maritime Law. The Norwegian Perspective* (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; *The Law of Admiralty* (Mineola, New York, 1975)
Gold-Chircop-Kindred	E. Gold, A. Chircop, and H. Kindred, *Maritime Law* (Toronto, 2003)
González Lebrero 2000	R.A. González Lebrero, *Manual de derecho de la navegación* (Buenos Aires 2000)
Grime 1991	R. Grime, *Shipping Law* (London 1991)
Guzmán 2019	J.V. Guzmán Escobar, 'A Latin American Perspective', *CMI Yearbook 2019* (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.), *Eenvormig bedrijfsrecht: realiteit of utopie?* (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, *Shipping Law & Admiralty Jurisdiction in South Africa* (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, *Capita zeerecht* (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.), *Aspects of Maritime Law. Claims under Bills of Lading* (Austin 2008), 35-57
Herber 1987	R. Herber, 'Gesetzgebungsprobleme bei der internationalen Zivilrechtsvereinheitlichung', (1987) *Zeitschrift für Gesetzgebung*, 17-42
Herber 2016	R. Herber, *Seehandelsrecht. Systematische Darstellung* (Berlin / Boston 2016)
Hill 2003	C. Hill, *Maritime Law* (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, *Kennedy and Rose Law of Salvage* (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, *Droit du commerce international* (Paris 2010)
Japikse 2004	R.E. Japikse, *Verkeersmiddelen en vervoer. Deel I. Algemene bepalingen en rederij* (Deventer 2004)
La Mattina 2017	A. La Mattina, 'Decision making and maritime law: the role of the Lex Maritima', *Il diritto marittimo* 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, *Modern Admiralty Law* (Abingdon / New York 2006)
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973
Maurer 2012	A. Maurer, *Lex Maritima* (Tübingen 2012)
MLC 2006	Maritime Labour Convention, 2006
Musi 2020	M. Musi, *La nozione di nave* (Bologna 2020)
Oostwouder 1994	W.J. Oostwouder, *Hoofdzaken Boek 8 BW* (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) *Tulane Law Review*, 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, *The Law of Tug, Tow and Pilotage* (London, 1982)
Rabe 2000	D. Rabe, *Seehandelsrecht* (Munich 2000)
Rabe-Bahnsen2018	D. Rabe and Kay Uwe Bahnsen, *Seehandelsrecht* (Munich 2018)
Registration of Ships	United Nations Convention on Conditions for Registration of Ships,

Convention	1986
Remond-Gouilloud 1993	M. Remond-Gouilloud, *Droit maritime*, (Paris 1993)
Ridley 2010	B. Harris, *Ridley's Law of the carriage of goods by land, sea and air* (London 2010)
Rimaboschi 2005, I	M. Rimaboschi, *Méthodes d'unification du droit maritime*, I (Trieste, 2005)
Robertson-Sturley 2013	D.W. Robertson and M.F. Sturley, 'Vessel Status in Maritime Law: Does Lozman Set a New Course?', (2013) *JMLC*, 393-500
Rodière 1972	R. Rodière, *Traité general de droit maritime. Evénements de mer* (Paris 1972)
Rodière 1976	R. Rodière, *Traité general de droit maritime. Introduction. L'armement* (Paris 1976)
Rodière-du Pontavice 1997	R. Rodière and E. du Pontavice, *Droit maritime* (Paris 1997)
Rose 1984	F. Rose, *The Modern Law of Pilotage* (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, *Admiralty and Maritime Law*, II (St. Paul, Minn., 2004)
Schultsz 1990	J.C. Schultsz, 'Interpretation of international conventions', in Economic and Social Commission for Asia and the Pacific, *Essays on maritime legislation*, 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.), *Eenvormig bedrijfsrecht: realiteit of utopie ?* (The Hague 2006), 225-250
Smeesters-Winkelmolen III	C. Smeesters and G. Winkelmolen, *Droit Maritime et Droit Fluvial* (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, *The Rotterdam Rules* (London, 2010)
Tetley 1994	W. Tetley, 'The General Maritime Law - The Lex Maritima', (1994) *Syracuse Journal of International Law and Commerce*, Vol. 105, 105-145
Tetley 1996	W. Tetley 'The general maritime law: the Lex Maritima' (1996) *European Transport Law,* 469-506
Tetley 2002	W. Tetley, *International maritime and admiralty law* (Cowansville 2002)
Tetley 2008, I	W. Tetley, *Marine cargo claims*, 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, *Common core, PECL and DCFR: could they change shipping and transport law* (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 *Liber amicorum Hubert Libert* (Antwerp / Apeldoorn 1999)
Van Hooydonk 2011-1	E. Van Hooydonk / Commissie Maritiem Recht, *Eerste Blauwboek*

	over de herziening van het Belgisch scheepvaartrecht (Antwerp / Apeldoorn 2011)
Van Hooydonk 2011-8	E. Van Hooydonk / Commissie Maritiem Recht, *Achtste Blauwboek over de herziening van het Belgisch scheepvaartrecht* (Antwerp 2011)
Van Hooydonk 2014	E. Van Hooydonk, 'Towards a worldwide restatement of the general principles of maritime law', (2014) *JIML*, 170-182
Vialard 1997	A. Vialard, *Droit maritime* (Paris 1997)
Werner1964	A.-R. Werner, *Traité de droit maritime général* (Genève, 1964)
Wolfrum 2006	R. Wolfrum, 'Hohe See und Tiefseeboden (Gebiet)', in W. Graf Vitzthum (Ed.), *Handbuch des Seerechts* (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, *Manuale di diritto della navigazione e dei trasporti* (Milan, 2023)

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