COMITE MARITIME INTERNATIONAL

# The CMI Lex Maritima 2025

## The Tokyo Principles of Maritime Law

**17 May 2025**

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# General introduction

### *Background*

The *CMI Lex Maritima 2025 – The Tokyo Principles of Maritime Law* (hereinafter: 'The CMI Lex Maritima') is an articulation of the general principles of maritime law. The document was adopted as a resolution of the General Assembly of the Comité Maritime International (CMI), the global umbrella organisation of maritime law practitioners.

There has long been a widespread belief that maritime law is founded on globally accepted basic principles, common customs and generally applied 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 compile 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 spelling out in the CMI Lex Maritima, in as simple terms as possible, the common, fundamental principles of maritime law, this instrument 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. If the 'positive maritime law' allows a court to rely on the general principles of (maritime) law (which indeed occurs), he or she may even use the CMI Lex Maritima as a source of law. In sum, the role that the CMI Lex Maritima can play in practice is entirely left to and subject to the positive maritime law as it applies in the respective countries, and of course does not claim any superiority to applicable law. In other words, the CMI Lex Maritima is always subordinate to positive maritime law, and does not intend to modify this positive maritime law, but at most to supplement it, to the extent that positive maritime law so allows. Thus, the CMI Lex Maritima is at the same time a flexible and modest document. It is most certainly neither an international convention, nor a model law, nor any other type of legally binding instrument, but merely a soft law instrument *sui generis* adopted by an international non-governmental organisation.[1] For more explanation about the status and the application of the Principles, see Rules 4 and 5, respectively.

In any event, the CMI believes that the CMI Lex Maritima can – perfectly in line with the CMI's core objective – contribute usefully to the international uniformity of maritime law. This objective of the CMI Lex Maritima is confirmed in its Rule 1.

[1] Throughout the document, the CMI Lex Maritima is deliberately referred to as an 'instrument'. This term does not have a strictly defined meaning. As other examples show, even a legal document that is not binding in itself and has been approved by a non-governmental organisation can without any difficulty be referred to as an 'instrument'. In this specific case, the instrument may indeed be used as an additional source of law in certain countries, provided that positive maritime law allows this.

### *Methodology and criteria*

It cannot be stressed enough that the CMI Lex Maritima aims only to enunciate principles that are demonstrably based on wide international agreement. In other words, it is about expressing the common foundation of maritime law.

Logically, aspects on which there is no international consensus and national specificities have been eliminated from the document. This immediately explains why some matters – despite their considerable importance to the maritime industry – are not covered in the instrument at all, such as marine insurance and multimodal transport. Although several National Maritime Law Associations (NMLAs)[2] suggested inserting rules on marine insurance, it was felt that identifying universally shared legal rules, if at all possible, would require extensive further study, which could be undertaken in the future, if considered appropriate.[3] With regard to multimodal transport, the availability of universally shared principles seems even less certain.

The CMI Lex Maritima was prepared on the basis of a comparison of rules of the 'positive maritime law', carried out in order to detect common ground. In simple terms, this positive maritime law includes all sources of maritime law that are outside the CMI Lex Maritima, and from which CMI Lex Maritima was extracted (see the definition in Rule 2(4)). To substantiate the general acceptance of the lex maritima Principles formulated, references to source materials are included in the footnotes.[4] In other words, the methodology applied is strictly objective and scientific; one can compare it to a mechanical or chemical extraction or distillation process. Consequently, subjective or personal preferences and policy wishes 'de lege ferenda' about future regulatory and/or unification initiatives were ignored. 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 that set out the actual general principles of maritime law. These comprise Principles of three different types: (1) Principles for which reference is made to other instruments which as such are part of the lex maritima (COLREG and the York-Antwerp Rules); (2)

[2] Argentina, China, Spain.

[3] In the past, a special International Working Group of the CMI has considered marine insurance at length and with great intensity (1998-2004). However, this did not result in the identification of any universally shared legal rules. For an overview of the results of this working group, see Hare 2004. In response to the Gothenburg Draft of this Instrument, the Spanish NMLA prepared an elaborate proposal for lex maritima principles on marine insurance. Further study could be carried out to ascertain whether, and to what extent, the proposed rules are effectively supported by universal acceptance.

[4] See also the Commentary to Principle 17 on the importance 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 specific and explicit 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.

substantive Principles the content of which is directly proclaimed by the document; and (3) Principles indicating that it is common for the 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 the positive maritime law actually introduces it (examples are mandatory provisions relating to contracts of carriage, wreck removal obligations, maritime liens and time bars). Further explanation is provided in the Commentary to Rule 2. Deliberately, the instrument is not composed of 'Articles' or 'Sections' because, as already explained, it is neither a convention nor a model law.

***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. Excerpts of the draft were shown at the CMI events in New York (2016) and Mexico City (2019). The first complete version shared publicly was version 8, which was presented at the CMI Conference in Antwerp in 2022. Version 9 was shown at the CMI Colloquium in Montreal in 2023. Version 15 was presented at the CMI Colloquium in Gothenburg in 2024. This 'Gothenburg Draft' was made available to all stakeholders through the website of the CMI[5] and directly submitted to the NMLAs affiliated to the CMI through a CMI Questionnaire, for possible addition or correction based on the same objective and scientific methodology as explained above. The IWG thoroughly considered, processed and responded to all comments received. On that basis, and also through considerable additional comparative law research, some ten consecutive versions of the 'Tokyo Draft' were prepared. The final version was submitted to the 2025 CMI Conference in Tokyo for discussion and adoption by the General Assembly of the CMI as 'The CMI Lex Maritima 2025' or 'The Tokyo Principles of Maritime Law'. The present, final version of the instrument was approved by the General Assembly on 17 May 2025.

The drafting of the IWG document and most of the research work on the consecutive versions 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; this 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); 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 Omaña Parés (Venezuela); Massimiliano Rimaboschi (Italy); Francis Rose (United Kingdom); Frank Smeele (The Netherlands); Michael Sturley (USA); Lijun Zhao (China/UK).

Websites were last consulted on 15 April 2025. The data on the status of IMO conventions is based on an IMO document dated 5 January 2024. For further and more detailed information about references in the text and footnotes which utilise initialisms or acronyms refer to the 'Citations and Abbreviations' at the end of the document.

[5] See https://comitemaritime.org/work/lex-maritima/

***Further work***

The present document is the first version of the CMI Lex Maritima. As maritime law continues to evolve around the world, it is appropriate that this document be updated periodically. On the other hand, since the CMI Lex Maritima contains general principles, which may be considered to enjoy a certain stability, this updating should be done with some restraint. As indicated above, the addition of certain principles in the future cannot be ruled out.

Several NMLAs have requested that the CMI Lex Maritima be made available in languages other than English. This could be in French (an official working language of the CMI) but, for example, also in Spanish.

# Part 1
# Preliminary rules

***Rule 1 – Objective***

**The objective of the CMI Lex Maritima is to identify and disseminate the universally applied principles of maritime law, thereby clarifying its specificities and promoting its international uniformity.**

***Commentary***

*The CMI Lex Maritima is an instrument that intends to identify and disseminate the universally applied principles of maritime law, thereby fulfilling a double function of clarifying the specificities of that branch of the law and promoting 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, thereby preventing 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, because there is no need to do so and because views on this issue vary significantly 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').*[6]

*The CMI Lex Maritima is also an educational tool, a vade mecum (hand book) that can efficiently introduce lawyers who are less familiar with maritime law to its essence (or 'ABC'). An example of an independent maritime law concept is salvage, which differs from both* negotiorum gestio *and* locatio operis faciendi *of classical civil law. Similarly, although the rules on liability in the event of a collision are not fundamentally dissimilar from general tort law, they still display some peculiarities. The CMI Lex Maritima can usefully draw attention to the existence of a number of such specificities. However,*

[6] **Current law**: **Argentina** (Shipping Act, Art. 1; see also Chami 2022, 11 *et seq.*); **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); **Georgia** (Maritime Code, Art. 27.1); **Ibero-America** (IIDM Maritime Model Law, Art. 1); **Italy** (Navigation Code, Art. 1; Lefebvre d'Ovidio-Pescatore-Tullio 2022, 61, para 27); **Poland** (Maritime Code, Art. 1, § 2; Łopuski 2008, 41-46); **Spain** (Maritime Navigation Act 14/2014, Art. 2.1); **Ukraine** (Merchant Shipping Code, Art. 4); **USA** (i.a. *Davis & Sons, Inc. v Gulf Oil Corp.*, 919 F.2d 313 (5th Cir. 1991), 315; Allsop 2016, 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. In several countries, the 'maritime' or 'admiralty' nature of a claim also determines jurisdiction (see, for example, **Canada**: *Monk Corp. v Island Fertilizers Ltd.*, 1991 CanLII 95 (SCC), [1991] 1 SCR 779).

*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, may be left aside. Both propositions have their supporters. As will be seen below, the positive law in various countries in any case recognises the ancillary function of maritime customs and the general principles of maritime law (see Rule 5).*

*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'.*[7] *The CMI Lex Maritima seeks to contribute to this by identifying the common foundations that form the globally accepted basis of maritime law.*[8] *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, numerous 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 8). 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% (in several cases nearly 99%) of world tonnage. Examples include TONNAGE, SOLAS, SOLAS PROT 1988, LL, LL PROT 1988, COLREG, MARPOL 1973/1974 and STCW.*[9] *Paraphrasing in the CMI Lex Maritima the basic principles of these globally applied conventions, which are essentially regulatory and often very technical in nature, 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, which the CMI Lex Maritima cannot and does not intend to affect. Furthermore, the authority of the aforementioned IMO instruments is strengthened by the fact that UNCLOS requires flag States, when regulating and supervising their ships, to conform to 'generally accepted international regulations, procedures and practices' and to take any steps which may be necessary to secure their observance.*[10] *These 'rules of reference' comprise most, if not all, of the aforementioned IMO public law conventions.*[11] *Furthermore, the conventions referred to are implemented and enforced through national legislation and enforcement agencies having powers to impose coercive measures and sanctions, where a soft law lex maritima instrument could offer only little added value. However, a Principle on the basic responsibilities of the shipowner and ship operator confirms, in general wording,*

[7] **CMI Constitution 2017**, Art. 1.
[8] The legal status of the CMI Lex Maritima is defined in Rule 4 below.
[9] **TONNAGE**: 160 States, 98.42% of world tonnage; **SOLAS 1974**: 168 States, 98.69 of world tonnage; **SOLAS PROT 1988**: 130 States, 97.91% of world tonnage; **LL:** 165 States, 98.68% of world tonnage; **LL PROT 1988**: 122 States, 97.64 of world tonnage; **COLREG**: 164 States, 98.69% of world tonnage; **MARPOL 1973/1978**: 161 States, 98.67% of world tonnage; **STCW**: 167 States, 98.69% of world tonnage.
[10] **UNCLOS**, Art. 94(5).
[11] For more details, see Librando 2014 577-605; see also Churchill-Lowe-Sander 2022, 460-461; Nguyen 2021, 419-444; Proelss 2017, 712-713, Art. 94, para 11.

*the obligation to comply with these fundamental public law regulations (see Principle 6). Also, a separate Principle confirms the special 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 is, for that matter, 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(3)).*

*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, done at Montego Bay on 10 December 1982 (the aforementioned 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 ship masters to render assistance at sea to ships and persons on board in distress. This Principle is included in several international conventions harmonising private maritime law but has also been repeated in UNCLOS. Similarly, Principle 22 on wreck removal deals with the powers of affected states.*

*Finally, the CMI Lex Maritima does not deal with inland navigation law, but only with the regime of seagoing vessels (see the definition in Rule 2(3)). The main reason for this is that the CMI as an organisation focuses on maritime law. In addition, inland navigation law is not uniform internationally; unification initiatives have been largely regional. 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 were 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 (for example, in Principle 2). Moreover, the transplantation of certain fundamental rules of maritime law into inland navigation law underlines the authority that those rules have as generally applicable Principles (for example, in Principle 19). On the technical inter-relation between the rules of positive maritime law and inland waterway transportation law there is no universal agreement, so that aspect is not touched upon in the CMI Lex Maritima either.*

***Rule 2 – Definitions***

**For the purposes of the CMI Lex Maritima:**

**(1) 'CMI Lex Maritima' means the preliminary Rules and the Principles laid down in the present instrument;**

**(2) 'Principles' means the Principles laid down in Parts 2 to 7 of the CMI Lex Maritima;**

**(3) 'ship' includes any type of seagoing vessel;**

**(4) 'positive maritime law' means the rules of public and 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;**

**(5) 'implement' includes recognise, apply, introduce, give effect to and/or specify;**

**(6) 'maritime custom' means any custom, practice or usage which is widely known to and regularly observed in maritime matters by persons or parties in the same situation;**

**(7) '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;**

**(8) 'ship operator' means the person or persons operating the ship, not being the shipowner;**

**(9) '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.*[12] *In common law jurisprudence, 'the general maritime law' – i.e. the lex maritima – has been set against 'municipal maritime law'.*[13] *The lex maritima can be considered the common international heritage of values, rules and principles governing maritime matters.*[14] *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.*[15] *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.*[16] *The CMI Lex Maritima can be considered a lex mercatoria for maritime affairs, in the sense that it contains a set of universally shared notions and principles that underlie the maritime legal system and which are*

[12] 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.

[13] Even though there is no unanimity on their relationship, but that is of no importance here. See **UK**: *The Gaetano and Maria* (1882) 7 PD 137; *The Tojo Maru* [1972] AC 242, [1971] 2 WLR 970, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, [1971] 3 WLUK 69, (1971) 115 SJ 325, [1971] CLY 11052; **USA**: *The Lottawanna* 88 US 558 (1874); *RMS Titanic Inc v Haver* 171 F 3d 943 at 960-964 (4th Cir 1999), 1999 AMC 1330; for a commentary, see again Allsop 2016, 163-175.

[14] Comp. Allsop 2016 at 169.

[15] Comp. Schoenbaum 2004-I, 20, § 2-1.

[16] On the medieval lex mercatoria see, for example, Comenale Pinto 2020, 802 *et seq.*

*derived from a variety of sources, including international conventions,[17] standard contracts and clauses, national codes and statutes, case law and doctrine.[18] 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 covers not only contract law, but a large variety of matters.*

*In order to correctly understand the CMI Lex Maritima, it should be pointed out from the outset that the Principles contained therein are of three types:*

> *(1) first of all, two international legal instruments are proclaimed lex maritima as such: COLREG and the York-Antwerp Rules;*
>
> *(2) a second type of Principles directly formulates substantive rules of law;*
>
> *(3) a third type of Principles includes 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 what can often (or even very often)[19] be found in the 'positive maritime law', which then spells out the precise, more elaborate and detailed rules; in many cases, 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 (see the further explanation of items (4) and (5) of the Rule).*

*Item (2) defines the notion of 'Principles' and requires no further explanation. Where the instrument refers specifically to the 'Principles', these must of course always be read in conjunction with the preliminary 'Rules'.*

*Item (3) 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 'ship' as a Principle of the lex maritima in its own right. As numerous researchers as well as a working group of the CMI have noted, there is no international unanimity on the definition of '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*

[17] This approach is also followed in the case law of **India**: see, for example, *Sangitadas v MV Amber* MFA (ADL) No 78 of 2017.

[18] The term lex mercatoria is used here in its broad sense, not in the narrower sense of a set of customary contractual arrangements or trade usages. Such arrangements also exist in the maritime sector and are one of the foundations upon which the CMI Lex Maritima is built. But as mentioned, the CMI Lex Maritima also rests on other foundations. This terminological choice is based on academic literature on the concept of lex mercatoria.

[19] Principles belonging to this category, while indeed frequently encountered, are not necessarily generally accepted or fully universal; it is rather a case of *id quod plerumque accidit* or *quod plerumque fit*. Similarly, it has been pointed out in the literature that transnational norms are often based on 'rough consensus', not necessarily on absolute unanimity, and that these norms moreover evolve (see Maurer 2012, 84, with reference to Calliess-Zumbansen 2010).

*objectives. The suitability for navigation, the presence of a hollow space and/or self-propulsion, a certain minimum size or 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 ship. Given this context, it is not useful to aim for or proclaim a universally applicable definition here. However, specifically for the application of the CMI Lex Maritima (and only for that purpose), an elementary definition is needed. The definition of 'ship' provided here refers to 'any type of seagoing vessel'. This broad approach can also be found in several international conventions[20] and national (statutory or other) definitions,[21] although the formulations are often accompanied by further specifications, which are deliberately omitted here. In other words, while no definition can be copied from the positive maritime law that can be considered universally applicable, it is possible to extract the common core from it, and the definition presented here attempts to do so. For the purposes of the CMI Lex Maritima, which formulates only fundamental principles, a general and broad definition is most appropriate in any event. The definition presented here recalls the underlying notion of the perils of the sea.[22] More specifically, the rules of maritime law find their historical origin (and largely their contemporary justification) in the exposure of the craft (including persons and cargo on board) to the particular dangers of the sea.[23] Exposure to these perils of the sea has always been, and still is, a characteristic element of maritime law. The notion of a 'seagoing vessel' thus refers to the deepest root, if not the raison d'être of maritime law as a specific branch of the law. Moreover, the exposure to the perils of the sea helps explain the distinction that is often made between seagoing and inland vessels. The term 'includes' indicates that inland vessels that also operate in maritime waters may be classified as a 'ship' (as is the case under some laws and regulations). The word 'includes' also makes it clear that a sharply delineated definition was deliberately not intended; however, the element 'seagoing' does indicate a minimum requirement. The notion of 'vessel' is deliberately not defined; a broad and flexible interpretation of this concept is intended. 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, may be narrower or broader, and always take precedence in a specific situation.*

[20] **BUNKER,**Art. 1.1; **CLC 1992**, Art. I(1); **COLREG,** Rule 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.

[21] **Current law**: **Algeria** (Maritime Code, Art. 13); **Argentina** (Shipping Act, Art. 2); **Bahamas** (Merchant Shipping Act, S. 2); **Barbados** (Shipping Act, S. 2(1)(rr)); **Belgium** (Shipping Code, Art. 1.1.1.3, § 1, 1°); **Bermuda** (Merchant Shipping Act, S. 2(1)); **Canada** (Shipping Act, 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); **Georgia** (Maritime Code, Art. 12.1 and Annex); **Germany** (Rabe-Bahnsen 2018, 18, para 2); **Greece** (Code of Private Maritime Law, Art. 1.1); **Ibero-America** (IIDM Maritime Model Law, Art. 2); **Indonesia** (Commercial Code, Art. 310); **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, IV); **Netherlands** (Civil Code, Book 8, Art. 1.1); **Norway** (Falkanger-Bull-Brautaset, 50-51); **Poland** (Maritime Code, Art. 2, § 1); **Portugal** (Decree-Law No. 202/98, Art. 1, a)); **Russia** (Merchant Shipping Code, Art. 7); **South Africa** (Merchant Shipping Act, S. 2; Admiralty Jurisdiction Regulation Act 105 of 1983, S. 1); **Spain** (Maritime Navigation Act 14/2014, Art. 56-57); **Tanzania** (Merchant Shipping Act 2003, S. 2(1)); **Turkey** (Commercial Code, Art. 931(1)); **UK** (Merchant Shipping Act 1995, S. 313(1)); **Ukraine** (Merchant Shipping Code, Art. 15); **USA** (1 USC §3; see also Robertson-Sturley 2013); **Vietnam** (Maritime Code 2015, Art. 4.1 and 13). For a recent comparative analysis, see Musi 2020.

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

[23] See, for example, Vialard 1997, 39, para 23.

*Item (4) 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. Whether the CMI Lex Maritima itself can be part of the positive maritime law is more of a philosophical question. The drafting of the CMI Lex Maritima has been conceived in such a way that, under the mechanisms described in particular in Rules 4 and 5, this instrument can in certain cases be made use of within the framework of the positive maritime law, without claiming any special authority of its own, or any exclusivity vis-à-vis other sources of principles, customs or practice. Should a court decide to rely on the general principles of maritime law and consider the CMI Lex Maritima relevant for this purpose, the instrument may be considered as absorbed into 'positive maritime law', to be understood in a broader sense than in the definition of Rule 2(4). Finally, it should be emphasized that the definition of 'positive maritime law' deliberately mentions 'the rules of non-maritime law that apply to maritime matters'. In various countries, the rules of maritime and transportation law are largely integrated into general law. To fully understand the CMI Lex Maritima, it is important to recognise that its Principles often apply by operation of general legal norms, even when no specific references to them are included in the footnotes.*

*The definition of the verb to 'implement' under item (5) has been inserted to clarify that there are various ways in which the positive maritime law may reflect or process Principles referred to in the CMI Lex Maritima (see the explanation about the third type of Principles above).*

*Item (6) defines 'maritime custom' as 'any custom, practice or usage which is widely known to and regularly observed in maritime matters by persons or parties in the same situation'. Many maritime conventions and maritime laws recognise the value of 'maritime custom' (see the Commentary to Principle 2, which defines the role of 'maritime custom'), but definitions of this notion are rare. The broad umbrella term 'custom, practice or usage' was deliberately chosen because both international maritime conventions[24] and national maritime laws[25] often do not strictly define these concepts and/or indeed juxtapose them. The description 'which is widely known to and regularly observed in maritime matters by persons or parties in the same situation' is inspired by the Unidroit Principles of International Commercial Contracts.[26] 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*

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

[25] **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. 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, X); **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).

[26] **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.9(2).

*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 a source of obligations between the parties involved.*

*Item (7) 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.*[27] *The person who operates a ship without being 'registered owner' is referred to in the Principles as 'ship operator', as defined, in the deliberately simplest and widest possible terms, in item (8).*[28] *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 definitions explained here apply only for the interpretation of the CMI Lex Maritima. They are 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.*[29] *Of course, the definitions used here do not rule out that the 'shipowner' or 'ship operator' may not be a natural person but have a legal personality. Lastly, the definitions provided apply whether or not a ship manager is appointed (see Principle 5(4)).*

*Item (9) confirms that the term 'court' used in the CMI Lex Maritima refers to any entity in charge of resolving a dispute (including, for example, 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).*

[27] **CLC 1992**, Art. I(3).

[28] The ship operator may be a bareboat charterer. The Italian NMLA commented that the activity of the owner is in a certain sense 'static', whereas the operator's is in a way 'dynamic'.

[29] See on this point some indications in fn. 148 below.

***Rule 3 – Scope ratione navis***

**(1) The Principles apply to all ships.**

**(2) Paragraph (1) is without prejudice to rules of positive maritime law excluding from their scope ships used for naval, governmental, non-commercial and/or other functions.**

***Commentary***

*The Rule defines the scope* ratione navis *(this means, in terms of the type of ships). 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 Principles themselves.*

*The applicability of the CMI Lex Maritima to ships is explained further in the Commentary to the definition of 'ship' in Rule 2(3). Nevertheless, it is useful to explicitly confirm in paragraph (1) of Rule 3 that the CMI Lex Maritima in principle applies to all types of ships, regardless of their function or purpose. Without this mention, doubts could arise, given that a number of rules of positive maritime law have been declared inapplicable to certain types of ships. The CMI Lex Maritima, which in accordance with Rule 4(2) cannot deviate from positive maritime law, can of course not undo such exceptions.*

*Although the latter observation is in fact already sufficient, paragraph (2) explicitly points out that positive maritime law often contains certain exclusions, and that these are indeed left untouched by the CMI Lex Maritima. For example, several conventions[30] and national laws[31] provide that they do not apply to ships deployed for military or other non-commercial government functions (however, some conventions allow the States Parties to extend their rules to such ships).[32] In any event, given the wide variety of such exceptions in the positive maritime law, it is not possible to include any such generally*

[30] See, for example, **Arrest Convention 1999**, Art. 8.2; **CLC 1992**, Art. XI; **Collision Convention** 1910, Art. 11; **FUND**, Art. 4.2; **Liens and Mortgages Convention 1926**, Art. 15; **MLC 2006**, Art. II.4; **Salvage Convention 1910**, Art. 14; compare also **Liens and Mortgages Convention 1967**, Art. 12.2; **Liens and Mortgages Convention 1993**, Art. 13.2. A general framework has been laid down in the **State-Owned Ships Convention 1926** and the **State-Owned Ships Protocol 1934,** and, at a regional level in the **South American Treaty on International Commercial Navigation Law**, Montevideo, 1940, Art. 34 *et seq.* The latter Convention was signed by **Argentina**, **Bolivia**, **Brazil**, **Chile**, **Colombia**, **Paraguay**, **Peru** and **Uruguay**.

[31] **Current law**: see, for example, **Argentina** (Shipping Act, Art. 4 and, concerning arrest, Art. 541); **Australia** (Navigation Act 2012, S. 10-11); **Barbados** (Shipping Act, S. 4 and 343); **Belgium** (Shipping Code, Art. 2.2.7.1 *et seq.*); **Bermuda** (Merchant Shipping Act, S. 4 and 5); **Chile** (Commercial Code, Art. 823); **China** (Maritime Code, Art. 3); **Ecuador** (Commercial Code, Art. 936, concerning arrest); **Georgia** (Maritime Code, Art. 3); **Greece** (Code of Private Maritime Law, Art. 2.2); **Ibero-America** (IIDM Maritime Model Law, Art. 4); **Italy** (Navigation Code, Art. 645, concerning arrest or seizure); **Japan** (Ships Act No. 46 of 1899, Art. 35(1)); **Lithuania** (Law on Merchant Shipping, Art. 1.2); **Poland** (Maritime Code, Art. 6); **Russia** (Merchant Shipping Code, Art. 3.2); **Singapore** (Merchant Shipping Act 1995, S. 3); **South Korea** (Commercial Act, Art. 741(1)); **Spain** (Maritime Navigation Act 14/2014, Art. 3); **Turkey** (Commercial Code, Art. 935); **UK** (Merchant Shipping Act 1995, S. 308(1)); **Ukraine** (Merchant Shipping Code, Art. 13); **Vietnam** (Maritime Code 2015, Art. 1.1 and 13).

[32] See, for example, **BUNKER**, Art. 4.2-4; **HNS 1996**, Art. 4.4-6; **Nairobi WRC**, Art. 4.2-3; **Salvage Convention 1989**, Art. 4.

*applicable exceptions in the CMI Lex Maritima.*[33] *Moreover, some conventions and national maritime laws clearly apply, as a starting point, to all types of ships, or at least contain no specific rules on, for example, State-owned ships,*[34] *so excluding such ships in advance from the scope of the CMI Lex Maritima would again run counter to positive maritime law or incorrectly limit the scope of the Principles derived from it.*

[33] This does not rule out the possibility that for some specific Principles certain exclusions may turn out to apply more or less universally.

[34] See, for example, **Arrest Convention 1952**, **Hague Rules**, **Hamburg Rules**, **LLMC Convention**, **Rotterdam Rules**; see also **CMNI** and, although not a convention, the **York-Antwerp Rules**.

***Rule 4 – Status of Principles***

**(1) The CMI Lex Maritima states the universally applied principles of maritime law as acknowledged by the General Assembly of the Comité Maritime International.**

**(2) The Principles do not intend to derogate from the positive maritime law but, to the extent that the positive maritime law so permits, to supplement it.**

**(3) Nothing in the Principles is intended to prevent 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.**

**(5) This instrument may be cited as 'The CMI Lex Maritima 2025' or 'The Tokyo Principles of Maritime Law'.**

***Commentary***

*Paragraph (1) makes clear that the Principles as laid down by the General Assembly of the CMI establish the 'universally applied principles' of maritime law. Thus, the CMI Lex Maritima does not establish new rules to harmonise divergent national laws and regulations, but formulates principles on which there is already consensus today. This is further explained in the Principle-by-Principle Commentaries and accompanying references. As explained in the General introduction, the CMI Lex Maritima Principles were identified on the basis of an objective, factual, comparative analysis of positive maritime law, from which universally applicable elements have been extracted, with references to the sources. Commercial interests or policy preferences played no role whatsoever in this process. The word 'acknowledged' indicates that the CMI Lex Maritima is a compilation made by the CMI to the best of its ability, not claiming any exclusivity as a source of relevant maritime law principles.*

*Paragraph (2) is essential for understanding the CMI Lex Maritima, as it defines its relationship to positive maritime law, as defined in Rule 2(4). Of course, 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. The instrument is intended only as a supporting, supplementary tool, and cannot and should not function* contra legem*. For example, the CMI Lex Maritima is of course not intended to alter existing rules regarding liability and limitation of liability established under positive maritime law, including those set out in conventions such as LLMC, CLC 1992 and FUND, in national provisions on the liability of the shipowner or ship operator, or in 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). Whether the CMI Lex Maritima itself can be relied on as a formal source of the law, depends entirely on the positive maritime law (see Rule 5). In sum, the CMI Lex Maritima is*

*always subordinate to the positive maritime law. It cannot claim any legal authority of its own, and its status as a source of law (if any) will always be determined by the positive maritime law.*

*Paragraph (3) clarifies that the CMI Lex Maritima is not intended to claim any exclusivity. The fact that a particular rule is not included in this compilation does not mean that it cannot be a lex maritima Principle. Moreover, with a view to the progressive unification of maritime law, it is recommended that the courts look for additional general principles of maritime law, which may 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.*[35] *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'.*

*Paragraph (5) requires no explanation.*

[35] **Unidroit Principles of International Commercial Contracts 2016**, Preamble.

***Rule 5 – Application of Principles***

**The Principles may 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 may apply. Given the 'soft law' nature of the instrument – in the sense of it not being a unification convention – the word 'may' is deliberately used instead of 'must' or 'should'.*

*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.*[36] *In addition, general principles of law are recognised as a source of law in the legal systems of various countries.*[37] *However, it will always depend on the positive maritime law (which may also include legal rules that are not specifically maritime) whether the CMI Lex Maritima can indeed serve as a relevant source of law on that basis.*

*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 from the general principles of maritime law.*[38]

*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.*[39] *With a view to applying the CMI Lex Maritima on a contractual basis, a 'CMI Lex Maritima Clause' could be inserted in maritime contracts.*[40]

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[36] **Current law: Belgium** (Shipping Code, Art. 1.1.2.4, § 1); **China** (Maritime Code, Art. 268; also Civil Code, Art. 10); **Croatia** (Maritime Code, Art. 986); **Poland** (Maritime Code, Art. 255, § 2, referring, in relation to general average, to 'the rules generally accepted in international maritime trade'); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 7, also applicable to inland navigation by virtue of Art. 127.5); **Venezuela** (Maritime Commerce Act, Art. 3); compare also **Georgia** (Maritime Code, Art. 24, referring to contractual clauses); **Ukraine** (Merchant Shipping Code, Art. 6, referring to contractual clauses); **Vietnam** (Maritime Code 2015, Art. 5.2, referring to contractual clauses).

[37] **Current law:** for example, **Ecuador** (Civil Code, Art. 18.7, referring to 'principles of universal law'); **Spain** (Civil Code, Art. 1.4, referring to 'general principles of law').

[38] **Current law:** for example, **India** (*Sangitadas v MV Amber* MFA (ADL) No 78 of 2017).

[39] **Unidroit Principles of International Commercial Contracts 2016**, Preamble.

[40] Such (alternative) clauses could read, for example, 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'.*

*A similar mechanism is provided for in some (albeit rare) national statutes.*[41] *It should immediately be noted, however, that, unlike the aforementioned Unidroit Principles, the CMI 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, universally applicable fundamental principles of maritime law. Thus, supplementing or interpreting contracts is not the main ambition of the CMI Lex Maritima.*

*'This contract shall be governed by […] as supplemented by the CMI Lex Maritima'.*

*'Any dispute shall be decided in accordance with […] as supplemented by the CMI Lex Maritima'.*

[41] **Current law: Georgia** (Maritime Code, Art. 24, which provides that 'foreign legislation and merchant shipping practices' may be used in contracts based on agreement of the parties); **Ukraine** (Merchant Shipping Code, Art. 6, containing a similar rule); **Vietnam** (Maritime Code 2015, Art. 5.2, containing a similar rule).

# Part 2
# Sources of maritime law

***Principle 1 – Interpretation of maritime law***

**(1) In the interpretation of the positive maritime law, a court may find it appropriate to support the uniformity of maritime law and the facilitation of maritime shipping and trade.**

**(2) The Principles may be used to interpret the positive maritime law.**

***Commentary***

*Paragraph (1) invites judges and arbitrators to consider the appropriateness of an internationally consistent and unifying interpretation of positive maritime law (the same approach may be applied, for that matter, by national legislators, governments and authorities when introducing or implementing laws and regulations). The call is in line with the core objective of the CMI, as already mentioned in the Commentary to 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[42] or the rules governing the interpretation of statutory provisions or contract clauses[43]). On the other hand, it can be assumed that the Principle expressed here is in many cases indeed compatible with the positive maritime law, or that it easily fits within it. Some maritime (and other) conventions even contain explicit rules according to which, in the interpretation and application of their provisions, regard must (not just 'may') be had to their international character and the need to promote uniformity.[44] The same Principle of unified interpretation has also been implemented, for a number of specific maritime conventions, through interpretative resolutions from the IMO.[45] It has further been advocated, as a general guideline, in legal doctrine,[46] and is supported by some national statute law.[47] Some national courts*

[42] **Vienna Convention on the Law of Treaties**, Art. 31-33.

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

[44] **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.

[45] See IMO Resolution A.1163(32) of 2022 on 'Interpretation of Article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976'; IMO Resolution A.1164(32) of 2022 on 'Interpretation of Article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976'; IMO Resolution A.1165(32) of 2022 on 'Interpretation of Article 6 of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 Amending Article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1969'.

[46] Herber 2016, 30-31; Tetley MCC 2008, I, 144-146; see also Rimaboschi 2005, I, 131-133; Rimaboschi 2006, 99-100; Van Hooydonk 2011-1, 101, para 1.90.

[47] **Current law**: **Italy** (Act 218 of 1995 on the Reform of the Italian System of Private International Law, Art. 2.2, referred to in Lefebvre d'Ovidio-Pescatore-Tullio 2022, 36, para 19 and 64, para 28); **Spain** (Maritime Navigation Act 14/2014, Art. 2.2); **Proposed law**: **Poland** (Draft Maritime Code 2018, Art. 6).

*apply this guideline even in the absence of an explicit obligation in the relevant convention.*[48] *Ample case law confirms that maritime unification conventions should be interpreted using an international and unifying rather than a national approach.*[49] *After all, 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 numerous maritime law systems and by many authorities on maritime law.*[50] *It is also consistent with the national provisions referred to in the Commentary to Rule 5 that recognise the general principles of maritime law as a formal source of law. In order to make a uniform interpretation possible, account should be taken of relevant foreign case law and the Travaux Préparatoires of maritime conventions,*[51] *of the broad international regulatory framework for maritime matters,*[52] *and also of so-called convention comparison, i.e. comparing the provisions of related conventions.*[53] *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.*[54] *Opening up and disseminating foreign case law is a task*

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

[49] For example, **Australia**: *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Bhd* [1998] HCA 65; *Heilbrunn v Lightwood PLC* [2007] FCA 1518; **Barbados**: *Furniture Ltd v Robulk Agencies Inc* [2008] BBHC 13 (concerning the Hamburg Rules); **Canada**: *Ordon Estate v Grail* (1998) 40 OR (3d) 639; *McDonald v Queen of the North (Ship)* 2008 BCSC 1777; *Hitachi Maxco Ltd v Dolphin Logistics Co Ltd* 2010 FC 853; **Hong Kong**: Ryoden Machinery Co Ltd v The Owners of the Ship or Vessel 'Anders Maersk' [1986] HKCFI 197; **Israel**: *Feyha Maritime Ltd v Miloubar Central Feedmill Ltd*, LCA 7195/18, Supreme Court of Israel, 12 May 2019; **New Zealand**: *Tasman Orient Line CV v New Zealand China Clays Ltd* [2009] NZCA 135; **UK**: *United Africa Co Ltd v 'Tolten' (Owners)* [1946] P 135; *Maxine Footwear Co Ltd v Canadian Government Merchant Marine Ltd* [1959] UKPC 13; *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] AC 807 (HL), [1961] 2 WLR 269 (HL), [1961] 1 All ER 495 (HL), [1961] 1 Lloyd's Rep 57 (HL), (1961) 105 Sol Jo 148 (HL), [1961] UKHL J0207-1; *Leesh River Tea Co Ltd v British India Steam Navigation Co Ltd* [1967] 2 QB 250 (CA), [1966] 3 WLR 642 (CA), [1966] 2 Lloyd's Rep 193 (CA), [1966] 3 All ER 593 (CA), (1966) 110 Sol Jo 633 (CA), [1966] EWCA Civ J0715-3, 1961 L No 3250; *Transworld Oil (USA) Inc v Minos Compania Naviera SA (The Leni)* [1992] 2 Lloyd's Rep 48; *Glencore Energy UK Ltd v Freeport Holdings Ltd* [2017] EWHC 3348 (Comm); *FIMbank plc v KCH Shipping Co Ltd* [2022] EWHC 2400 (Comm); *Trafigura Pte Ltd v TKK Shipping Pte Ltd* [2023] EWHC 26 (Comm); **USA**: *Re Intercontinental Properties Management SA* 604 F 2d 254 (4th Cir 1979), 1979 US App LEXIS 13334, 1979 AMC 1680, Nos 77-2406, 77-2407; *Granite State Insurance Co v M/V Caraibe* 825 F Supp 1113 (D Puerto Rico 1993), 1993 WL 240992, 1993 US Dist LEXIS 9067, 1994 AMC 680, Civil No. 92-2000 (JAF).

[50] See, for example, Berlingieri 1987, 341-347; Bugden-Lamont-Black 2010, 316-319, para 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.

[51] See, for example, *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] AC 807 (HL), [1961] 2 WLR 269 (HL), [1961] 1 All ER 495 (HL), [1961] 1 Lloyd's Rep 57 (HL), (1961) 105 Sol Jo 148 (HL), [1961] UKHL J0207-1; *Granite State Insurance Co v M/V Caraibe* 825 F Supp 1113 (D Puerto Rico 1993), 1993 WL 240992, 1993 US Dist LEXIS 9067, 1994 AMC 680, Civil No. 92-2000 (JAF); *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Bhd* [1998] HCA 65; *Tasman Orient Line CV v New Zealand China Clays Ltd* [2009] NZCA 135; *FIMbank plc v KCH Shipping Co Ltd* [2022] EWHC 2400 (Comm); 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.

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

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

[54] 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; and the invitation to the court to consider, inter alia, 'decisions of foreign courts' in **South Africa** (Wreck and Salvage Act 94 of 1996, S. 2(5)).

*of legal academia, databases, professional journals and the government.[55] The CMI, in cooperation with the Centre for Maritime Law at the National University of Singapore, has developed and continues to enlarge an online database on the interpretation of maritime law conventions that is accessible free of charge.[56] However, the unifying approach is also advisable outside the domain of the interpretation of international conventions. In particular, where national maritime law reflects internationally accepted principles, pursuing international uniformity is appropriate as well. Considering the customary and traditional origins of maritime law may also be helpful. While this may not constitute a universally accepted principle of interpretation, traditionalism is widely acknowledged as a distinguishing feature of this area of the law. [57] In specific cases, it may also be taken into account on the basis of Rule 4(3).*

*As regards the suggestion to apply an interpretation that facilitates 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.[58] In other words, the promotion of maritime shipping and trade is the wider, underlying objective of the unification of the maritime law, and therefore also of the present Principles. That the CMI, in its unification initiatives, acts 'in the interest of global commerce' has also been emphasized in case law.[59] 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[60] and in the IMO Convention on Facilitation of International Maritime Traffic (FAL), to which as many as 129 countries are parties, representing almost 96% of world tonnage. Although inserting into a legislative instrument a provision that expresses its underlying policy objectives is 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).[61] In other instances such objective is confirmed in an explanatory memorandum accompanying the relevant legislative proposal. In view of all these elements it is logical to confirm in the present Principle this broader macro-economic policy objective in the CMI Lex Maritima. 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.*

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[55] 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.

[56] See https://cmlcmidatabase.org/. This database was also used in the preparation of the present Commentary.

[57] See, for example, López Rueda 2003, 245-246; Werner 1964, 9.

[58] 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, 8-11.

[59] **UK**: *United Africa Co Ltd v 'Tolten' (Owners)* [1946] P 135.

[60] **UNCLOS**, Art. 17 and 87; see also the Preamble to the Convention.

[61] **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.

*Paragraph (2) confirms that these Principles may be used in interpreting the positive maritime law. Indeed, this is one of the expected uses of the instrument. The same is provided for in the Unidroit Principles of International Commercial Contracts 2016.*[62] *Whether the CMI Lex Maritima may be used as an ancillary interpretative tool depends on the parameters of the relevant positive maritime law, which remains unaffected (see again Rule 4(2)).*

[62] **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 may apply maritime custom whenever the positive maritime law so permits.**

**(3) A court may apply maritime custom to, inter alia, the following matters:**
**(a) the receipt 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 issuance of a transport document or an electronic transport record;**
**(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(6). Maritime custom is particularly important in those fields not governed by international conventions or national statutory law.*

*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.*[63]

*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',*[64] *and the Rotterdam Rules to 'the customs, usages or practices of the trade'.*[65] *Some national maritime codes and statutes more generally confirm the role of maritime custom as a source of law*[66] *or refer to it in relation to specific*

[63] **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.9(1).
[64] **Hamburg Rules**, Art. 4.2(b)(ii) and 9.1.
[65] **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.
[66] **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); **Ecuador** (Commercial Code, Art. 843); **Ibero-America** (IIDM Maritime Model Law, Art. 1 and 5); **Italy** (Navigation Code, Art. 1); **Mexico** (Maritime Navigation and Commerce Act, Art. 6, X); **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).

*matters.[67] Moreover, the importance of maritime custom is highlighted in an abundant literature.[68] 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. However, here too, it is not the intention of the CMI Lex Maritima to contravene in any way positive law (or concluded contracts). The paragraph is primarily intended as a reminder that maritime custom is widely recognised as a relevant source of law.*

*It cannot be ruled out that certain Principles of the CMI Lex Maritima themselves may be recognised by a court as maritime custom, but of course only where these Principles meet, in the opinion of the court, the definition of 'maritime custom' of Rule 2(6).*

*Furthermore, attention should be drawn to 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 interested parties involved, which strengthens their acceptance and authority. This has been highlighted in recent academic research, more in particular by German authority Maurer.[69] According to this theory, courts may recognise certain general principles reflected in such standard contracts – but probably not the contracts as such – as autonomous maritime custom. Principles 14, 15 and 16 concerning charterparties are largely inspired by such commonly used standard contracts. 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. Here, too, it is obviously not the intention to interfere with positive law or contracts.*

*Paragraph (3) provides some specific examples of matters that may be governed by maritime custom, local custom or port custom. Some of these non-exhaustive examples are drawn from references in international conventions such as those dealing with the carriage of goods on the deck of a ship,[70] the delivery of goods in the port of destination,[71] and the documents used to arrange for maritime carriage.[72] For that matter, the Unidroit Principles of International Commercial Contracts 2016 also*

[67] **Current law**: see, for example, **Brazil** (Commercial Code, Art. 519, para 2, 591, 620, 673, 3, 742, 1 and 750); **CEMAC** (CEMAC Merchant Shipping Code, Art. 392, 415, 482, 528.1, c) and 532); **China** (Maritime Code, Art. 49 and 53); **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. 322); **Finland** (Maritime Act, Chapter 14, S. 2); **Greece** (Code of Private Maritime Law, Art. 75); **Indonesia** (Commercial Code, Art. 343); **Italy** (Navigation Code, Art. 384, 390, 410, 433, 445, 448, 452, 453 and 456, among others); **Latvia** (Maritime Code, S. 166); **Norway** (Maritime Code, Art. 322); **Peru** (Commercial Code, Art. 669 and 792); **Poland** (Maritime Code, Art. 112, § 1 and 4, 113, § 3, 114, § 1, 115, § 3 and 126, § 2); **Russia** (Merchant Shipping Code, Art. 285.2); **South Korea** (Commercial Act, Art. 872(2)); **Sweden** (Maritime Code, Chapter 14, S. 2); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 30.3, 47.1, 53.1, 63.2 and 71.2; Ordinance on Maritime Navigation, Art. 12.1, 31.2 and 34.1); **Ukraine** (Merchant Shipping Code, Art. 71, 117, 118, 146, 160, 166, 293 and 295).

[68] See, for example, Bonassies-Scapel-Bloch 2022, 38, para 32; Cornejo Fuller 2003, 39-41; González Lebrero 2000, 20-21; Herber 23; Noussia-Glynou 2023, 20, para 9 and 11; 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.

[69] Maurer 2012, 100-101; Maurer 2016, 237, para 14.19-14.20, 239, para 14.23 and 241-244, para 14.28, 14.31 and 14.32.

[70] **Hamburg Rules**, Art. 9.1; **Rotterdam Rules**, Art. 25(1)(c).

[71] **Hamburg Rules**, Art. 4.2(b)(ii); **Rotterdam Rules**, Art. 43 and 44.

[72] **Rotterdam Rules**, Art. 35.

*confirm the role of local port usages.*[73] *These rules, none of which are intended to interfere with positive maritime law or binding contracts, may be considered to be widely accepted.*

[73] **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) reflects an obvious rule, specific to maritime law. It is reflected in a number of conventions, including UNCLOS,*[74] *and in numerous national statutory provisions.*[75] *The ship's name is an essential element in, for example, the registration of ships, 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 comprising 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 marked 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(3) are assigned such a number. Still, it should be confirmed here that this IMO number plays an important role in commercial shipping. The official tonnage of the ship is not mentioned either,*

[74] **UNCLOS**, Art. 94.1.2(a); see also **Registration of Ships Convention**, Art. 11.2(a).

[75] **Current law**: for example, **Algeria** (Maritime Code, Art. 14); **Argentina** (Shipping Act, Art. 43); **Bahamas** (Merchant Shipping Act, S. 15 and 42); **Barbados** (Shipping Act, S. 30 and 58 *et seq.*); **Canada** (Shipping Act, S. 52); **CEMAC** (CEMAC Merchant Shipping Code, Art. 21); **China** (Registration of Ships Regulations, Art. 9 and 10); **Denmark** (Merchant Shipping Act, S. 5); **Greece** (Code of Private Maritime Law, Art. 3.2); **Italy** (Navigation Code, Art. 137 and 140); **Japan** (Ship Registration Order, Art. 11); **Malaysia** (Merchant Shipping Ordinance 1952, S. 22); **North Korea** (Law on the Registration of Ships, Art. 16); **Panama** (Merchant Marine Act 57 of 2008, Art. 9 *et seq.*); **Poland** (Maritime Code, Art. 12 and also 29); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 21 and 33); **Singapore** (Merchant Shipping Act 1995, S. 44); **South Africa** (Ship Registration Act, S. 21; Ship Registration Regulations, R. 15 and 45); **Spain** (Maritime Navigation Act 14/2014, Art. 60.5); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 2 and 32); **Tanzania** (Merchant Shipping Act 2003, S. 28 and 41); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 23 and 35); **Turkey** (Commercial Code, Art. 938 and 946); **Ukraine** (Merchant Shipping Code, Art. 21 and 27).

*although for merchant ships this is in fact also an important means of identification, which moreover plays a key role in the application of certain rules of positive maritime law (such as those on tonnage limitation: see Principle 11 and also Principle 12).*

*The Principle set out in paragraph (2) confirms key principles of the international law of the sea. The wording has been taken verbatim from UNCLOS[76] (albeit with a slight rearrangement of the order of the sentences, as the focus is here on the status of the ship rather than the obligations of the flag State) and reflects customary international law on the matter.[77] The adoption of the rule in the CMI Lex Maritima is justified because it is indeed fundamental to the maritime industry and to the functioning of both public and private maritime law (so not just the law of the sea), and because it clarifies the Principle contained in the immediately following Principle 4 concerning the law governing property interests. The Principle is reiterated, for that matter, in several national statutes.[78] The Principle does not influence owners' decisions regarding flag selection or their right to change registration.*

[76] **UNCLOS**, Art. 91.1, first sentence; see already **Convention on the High Seas**, Art. 5.1; see also **Registration of Ships Convention**, Art. 4.

[77] See, for example, Wolfrum 2006, 301-302, para 30-32.

[78] **Current law**: for example, **Argentina** (Shipping Act, Art. 597); **CEMAC** (CEMAC Merchant Shipping Code, Art. 22.1); **Tanzania** (Merchant Shipping Act 2003, S. 83(1)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 60).

***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, both these matters are governed by the law of the State of primary registration.**

***Commentary***

*This Principle first confirms that the property rights in ships[79] 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[80] and also in a regional convention signed by South American States.[81] That the Principle included here is a conflict of laws (private international law) rule cannot be an objection to its inclusion in the CMI Lex Maritima. In fact, from the very start of the movement for the international unification of maritime law in the nineteenth century, it was envisaged that unification could also 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 *(the law of the place of registration) governs ship mortgages is also generally accepted. This principle is confirmed in all international conventions on maritime liens and mortgages[82] and, in addition, in some national statutes[83] (this application of the* lex registrationis *is, for that matter, often implicitly confirmed in provisions on the recognition and enforceability of mortgages on foreign*

[79] In some legal systems also referred to as rights 'in rem' or 'in re'.

[80] **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)); **Georgia** (Maritime Code, Art. 16.1); **Germany** (Act Introducing the Civil Code, Art. 45(1)); **Greece** (Code of Private Maritime Law, Art. 16); **Italy** (Navigation Code, Art. 6); **Netherlands** (Civil Code, Book 10, Art. 127.2); **Poland** (Maritime Code, Art. 355, § 2; Private International Law Act 2011, Art. 42); **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); **Ukraine** (Merchant Shipping Code, Art. 19; also, but not specifically on ships, Private International Law Act, Art. 40); **Uruguay** (Act on Maritime Commercial Law No. 19.246 of 2014, Art. 7, referring to the Convention mentioned in the following footnote). Common law countries also recognise the rule, albeit with nuances: compare **Australia** (*Tisand Pty Ltd and Others v The Owners of the Ship MV Cape Moreton (Ex Freya)* [2005] FCAFC 68; Nygh 2020, 784-785, para 32.28); **New Zealand** (Myburgh 2005); **South Africa** (*Marcard Stein v Port Marine* 1995 (3) SA 663); **UK** (*Dornoch Ltd v Westminster International BV (The "WD Fairway")* [2009] 2 Lloyd's Rep 191; Dicey-Morris-Collins 2025, II, 1345-1347, para 23E-056-23-059).

[81] **South American Treaty on International Commercial Navigation Law**, Montevideo, 1940, Art. 2, 3 and 31). The Convention was signed by **Argentina**, **Bolivia**, **Brazil**, **Chile**, **Colombia**, **Paraguay**, **Peru** and **Uruguay**.

[82] **Liens and Mortgages Convention 1926**, Art. 1; **Liens and Mortgages Convention 1967**, Art. 1; **Liens and Mortgages Convention 1993**, Art. 1.

[83] **Current law**: **Argentina** (Shipping Act, Art. 600); **Belgium** (Shipping Code, Art. 2.2.5.1); **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.

*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. These aspects are governed by the law that applies under the general rules on conflict of laws.*

*The specific rule on bareboat charter registration has been recognised by the International Chamber of Commerce[84] and can additionally be supported by some national statutes.[85] The State of primary registration mentioned in the second sentence refers to the 'original' or 'underlying' registry, not the bareboat registry. This 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.*

*The Principle 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.*

*The notion of 'property interests' used in the Principle does not include maritime liens. 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 presented in Principle 23 on prioritised claims.*

[84] See Gabaldón García 2024, 596-597, with further references.

[85] **Current law**: **Belgium** (Shipping Code, Art. 2.2.4.1, § 1, 1° and 2.2.5.1, § 1, second indent); **Cyprus** (The Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005, S. 23J); **Italy** (Presidential Decree No. 66 of 21 February 1990, Art. 8 and 14); **Malta** (Merchant Shipping Act, Art. 84M); compare also **China** (Maritime Code, Art. 271); **Denmark** (Merchant Shipping Act, S. 22.3); **Spain** (Maritime Navigation Act 14/2014, Art. 96.4). To avoid confusion, the Principle does not suggest that the possibility of bareboat registration is as such a CMI Lex Maritima Principle. Whether such registration is possible depends on the positive maritime law of the respective flag States.

***Principle 5 – Ownership and management***

**(1) A ship may be owned by a single shipowner or by two or more part owners.**

**(2) It is common for the positive maritime law to implement the Principles that part owners of a ship:**
**(a) take decisions affecting their common interest or the operation of the ship by majority voting;**
**(b) are liable to other parties in proportion to their shares in the ship;**
**(c) may appoint a managing owner, a ship's manager or a 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 convention and is therefore 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 one is that ships may be the subject of co-ownership by shares or by part owners.*[86] *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,*[87] *and the concept is also recognised in maritime law systems*

[86] Or 'divided' or 'fractional' co-ownership, as distinguished from joint co-ownership, by joint owners (without shares).

[87] **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.*); **Canada** (Shipping Act, S. 53); **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.*); **Ecuador** (Commercial Code, Art. 855 *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.*); **Indonesia** (Commercial Code, Art. 323 *et seq.*); **Italy** (Navigation Code, Art. 258 *et seq.* and 278 *et seq.*); **Japan** (Commercial Code, Art. 692 *et seq.*); **Mexico** (Maritime Navigation and Commerce Act, Art. 84 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 74-76); **Netherlands** (Civil Code, Book 8, Art. 160 *et seq.*); **Norway** (Maritime Code, S. 101 *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 18 *et seq.*); **Paraguay** (Commercial Code, Art. 876 *et seq.*); **Peru** (Commercial Code, Art. 602 *et seq.*); **Poland** (Maritime Code, Art. 23, § 5); **South Africa** (Ship Registration Act, S. 15); **South Korea** (Commercial Act, Art. 756 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 64 and 150 *et seq.*); **Sweden** (Maritime Code, Chapter 5); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 28.2); **Turkey** (Commercial Code, Art. 1064 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 16 (implicit)); **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. The references to the German Commercial Code below are therefore referred to as 'Legal history'.

*lacking a comprehensive statutory framework.[88] The rule that the co-ownership of a ship is divided into 64 shares can be found in several common law countries,[89] but is not universal, and has therefore not been included in the Principle. In some legal systems, general rules on co-ownership of movable property are applied, on a supplementary basis[90] or even exclusively.[91] The Principle summarises specific rules on co-ownership of ships found in the positive maritime law of many countries (which may resemble general rules on co-ownership found in the general civil law).*

*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. Decision-making by majority vote on matters affecting the common interest of the co-owners or the operation of the ship (item (a)) is confirmed in numerous national legal provisions[92,93] and in case law and legal doctrine.[94] However, the rule is not absolute, because some legal systems require unanimity for specific decisions (the decisions to which this exactly applies varies, however, and therefore cannot be stipulated in the Principle[95]). The principle of proportional liability of co-owners (item (b)) can also be found in many legal systems,[96,97] albeit sometimes with further special arrangements and distinctions. The rule stated here applies without distinction between contractual and non-contractual liability. The practice of co-owners being*

[88] 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.

[89] **Current law**: **Barbados** (Shipping Act, S. 17(1)); **Canada** (Shipping Act, S. 53(1)); **South Africa** (Ship Registration Act, S. 15(1)(a); **UK** (Merchant Shipping (Registration of Ships) Regulations 1993, R. 2(5)a)); compare, for a division into 24 parts, **Italy** (Navigation Code, Art. 258); into 100 parts, **Mexico** (Maritime Navigation and Commerce Act, Art. 84).

[90] **Current law**: for example, **Argentina** (Shipping Act, Art. 164); **Greece** (Code of Private Maritime Law, Art. 51.1); **Spain** (Maritime Navigation Act 14/2014, Art. 64); **Venezuela** (Maritime Commerce Act, Art. 82); compare, referring to general company law, **Uruguay** (Commercial Code, Art. 1046).

[91] **Current law**: for example, **Chile** (Commercial Code, Art. 837); **China** (Maritime Code, Art. 10 and Civil Code, Art. 297 *et seq.*); **Poland** (Civil Code, Art. 195 *et seq.*).

[92] **Legal history: Germany** (Commercial Code, § 491).

[93] **Current law**: **Argentina** (Shipping Act, Art. 165); **Belgium** (Shipping Code, Art. 2.3.1.5); **Brazil** (Commercial Code, Art. 486); **CEMAC** (Merchant Shipping Code, Art. 54); **Colombia** (Commercial Code, Art. 1460); **Denmark** (Merchant Shipping Act, S. 108); **France** (Transport Code, Art. L5114-30); **Greece** (Code of Private Maritime Law, Art. 52.1); **Indonesia** (Commercial Code, Art. 334); **Italy** (Navigation Code, Art. 259); **Japan** (Commercial Code, Art. 692); **Mexico** (Maritime Navigation and Commerce Act, Art. 84 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 74); **Netherlands** (Civil Code, Book 8, Art. 171); **Norway** (Maritime Code, S. 108); **Panama** (Maritime Commerce Act 55 of 2008, Art. 18); **Paraguay** (Commercial Code, Art. 877); **Peru** (Commercial Code, Art. 602); **Romania** (Commercial Code, Art. 505); **South Korea** (Commercial Act, Art. 756); **Spain** (Maritime Navigation Act 14/2014, Art. 151); **Sweden** (Maritime Code, Chapter 5, S. 7); **Turkey** (Commercial Code, Art. 1067); **Uruguay** (Commercial Code, Art. 1047); **Venezuela** (Maritime Commerce Act, Art. 76).

[94] **Current law**: **UK** (Chorley-Giles 1987, 29-31; Hill 2003, 2-3; Mandaraka-Sheppard 2006, 299-303).

[95] To capture the variety of national rules, the wording 'take all decisions' in item (a) of the Gothenburg Draft has been replaced with the more flexible 'take decisions'.

[96] **Legal history: Germany** (Commercial Code, § 507).

[97] **Current law**: **Belgium** (Shipping Code, Art. 2.3.1.14); **Denmark** (Merchant Shipping Act, S. 102); **Finland** (Maritime Act, Chapter 5, S. 1, para 2 and S. 5); **France** (Transport Code, Art. L5114-38-40); **Greece** (Code of Private Maritime Law, Art. 54); **Indonesia** (Commercial Code, Art. 326); **Italy** (Navigation Code, Art. 283); **Japan** (Commercial Code, Art. 695); **Netherlands** (Civil Code, Book 8, Art. 181); **Paraguay** (Commercial Code, Art. 878); **Peru** (Commercial Code, Art. 603); **Sweden** (Maritime Code, Chapter 5, S. 1); **Turkey** (Commercial Code, Art. 1080); **Uruguay** (Commercial Code, Art. 1048 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 88); compare, however, **Brazil** (Commercial Code, Art. 494); **CEMAC** (Merchant Shipping Code, Art. 64); **Ecuador** (Commercial Code, Art. 859); **Norway** (Maritime Code, S. 101 and 102).

*represented by a managing owner, a ship's manager or a ship's husband (item (c)) is also explicitly confirmed in various sources of positive maritime law (which in some cases imposes such appointment)[98,99] For the sake of flexibility, both the term ship's manager and the (specific English) term ship's husband are mentioned.[100]*

*Like all other Principles contained in the CMI Lex Maritima, the rules presented here 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. But most of the national provisions do seem to leave room for freedom of contract.*

*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 general national law (such as a lease, a 'contrat de louage' or a 'Mietvertrag'). In the chartering business, the terms 'hiring' and 'hire' are often used in a general sense, without any further specific legal connotation or implication that would link a given contract to any such technical legal classification.*

*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.[101] However, international standard contracts are frequently used. It is not to be excluded that a court 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 specific national legislative frameworks.[102] In many countries, ship agents are regarded as commercial agents and are subject to*

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[98] **Legal history: Germany** (Commercial Code, § 492).

[99] **Current law**: **Belgium** (Shipping Code, Art. 2.3.1.8 *et seq.*); **Brazil** (Commercial Code, Art. 491 *et seq.*); **CEMAC** (Merchant Shipping Code, Art. 57 *et seq.*); **Colombia** (Commercial Code, Art. 1463); **Denmark** (Merchant Shipping Act, S. 103 *et seq.*); **Ecuador** (Commercial Code, Art. 857); **Finland** (Maritime Act, Chapter 5, S. 6 *et seq.*); **France** (Transport Code, Art. L5114-32 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 53); **Indonesia** (Commercial Code, Art. 327); **Japan** (Commercial Code, Art. 697 *et seq.*); **Netherlands** (Civil Code, Book 8, Art. 163 *et seq.*); **Norway** (Maritime Code, S. 103 *et seq.*); **Paraguay** (Commercial Code, Art. 889 *et seq.*); **Peru** (Commercial Code, Art. 607 *et seq.*); **South Korea** (Commercial Act, Art. 764 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 153; Royal Decree 131/2019 of 8 March 2019); **Sweden** (Maritime Code, Chapter 5, S. 2 *et seq.*); **Turkey** (Commercial Code, Art. 1068 *et seq.*); **Uruguay** (Commercial Code, Art. 1059 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 85 *et seq.*).

[100] The term ship's husband is well established and does not yet have a gender-neutral equivalent.

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

[102] **Current law**: **Argentina** (Shipping Act, Art. 193 *et seq.*); **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.*); **Ecuador** (Commercial Code, Art. 883 *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.*); **Paraguay** (River and Sea Navigation Code, Art. 43); **Poland** (Maritime Code, Art. 201 *et seq.*); **Slovenia** (Maritime Code, Art. 659 *et seq.*);

*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 suffices. It is not necessary to elaborate on the distinctions among various 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 not a rule that can be elevated to lex maritima Principle.*

**Spain** (Maritime Navigation Act 14/2014, Art. 319 *et seq.*); **Tanzania** (Tanzania Shipping Agencies Act, 2017); **Ukraine** (Merchant Shipping Code, Art. 116-119); **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 describe the universally applicable maritime law regarding the key responsibilities of shipowners, ship operators, ship masters and pilots. Principles 10 to 12 add fundamental principles regarding liabilities to claimants.*

*In this context, a terminological distinction is made between 'responsibility', to identify the party expected to fulfil specific obligations, and 'liability', which is governed by rules that determine who must pay damages if those obligations are not met. Principle 6 under consideration here concerns the 'responsibility' of the shipowner and the ship operator.*

*More specifically, Principle 6 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 training, qualification and employment of seafarers[103] and maritime security. The main purpose of this Principle is to draw attention to the comprehensive standards governing these matters and to emphasise the fundamental responsibility of the parties involved to comply with such standards, which are predominantly established, and regularly updated, by the IMO and the ILO. The very wide international penetration of these rules and the strengthening of their authority by UNCLOS have already been noted above.[104] In addition, in many countries further statutory and regulatory provisions apply, often spread over several normative acts. The Principle presented here is a concise synthesis of all these obligations, and fulfils a broad signalling function, without, of course, being able or intending to change positive maritime law (see again Rule 4(2)). Similar synoptic statutory provisions seem so far rather rare but do exist.[105] On a much wider scale, the need for strict compliance with internationally agreed maritime rules and standards is stressed in the Understanding on Common Shipping Principles[106] and the*

[103] Including matters such as welfare and repatriation.
[104] See the Commentary to Rule 1, with further references.
[105] **Current law: Algeria** (Maritime Code, Art. 574); **China** (Maritime Traffic Safety Law 2021, Art. 7, 11 and 12); **Georgia** (Maritime Code, Art. 14.4); **Paraguay** (River and Sea Navigation Code, Art. 41); compare **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 45.2).
[106] OECD, *Understanding on Common Shipping Principles*, OECD/LEGAL/5012, Principle X.

*International Understanding on Maritime Transport Principles*[107] *adopted through the OECD by numerous countries. That the obligations in question are of an essentially public law nature is not an objection to the inclusion of the Principle into the CMI Lex Maritima, as the distinction between public and private law is, in maritime matters, largely artificial.*[108] *If these universal and fundamental obligations were ignored, the CMI Lex Maritima, as a compilation of universally applicable maritime principles, would not be complete.*

*As is made clear in the definition in Rule 2(7), 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(8). 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 relevant specific rules and regulations. In sum, the CMI Lex Maritima is, in this respect as well, limited to pointing out, in a synoptical, simplified manner, the core obligations that arise from the positive maritime law.*

[107] OECD, *International Understanding on Maritime Transport Principles*, OECD/LEGAL/5014, Principle III.1.
[108] See again the Commentary to Rule 1.

***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 COLREG 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 98.69% of the world's tonnage. No IMO convention covers a larger share of the world fleet. Numerous national statutory and regulatory provisions confirm that COLREG applies as part and parcel of the positive maritime law and/or introduce sanctions for infringements.*[109] *Fourth, COLREG is recognized as a 'generally accepted' instrument under the 1982 UN Convention on the Law of the Sea.*[110] *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 recognition of COLREG as an 'as such' CMI Lex Maritima Principle of Type 1 (see Commentary to Rule 2) applies including any amendments or any subsequent replacement by another instrument (if it would enjoy the same general acceptance).*

*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.*[111] *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.*[112] *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.*[113] *In many cases, such special local rules indeed apply.*

[109] **Current law**: for example, **Argentina** (Shipping Act, Art. 91); **Belgium** (Shipping Code, Art. 4.1.2.47); **Canada** (Shipping Act, Sch. 1, item 17); **Panama** (Maritime Commerce Act 55 of 2008, Art. 208).
[110] **UNCLOS**, Art. 94.4.c and 94.5; see *South China Sea Arbitration (Philippines v China)*, Award on the Merits, 12 July 2016, para 1081-1083.
[111] **COLREG**, Rule 2(a).
[112] **COLREG**, Rule 1(a).
[113] **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 safe and proper loading, stowage, carriage and unloading of cargo, and the maintenance of good order and 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) Ship masters are bound, in so far as they can do without serious danger to their ship and persons thereon, to render assistance to any person at sea in danger of being lost and, after a collision, to the other ship.**

**(4) The ship master is authorised to sign bills of lading. It is common for the positive maritime law to 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. In a bygone era, the ship master had almost absolute power and used to be considered 'Master under God' or 'seul maître après Dieu'. Under contemporary maritime law the ship master remains essentially the person having command of the ship and who is in charge of the maritime expedition in its various aspects.*

*The Principle is based on generally accepted rules. Some international conventions[114] and national maritime laws[115] contain specific, often more elaborate provisions or even separate chapters on the*

[114] **SOLAS Convention,** Annex, Chapter V, Rule 34.1.

[115] **Current Law**: **Algeria** (Maritime Code, Art. 580 *et seq.*); **Argentina** (Shipping Act, Art. 120 *et seq.* and 205); **Austria** (Business Code, § 511 *et seq.*); **Belgium** (Shipping Code, Art. 2.4.2.1 *et seq.*); **Brazil** (Commercial Code, Art. 496 *et seq.*); **Canada** (Shipping Act, S. 82 *et seq.*, S. 107 *et seq.,* 115 and 116); **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.*; Maritime Traffic Safety Law 2021, Art. 7, although not specifically about the ship master); **Colombia** (Commercial Code, Art. 1495 *et seq.*); **Denmark** (Merchant Shipping Act, S. 131 *et seq.*); **Ecuador** (Commercial Code, Art. 870 *et seq.*; Organic Law on Navigation and Management of Maritime and Fluvial Security and Protection in Water Areas, Art. 49); **Finland** (Maritime Act, Chapter 6); **France** (Transport Code, Art. L5412-2 *et seq.*); **Georgia** (Maritime Code, Art. 48 *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.*; Seafarer's Act, Art. 7 *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.*); **Netherlands** (Civil Code, Book 8, Art. 260 *et seq.*); **Norway** (Maritime Code, S. 131 *et seq.*), **Peru** (Commercial Code, Art. 622 *et seq.*); **Panama**

*responsibilities of ship masters. 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 dies or is incapacitated, or a watch officer on the bridge). The task defined here in general terms may include, in accordance with the positive maritime law of the flag State, more specific duties such as keeping the ship's books and documents, flying the national flag or leaving the ship as the last person on board ('The captain goes down with the ship').*

*Paragraph (2) confirms in simple terms three fundamental standards of conduct for those in charge of a ship. The first one (item (a)) 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[116] as well as in some national statutory provisions[117] and, of course, in case law.[118] More specifically, seamanship is also a requirement under rules on professional qualifications.[119] The second standard (item (b)) concerns conduct towards persons and is in line with contemporary maritime labour law[120] and the protection of human rights. The third standard (item (c)) is consistent with, inter alia, contemporary maritime environmental law.[121] It should also be recalled that the SOLAS Convention provides that the owner, the charterer, or the company operating the ship or any other person, shall not prevent or restrict the ship master from taking or executing any decision which, in the master's professional judgment, is necessary for safe navigation and protection of the marine environment.[122] Likewise, the ship master shall not be constrained by the company, the charterer or any other person from taking or executing any decision which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship.[123]*

(Maritime Commerce Act 55 of 2008, Art. 29 *et seq.*); **Paraguay** (Commercial Code, Art. 904 *et seq.*; River and Sea Navigation Code, Art. 58 *et seq.*); **Poland** (Maritime Code, Art. 53-72); **Romania** (Commercial Code, Art. 506 *et seq.*); **Russia** (Merchant Shipping Code, Art. 61 *et seq.*); **South Korea** (Commercial Act, Art. 745 *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. 1088 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 58-72); **Uruguay** (Commercial Code, Art. 1074 *et seq.*); **Vanuatu** (Maritime Act, S. 105); **Venezuela** (Maritime Commerce Act, Art. 18 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 52 *et seq.*). In the **USA**, the matter is governed by case law (see Force 2001, 79 *et seq.*, para 119 *et seq.*).

[116] **Current law**: **COLREG**, Rule 2(a) ('ordinary practice of seamen') and 8(a) ('good seamanship').

[117] **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** (Maritime Waterways Regulations, § 3(1); Pilotage Act, § 25(2)); **Japan** (Act for Preventing Collisions at Sea No. 62 of 1977, Art. 39); **Norway** (Maritime Code, S. 132); **Poland** (Maritime Code, Art. 57); **Sweden** (Maritime Code, Chapter 6, S. 2); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 52.2); compare also **Paraguay** (Commercial Code, Art. 908).

[118] **Current Law**: for example, **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).

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

[120] **Current Law**: **MLC 2006**, Art. IV; see also, for example, **Argentina** (Shipping Act, Art. 131, i)); **Japan** (Seafarer's Act, Art. 12); **Poland** (Maritime Code, Art. 61, § 1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 53.1, although rather about the 'interests' of crew and passengers).

[121] **Current law**: for example, **SOLAS Convention** (Annex, Chapter V, Rule 34.1); **STCW Convention** (Annex, R. 11/1.11); **Japan** (Act on Prevention of Marine Pollution and Maritime Disasters No. 136 of 1970, Art. 2); **Poland** (Prevention of Pollution from Ships Act 1995, Art. 9); **Russia** (Merchant Shipping Code, Art. 61); **Spain** (Maritime Navigation Act 14/2014, Art. 182.1).

[122] **SOLAS Convention,** Annex, Chapter V, Rule 34-1; see also, for example, **Georgia** (Maritime Code, Art. 61); **Germany** (Security of Maritime Navigation Regulations, § 9).

[123] **SOLAS Convention,** Annex, Chapter XI-2, Rule 8.1.

*Paragraph (3) concerns the obligation to render assistance to persons in danger at sea and, after a collision, to the other ship. The universality of this rule is evidenced by its inclusion in several law of the sea and maritime law conventions[124] and numerous national laws.[125] French authorities Bonassies and Scapel have termed this Principle an 'obligation impérieuse' based on 'une tradition immémoriale à la mer'.[126] In the CMI Lex Maritima, the fundamental need to protect human life at sea is also central to several other Principles, including the more general paragraph (1) of the present Principle and the repeated references in the Commentaries to Rule 1 and Principle 6 to the authority of conventions such as SOLAS.*

*Paragraph (4) confirms that the ship master is authorised to sign bills of lading. The paragraph further states that the 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, many national laws continue to expressly recognise them.[127] However, since there is no uniformity in this regard, it suffices here to draw attention in general terms to the possibility.*

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[124] **High Seas Convention 1958**, Art. 12.1; **UNCLOS**, Art. 98.1; **SAR Convention** (Annex, Art. 2.10); **SOLAS Convention** (Annex, Chapter V, Rule 33.1); **Collision Convention 1910**, Art. 8**; Salvage Convention 1910**, Art. 11-12; **Salvage Convention 1989**, Art. 10.

[125] **Current Law**: **Algeria** (Maritime Code, Art. 285 and 334); **Argentina** (Shipping Act, Art. 131, k) and l)); **Austria** (Maritime Navigation Act, § 24); **Barbados** (Shipping Act, S. 224 and 228); **Belgium** (Shipping Code, Art. 2.4.5.35); **Bermuda** (Merchant Shipping Act, S. 100 and 101); **Canada** (Shipping Act, 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)); **Ecuador** (Organic Law on Navigation and Management of Maritime and Fluvial Security and Protection in Water Areas, Art. 92); **Finland** (Maritime Act, Chapter 6, S. 11 and Chapter 8, S. 5); **Georgia** (Maritime Code, Art. 54 and 297); **Germany** (Security of Maritime Navigation Regulations, § 2 and 6); **Greece** (Code of Private Maritime Law, Art. 210); **Ibero-America** (IIDM Maritime Model Law, Art. 333 and 347); **India** (Merchant Shipping Act, S. 348); **Indonesia** (Commercial Code, Art. 358a); **Ireland** (Merchant Shipping Act 1894, S. 422); **Japan** (Seafarer's Act, Art. 12-14); **Latvia** (Maritime Code, S. 63); **Liberia** (Maritime Law, §296(10)); **Malaysia** (Merchant Shipping Ordinance 1952, S. 387 and 388); **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); **Panama** (Maritime Commerce Act 55 of 2008, Art. 37 and 219); **Poland** (Maritime Code, Art. 60 and 261, § 1); **Portugal** (Decree-Law No. 203/98, Art. 3); **Russia** (Merchant Shipping Code, Art. 62-63); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 138, 142 and 144); **Singapore** (Merchant Shipping Act 1995, S. 106); **Slovenia** (Maritime Code, Art. 753); **South Africa** (Wreck and Salvage Act No. 94 of 1996, S. 5, 6 and 7); **Sweden** (Maritime Code, Chapter 6, S. 6 and Chapter 8, S. 4); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 133); **Tanzania** (Merchant Shipping Act 2003, S. 198, 202 and 204); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 165, 169 and 171); **Ukraine** (Merchant Shipping Code, Art. 59-60); **USA** (46 U.S.C. § 2304); **Vanuatu** (Maritime Act, S. 105(j)).

[126] Bonassies-Scapel 2016, 342, para 479; see also Bonassies-Scapel-Bloch 2022, 439, para 532.

[127] **Current Law**: **Algeria** (Maritime Code, Art. 583 *et seq.*); **Argentina** (Shipping Act, Art. 202 and also 298); **Austria** (Business Code, § 526 *et seq.*); **Belgium** (Shipping Code, Art. 2.4.2.5-2.4.2.7); **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); **Ecuador** (Commercial Code, Art. 872, 879 and 880); **Finland** (Maritime Act, Chapter 6, S. 13 and 15-16); **France** (Transport Code, Art. L5412-4-5); **Georgia** (Maritime Code, Art. 51 and 59); **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); **Indonesia** (Commercial Code, Art. 360 *et seq.*); **Italy** (Navigation Code, Art. 306 *et seq.*); **Japan** (Commercial

*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 masters and allow them to use coercive measures against those on board and to detain or take into custody any person on board in specific cases. Because these are civil, public or criminal law regulations and in view of variations in national provisions, no further Principles have been included here.*

*Nor has a Principle been included on uncrewed ships or Maritime Autonomous Surface Ships (MASS). Important technological and legal developments are taking place in this area (which are, for that matter, followed up closely by a specific International Working Group of the CMI), but it is far too early to detect any lex maritima Principles in it.*

Code, Art. 708 and also 757(1)); **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); **Netherlands** (Civil Code, Book 8, Art. 260-261); **Norway** (Maritime Code, Art. 137-139); **Panama** (Maritime Commerce Act 55 of 2008, Art. 29, 30, 31 and 41); **Paraguay** (Commercial Code, Art. 945 *et seq.*); **Peru** (Commercial Code, Art. 623); **Poland** (Maritime Code, Art. 54, and also 62, § 2 and 69); **Romania** (Commercial Code, Art. 516 *et seq.*); **Russia** (Merchant Shipping Code, Art. 71); **South Korea** (Commercial Act, Art. 749 *et seq.*); **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, and also 96); **Turkey** (Commercial Code, Art. 1103 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 58, para 2 and 69); **Uruguay** (Commercial Code, Art. 1114 *et seq.*); **USA** (case law references in Force 2001, 79-80, para 119-120); **Venezuela** (Maritime Commerce Act, Art. 18-19 and 24).

***Principle 9 – The pilot***

**The pilot is a local guide to the master. The pilot 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[128,129] and/or a local guide[130], an assistant[131,132] or an expert[133], who contributes to the safety of navigation to, from and in ports.[134] Furthermore, it is*

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

[129] **Current law: Argentina** (Shipping Act, Art. 145; Pilotage Regulations, Art. 1 and 13); **Belgium** (Flemish Pilotage Decree, Art. 2, 4° and 8); **Belgium-Netherlands** (Scheldt Regulations, Art. 10.1); **Brazil** (Federal Law 9.537/97, Art. 12; Rules of the Maritime Authority on the Pilotage Service NORMAM-311/DPC, Art. 1.21 and Art. 2.28.1.a)); **CEMAC** (CEMAC Merchant Shipping Code, Art. 644.2); **Chile** (Pilotage Regulations, Art. 3); **Colombia** (Pilotage Act, Art. 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 346/2023, S. 3, 8)); **Ecuador** (Organic Law on Navigation and Management of Maritime and Fluvial Security and Protection in Water Areas, Art. 5, 31)); **EU** (EU Maritime Pilotage Study 1995, 59-62); **Finland** (Pilotage Act 940/2003, Section 2, 1)); **France** (Transport Code, Art. L5341-1); **Georgia** (Maritime Code, Art. 15, d), mentioning in an English translation 'escorting ships to port approaches, within the internal port waters and between ports', and Art. 98.1, mentioning 'the pilot's recommendations'); **Germany** (Pilotage Act, § 1 and 23(1); Ehlers 2017, 275, para 2); **Malta** (Maritime Pilotage Regulations, Reg. 5(1); **Netherlands** (Pilotage Act, Art. 2.1); **Poland** (Maritime Code, Art. 220); **Spain** (Maritime Navigation Act 14/2014, Art. 325; State Ports and Merchant Shipping Act 2/2011, Art. 126.1; 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); **Ukraine** (Merchant Shipping Code, Art. 104 and 105).

[130] **Current law: CEMAC** (CEMAC Merchant Shipping Code, Art. 2, 56)); **EU** (Ports Regulation 2017/352, Art. 2(8)); **Japan** (Pilotage Act, Art. 2.1 and 41.1); **Norway** (Pilotage Act, § 4, a) and 8); **South Korea** (Pilotage Act, Art. 2.1); **USA** (Schoenbaum 2004 II, 71, § 13-1).

[131] **Legal history: Belgium** (Pilotage Act 1967, Art. 5).

[132] **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, Reg. 3 and 5(1)); **Paraguay** (River and Sea Navigation Code, Art. 76); **Portugal** (Decree-Law 48/2002, Art. 1.1).

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

[134] **Current law: Argentina** (Pilotage Regulations, Art. 2); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM-311/DPC, Art. 1.21); **Cyprus** (Cyprus Port Authority (Operation of Port Precincts) Regulations 1976 to 2015, Reg. 149(1)); **EU** (Ports Regulation 2017/352, Art. 2(8)); **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., Art. 19(1)b)1. and 47(2)); **South Korea** (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)).

*confirmed in various countries that the pilot may[135,136] or, by definition, must[137,138] actually take charge of the navigation or have the conduct of the vessel. This taking charge or conduct of the ship is different from command but, as some jurisdictions insist, more than merely advising.[139] It is often indicated explicitly that the master continues to carry out the command or at least has final responsibility[140,141] and may or indeed has to intervene or overrule the pilot if circumstances require.[142] 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.[143] Additional comparative law research confirms that the applicable rules 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 legal power or authority of command of the master.[144] A universal expression that summarises the division of roles and often*

[135] **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-Netherlands** (Scheldt Regulations 1843, Art. 19 and 22); **France** (Danjon 1926 II, 128, para 556).

[136] **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); **Netherlands** (Pilotage Act, Art. 2.2).

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

[138] **Current law: Australia** (Navigation Act 2012, S. 14(1) and 326(1)); **Bahamas** (Merchant Shipping Act, S. 2); **Canada** (Pilotage Act, S. 1.1); **Georgia** (Maritime Code, Art. 98.1); **Hong Kong** (Pilotage Ordinance, S. 2); **Ireland** (Harbours Act, 1996, S. 2); **Malaysia** (Merchant Shipping Ordinance 1952, S. 2); **Malta** (Merchant Shipping Act, S. 2(1)); **Nigeria** (Ports Authority (Pilotage) Regulations, Reg. 2); **Singapore** (Maritime and Port Authority of Singapore Act (Chapter 170A), S. 2); **South Africa** (National Ports Act, S. 75(3); Ports Rules, R. 43(b)); **Tanzania** (Merchant Shipping Act 2003, S. 2(1); **UK** (Pilotage Act, S. 31(1)); **USA** (Parks 1982, 1022-1027, with cases; Resolution adopted by the Board of Trustees of the American Pilots' Association on October 8, 1997, on The Respective Roles and Responsibilities of the Pilot and the Master).

[139] **Current law: UK** (Hill 2003, 460-461, with case law references).

[140] **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).

[141] **Current law: STCW Code** (S. A-VIII/2.49); **Algeria** (Maritime Code, Art. 177); **Argentina** (Shipping Act, Art. 134; Pilotage Regulations, Art. 13); **Australia** (Navigation Act 2012, S. 326(1)-(2)); **Belgium** (Flemish Pilotage Decree, Art. 8); **Belgium-Netherlands** (Scheldt Regulations, Art. 10.1); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM-311/DPC, Art. 2.30.1); **Chile** (Commercial Code, Art. 909 Pilotage Regulations, Art. 3); **China** (Maritime Code, Art. 39; Maritime Traffic Safety Law, Art. 31, para 3); **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)); **Ecuador** (Commercial Code, Art. 874); **Georgia** (Maritime Code, Art. 97); **Germany** (Pilotage Act, § 23(2)); **Japan** (Pilotage Act, Art. 41.2); **Malta** (Maritime Pilotage Regulations, Reg. 5(2)); **Mexico** (Navigation and Maritime Commerce Act, Art. 58, I); **Norway** (Pilotage Act, § 7 and 8); **Paraguay** (River and Sea Navigation Code, Art. 76); **Poland** (Maritime Code, Art. 221); **Romania** (Stănescu 2019, 88, para 220); **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); **South Africa** (National Ports Act, S. 75(6); Ports Rules, R. 43(a)); **South Korea** (Pilotage Act, Art. 18.5); **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); **Ukraine** (Merchant Shipping Code, Art. 97); **Uruguay** (Commercial Code, Art. 1147); **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).

[142] **Current law: Argentina** (Pilotage Regulations, Art. 13); **Brazil** (Rules of the Maritime Authority on the Pilotage Service NORMAM-311/DPC, Art. 2.30.2.d)); **Canada** (Pilotage Act, S. 38.02); **Paraguay** (Commercial Code, Art. 971); **South Africa** (National Ports Act, S. 75(6); Ports Rules, R. 43(c)); **UK** (Chorley-Giles 1987, 350-351; Rose 1984, 31-32); **Uruguay** (Commercial Code, Art. 1147); **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).

[143] Rodière 1976, 577, para 448.

[144] Van Hooydonk 1999, 457-506.

*appears in logbooks is 'Master's orders, pilot's advice'.*[145] *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.*[146] *With that proviso, Principle 9 is the common denominator of the rules of positive maritime law analysed. It deliberately makes no mention of the respective 'liabilities' of the pilot and the ship master for the consequences of accidents. The reason for this is that the Principle is not intended to define the respective liabilities of these parties (or of the pilotage service provider, the shipowner or the ship operator, for that matter).*[147] *Liability in relation to pilotage is regulated nationally (or even locally) in different ways and cannot therefore be the subject of a lex maritima Principle. Nor has a rule been included on compulsory pilotage. In many marine areas (especially in port approaches and within port waters), ships are required to take a pilot on board. Exceptions often apply and/or the option exists for experienced masters to obtain a Pilotage Exemption Certificate (PEC). These are public law regulations the precise terms of which vary according to national or local conditions; therefore, they are not reflected in the CMI Lex Maritima Principle either.*

[145] 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).

[146] **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)).

[147] On the terminological distinction applied in the CMI Lex Maritima between 'responsibilities' and 'liabilities', see the Commentary to Principle 6.

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

**It is common for the positive maritime law to implement the Principle that shipowners or, as the case may be, ship operators, are liable not only for the consequences of their own actions, but also for contracts entered into or acts committed by other persons involved in the operation of the ship.**

***Commentary***

*Principle 10 draws attention to the common occurrence in positive maritime law of specific rules concerning the liability of the shipowner or ship operator. There exists no international unification convention on this subject, and a comparison of national systems shows that significant divergences exist. It is common for special statutory provisions to establish that the (registered) shipowner or the ship operator is bound by contracts entered into by the master of the ship or that it is 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 or damages; in other cases, the bareboat charterer assumes the bulk, if not all of the debts or liabilities.*[148] *In common law countries, the matter is governed by the principles concerning the action* in rem *against the ship.*[149] *Although*

[148] **Current law**: **Algeria** (Maritime Code, Art. 577); **Argentina** (Shipping Act, Art. 174, on the liability of the *armador*, i.e., the shipowner or ship operator); **Austria** (Business Code, § 485 *et seq.*); **Belgium** (Shipping Code, Art. 2.3.1.19 *et seq.,* on the liability of the *scheepseigenaar*, i.e. the shipowner); **Brazil** (Commercial Code, Art. 494); **CEMAC** (CEMAC Merchant Shipping Code, Art. 372.1); **Chile** (Commercial Code, Art. 885 *et seq.,* on the liability of the *armador*, i.e. the shipowner or ship operator); **Colombia** (Commercial Code, Art. 1479 *et seq.,* on the liability of the *armador*, i.e., the shipowner or ship operator); **Denmark** (Merchant Shipping Act, S. 151, on the liability of the *reder*, i.e. the shipowner or ship operator); **Ecuador** (Commercial Code, Art. 864-864, on the liability of the *armador*, i.e. the shipowner or ship operator); **Finland** (Maritime Act, Chapter 7, S. 1); **France** (Transport Code, Art. L5412-1, on the liability of the *armateur*, i.e. the shipowner or ship operator); **Germany** (Commercial Code, § 480, on the liability of the *Reeder*, i.e. the shipowner); **Greece** (Code of Private Maritime Law, Art. 49 and 62, on the liability of the owner-operator and the (non-owning) operator, respectively); **Ibero-America** (IIDM Maritime Model Law, Art. 91, on the liability of the *armador*, i.e., the shipowner or ship operator); **Italy** (Navigation Code, Art. 274, on the liability of the *armatore*, i.e. the shipowner or ship operator); **Japan** (Commercial Code, Art. 690 and 703.1); **Latvia** (Maritime Code, S. 57); **Malta** (Merchant Shipping Act, S. 347 *et seq.,* on the liability of the shipowner); **Netherlands** (Civil Code, Book 8, Art. 8:360, on the liability of the *reder*, i.e. the shipowner; see also Art. 8:461); **Norway** (Maritime Code, S. 151, on the liability of the *reder*, i.e. the shipowner or the bareboat charterer); **Peru** (Commercial Code, Art. 599 *et seq.*); **Poland** (Maritime Code, Art. 7, 54 and 224 *j°* Civil Code, Art. 430 and 474); **Portugal** (Decree-Law No. 202/98, Art. 4 *et seq.*); **Romania** (Commercial Code, Art. 501, on the liability of the *proprietarul unui vas*, i.e. the shipowner); **Slovenia** (Maritime Code, Art. 382); **Spain** (Maritime Navigation Act 14/2014, Art. 149, on the liability of the *armador*, i.e. the shipowner or ship operator); **Sweden** (Maritime Code, Chapter 7, S. 1, on the liability of the *redar*, i.e. the shipowner or ship operator); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 48, on the liability of the *armateur*, i.e., the shipowner or ship operator); **Turkey** (Commercial Code, Art. 1062(1), 1103(1), 1104(1) and 1109); **Uruguay** (Commercial Code, Art. 1048 *et seq.* and 1063 *et seq.*); **Venezuela** (Maritime Commerce Act, Art. 37 *et seq.*).

[149] **Current law**: **Canada** (*Mount Royal/Walsh Inc. v Jensen Star (The)* (C.A.), 1989 CanLII 9431 (FCA), [1990] 1 FC 199; *Jian Sheng Co. v Great Tempo S.A.* (C.A.), 1998 CanLII 9059 (FCA), [1998] 3 FC 418; *R. v Outtrim*, 1948 CanLII 411 (BC CA); Gold-Chircop-Kindred, 760 *et seq.*; concerning stevedoring, see Shipping Act 2001, S. 251); **South**

*certain similarities can be detected, no real unity can be discerned in all this and therefore the CMI 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.*

**Africa** (Admiralty Jurisdiction Regulation Act 105 of 1983, S. 1(3)); **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***

**It is common for the positive maritime law to 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 distinguish between general limits and limits for passenger claims.**
**(2) Persons liable shall not be entitled to limit their liability if it is proved that the loss resulted from their 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 whom or on whose behalf a fund is constituted.**
**(5) The limitation may also be invoked without the constitution of a fund.**

***Commentary***

*Principle 11 highlights that positive maritime law may establish a system for (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[150] but it would be a step too far to consider them 'as such' parts of the lex maritima, as some countries indeed still apply diverging national provisions.[151] It should be noted, however, that several counties have extended the scope of the LLMC Convention to situations not governed by the instrument itself.[152] Moreover, there are also countries not party to LLMC that introduced analogous provisions in their national legislation.[153]*

*Under these circumstances, a simplified paraphrasing of the core principles derived from the LLMC Convention has been preferred, in the form of a 'type 3' Principle,[154] which merely indicates that from an international perspective, positive maritime law often includes the stated rules. However, to determine the rules applicable in a given case, it is necessary to consult the positive maritime law, from which the CMI Lex Maritima Principles does not derogate (see Rule 4(2)).*

*It should be pointed out in this context that the LLMC Convention itself also allows for various national derogations. For example, a State Party may provide in its national law that, where an action is brought in its courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted or is constituted when the right to limit liability is*

[150] **LLMC 1976**: 55 States, 52.94% of world tonnage; **LLMC PROT 1996**: 64 States, 69.36% of world tonnage.
[151] See, for example, **Argentina** (Shipping Act, Art. 175 *et seq.*); **Colombia** (Commercial Code, Art. 1480-1481).
[152] See, for example, **Belgium** (Shipping Code, Art. 2.3.2.31).
[153] See, for example, **China** (Maritime Code, Art. 204 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 349 *et seq.*).
[154] On the three types of Principles, see the Commentary to Rule 2.

*invoked.[155] The Principle presented here leaves such specificities unaffected (see, on the example just mentioned, item (5) of the second paragraph)[156].*

*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.[157] Again, a simplified wording has been preferred here. On the meaning of 'shipowner' and 'ship operator' in these Principles, see Rule 2(7)-(8) and the relevant Commentary.*

*In 2008, the CMI adopted Procedural Rules Relating to Limitation of Liability in Maritime Law, which have meanwhile inspired some national legislative initiatives. In 2022, a unified interpretation on the breaking of the right to limit liability was provided by the IMO.[158]*

*Some legal systems (such as that of the EU)[159] provide for compulsory liability insurance. As this is not a universally applicable principle, it has not been included in the CMI Lex Maritima.*

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

[155] **LLMC**, Art. 10.1.

[156] That is the case, for example, in **Japan** (Act on Limitation of Shipowner Liability, Art. 3(1) and 17(1) and also 19 and 20). But compare, for example, **Canada** (Marine Liability Act, S. 32(2)); **Denmark** (Merchant Shipping Act, S. 180); **Greece** (Code of Private Maritime Law, Art. 234); **Poland** (Maritime Code, Art. 98, § 1).

[157] See **LLMC**, Art. 1(1) and 1(2).

[158] See IMO Resolution A.1163(32) of 2022 on 'Interpretation of Article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976'; IMO Resolution A.1164(32) on 'Interpretation of Article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976'.

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

***Principle 12 – Pollution liabilities***

**(1) It is common for the positive maritime law to 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) Shipowners have the right to limit their liability in accordance with limits of liability based on the tonnage of the ship.**
**(e) Shipowners shall not be entitled to limit their liability if it is proved that the pollution damage resulted from their 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 themselves of the benefit of limitation of liability, shipowners 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) It is common for the positive maritime law to implement the Principles of, inter alia, strict civil liability, 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 points out that special civil liability regimes apply 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 97.32% of world tonnage. Although it is premature to label this convention as such as part of the lex maritima, some core provisions of CLC 1992 have been paraphrased in this Principle. The second para, item (h) 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,*[160] *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*

[160] For example, **FUND PROT 1992**: 121 States, 94.25% of world tonnage.

*relatively recent instruments, while considerable, still varies,*[161] *so it is premature to proclaim any substantive lex maritima Principles based on 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 substantive provisions of the Nairobi Wreck Removal Convention are to an extent reflected in Principle 22.*

*As already noted, in 2008 the CMI adopted Procedural Rules Relating to Limitation of Liability in Maritime Law, which have meanwhile inspired national legislative initiatives. In 2022, a unified interpretation on the breaking of the right to limit liability has been provided by the IMO.*[162]

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

[161] **BUNKER**: 106 States, 95.02% of world tonnage; **HNS 1996**: 14 States, 17.73% of world tonnage; **HNS 2010**: 8 States, 3.95% of world tonnage; **Nairobi WRC**: 67 States, 80.28% of world tonnage.

[162] See IMO Resolution A.1165(32) on 'Interpretation of Article 6 of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 Amending Article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1969'.

# Part 5
# Maritime contracts

***Principle 13 – Freedom of maritime contract***

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

***Commentary***

*Freedom of contract is an important principle in the general lex mercatoria. In fact, it is the subject-matter of the very first provision of the Unidroit Principles of International Commercial Contracts 2016.*[163] *In maritime law, the principle is no less fundamental. While it is not expressed as such in any general convention, 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. The same is true, for example, as regards 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.*[164] *In some countries, freedom of contract is expressly recognised, either in the maritime code – in some (albeit rather rare) cases in general terms*[165]*, in more frequent cases specifically with regard to charter parties*[166] *– or, again in general terms, in the general contract law provisions of the civil and/or the commercial code, which may also apply in maritime matters,*[167]*. This all confirms that the rule can indeed be considered to belong to the lex maritima. 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 a default rule in this Principle is an important added value of the CMI Lex Maritima.*

*However, numerous restrictions on freedom of contract follow from positive maritime law (see the definition of this concept in Rule 2(4)). 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.*[168] *In some areas, there is (at least in some legal systems) an*

[163] **Unidroit Principles of International Commercial Contracts 2016**, Art. 1.1.
[164] **Salvage Convention 1989**, Art. 6(1) and also 7.
[165] **Current law**: **Vietnam** (Maritime Code 2015, Art. 5.1).
[166] **Current law**: **Denmark** (Merchant Shipping Act, S. 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); **Panama** (Maritime Commerce Act 55 of 2008, Art. 94); **Sweden** (Maritime Code, Chapter 14, S. 2).
[167] **Current law**: for example, **Belgium** (Civil Code, Art. 5.14), **China** (Civil Code, Art. 464, 465 and 470); **France** (Civil Code, Art. 1102); **Greece** (Civil Code, Art. 361, implicit); **Italy** (Civil Code, Art. 1322); **Poland** (Civil Code, Art. $353^1$); **Spain** (Civil Code, Art. 1255); **Switzerland** (Civil Code, Book V, Art. 19); **Ukraine** (Civil Code, Art. 3.1, 3) and 627).
[168] See **MLC 2006**, Art. VI, Regulation 2.1 and Standard A2.1.

*obligation to contract (for example, in relation to insurance, pilotage, towing or ship agency). Yet another example of a restriction of the freedom of contract can be found in the rules of certain countries that limit access to the market for coastwise carriage or cabotage (domestic) transportation.*[169] *Some rules of positive maritime law – which may, again in accordance with the definition of that concept in Rule 2(4), comprise 'the rules of non-maritime law that apply to maritime matters', such as general rules of contract law contained in civil or commercial codes – may impose more general restrictions on freedom of contract based on 'public policy' or 'public order'.*[170] *Criminally sanctioned statutory or regulatory provisions cannot be derogated from by contract either. Finally, maritime contracts cannot deviate from 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'). Finally, several rules of 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.*[171]

[169] **Current law**: for example, **Canada** (Coasting Trade Act, S.C. 1992, c. 31); **Malaysia** (Merchant Shipping Ordinance 1952, S. 68S); **Tanzania** (Merchant Shipping Act 2003, S. 10(2)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 56(2)); **USA** (46 USC § 55102, based on the Merchant Marine Act of 1920 or 'Jones Act').

[170] **Current law**: for example, **Argentina** (Civil and Commercial Code, Art. 958); **Belgium** (Civil Code, Art. 1.3); **France** (Civil Code, Art. 1102); **Japan** (Civil Code, Art. 90); **Spain** (Civil Code, Art. 1255).

[171] 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 or ship operator, hereinafter referred to as 'owners', in exchange for the payment of hire, provides the charterers with an uncrewed ship which the charterers shall possess, employ, man and operate for an agreed period.**

**(2) It is common for the positive maritime law or the contract to implement, inter alia, the following Principles:**

**(a) The contract shall specify 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, ready for service and properly documented, and at a safe berth or mooring.**

**(c) The ship shall be employed in lawful trades for the carriage of lawful merchandise within the agreed trading limits.**

**(d) 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.**

**(e) 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.**

**(f) 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.**

**(g) 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[172] and are always of non-mandatory, supplemental nature; moreover, they are usually of limited importance in dispute resolution practice.[173] One recent national codification contains a set of provisions that reflect*

[172] One of the aspects on which there are significant divergences is the difference between, or assimilation of, the voyage charter and the contract of carriage. In accordance with the established methodology underlying the CMI Lex Maritima, such divergences are not considered further here (see also the Commentaries accompanying Principles 16 and 17 below).

[173] **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**

*the core clauses of the most commonly used standard contracts and therefore corresponds as closely as possible to commercial reality.[174] The Principles on charterparties set forth in the CMI Lex Maritima adopt a similar approach, albeit with even greater conciseness in their wording. This choice is consistent with the observation, reflected in the Commentary to Principle 2, that internationally common standard contracts may be considered to reflect relevant custom.*

*The CMI Lex Maritima Principles on charter parties, as a synthesis of the most common contractual clauses, have mainly an informative and educational value. In daily reality, chartering agreements are almost always regulated by written contracts, often using the already mentioned internationally accepted models. It is expected that it will be rather rare for a judge or arbitrator to refer to the Principles expressed here as a source of law in its own right. This may occur, however, in those rare cases where there is no written contract or it contains gaps, and the judge or arbitrator can and wishes to take into account the general principles of maritime law and/or the internationally customary contractual arrangements. As always, the practical function of the CMI Lex Maritima will be determined by the contours of positive maritime law (Rule 4(2)).*

*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 devote some provisions. 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 vessel charters.*

*The definition of the bareboat or demise charter included in paragraph (1) can be considered universally accepted.[175] Deliberately, the term 'owners' is used instead of the term 'shipowner' as defined in Rule 2(7), because a bareboat charter can also be entered into by a party that is not the registered owner.*

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(Commercial Code, Art. 927 *et seq.*); **China** (Maritime Code, Art. 127 *et seq.*); **Denmark** (Merchant Shipping Act, S. 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.*); **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.*); **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.*); **Poland** (Maritime Code, Art. 103 *et seq.* and 188 *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.*); **South Korea** (Commercial Act, Art. 827 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 188 *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.*); **Ukraine** (Merchant Shipping Code, Art. 203 *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.*)

[174] **Current law**: **Belgium** (Shipping Code, Art. 2.6.1.1 *et seq.*).

[175] **Current law**: **Belgium** (Shipping Code, Art. 2.1.1.4, 2°); **Canada** (Shipping Act, S. 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); **Ecuador** (Commercial Code, Art. 937, 948 and 980); **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); **Netherlands** (Civil Code, Book 8, Art. 530); **Panama** (Maritime Commerce Act 55 of 2008, Art. 99); **Spain** (Maritime Navigation Act 14/2014, Art. 188); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 90); **UK** (Scrutton 2008, 55, para A28); **Ukraine** (Merchant Shipping Code, Art. 215); **USA** (Force 2001, 95, para 156, with case law references); **Vietnam** (Maritime Code 2015, Art. 229.1).

*The term 'uncrewed' does of course not refer to remotely or autonomously steered vessels, but to vessels for which the charterer must retain the necessary crew.*

*The substantive rules on the bareboat charter in paragraph (2) were extracted mainly from BIMCO's BARECON 2017 (this reference does not, of course, imply that the CMI wishes to express any preference for a particular model form). The Principles presented are a much simplified selection of the most important and typical clauses in this type of contract. Of course, the elements mentioned are not meant to be exhaustive. Since these rules are derived from customary contractual arrangements, the Principle states that both positive maritime law and the contract itself commonly implement the rules mentioned.*

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

***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 charterers with a crewed ship which the charterer shall employ for an agreed period.**

**(2) It is common for the positive maritime law or the contract to implement, inter alia, the following Principles:**

**(a) The contract shall specify 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 ship shall be delivered to the charterers at the place of delivery in a seaworthy condition, in every way fit to be employed for the intended service, with full complement of qualified master, officers and crew and her holds clean and in all respects ready to receive the cargo.**

**(c) The ship shall be employed in lawful trades for the carriage of lawful merchandise within the agreed trading limits.**

**(d) The ship shall be loaded and discharged in any safe anchorage or at any safe berth or place that the charterers may direct, provided the ship can safely enter, lie and depart always afloat.**

**(e) The owners shall provide and pay for the insurances of the ship, provisions, stores, wages, and crew costs; they shall maintain the ship's class and keep her in a thoroughly efficient state in hull, machinery and equipment.**

**(f) The charterers shall provide and pay for all the bunkers, port and waterway charges, pilotage and towage.**

**(g) The master shall be under the orders and directions of the charterers as regards employment and agency and perform the voyages with the utmost despatch; the charterers shall perform all cargo handling, at their risk and expense, under the supervision of the master.**

**(h) 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 Commentary to Principle 14 above.*

*The definition of a time charter in paragraph (1) can be considered generally accepted.*[176]

[176] **Current law**: **Argentina** (Shipping Act, Art. 227); **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. 321); **Ecuador** (Commercial Code, Art. 937, 948 and 949); **Finland** (Maritime Act, Chapter 14, S. 1); **France** (Transport Code, Art. L5423-10); **Georgia** (Maritime Code, Art. 184); **Germany** (Commercial Code, § 557(1)); **Greece** (Code of Private Maritime Law, Art. 93.1); **Ibero-America** (IIDM Maritime Model Law, Art. 148); **Indonesia** (Commercial Code, Art. 453); **Japan** (Commercial Code, Art. 704); **Latvia** (Maritime Code, S. 165); **Morocco** (Maritime Commerce Code, Art. 270); **Netherlands** (Civil Code, Book 8, Art. 373.1 and 502.1); **Norway** (Maritime Code, Art. 321); **Panama** (Maritime Commerce Act 55 of 2008, Art. 105); **Poland** (Maritime Code, Art. 188); **Russia** (Merchant Shipping

*Paragraph (2) provides a sampling of the most common clauses found in such contracts. It takes into account various international standard contracts, such as NYPE 46, NYPE 2015 and BALTIME 1939 (revised 2001). In this context, the CMI obviously does not express any preference for a particular model form either.*

Code, Art. 198); **South Korea** (Commercial Act, Art. 842); **Spain** (Maritime Navigation Act 14/2014, Art. 203-204); **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)); **UK** (Scrutton 2008, 60, para A30); **Ukraine** (Merchant Shipping Code, Art. 203); **USA** (Force 2001, 94, para 154); **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 freight, provides the charterers with a crewed ship which the charterer shall employ for an agreed voyage.**

**(2) It is common for the positive maritime law or the contract to implement, inter alia, the following Principles:**

**(a) The contract shall specify 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 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 in specific cases only, including in case the loss, damage or delay has been caused by personal want of due diligence on the part of the owners to make the ship seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the owners, and subject, where applicable, to any defences they might be entitled to rely on in their capacity as carrier.**

**(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.**

**(e) The owners shall give free use of the ship's cargo handling gear and of sufficient power to operate it. All such equipment shall be in good working order.**

**(f) The owners shall pay all dues, charges and taxes customarily levied on the ship. The charterers shall pay all dues, charges, duties and taxes customarily levied on the cargo.**

***Commentary***

*With regard to the voyage charterparty as well, reference is made to the general Commentary on charter contracts accompanying Principle 14.*

*The definition in paragraph (1) can be considered generally accepted.*[177] *Some statutory definitions not only mention the obligation of the owners to make the ship available, but also their obligation to carry*

[177] **Current law**: **Argentina** (Shipping Act, Art. 241); **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); **China** (Maritime Code, Art. 92); **Denmark** (Merchant Shipping Act, S. 321); **Ecuador** (Commercial Code, Art. 937, 948 and 963); **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); **Indonesia** (Commercial Code, Art. 453); **Italy** (Navigation Code, Art. 384); **Japan** (Commercial Code, Art. 748(1), although somewhat less explicit); **Latvia** (Maritime Code, S. 165); **Netherlands** (Civil Code, Book 8, Art.

*out the agreed voyage and/or transport and deliver the cargo. However, there is apparently no international consensus on the relationship between the voyage charter and the contract of carriage; in some countries these types of contracts are amalgamated by the legislator and in others they are strictly distinguished. For this reason, the CMI Lex Maritima, which focuses on universally shared concepts and rules, deliberately leaves this issue unaddressed. In any event, it should be noted that a voyage charter may provide for performance of 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. However, item (c) can be considered a blend of the responsibility clauses of GENCON 1994 and GENCON 2022, confirming that the matter is optional for the parties. In this context, too, the CMI refrains from expressing any preference for a particular model contract.*

*No attention has been given to the possible use of alternative clauses (such as Liner Terms vs FIO).*

373.1 and 502.1); **Norway** (Maritime Code, Art. 321); **Panama** (Maritime Commerce Act 55 of 2008, Art. 117); **Poland** (Maritime Code, Art. 103-104); **South Korea** (Commercial Act, Art. 827(1)); **Spain** (Maritime Navigation Act 14/2014, Art. 204.1); **Sweden** (Maritime Code, Chapter 14, S. 1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 94.1); **UK** (Scrutton 2008, 60, para A30); **Ukraine** (Merchant Shipping Code, Art. 133-134); **USA** (Force 2001, 94-95, para 155); **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 consignee.**

**(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. Such transport document may be negotiable or non-negotiable.**

**(3) In relation to carriage of goods by sea, it is common for the positive maritime law to 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. 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 addition, some countries have through their national laws extended the scope of the Hague-Visby Rules.*[178]

*But 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 a lex maritima Principle.*[179] *Nevertheless, Principle 17 sets out some general rules of*

[178] **Current law:** for example, **Bangladesh** (Carriage of Goods by Sea Act 1925, S. 2); **Belgium** (Shipping Code, Art. 2.6.2.2, § 1, 2°); **Canada** (Marine Liability Act, S. 43(2)); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 3(2)); **India** (Carriage of Goods by Sea Act 1925, S. 2).

[179] Still, one author from **Latvia** has claimed that the Hague Rules as such have acquired the status of international customary shipping law or lex maritima (see Leynieks 2003, 304, and the reference to that position in some case law of **Canada**: *Arc-En-Ciel Produce Inc v BF Leticia (Ship)* 2022 FC 843, [2022] Lloyd's Rep Plus 105).

*thumb relating 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.*[180] *Nor was further consideration given to the national statutory provisions, contained in various civil or commercial codes, that govern the contract of carriage in general; they do not in fact belong to maritime law.*

*Paragraph (1) of Principle 17 offers an elementary definition of the contract for the carriage of goods by sea, which can be considered to be generally applicable.*[181]

*The elementary rules regarding the transport document for the carriage of goods by sea' in paragraph (2) can be considered generally applicable as well.*[182] *The right of the shipper to obtain from the carrier*

[180] 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, whereas the conventions in the second system apply only after national transposition, with or without further extension. The references below do not specify whether the national legislation belongs to a monistic or a dualistic regime. National extensions may reinforce the lex maritima authority of the international regime.

[181] **Current law**: **Hamburg Rules**, Art. 1.6; **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); **Ecuador** (Commercial Code, Art. 989); **France** (Transport Code, Art. L5422-1); **Georgia** (Maritime Code, Art. 114.1); **Germany** (Commercial Code, § 481(1))); **Greece** (Code of Private Maritime Law, Art. 117.1); **Ibero-America** (IIDM Maritime Model Law, Art. 186.1); **Indonesia** (Commercial Code, Art. 466); **Lithuania** (Law of Merchant Shipping, Art. 2.15); **Mexico** (Navigation and Maritime Commerce Act, Art. 128); **Netherlands** (Civil Code, Book 8, Art. 370.1, with no freight requirement, however); **Panama** (Maritime Commerce Act 55 of 2008, Art. 46); **Poland** (Maritime Code, Art. 103-104); **Russia** (Merchant Shipping Code, Art. 115.1); **South Korea** (Commercial Act, Art. 791); **Spain** (Maritime Navigation Act 14/2014, Art. 203 and 205); 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); **Ukraine** (Merchant Shipping Code, Art. 133-134); **Venezuela** (Maritime Commerce Act, Art. 197.6).

[182] **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); **Austria** (Business Code, § 642 *et seq.*); **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.*); **Ecuador** (Commercial Code, Art. 992 and 1022 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 42 *et seq.*); **France** (Transport Code, Art. L5422-3 *et seq.*); **Georgia** (Maritime Code, Art. 118 *et seq.*); **Germany** (Commercial Code, § 513 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 121 *et seq.*); **Hong Kong** (Bills of Lading and Analogous Shipping Documents Ordinance); **Ibero-America** (IIDM Maritime Model Law, Art. 220 *et seq.*); **Indonesia** (Commercial Code, Art. 504 *et seq.*); **Japan** (Commercial Code, Art. 757 *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.*); **Netherlands** (Civil Code, Book 8, Art. 399 *et seq.*); **Norway** (Maritime Code, S. 292 *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 78 *et seq.*); **Paraguay** (Commercial Code, Art. 1028 *et seq.*); **Peru** (Commercial Code, Art. 719 *et seq.*); **Poland** (Maritime Code, Art. 129 *et seq.*); **Romania** (Commercial Code, Art. 565 *et seq.*); **Russia** (Merchant Shipping Code, Art. 142 *et seq.*); **Slovenia** (Maritime Code, Art. 491 *et seq.*); **South Korea** (Commercial Act, Art. 852 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 205, 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.*); **Ukraine** (Merchant Shipping Code, Art. 134 *et seq.*); **Uruguay** (Commercial Code, Art. 1205 *et seq.*); **USA** (46 U.S.C. § 30703; COGSA, S. 3(3) and (7)); **Vanuatu** (Maritime Act, S. 70(3)); **Venezuela** (Maritime Commerce Act, Art. 232 *et seq.*).

*a transport document (unless there is a contrary agreement or custom) is a Principle in its own right (which also applies if the ship is operated under a time or voyage charter).*[183,184] *Transport documents often contain a choice of law and/or a jurisdiction clause. Because positive maritime law does not necessarily allow enforcement of such clauses, this possibility has not been mentioned in the paragraph. The wording of the Principle does not affect the recognition of electronic transport documents under various conventions and national laws.*

*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). The first of these concerns the period of responsibility mentioned in item (a).*[185] *In that connection, it should be pointed out that, in principle, the carrier is liable from the receipt of the goods until their delivery.*[186] *The carrier's obligation to exercise (at least) due diligence referred to in item (b) is also widely recognised,*[187,188] *just*

[183] **Legal history**: **Harter Act**, S. 4.

[184] **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); **Austria** (Business Code, § 642(1)); **Belgium** (Shipping Code, Art. 2.6.2.5, § 3); **Brazil** (Commercial Code, Art. 578; Water Transportation Act 116/67, Art. 4, § 1); **CEMAC** (CEMAC Merchant Shipping Code, Art. 518); **Chile** (Commercial Code, Art. 1014); **China** (Maritime Code, Art. 72); **Colombia** (Commercial Code, Art. 1601 and 1635); **Denmark** (Merchant Shipping Act, S. 294); **Finland** (Maritime Act, Chapter 13, S. 44); **France** (Transport Code, Art. L5422-3); **Georgia** (Maritime Code, Art. 120); **Germany** (Commercial Code, § 513); **Greece** (Code of Private Maritime Law, Art. 122.1); **Ibero-America** (IIDM Maritime Model Law, Art. 220); **Indonesia** (Commercial Code, Art. 504); **Japan** (Commercial Code, Art. 757); **Latvia** (Maritime Code, S. 152); **Liberia** (Maritime Law, §122(3)); **Mexico** (Navigation and Maritime Commerce Act, Art. 129); **Netherlands** (Civil Code, Book 8, Art. 399); **Norway** (Maritime Code, S. 294); **Paraguay** (Commercial Code, Art. 1030); **Peru** (Commercial Code, Art. 719); **Poland** (Maritime Code, Art. 129, § 1); **Russia** (Merchant Shipping Code, Art. 142); **Slovenia** (Maritime Code, Art. 491); **Spain** (Maritime Navigation Act 14/2014, Art. 246); **South Korea** (Commercial Act, Art. 852); **Sweden** (Maritime Code, Chapter 13, S. 44); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 113); **Ukraine** (Merchant Shipping Code, Art. 137); **Uruguay** (Commercial Code, Art. 1208); **USA** (46 U.S.C. § 30703(a); COGSA, S. 3(3)); **Vanuatu** (Maritime Act, S. 70(3)); **Venezuela** (Maritime Commerce Act, Art. 232).

[185] **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); **Ecuador** (Commercial Code, Art. 996, 997 and 999); **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); **Poland** (Maritime Code, Art. 165, § 1); **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).

[186] 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.

[187] **Legal history**: **Harter Act**, S. 2-3.

[188] **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); **Georgia** (Maritime Code, Art. 126); **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); **Indonesia** (Commercial Code, Art. 470a); **Japan** (Commercial Code, Art. 739; Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 5); **Latvia** (Maritime Code, S. 135);

*as are the restrictions on the carriage on deck as referred to in item (c) (whereby it should be noted that in certain trades such as container carriage transportation on deck is a normal practice).*[189] *Item (d) draws attention to the cases of exemption from liability recognised in both conventions and statutes.*[190]

**Liberia** (Maritime Law, §122(1)); **Netherlands** (Civil Code, Book 8, Art. 381.1); **Norway** (Maritime Code, S. 262, somewhat stricter); **Panama** (Maritime Commerce Act 55 of 2008, Art. 54); **Poland** (Maritime Code, Art. 110); **Slovenia** (Maritime Code, Art. 453); **South Korea** (Commercial Act, Art. 794-795); **Spain** (Maritime Navigation Act 14/2014, Art. 212); **Sweden** (Maritime Code, Chapter 13, S. 12, somewhat stricter); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 102); **Turkey** (Commercial Code, Art. 1141); **Ukraine** (Merchant Shipping Code, Art. 143); **USA** (46 U.S.C. § 30705-30706; COGSA, S. 3(1)); **Vanuatu** (Maritime Act, S. 70(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).

[189] 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); **Ecuador** (Commercial Code, Art. 1011 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 13 and 34); **France** (Transport Code, Art. L5422-7 and L5422-16); **Georgia** (Maritime Code, Art. 129); **Germany** (Commercial Code, § 486(4) and 500); **Greece** (Code of Private Maritime Law, Art. 135); **Ibero-America** (IIDM Maritime Model Law, Art. 210); **Japan** (Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 14(1)); **Latvia** (Maritime Code, S. 124 and 144); **Norway** (Maritime Code, S. 263 and 284); **Panama** (Maritime Commerce Act 55 of 2008, Art. 61); **Poland** (Maritime Code, Art. 126, § 2); **Russia** (Merchant Shipping Code, Art. 138); **Spain** (Maritime Navigation Act 14/2014, Art. 219); **Sweden** (Maritime Code, Chapter 13, S. 13 and 34; **Turkey** (Commercial Code, Art. 1151); **Ukraine** (Merchant Shipping Code, Art. 146); **Uruguay** (Commercial Code, Art. 1080); **Venezuela** (Maritime Commerce Act, Art. 221-222); **Vietnam** (Maritime Code 2015, Art. 170.4.c) and 172).

[190] **Current law**: **Hague Rules**, Art. 4.1-4; **Hamburg Rules**, Art. 5.4-6; **Rotterdam Rules**, Art. 17.2-3; **Algeria** (Maritime Code, Art. 803); **Argentina** (Shipping Act, Art. 272 and 275); **Belgium** (Shipping Code, Art. 2.6.2.6, § 1-2); **CEMAC** (CEMAC Merchant Shipping Code, Art. 546); **China** (Maritime Code, Art. 51); **Colombia** (Commercial Code, Art. 1609); **Denmark** (Merchant Shipping Act, S. 275 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 25 *et seq.*); **France** (Transport Code, Art. L5422-12); **Georgia** (Maritime Code, Art. 156 *et seq.*); **Latvia** (Maritime Code, S. 136); **Germany** (Commercial Code, § 498 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 202); **Japan** (Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 4); **Liberia** (Maritime Law, §123(1)-(3)); **Netherlands** (Civil Code, Book 8, Art. 383); **Norway** (Maritime Code, S. 275 *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 55 and 59); **Poland** (Maritime Code, Art. 165, § 2); **Russia** (Merchant Shipping Code, Art. 166 *et seq.*); **Slovenia** (Maritime Code, Art. 537 and 540); **South Korea** (Commercial Act, Art. 796); **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); **Ukraine** (Merchant Shipping Code, Art. 177-178); **USA** (46 U.S.C. § 30706; COGSA, S. 4(1)-(2)); **Vanuatu** (Maritime Act, S. 71); **Venezuela** (Maritime Commerce Act, Art. 205-206).

*Item (e) does the same with regard to limitation of liability in favour of the carrier.*[191,192] *That these items only mention liability for loss or damage does not exclude that the carrier may also be liable for delay. However, there is even less international uniformity on this,*[193] *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,*[194] *just as the invalidity of certain contractual liability clauses mentioned in item (g) (the mandatory liability regime is counterbalanced by the limitation of liability, as just mentioned; and this combination is, for that matter, part and parcel of all transport law conventions).*[195,196]

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[191] **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.*); **Ecuador** (Commercial Code, Art. 1005 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 29 *et seq.*); **France** (Transport Code, Art. L5422-13 *et seq.*); **Georgia** (Maritime Code, Art. 161); **Germany** (Commercial Code, § 504 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 138); **Ibero-America** (IIDM Maritime Model Law, Art. 243 *et seq.*); **Indonesia** (Commercial Code, Art. 474); **Japan** (Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 9); **Latvia** (Maritime Code, S. 140 *et seq.*); **Liberia** (Maritime Law, §123(5)); **Netherlands** (Civil Code, Book 8, Art. 388); **Norway** (Maritime Code, S. 280 *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 63); **Poland** (Maritime Code, Art. 167); **Russia** (Merchant Shipping Code, Art. 169 *et seq.*); **Slovenia** (Maritime Code, Art. 550); **South Korea** (Commercial Act, Art. 797); **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); **Ukraine** (Merchant Shipping Code, Art. 181); **USA** (COGSA, S. 4(5)); **Vanuatu** (Maritime Act, S. 71(5)); **Venezuela** (Maritime Commerce Act, Art. 211).

[192] Some (apparently rather rare) countries still do not apply such a fixed limit.

[193] **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); **Ecuador** (Commercial Code, Art. 1006); **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); **Indonesia** (Commercial Code, Art. 477); **Latvia** (Maritime Code, S. 138); **Norway** (Maritime Code, S. 278); **Panama** (Maritime Commerce Act 55 of 2008, Art. 58); **Spain** (Maritime Navigation Act 14/2014, Art. 280 and 283); **Sweden** (Maritime Code, Chapter 13, S. 28); **USA** (case law references in Force 2001, 124-125, para 221-226); **Venezuela** (Maritime Commerce Act, Art. 212 *et seq.*).

[194] **Current law**: **Hague Rules**, Art. 3.6; **Hague-Visby Rules**, Art. 3.6; **Hamburg Rules**, Art. 19; **Rotterdam Rules**, Art. 23; **Algeria** (Maritime Code, Art. 790); **Argentina** (Shipping Act, Art. 524 and 525); **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); **Georgia** (Maritime Code, Art. 150); **Germany** (Commercial Code, § 510); **Ibero-America** (IIDM Maritime Model Law, Art. 208); **Japan** (Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 7); **Latvia** (Maritime Code, S. 148); **Liberia** (Maritime Law, §122(6)); **Netherlands** (Civil Code, Book 8, Art. 492); **Norway** (Maritime Code, S. 288); **Panama** (Maritime Commerce Act 55 of 2008, Art. 88-89); **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)); **Vanuatu** (Maritime Act, S. 70(6)).

[195] **Legal history**: **Harter Act**, S. 1-2.

[196] **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); **China** (Maritime Code, Art. 44); **Denmark** (Merchant Shipping Act, S. 254); **Ecuador** (Commercial Code, Art. 943); **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); **Japan** (Act on the International Carriage of Goods by Sea No. 172 of 1957, Art. 11); **Latvia** (Maritime Code, S. 115); **Liberia** (Maritime Law, §122(8)); **Netherlands** (Civil Code, Book 8, Art. 382); **Norway** (Maritime Code, S. 254); **Panama** (Maritime Commerce Act 55 of 2008, Art. 49); **Poland** (Maritime Code, Art. 169); **Russia** (Merchant Shipping Code, Art. 116 and 175); **Slovenia** (Maritime Code, Art. 559-560); **South Korea** (Commercial Act, Art. 799); **Spain** (Maritime

*Due to the lack of uniformity, no provision has been included in relation to multimodal transport.*[197]

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)); **Vanuatu** (Maritime Act, S. 70(8)); **Venezuela** (Maritime Commerce Act, Art. 219). At the common law of **England**, freedom of contract prevails in common carriage.

[197] See also the General introduction.

***Principle 18 – Contract for the carriage of passengers***

**(1) A contract for the carriage of passengers by sea is a contract under which a carrier undertakes, in exchange for the payment of a fare, to carry passengers and their luggage by sea from one place to another.**

**(2) In relation to carriage of passengers by sea, it is common for the positive maritime law to implement, inter alia, the following Principles:**
**(a) Passengers are entitled to obtain from the carrier a passenger ticket and, whether or not included therein, a receipt for their luggage.**
**(b) The carrier is liable for loss suffered as a result of the death of or personal injury to a passenger and for 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 43.42% of the world fleet. The consolidated regime (PAL 2002) has been integrated into EU law.[198] 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.[199]*

[198] **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); **Poland** (Maritime Code, Art. 181); **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).

[199] **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); **Denmark** (Merchant Shipping Act, S. 401); **Ecuador** (Commercial Code, Art. 1038); **France** (Transport Code, Art. L5421-1); **Georgia** (Maritime Code, Art. 165.1); **Greece** (Code of Private Maritime Law, Art. 152.1); **Ibero-America** (IIDM Maritime Model Law, Art. 286-287);

*Many positive maritime law provisions 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),[200] the carrier's liability (item (b)),[201,202] the obligation to notify damage or loss of*

**Indonesia** (Commercial Code, Art. 521); **Lithuania** (Law of Merchant Shipping, Art. 2.12); **Mexico** (Navigation and Maritime Commerce Act, Art. 139); **Netherlands** (Civil Code, Book 8, Art. 500.e, with no fare requirement, however); **Norway** (Maritime Code, S. 401); **Poland** (Maritime Code, Art. 172, § 1); **Russia** (Merchant Shipping Code, Art. 177.1); **Slovenia** (Maritime Code, Art. 587); **South Korea** (Commercial Act, Art. 817); **Spain** (Maritime Navigation Act 14/2014, Art.287.1); **Sweden** (Maritime Code, Chapter 15, S. 1); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 392(1)); **Turkey** (Commercial Code, Art. 1247(1)); **Venezuela** (Maritime Commerce Act, Art. 276); **Vietnam** (Maritime Code 2015, Art. 200.1).

[200] **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, only on the evidential value); **Ecuador** (Commercial Code, Art. 1042); **Georgia** (Maritime Code, Art. 166, only on the evidential value); **Greece** (Code of Private Maritime Law, Art. 152.2); **Ibero-America** (IIDM Maritime Model Law, Art. 289 *et seq.*); **Indonesia** (Commercial Code, Art. 530); **Italy** (Navigation Code, Art. 396 *et seq.*); **Lithuania** (Law of Merchant Shipping, Art. 31.2); **Mexico** (Navigation and Maritime Commerce Act, Art. 141); **Netherlands** (Civil Code, Book 8, Art. 528, optionally); **Poland** (Maritime Code, Art. 173); **Russia** (Merchant Shipping Code, Art. 179); **Slovenia** (Maritime Code, Art. 589 *et seq.*); **Spain** (Maritime Navigation Act 14/2014, Art. 288 *et seq.*); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 118.2); **Ukraine** (Merchant Shipping Code, Art. 184); **Venezuela** (Maritime Commerce Act, Art. 279 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 201).

[201] **Current law**: **PAL 1974**; Art. 3, 7 and 8; **PAL 2002**, Art. 3, 7 and 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.*); **Ecuador** (Commercial Code, Art. 1043 and 1049 *et seq.*); **Finland** (Maritime Act, Chapter 13, S. 11 *et seq.*); **France** (Transport Code, Art. L5421-2 *et seq.*); **Georgia** (Maritime Code, Art. 174-175); **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.*); **Indonesia** (Commercial Code, Art. 522 *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); **Netherlands** (Civil Code, Book 8, Art. 504 *et seq.*); **Norway** (Maritime Code, S. 418a *et seq.*); **Russia** (Merchant Shipping Code, Art. 186 *et seq.*); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 309 *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.*); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 394 *et seq.*); **Turkey** (Commercial Code, Art. 1256 and 1262 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 193-194); **Venezuela** (Maritime Commerce Act, Art. 291 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 203 *et seq.*).

[202] 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); **Ecuador** (Commercial Code, Art. 1061); **Finland** (Maritime Act, Chapter 13, S. 17); **Germany** (Commercial Code, § 545); **Ibero-America** (IIDM Maritime Model Law, Art. 314); **Indonesia** (Commercial Code, Art. 527); **Latvia** (Maritime Code, S. 248); **Liberia** (Maritime Law, §152); **Mexico** (Navigation and Maritime Commerce Act, Art. 142, final para); **Netherlands** (Civil Code, Book 8, Art. 504c); **Norway** (Maritime Code, S. 424); **Russia** (Merchant Shipping Code, Art. 193); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 318); **Slovenia** (Maritime Code, Art. 611); **Sweden** (Maritime Code, Chapter 15, S. 25); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 403); **Turkey** (Commercial Code, Art. 1267); **Ukraine** (Merchant Shipping Code, Art. 194, final para); **Venezuela** (Maritime Commerce Act, Art. 302); **Vietnam** (Maritime Code 2015, Art. 210).

*luggage (item (c)),[203] the obligation to carry insurance (item (d)),[204] and the invalidity of alternative contractual terms (item (e)).[205]*

[203] **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); **Netherlands** (Civil Code, Book 8, Art. 511); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 320); **Slovenia** (Maritime Code, Art. 617); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 405); **Turkey** (Commercial Code, Art. 1269); **Venezuela** (Maritime Commerce Act, Art. 304); **Vietnam** (Maritime Code 2015, Art. 213).

[204] **Current law**: **PAL 2002**, Art. 4bis; **Belgium** (Shipping Code, Art. 2.3.2.19 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 602); **Georgia** (Maritime Code, Art. 172); **Greece** (Code of Private Maritime Law, Art. 159); **Latvia** (Maritime Code, S. 241); **Mexico** (Navigation and Maritime Commerce Act, Art. 143); **Netherlands** (Civil Code, Book 8, Art. 529 *et seq.*); **Poland** (Maritime Code, Art. 182-182a); **Spain** (Maritime Navigation Act 14/2014, Art. 300); **Turkey** (Commercial Code, Art. 1259); **Ukraine** (Merchant Shipping Code, Art. 191); **Vietnam** (Maritime Code 2015, Art. 203.3).

[205] **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); **Ecuador** (Commercial Code, Art. 1065); **Finland** (Maritime Act, Chapter 13, S. 21); **Georgia** (Maritime Code, Art. 167.2); **Germany** (Commercial Code, § 551); **Greece** (Code of Private Maritime Law, Art. 157); **Ibero-America** (IIDM Maritime Model Law, Art. 317); **Italy** (Navigation Code, Art. 415); **Latvia** (Maritime Code, S. 251); **Liberia** (Maritime Law, §157); **Mexico** (Navigation and Maritime Commerce Act, Art. 138); **Netherlands** (Civil Code, Book 8, Art. 520); **Norway** (Maritime Code, S. 430); **Russia** (Merchant Shipping Code, Art. 178); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 323); **Slovenia** (Maritime Code, Art. 619); **Spain** (Maritime Navigation Act 14/2014, Art. 298.2); **Sweden** (Maritime Code, Chapter 15, S. 35); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 408); **Turkey** (Commercial Code, Art. 1271); **Ukraine** (Merchant Shipping Code, Art. 186); **Venezuela** (Maritime Commerce Act, Art. 306).

# Part 6
# Maritime incidents

***Principle 19 – Collision***

**(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. In respect of damages caused by death or personal injury, the vessels in fault shall be jointly and severally liable to third parties, without prejudice to their right of recourse.**

**(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 supported CMI Convention.*[206]

*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.*[207] *National legislators are thus free to develop their own rules for collisions with a wholly national dimension. It appears, however, that many countries have aligned their own legislation with the wording of the Collision Convention.*[208]

[206] However, the **USA** is not a Party.
[207] **Collision Convention 1910**, Art. 12.
[208] **Current law**: see 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); **Spain** (Maritime Navigation Act, Art. 339.1); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 121).

*The wording of the Principle is based on a non-authentic translation of the Convention text[209] (the only authentic version of which is in French). In line with the general methodology underlying the CMI Lex Maritima, the rules set out 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-based 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.[210] That the rule 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[211] and case law.[212] The rule was also reaffirmed in the 1960 UNECE Convention on collisions between inland waterway vessels in Europe.[213] This further strengthens the authority of the Principle (although the CMI Lex Maritima does not touch upon inland navigation law as such).*

*Paragraph (2) adopts, first of all, 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 had already been discussed at the very first conference for the unification of maritime law in Antwerp in 1885.[214] The introduction of the proportionate or comparative fault rule was the main contribution of the CMI Convention of 1910 to the international unification of the law of*

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[209] 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) and, in addition, antiquated.

[210] **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).

[211] **Current law**: **Algeria** (Maritime Code, Art. 277); **Argentina** (Shipping Act, Art. 359); **Austria** (Business Code, § 735); **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, S. 161.1); **Ecuador** (Commercial Code, Art. 1110); **Finland** (Maritime Act, Chapter 8, S. 2, para 1); **France** (Transport Code, Art. L5131-3); **Georgia** (Maritime Code, Art. 292); **Germany** (Commercial Code, § 570); **Greece** (Code of Private Maritime Law, Art. 201.1 and 202.1); **Indonesia** (Commercial Code, Art. 536); **Italy** (Navigation Code, Art. 483); **Japan** (Commercial Code, Art. 788); **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); **Netherlands** (Civil Code, Book 8, Art. 544); **Norway** (Maritime Code, S. 161); **Peru** (Commercial Code, Art. 839); **Poland** (Maritime Code, Art. 258, § 1); **Romania** (Commercial Code, Art. 673); **Russia** (Merchant Shipping Code, Art. 312); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 136(5)); **Slovenia** (Maritime Code, Art. 746); **South Korea** (Commercial Act, Art. 878); **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)); **Ukraine** (Merchant Shipping Code, Art. 299); **Venezuela** (Maritime Commerce Act, Art. 321); **Vietnam** (Maritime Code 2015, Art. 287.2).

[212] **Current law**: **USA** (see references in Gilmore-Black 1975, 492, para 7-4; Schoenbaum 2004 II, 89-90, § 14-2).

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

[214] 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.

*collisions. It confirmed the pre-existing regime of several countries[215] and replaced several alternative regimes, including the automatic apportionment of liability by halves.[216] The scope of this rule of the Convention has also been confirmed in, or extended through, national provisions[217] and case law[218]. The Principle presented here also confirms that the ships are jointly and severally liable in respect of damage arising from death or personal injury. That rule is proclaimed in the Convention[219] and confirmed in numerous national provisions and case law.[220] However, the Principle does not endorse*

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

[216] 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.

[217] **Current law**: **Algeria** (Maritime Code, Art. 278, para 1); **Argentina** (Shipping Act, Art. 360, para 1); **Austria** (Business Code, § 736(1)); **Bahamas** (Merchant Shipping Act, S. 251(1)); **Barbados** (Shipping Act, S. 308(1)); **Belgium** (Shipping Code, Art. 2.7.2.5, § 1); **Bermuda** (Merchant Shipping Act, S. 183(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, S. 161.2); **Ecuador** (Commercial Code, Art. 1111); **Finland** (Maritime Act, Chapter 8, S. 2, para 2); **France** (Transport Code, Art. L5131-4); **Georgia** (Maritime Code, Art. 293 and 295.2); **Germany** (Commercial Code, § 571(1)); **Greece** (Code of Private Maritime Law, Art. 203.2); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 3(1)); **Indonesia** (Commercial Code, Art. 537); **Italy** (Navigation Code, Art. 484); **Latvia** (Maritime Code, Art. 60.2); **Lithuania** (Law on Merchant Shipping, Art. 57.4); **Malaysia** (Merchant Shipping Ordinance 1952, S. 513(1)); **Malta** (Merchant Shipping Act, S; 360(1)); **Morocco** (Maritime Commerce Code, Art. 295); **Netherlands** (Civil Code, Book 8, Art. 545); **Nigeria** (Merchant Shipping Act, S. 340(1)); **Norway** (Maritime Code, S. 161); **Poland** (Maritime Code, Art. 259, § 1); **Russia** (Merchant Shipping Code, Art. 313.1); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 136(1)); **Slovenia** (Maritime Code, Art. 748); **South Africa** (Merchant Shipping Act, S. 255(1)); **South Korea** (Commercial Act, Art. 879); **Spain** (Maritime Navigation Act, Art. 341.1); **Sweden** (Maritime Code, Chapter 8, S. 1); **Tanzania** (Merchant Shipping Act 2003, S. 362(1)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 163(1)); **Turkey** (Commercial Code, Art. 1289, para 1, sentence 1); **UK** (Merchant Shipping Act, S. 187(1)); **Ukraine** (Merchant Shipping Code, Art. 300); **Venezuela** (Maritime Commerce Act, Art. 322); **Vietnam** (Maritime Code 2015, Art. 287.2).

[218] **Current law**: **USA** (*United States v Reliable Transfer Co. (The Mary A. Whalen)*, 421 US 307, 1975 AMC 541; Schoenbaum 2004 II, 106-107, § 14-4).

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

[220] **Current law**: **Algeria** (Maritime Code, Art. 279, para 2); **Argentina** (Shipping Act, Art. 360, para 2); **Austria** (Business Code, § 736(2)); **Bahamas** (Merchant Shipping Act, S. 252 and 253); **Barbados** (Shipping Act, S. 309 and 310); **Belgium** (Shipping Code, Art. 2.7.2.5, § 3); **Bermuda** (Merchant Shipping Act, S. 184 and 185); **Canada** (Marine Liability Act, S. 17(2)); **CEMAC** (CEMAC Merchant Shipping Code, Art. 223.3); **Chile** (Commercial Code, Art. 1123, para 1); **China** (Maritime Code, Art. 169, para 3); **Croatia** (Maritime Code, Art. 754(1)); **Denmark** (Merchant Shipping Act, S. 161.3); **Ecuador** (Commercial Code, Art. 1112); **Finland** (Maritime Act, Chapter 8, S. 3); **France** (Transport Code, Art. L5131-4, para 3); **Georgia** (Maritime Code, Art. 295.1); **Germany** (Commercial Code, § 571(2)); **Greece** (Code of Private Maritime Law, Art. 203.4); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 4(1) and 5(1)); **Indonesia** (Commercial Code, Art. 537); **Italy** (Navigation Code, Art. 484, para 2); **Latvia** (Maritime Code, Art. 60.4); **Lithuania** (Law on Merchant Shipping, Art. 57.5); **Malaysia** (Merchant Shipping Ordinance 1952, S. 514); **Malta** (Merchant Shipping Act, S; 361); **Morocco** (Maritime Commerce Code, Art. 295, para 3); **Netherlands** (Civil Code, Book 8, Art. 545); **Nigeria** (Merchant Shipping Act, S. 341); **Norway** (Maritime Code, S. 161, para 3); **Poland** (Maritime Code, Art. 259, § 2); **Romania** (Commercial Code, Art. 674); **Russia** (Merchant Shipping Code, Art. 313.2); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 136(6)); **Slovenia** (Maritime Code, Art. 750); **South Africa** (Merchant Shipping Act, S. 256(1)); **South Korea** (Commercial Act, Art. 879(2)); **Spain** (Maritime Navigation Act, Art. 342.1); **Sweden** (Maritime Code, Chapter 8, S. 1, para 3); **Tanzania** (Merchant Shipping Act 2003, S. 363(1) and 365(1)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 163(6)); **Turkey** (Commercial Code, Art. 1290); **UK** (Merchant Shipping Act, S. 188-189); **Ukraine** (Merchant Shipping Code, Art. 302, para 1); **USA** (see, for example, Tetley

*joint and several liability in respect of property claims, because that specific rule is not generally accepted. The Convention provides, with regard to damage to the ships and to the cargo and other property on board, that the ships in fault shall only be liable to pay compensation up to the amount of their share of the faults committed, but that rule is not universally adhered to either;*[221]*; for that reason, the relevant provision of the Convention cannot be considered part of the lex maritima.*

*Paragraph (3) reflects the second sentence of the first paragraph of the Collision Convention's Article 4. This rule does not seem to have given rise to any controversy. It already appeared in national laws before 1910*[222] *and continues to be confirmed in the current ones*[223] *as well as in US case law*[224] *and the UNECE Convention on collisions in inland navigation.*[225]

*Paragraph (4) was taken from the first paragraph of Article 2 of the Collision Convention. The rule covers, inter alia, the so-called 'inevitable accident' and 'inscrutable fault' cases ('accidental' means 'without any fault' and is equivalent to French 'fortuit'). It is only a logical, in fact entirely obvious consequence of the negligence-based liability system. Since, furthermore, it is in many countries perfectly in line with the general law of torts, some consider it superfluous.*[226] *However, it is not incorrect, and given the diversity of liability regimes in history, its express confirmation in earlier*[227] *as well as current*[228] *national statutes, and its inclusion in the successful 1910 Convention, it is useful to*

2002, 255, with references); **Venezuela** (Maritime Commerce Act, Art. 323); **Vietnam** (Maritime Code 2015, Art. 287.4).

[221] More specifically, the rule is not accepted in the USA, where 'innocent' cargo may recover from the non-carrying vessel 100% of its damages (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).

[222] **Legal history**: **France** (Code de commerce 1807, Art. 407).

[223] **Current law**: **Algeria** (Maritime Code, Art. 278, second para); **Argentina** (Shipping Act, Art. 360, para 1); **Austria** (Business Code, § 736(1)); **Bahamas** (Merchant Shipping Act, S. 251(1)a)); **Barbados** (Shipping Act, S. 308(2)(a)); **Belgium** (Shipping Code, Art. 2.7.2.5, § 1); **Bermuda** (Merchant Shipping Act, S. 183(2)); **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, S. 161.2); **Finland** (Maritime Act, Chapter 8, S. 2, para 2); **France** (Transport Code, Art. L5131-4); **Georgia** (Maritime Code, Art. 293); **Germany** (Commercial Code, § 571(1)); **Greece** (Code of Private Maritime Law, Art. 203.2); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 3(2)); **Italy** (Navigation Code, Art. 484); **Japan** (Commercial Code, Art. 788); **Latvia** (Maritime Code, Art. 60.3); **Lithuania** (Law on Merchant Shipping, Art. 57.4); **Malaysia** (Merchant Shipping Ordinance 1952, S. 513(1)(a)); **Malta** (Merchant Shipping Act, S; 360(1)); **Morocco** (Maritime Commerce Code, Art. 295); **Netherlands** (Civil Code, Book 8, Art. 545.2); **Nigeria** (Merchant Shipping Act, S. 340(1)(a)); **Norway** (Maritime Code, S. 161); **Poland** (Maritime Code, Art. 259, § 1); **Russia** (Merchant Shipping Code, Art. 313.1); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 136(2)); **Slovenia** (Maritime Code, Art. 748); **South Africa** (Merchant Shipping Act, S. 255(1)(a)); **South Korea** (Commercial Act, Art. 879); **Spain** (Maritime Navigation Act, Art. 341.2); **Sweden** (Maritime Code, Chapter 8, S. 1); **Tanzania** (Merchant Shipping Act 2003, S. 362(2)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 163(2)); **Turkey** (Commercial Code, Art. 1289, para 1, sentence 2); **UK** (Merchant Shipping Act, S. 187(2)); **Ukraine** (Merchant Shipping Code, Art. 300); **Venezuela** (Maritime Commerce Act, Art. 322); **Vietnam** (Maritime Code 2015, Art. 287.2). The Chilean Commercial Code does not mention the rule.

[224] *Citadel Shipping Co. v Consolidated Grain* 1983 AMC 1721; Schoenbaum 2004 II, 108, § 14-4; Tetley 2002, 235.

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

[226] Bonassies-Scapel 2016, 332, para 392; Rabe 2000, 980, para 1; Rabe-Bahnsen 2018, 1287, para 2.

[227] **Legal history**: **Belgium** (Maritime Act 1879, Art. 228); **France** (Code de commerce 1807, Art. 407); **Spain** (Commercial Code 1885, Art. 830).

[228] **Current law**: **Algeria** (Maritime Code, Art. 281); **Argentina** (Shipping Act, Art. 358); **Austria** (Business Code, § 734); **Belgium** (Shipping Code, Art. 2.7.2.7); **Brazil** (Commercial Code, Art. 750); **CEMAC** (CEMAC Merchant

*repeat it here. It also features in the UNECE Convention on collisions in inland navigation, for that matter.*[229]

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, S. 162); **Ecuador** (Commercial Code, Art. 1109); **Finland** (Maritime Act, Chapter 8, S. 4); **France** (Transport Code, Art. L5131-3); **Georgia** (Maritime Code, Art. 294.1); **Indonesia** (Commercial Code, Art. 535); **Italy** (Navigation Code, Art. 482); **Latvia** (Maritime Code, Art. 59); **Lithuania** (Law on Merchant Shipping, Art. 57.3); **Morocco** (Maritime Commerce Code, Art. 293); **Netherlands** (Civil Code, Book 8, Art. 543); **Norway** (Maritime Code, S. 162); **Paraguay** (Commercial Code, Art. 1261); **Peru** (Commercial Code, Art. 843); **Poland** (Maritime Code, Art. 260, § 1); **Romania** (Commercial Code, Art. 672 and also 674); **Russia** (Merchant Shipping Code, Art. 311.1); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 136(4)); **Slovenia** (Maritime Code, Art. 752); **South Korea** (Commercial Act, Art. 877); **Sweden** (Maritime Code, Chapter 8, S. 2); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 163(4)); **Turkey** (Commercial Code, Art. 1287, para 1); **Ukraine** (Merchant Shipping Code, Art. 298); **Venezuela** (Maritime Commerce Act, Art. 321); **Vietnam** (Maritime Code 2015, Art. 287.3).

[229] **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. No salvage reward is due if the salvage operations have had no useful result.**

**(3) The salvage reward shall not exceed the salved value of the ship and other property.**

**(4) The salvage reward shall be fixed taking into account the relevant circumstances and with a view to encouraging salvage operations.**

**(5) It is common for the positive maritime law or the contract to implement the Principle that salvors are compensated for the costs incurred 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,*[230] *modern 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 diverging national laws gave rise to innumerable conflicts. The CMI 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 adhered to by the most important maritime nations, so that it was labelled as a true 'international law',*[231] *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.*[232] *The Convention added that when a salvage remuneration is due, it may under no circumstances exceed the value of the property salved.*[233]

*In the aftermath of the environmental disaster with the oil tanker Amoco Cadiz in 1978, the IMO asked the CMI 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 draft instrument prepared by the CMI eventually led to the adoption, within the IMO, of*

[230] See details in Brice, 3-14, para 1-07-1-36; Tetley 2002, 321-322.
[231] Smeesters-Winkelmolen III, 388, para 1206.
[232] See, among others, Tetley 2002, 323-326.
[233] **Salvage Convention 1910**, Art. 2.

*the 1989 Salvage Convention. In the revision of the 1910 Salvage Convention, the principle was maintained that only the salvor who has achieved a useful result is entitled to a salvage reward. Likewise, the 1989 Convention confirmed that the salvage reward shall not exceed the 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 62.52% of the gross tonnage of the world fleet, are parties to the 1989 Salvage Convention. 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. In doing so, consideration should also be given to the national laws that have introduced or extended the Conventions, or are analogous to them.*[234] *Model contracts used in the maritime sector provide a fourth source of lex maritima rules on salvage. 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.*[235] *US case law considers the general maritime law of salvage a part of the* jus gentium or *customary international law.*[236] *That 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,*[237] *the law relating to salvage differs fundamentally from the rules of civil law relating to* negotiorum gestio *and* locatio operis faciendi*. Incidentally, some national maritime laws expressly confirm this.*[238] *As previously stated, contractual arrangements may override the default rules concerning salvage, allowing the parties to agree on the amount of remuneration.* [239] *Therefore, the Principles proposed here in no way reflect mandatory norms.*

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[234] 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 references to the Salvage Convention 1989 in, for example, **Belgium** (Shipping Code, Art. 2.7.5.4-2.7.5.5); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 50); **Greece** (Code of Private Maritime Law, Art. 196.1); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 9); **Lithuania** (Law on Merchant Shipping, Art. 55); **Singapore** (Merchant Shipping Act 1995, S. 145A); **South Africa** (Wreck And Salvage Act No. 94 of 1996, S. 2); **Spain** (Maritime Navigation Act, Art. 357); **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).

[235] 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.

[236] Schoenbaum 2004 II, 164, para 16-1, with references.

[237] See the Commentary to Principle 1 above.

[238] **Current law**: **Belgium** (Shipping Code, Art. 2.7.5.5, § 3); **Netherlands** (Civil Code, Book 8, Art. 577, concerning *negotiorum gestio* only).

[239] **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, Chapter 16, S. 3); **France** (Transport Code, Art. L5132-1, I); **Morocco** (Maritime Commerce Code, Art. 305); **Nigeria** (Merchant Shipping Act, S. 390(5)); **Poland** (Maritime Code, Art. 236, § 1 and 239, § 1); **Portugal** (Decree-Law No. 203/98, Art. 2.1); **Slovenia** (Maritime Code, Art. 758); **South Korea** (Maritime Act, Art. 883); **Spain** (Maritime Navigation Act, Art. 361);

*To begin with, the notion of salvage should be clarified. Paragraph (1) provides 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 salvage,[240] is confirmed in the convention provisions,[241] national laws,[242] case law,[243] and doctrine.[244] 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.[245] However, national law may provide otherwise specifically with regard to public authorities;[246] nonetheless, such national laws would not be incompatible with the Principle enunciated here, which does not intend to provide an exhaustive definition. Consistent with the methodology applied in drafting these Principles, the definition has indeed been kept to a minimum. For example, it does not specify the waters in which salvage operations*

**Sweden** (Maritime Code, Chapter 16, S. 3); **Ukraine** (Merchant Shipping Code, Art. 332); **Venezuela** (Maritime Commerce Act, Art. 343).

[240] Bonassies-Scapel 2016, 427, para 496; Bonassies-Scapel-Bloch 2022, 453, para 551.

[241] **Current law**: **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Art. 1(a).

[242] **Current law**: **Algeria** (Maritime Code, Art. 332); **Austria** (Business Code, § 740); **Bahamas** (Merchant Shipping Act, S. 232); **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, Art. 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); **Ecuador** (Commercial Code, Art. 1148); **Finland** (Maritime Act, Chapter 16, S. 1.1)); **Georgia** (Maritime Code, Art. 321.1); **Germany** (Commercial Code, § 574, I); **Italy** (Navigation Code, Art. 491); **Latvia** (Maritime Code, Art. 252.1); **Malaysia** (Merchant Shipping Ordinance 1952, S. 390); **Mexico** (Navigation and Maritime Commerce Act, Art. 161); **Morocco** (Maritime Commerce Code, Art. 300); **Netherlands** (Civil Code, Book 8, Art. 551.a); **Nigeria** (Merchant Shipping Act, S. 387); **Norway** (Maritime Code, Art. 441, a)); **Paraguay** (Commercial Code, Art. 1303); **Poland** (Maritime Code, Art. 231); **Portugal** (Decree-Law No. 203/98, Art. 1.1.a)); **Russia** (Merchant Shipping Code, Art. 337.2, 1)); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 262(1)); **South Korea** (Maritime Act, Art. 882); **Spain** (Maritime Navigation Act 14/2014, Art. 358.1); **Sweden** (Maritime Code, Chapter 16, S. 1.1); **Tanzania** (Merchant Shipping Act 2003, S. 322(1)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 351); **Turkey** (Commercial Code, Art. 1298(1)); **Ukraine** (Merchant Shipping Code, Art. 326); **Vietnam** (Maritime Code 2015, Art. 264.1).

[243] **Current law**: see generally Tetley 2002, 332; **France** (see references in Bonassies-Scapel 2016, 427-428, para 496-499; Bonassies-Scapel-Bloch 2022, 453-454, para 551-554; 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, para 5.001-5.024; Mandaraka-Sheppard 2006, 662-668); **USA** (see references in Brice, 55-57, para 1-171-1-174; Schoenbaum 2004 II, 165-166, § 16-1).

[244] **Current law**: **Canada** (Gold-Chircop-Kindred, 606-607); **France** (Bonassies-Scapel 2016, 427-428, para 496-428; Rodière 1972, 182-183, para 162); **UK** (Kennedy-Rose, 180-193, para 5.001-5.024); see also Berger, https://www.trans-lex.org/945300.

[245] **Current law**: **Salvage Convention 1910**, Art. 4; **Salvage Convention 1989**, Art. 17; various national laws, for example, **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, Chapter 16, S. 10); **Ibero-America** (IIDM Maritime Model Law, Art. 355); **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); **South Korea** (Maritime Act, Art. 882 and 890); **Sweden** (Maritime Code, Chapter 16, S. 10); **Ukraine** (Merchant Shipping Code, Art. 328). See also Bishop, 478-483; Brice, 59-103, para 1-184-1-339; Schoenbaum 2004 II, 165-166, § 16-1; Tetley 2002, 330-331.

[246] **Salvage Convention 1989**, Art. 5(3).

*can be carried out,[247] or whether inland vessels or other property may also be salved.[248] There is no complete uniformity or consensus on these issues, although the general tendency of the 1989 Salvage Convention was to extend the scope of the regime of salvage.*

*The first sentence of 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[249] and the correlating national laws[250] and has roots in, particularly, English (and US) case law.[251] 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 response to the situation. The second sentence of paragraph (4) confirms 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,[252] numerous national laws[253] and various model contract forms are based.*

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[247] In principle, the geographical scope of the Conventions is quite wide: see **Salvage Convention 1910**, Art. 1; **Salvage Convention 1989**, Art. 1(a) and 30(1)(a) and (b).

[248] 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).

[249] **Salvage Convention 1910**, Art. 2.1; **Salvage Convention 1989**, Art. 12(1).

[250] **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)); **Denmark** (Merchant Shipping Act, S. 445.1); **Ecuador** (Commercial Code, Art. 1149); **Finland** (Maritime Act, Chapter 16, S. 5); **France** (Transport Code, Art. L5132-3, I); **Georgia** (Maritime Code, Art. 322.1); **Germany** (Commercial Code, § 576, I); **Ibero-America** (IIDM Maritime Model Law, Art. 348); **Indonesia** (Commercial Code, Art. 560 but also 561); **Latvia** (Maritime Code, Art. 256(1)); **Malaysia** (Merchant Shipping Ordinance 1952, S. 390); **Morocco** (Maritime Commerce Code, Art. 301); **Netherlands** (Civil Code, Book 8, Art. 561.1); **Nigeria** (Merchant Shipping Act, S. 390(1)); **Panama** (Maritime Commerce Act 55 of 2008, Art. 210); **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. 266.1). **Malta** is one of the countries that at first sight deviates 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, Art. 343(1) and 345(2)(a)). Compare, more or less in the same sense, **Bahamas** (Merchant Shipping Act, S. 232); **Malaysia** (Merchant Shipping Ordinance 1952, S. 390 *j°* 396(1)(a)); **South Korea** (Maritime Act, Art. 882 *j°* 883); **Tanzania** (Merchant Shipping Act 2003, S. 322); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 351 *j°* 359(c)); see also **Indonesia** (Commercial Code, Art. 560 and 561 *j°* 562). Similarly, **Japan** seems to require that the property concerned has effectively been salved, and the result achieved is a factor in the determination of the amount due (Commercial Code, Art. 792(1) and 793).

[251] See Kennedy-Rose, 364-394, para 9.001-9.061; Schoenbaum 2004 II, 165 and 167, § 16-1; see also Berger, https://www.trans-lex.org/945300.

[252] **Salvage Convention 1910**, Art. 2; **Salvage Convention 1989**, Art. 12(2).

[253] **Current law**: **Algeria** (Maritime Code, Art. 337); **Austria** (Business Code, § 741(1)); **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); **Georgia** (Maritime Code, Art. 322.2); **Latvia** (Maritime Code, Art. 256(1)); **Morocco** (Maritime Commerce Code, Art. 301); **Netherlands** (Civil Code, Book 8, Art. 561.2); **Nigeria** (Merchant Shipping Act, S. 390(1)); **Norway** (Maritime Code, Art. 445); **Panama** (Maritime Commerce Act 55 of 2008, Art. 210); **Poland** (Maritime Code, Art. 233); **Russia** (Merchant Shipping Code, Art. 341.2); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 264(1)); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 353(1)); **Turkey** (Commercial Code, Art. 1304(2)); **Venezuela** (Maritime Commerce Act, Art. 343).

*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[254] and in national laws.[255]*

*Paragraph (4) 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 specify the factors to consider when determining the reward, although the 1989 Convention contains a broader list.[256] 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 (Rule 4(2)) and the list of criteria contained in the Salvage Convention 1989 is clearly not intended to be exhaustive.[257] The principle that the judge or arbitrator must also consider the appropriateness of encouraging salvage operations is an underlying policy principle of the law of salvage as a whole, and is moreover expressly confirmed in the 1989 Convention.[258] The objective of encouraging salvage operations is explained first of all by the fact that it is not always easy 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.[259] The relevant provisions of the Conventions are confirmed in, have inspired, or are at least similar to those of various national laws.[260] That the 'circumstances' criterion is mentioned first, and the 'encouragement' criterion only second, has no specific purpose or implications.*

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[254] **Salvage Convention 1910**, Art. 2; **Salvage Convention 1989**, Art. 13(3).

[255] **Current law**: **Algeria** (Maritime Code, Art. 347); **Argentina** (Navigation Act, Art. 371); **Austria** (Business Code, § 741(2)); **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); **Ecuador** (Commercial Code, Art. 1151); **Finland** (Maritime Act, Chapter 16, S. 5); **France** (Transport Code, Art. L5132-4, III); **Georgia** (Maritime Code, Art. 331); **Germany** (Commercial Code, § 577, II); **Indonesia** (Commercial Code, Art. 562); **Italy** (Navigation Code, Art. 491); **Japan** (Commercial Code, Art. 795); **Latvia** (Maritime Code, Art. 256(1)); **Malta** (Merchant Shipping Act, Art. 343(1)); **Morocco** (Maritime Commerce Code, Art. 301); **Netherlands** (Civil Code, Book 8, Art. 563.4); **Nigeria** (Merchant Shipping Act, S. 392(3)); **Norway** (Maritime Code, Art. 445); **Panama** (Maritime Commerce Act 55 of 2008, Art. 210); **Poland** (Maritime Code, Art. 240); **Russia** (Merchant Shipping Code, Art. 342.3); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 272); **Slovenia** (Maritime Code, Art. 760); **South Korea** (Maritime Act, Art. 884(1)); **Spain** (Maritime Navigation Act 14/2014, Art. 362.1); **Sweden** (Maritime Code, Chapter 16, S. 5); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 361); **Turkey** (Commercial Code, Art. 1304(3)); **Ukraine** (Merchant Shipping Code, Art. 334); **Venezuela** (Maritime Commerce Act, Art. 356); **Vietnam** (Maritime Code 2015, Art. 267.1).

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

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

[258] **Salvage Convention 1989**, Art. 13(1) and the Preamble.

[259] See Berlingieri 2015, 101.

[260] **Current law**: **Algeria** (Maritime Code, Art. 345); **Argentina** (Navigation Act, Art. 379); **Austria** (Business Code, § 745); **Belgium** (Shipping Code, Art. 2.7.5.14, § 1); **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); **Ecuador** (Commercial Code, Art. 1150); **Finland** (Maritime Act, Chapter 16, S. 6); **France** (Transport Code, Art. L5132-4); **Georgia** (Maritime Code, Art. 328); **Germany** (Commercial Code, § 577); **Ibero-America** (IIDM Maritime Model Law, Art. 349); **Italy** (Navigation Code, Art. 491); **Japan** (Commercial Code, Art. 793); **Latvia** (Maritime Code, Art. 257); **Malaysia** (Merchant Shipping Ordinance 1952, S. 396); **Malta**

*Finally, paragraph (5) 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 simplified 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.*[261] *Rules to the same or a similar effect have been inserted into various national laws.*[262] *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 diverges from the Convention regime, so that different solutions are applied on this point as well. It is therefore sufficient to draw attention in this Principle, in a general sense, to the possibility that a salvor may be entitled, either on a statutory or contractual basis, to compensation for environmental measures independently of the traditional salvage reward, which is dealt with in paragraphs (1) to (4) above.*

(Merchant Shipping Act, Art. 345(2)); **Morocco** (Maritime Commerce Code, Art. 307); **Netherlands** (Civil Code, Book 8, Art. 563.2); **Nigeria** (Merchant Shipping Act, S. 392); **Norway** (Maritime Code, Art. 446); **Panama** (Maritime Commerce Act 55 of 2008, Art. 216); **Poland** (Maritime Code, Art. 239, § 1 and 2); **Portugal** (Decree-Law No. 203/98, Art. 6); **Russia** (Merchant Shipping Code, Art. 342.1); **Slovenia** (Maritime Code, Art. 762); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 270); **South Korea** (Maritime Act, Art. 883); **Sweden** (Maritime Code, Chapter 16, S. 6); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 359); **Ukraine** (Merchant Shipping Code, Art. 333); **Venezuela** (Maritime Commerce Act, Art. 344); **Vietnam** (Maritime Code 2015, Art. 267.2). Compare also, on earlier US case law, Schoenbaum 2004 II, 171-172, § 16-1); see also **Paraguay** (Commercial Code, Art. 1304, from 1903).

[261] **Salvage Convention 1989**, Art. 14.

[262] **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); **Ecuador** (Commercial Code, Art. 1152 *et seq.*); **Finland** (Maritime Act, Chapter 16, 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); **Latvia** (Maritime Code, Art. 260); **Netherlands** (Civil Code, Book 8, Art. 564); **Nigeria** (Merchant Shipping Act, S. 393); **Norway** (Maritime Code, Art. 449); **Poland** (Maritime Code, Art. 241); **Portugal** (Decree-Law No. 203/98, Art. 5.2 and 9); **Russia** (Merchant Shipping Code, Art. 343); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 273); **South Korea** (Maritime Act, Art. 885); **Spain** (Maritime Navigation Act, Art. 361.1); **Sweden** (Maritime Code, Chapter 16, S. 9); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 362); **Turkey** (Commercial Code, Art. 1312); **Ukraine** (Merchant Shipping Code, Art. 338); **Venezuela** (Maritime Commerce Act, Art. 346); **Vietnam** (Maritime Code 2015, Art. 268).

***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 framework for the adjustment of general average cases. The fundamental 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.*[263] *The Principle confirms both these rules.*

*The solidarity mechanism that applies in general average cases is one of the oldest and most characteristic institutions of maritime law. The origins can be found in Antiquity and more specifically in the maritime law of the island of Rhodes; the earliest known statement is that in the Roman Digest, which has a rule on jettison, a typical case of general average.*[264] *The principle was elaborated in maritime law compilations and statutes of the West European Middle Ages, including the Rolls of Oléron, the Ordinamenta of Trani and the Consulate of the Sea; the basic principles have remained unchanged until the present day.*[265] *The first version of the modern international rules was adopted in 1860.*[266] *They have been updated several times, and the most recent version of the York-Antwerp Rules was approved by the CMI Assembly in 2016. The York-Antwerp Rules are not an international unification convention, but a set of rules referred to worldwide in charter parties and bills of lading. In other words, they are a successful example of international self-regulation by the maritime sector.*[267] *General average is as such considered part of the lex maritima.*[268]

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[263] **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 stability of the language underlines its lex maritima authority.

[264] The so-called *Lex Rhodia de jactu* (Dig. XIV.2.1).

[265] **Legal history**: see also, for example, **France** (Ordonnance de la Marine, VII.III, Art. 2; Code de commerce, Art. 401). Doctrine is abundant; see, for example, Lefebvre d'Ovidio 1935.

[266] For an overview of the development of general average law, see Antonini 1983; Rodière 1972, 289 *et seq.*, para 260 *et seq.* (with P. Lureau); Siccardi 2019, 3 *et seq.*, para 1 *et seq.* and 24 *et seq.*, para 27 *et seq.*

[267] On the impact of the Rules, see, for example, Gilmore-Black 1975, 252-253, § 5-5; Maurer 2012, 46; Maurer 2016, 238, para 14.21; Tetley 2002, 367-368; Van Hooydonk, 2011-8, 225-227, para 8.384.

[268] Tetley 2002, 363, fn. 1 and 367-368.

*A striking phenomenon of recent decades is that national legislators, instead of inserting a (non-mandatory) substantive regulation of general average into their maritime laws, are increasingly resorting to a mere reference to (a certain version of) the York-Antwerp Rules (or to certain provisions of it).*[269] *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 confirms that the York-Antwerp Rules as such belong to the lex maritima. With the exception of 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 should be considered 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 Principle, 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 should be applied. Here again, the Principle does not aim to override the positive maritime law.*[270]

*Because of the primacy in the industry of the York-Antwerp Rules, national substantive statutory provisions have not been considered any further. Essentially, however, these provisions confirm the principles contained in the York-Antwerp Rules (or at least a version of them). The national procedural provisions show an insufficient degree of harmony to extract any lex maritima Principles from them.*

*The Principle deliberately states that only the 'most 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.*[271] *The Principle also explicitly confirms the role of the CMI as custodian of the York-Antwerp Rules.*[272]

[269] **Current law**: **Argentina** (Shipping Act, Art. 403); **Belgium** (Belgian Shipping Code, Art 2.7.1.4 and, on inland navigation, Art. 3.7.1.4, referring to the General Average Rules of the Rotterdam-based association IVR); **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); **Netherlands** (Civil Code, Book 8, Art. 613 and, on inland navigation, Art. 1022, referring to the General Average Rules of the Rotterdam-based association IVR); **Norway** (Maritime Code, Section 461); **Poland** (Maritime Code, Art. 255, § 2, referring to 'the rules generally accepted in international maritime trade', which is considered a reference to the York-Antwerp Rules: Łuczywek-Pyć-Zużewicz-Wiewiórowska 2022, commentary to Art. 255, para 3); **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 **China**, the York-Antwerp Rules are considered a source of international maritime custom within the meaning of Art. 268 of the Maritime Code (Zhengliang Hu 2024, 61, para 60). In **Germany**, the intention to introduce a statutory reference to the York-Antwerp Rules encountered constitutionality concerns (Herber 2016, 406).

[270] The positive maritime law will also determine, for example, whether the principles relating to general average can or should be applied in the (unlikely) absence of both a contractual clause and a statutory provision.

[271] See also Berger, https://www.trans-lex.org/945200. On whether the York-Antwerp Rules of 2016 are to be considered a 'modification' of the York-Antwerp Rules of 1994, see *Star Axe I LLC v Royal & Sun Alliance Luxembourg SA - Belgian Branch* [2023] EWHC 2784 (Comm) [2024] 1 Lloyd's Rep 342.

[272] In addition to the York-Antwerp Rules, the CMI in 2016 adopted 'CMI Guidelines relating to General Average'; in 2022 these Guidelines were updated.

***Principle 22 – Wreck removal***

**(1) For the purposes of this Principle, 'wreck' means a sunken or stranded ship, any part thereof, and any object that is lost from a ship and that is stranded, sunken or adrift at sea.**

**(2) It is common for the positive maritime law to 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 by the authorities 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 shore. 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 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 (and for which CMI provided important preparatory work). Currently, the Wreck Removal Convention is binding on 67 States, representing already 80.28% of world tonnage. The Principles included in the CMI Lex Maritima are based on this Wreck Removal Convention as well as on concurrent specific provisions of national laws (some of which refer to the Convention[273]) 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[274] has deliberately been stripped to the bone, because the CMI Lex Maritima focuses on general principles.*

[273] **Current law:** for example, **Belgium** (Shipping Code, Art. 2.7.6.8); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 2 and 16); **Netherlands** (Civil Code, Book 8, Art. 655); **South Africa** (Wreck and Salvage Act 94 of 1996, S. 2(1)); **UK** (Merchant Shipping Act, S. 255A).

[274] **Current law: Wreck Removal Convention**, Art. 1(4); see also, for example, **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 27); **Denmark** (Merchant Shipping Act, S. 165.3); **Germany** (Security of Maritime Navigation Regulations, § 7b(5); **Latvia** (Maritime Code, S. 267); **Netherlands** (Maritime Accident Control Act, Art. 1.e); **Nigeria** (Merchant Shipping Act, S. 361); **South Africa** (Wreck and Salvage Act No. 94 of 1996, S. 1); **Ukraine** (Merchant Shipping Code, Art. 120); **Vietnam** (Maritime Code 2015, Art. 276).

*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 legal doctrine. This is specifically the case with the duty to report wrecks (item (a)),*[275] *the duty to remove wrecks (whether or not following an explicit order from the authorities) (item (b)),*[276] *the power of authorities to remove wrecks* ex officio *(item (c)),*[277] *and the liability of the shipowner or ship operator for the costs of wreck removal (item (d)).*[278] *It should be emphasised that the Wreck*

[275] **Current law: Wreck Removal Convention**, Art. 5; see also, for example, **Australia** (Navigation Act 2012, S. 232); **Barbados** (Shipping Act, S. 229, although not specifically about wrecks); **Belgium** (Shipping Code, Art. 2.7.6.12); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 19); **CEMAC** (CEMAC Merchant Shipping Code, Art. 280); **China** (Maritime Traffic Safety Law, Art. 51); **Georgia** (Maritime Code, Art. 106); **Germany** (Security of Maritime Navigation Regulations, § 7 and 7b); **Italy** (Navigation Code, Art. 182, although not specifically about wrecks); **Latvia** (Maritime Code, S. 268(1)); **Malta** (Merchant Shipping Act, S. 332); **Mexico** (Navigation and Maritime Commerce Act, Art. 173); **Netherlands** (Maritime Accident Control Act, Art. 5-6); **Panama** (Merchant Marine Act 57 of 2008, Art. 126, although not specifically about wrecks); **Poland** (Maritime Code, Art. 282, § 1); **Singapore** (Merchant Shipping Act 1995, S. 107; Merchant Shipping (Wreck Removal) Act 2017, S. 4); **Spain** (Maritime Navigation Act 14/2014, Art. 370); **UK** (Merchant Shipping Act, S. 236 and 255B); **Ukraine** (Merchant Shipping Code, Art. 122-123); **Vietnam** (Maritime Code 2015, Art. 279).

[276] **Current law: Wreck Removal Convention**, Art. 9.2; see also, for example, **Argentina** (Shipping Act, Art. 17-17*bis*); **Belgium** (Shipping Code, Art. 2.7.6.3; Flemish Shipping Decree, Art. 17); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 21(1) and 37); **CEMAC** (CEMAC Merchant Shipping Code, Art. 283.1 and 291); **China** (Maritime Traffic Safety Law, Art. 51 and 106); **Denmark** (Merchant Shipping Act, S. 166.2); **Georgia** (Maritime Code, Art. 106.2 and 108.1, apparently implicitly); **Germany** (Security of Maritime Navigation Regulations, § 7c); **Italy** (Navigation Code, Art. 73); **Latvia** (Maritime Code, S. 269-270); **Morocco** (Maritime Commerce Code, Art. 124); **Netherlands** (Maritime Accident Control Act, Art. 9 *et seq.*); **Nigeria** (Merchant Shipping Act, S. 366 *et seq.*); **Poland** (Maritime Code, Art. 282, § 1 and 284, § 1); **Russia** (Merchant Shipping Code, Art. 109); **Singapore** (Merchant Shipping (Wreck Removal) Act 2017, S. 7); **South Africa** (Wreck and Salvage Act No. 94 of 1996, S. 18(1)); **Spain** (State Ports and Merchant Shipping Act 2/2011, Art. 304); **UK** (Merchant Shipping Act, S. 255D); **Ukraine** (Merchant Shipping Code, Art. 122-123); **Uruguay** (National Navy and Salvage Act No. 17.121 of 1999, Art. 3 (implicit)); **Vietnam** (Maritime Code 2015, Art. 277).

[277] **Current law: Wreck Removal Convention**, Art. 9.7-8; see also, for example, **Argentina** (Shipping Act, Art. 17-17*bis*); **Australia** (Navigation Act 2012, S. 229 *et seq.*); **Bahamas** (Merchant Shipping Act, S. 230 and 231); **Barbados** (Shipping Act, S. 281 and 282); **Belgium** (Shipping Code, Art. 2.7.6.4; Flemish Shipping Decree, Art. 140); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 21(2), 30(3), 36, 37(3) and 39 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 282.1 and 283.2); **China** (Maritime Traffic Safety Law, Art. 51 and 106); **Georgia** (Maritime Code, Art. 107.3 and 109); **Germany** (Federal Waterways Act, § 30(1); Maritime Shipping Responsibilities Act, § 3, 3a and 3b(1)); **Italy** (Navigation Code, Art. 73; Regulations for the Implementation of the Navigation Code, Art. 92); **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); **Netherlands** (Wreck Act 1934; Maritime Accident Control Act, Art. 13); **Nigeria** (Merchant Shipping Act, S. 382 *et seq.*); **Poland** (Maritime Code, Art. 282, § 2); **Russia** (Merchant Shipping Code, Art. 111); **Singapore** (Merchant Shipping (Wreck Removal) Act 2017, S. 8); **South Africa** (Wreck and Salvage Act No. 94 of 1996, S. 18(2)); **Spain** (State Ports and Merchant Shipping Act 2/2011, Art. 304); **Ukraine** (Merchant Shipping Code, Art. 123123); **UK** (Merchant Shipping Act, S. 252-253 and 255F); **Uruguay** (National Navy and Salvage Act No. 17.121 of 1999, Art. 4 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 277).

[278] **Current law: Wreck Removal Convention**, Art. 10-11; see also, for example, **Belgium** (Shipping Code, Art. 2.7.6.6; Flemish Shipping Decree, Art. 18-19); **Canada** (Wrecked, Abandoned or Hazardous Vessels Act, S. 23 and 45); **CEMAC** (CEMAC Merchant Shipping Code, Art. 282.2 and 293); **Denmark** (Merchant Shipping Act, S. 166); **Georgia** (Maritime Code, Art. 108.1); **Germany** (Federal Waterways Act, § 30(3) and (12); Maritime Shipping Responsibilities Act, § 3b(2)); **Japan** (Act on Liability for Oil Pollution Damage, Art. 47); **Latvia** (Maritime Code, S. 269(2)); **Netherlands** (Civil Code, Book 8, Art. 656-658); **Poland** (Maritime Code, Art. 282, § 1-2 and 284, § 1 (implicit)); **Singapore** (Merchant Shipping (Wreck Removal) Act 2017, S. 10-12); **South Africa** (Wreck and Salvage Act No. 94 of 1996, S. 18(3)); **Spain** (State Ports and Merchant Shipping Act 2/2011, Art. 304); **UK** (Merchant Shipping Act, S. 255G *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 123); **Uruguay** (National Navy and Salvage Act No. 17.121 of 1999, Art. 14); **Vietnam** (Maritime Code 2015, Art. 277).

*Removal Convention imposes the obligations listed under (b), (c) and (d) on the registered owner (the 'shipowner' in the terminology of these Principles). However, the Principles deliberately also mention the possibility that the obligations are (also) imposed on the ship operator, because national provisions on wreck removal sometimes impose broader obligations. Of course, this does not change the rule that the CMI Lex Maritima can never change the positive maritime law (such as, in this case, the Wreck Removal Convention; see Rule 4(2)).*

*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 proclaimed as Principles of the lex maritima at this stage.*

# Part 7
# Maritime claims

***Principle 23 − Prioritised claims***

**It is common for the positive maritime law to 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) Except in the event of a judicial sale, 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 harmonisation conventions were drawn up in 1926, 1967 and 1993.*[279] *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.*[280] *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 a number of broad categories. This element is expressed here in item (1). The various categories of preferential rights are subsumed here under the general term 'prioritised claims' (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*

[279] **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.

[280] 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).

*cannot be formulated on that point either. The same applies to the question of whether positive maritime law permits an action* in rem *against the ship and/or an action* in personam*, which is indeed another point of international divergence.*

*Items (2) to (4) confirms various arrangements concerning maritime liens found in each of the maritime harmonisation conventions and in numerous national laws and/or case law. This applies, in particular, to rules on the ranking of prioritised claims,*[281] *the principle that a maritime lien survives despite any change of ownership or registration (French* droit de suite; *but maritime liens cease to attach to the*

[281] **Current law: 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.*); **Austria** (Business Code, § 754 *et seq.*); **Bahamas** (Merchant Shipping Act, S. 277 *et seq.*); **Barbados** (Shipping Act, S. 338 *et seq.*); **Belgium** (Shipping Code, Art. 2.2.5.1 *et seq.*); **Brazil** (Commercial Code, Art. 470 *et seq.*); **Canada** (Shipping Act, S. 86; Marine Act, S. 122; Marine Liability Act, S. 139; *Ballantrae Holdings Inc. v The Ship Phoenix Sun,* [2016] FC 570); **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.*); **Ecuador** (Commercial Code, Art. 914 *et seq.*); **Finland** (Maritime Act, Chapter 3, S. 2 *et seq.*); **France** (Transport Code, Art. L5114-7 *et seq.*); **Georgia** (Maritime Code, Art. 350 *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.*); **Indonesia** (Commercial Code, Art. 316 *et seq.*); **Italy** (Navigation Code, Art. 548 *et seq.*); **Japan** (Commercial Code, Art. 842 *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.*); **Netherlands** (Civil Code, Book 8, Art. 210 *et seq.*); **Nigeria** (Merchant Shipping Act, S. 67 *et seq.*); **Norway** (Maritime Code, S. 51 *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 239 *et seq.*); **Paraguay** (Commercial Code, Art. 1368 *et seq.* and esp. Art. 1377 *et seq.)*); **Philippines** (Ship Mortgage Decree of 1978, S. 17(a) and 21); **Poland** (Maritime Code, Art. 90 *et seq.*); **Romania** (Commercial Code, Art. 868 *et seq.*); **Russia** (Merchant Shipping Code, Art. 367 *et seq.*); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 74E and 74F); **Slovenia** (Maritime Code, Art. 237 *et seq.*); **South Korea** (Commercial Act, Art. 777 *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); **Tanzania** (Merchant Shipping Act 2003, S. 98 *et seq.*); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 86 *et seq.*); **Turkey** (Commercial Code, Art. 1320 *et seq.* and 1392); **UK** (case law references in Chorley-Giles 1987, 71-73 and 78-81); **Ukraine** (Merchant Shipping Code, Art. 358 *et seq.*); **Uruguay** (Commercial Code, Art. 1037-1038); **USA** (46 U.S.C. § 31301(4)-(6) and 31342; Force 2001, 63 *et seq.*, para 86 *et seq.*); **Vanuatu** (Maritime Act, S. 66); **Venezuela** (Maritime Commerce Act, Art. 113 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 40 *et seq.*).

*ship in the event of a forced sale)*[282] *and the extinction of a maritime lien after a certain lapse of time.*[283] *Again, the applicable arrangements must in each case be verified in the positive maritime law.*

[282] **Current law: 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); **Austria** (Business Code, § 755); **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); **Ecuador** (Commercial Code, Art. 914); **Finland** (Maritime Act, Chapter 3, S. 4); **France** (Transport Code, Art. L5114-18); **Ibero-America** (IIDM Maritime Model Law, Art. 32); **Indonesia** (Commercial Code, Art. 316e); **Italy** (Navigation Code, Art. 557); **Japan** (Commercial Code, Art. 845 (implicit)); **Latvia** (Maritime Code, S. 36); **Netherlands** (Civil Code, Book 8, Art. 215.1); **Nigeria** (Merchant Shipping Act, S. 71(2)); **Norway** (Maritime Code, S. 53); **Poland** (Maritime Code, Art. 90, § 2); **Russia** (Merchant Shipping Code, Art. 370); **Slovenia** (Maritime Code, Art. 241); **South Korea** (Commercial Act, Art. 785); **Spain** (Maritime Navigation Act 14/2014, Art. 122.2); **Sweden** (Maritime Code, Chapter 3, S. 38); **Tanzania** (Merchant Shipping Act 2003, S. 102); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 90); **Turkey** (Commercial Code, Art. 1321(5)); **Venezuela** (Maritime Commerce Act, Art. 114); **Vietnam** (Maritime Code 2015, Art. 40.5).

[283] **Current law: 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); **Austria** (Business Code, § 901); **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); **Georgia** (Maritime Code, Art. 355); **Germany** (Commercial Code, § 600); **Ibero-America** (IIDM Maritime Model Law, Art. 36); **Italy** (Navigation Code, Art. 558); **Japan** (Commercial Code, Art. 846); **Lithuania** (Law on Merchant Shipping, Art. 64); **Mexico** (Navigation and Maritime Commerce Act, Art. 93); **Morocco** (Maritime Commerce Code, Art. 79); **Netherlands** (Civil Code, Book 8, Art. 219); **Nigeria** (Merchant Shipping Act, S. 73); **Norway** (Maritime Code, S. 55); **Paraguay** (Commercial Code, Art. 1378, para 1, 2°); **Poland** (Maritime Code, Art. 95); **Russia** (Merchant Shipping Code, Art. 371); **Slovenia** (Maritime Code, Art. 248); **South Korea** (Commercial Act, Art. 785); **Spain** (Maritime Navigation Act 14/2014, Art. 123.2); **Sweden** (Maritime Code, Chapter 3, S. 40); **Tanzania** (Merchant Shipping Act 2003, S. 104); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 92); **Turkey** (Commercial Code, Art. 1326); **Ukraine** (Merchant Shipping Code, Art. 363); **Venezuela** (Maritime Commerce Act, Art. 118-119); **Vietnam** (Maritime Code 2015, Art. 43). But see also **USA** (doctrine of 'laches': Force 2001, 73-74, para 107).

***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) It is common for the positive maritime law to 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 prioritised claims, 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. But numerous countries are still not bound by any of these Conventions. In these circumstances, a minimal statement of the relevant lex maritima has also been adopted here. Nevertheless, this does not preclude positive maritime law from assigning greater authority to the Conventions.*[284]

*The first paragraph of the Principle 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*

[284] **Current law: India** (*Sangitadas v MV Amber* MFA (ADL) No 78 of 2017, where it was held that the 1952 and 1999 Conventions, being the result of international unification and development of the maritime laws of the world, could, therefore, be regarded as 'international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, could be adopted and adapted by courts to supplement and complement national statutes on the subject to aid the courts in filling lacunae' in national legislation. Whether such an approach can be followed elsewhere will depend on the applicable positive (national) maritime law, which is not affected by the CMI Lex Maritima (Rule 4(2)).

*can as such be considered a lex maritima Principle, as it is confirmed not only in the aforementioned international conventions[285] but also in various national maritime law systems.[286] Seizure is a measure in execution or satisfaction of a judgment with a view to the forced sale of the ship. It is referred to as such in the Ship Arrest Conventions[287] and is regulated in numerous national legal systems.[288] 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.[289] Proven or suspected infringements which may give rise to detention may relate so safety or environmental laws and regulations.[290] Rights of retention are referred to in the recent Liens and Mortgages Conventions[291] and specifically regulated in some national legal systems.[292]*

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[285] **Arrest Convention 1952**, Art. 1(2) and 2; **Arrest Convention 1999**, Art. 1.2 and 2; see also **MLC 2006**, Standard A2.5.1.6.

[286] **Current law**: for example, **Algeria** (Maritime Code, Art. 150 *et seq.*); **Argentina** (Shipping Act, Art. 531 *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.*); **China** (Special Maritime Procedure Law, Art. 21 *et seq.*); **Colombia** (Commercial Code, Art. 1449 *et seq.*); **Denmark** (Merchant Shipping Act, S. 91 *et seq.*); **Ecuador** (Commercial Code, Art. 927 *et seq.*); **Finland** (Maritime Act, Chapter 4); **France** (Transport Code, Art. L5114-21 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 272 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 20 *et seq.*); **Japan** (Civil Provisional Remedies Act, Art. 48); **Latvia** (Maritime Code, S. 47 *et seq.*); **Mexico** (Navigation and Maritime Commerce Act, Art. 268 *et seq.*); **Morocco** (Maritime Commerce Code, Art. 110); **Netherlands** (Civil Procedure Code, Art. 728 *et seq.*); **Norway** (Maritime Code, S. 91 *et seq.*); **Russia** (Merchant Shipping Code, Art. 388 *et seq.*); **Slovenia** (Maritime Code, Art. 947 *et seq.*); **South Africa** (Admiralty Jurisdiction Regulation Act 105 of 1983; Admiralty Proceedings Rules); **Spain** (Maritime Navigation Act 14/2014, Art. 470 *et seq.*); **Sweden** (Maritime Code, Chapter 4); **UK** (Civil Procedure Rules, Part 61 - Admiralty Claims, Rule 61.5); **Ukraine** (Merchant Shipping Code, Art. 41 *et seq.*); **USA** (28 USC Appendix - Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions - Rule B. In Personam Actions: Attachment and Garnishment and Rule C. In Rem Actions: Special Provisions); **Venezuela** (Maritime Commerce Act, Art. 92 *et seq.*); **Vietnam** (Maritime Code 2015, Art. 129 *et seq.*).

[287] **Arrest Convention 1952**, Art. 1(2); **Arrest Convention 1999**, Art. 1(2).

[288] **Current law**: for example, **Algeria** (Maritime Code, Art. 160 *et seq.*); **Argentina** (Shipping Act, Art. 535); **Belgium** (Shipping Code, Art. 2.2.6.25 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 157 *et seq.*); **China** (Special Maritime Procedure Law, Art. 29 *et seq.*); **France** (Transport Code, Art. L5114-23 *et seq.*); **Italy** (Navigation Code, Art. 643 *et seq.* and Art. 649 *et seq.*); **Japan** (Civil Execution Act, Art. 112 *et seq.*); **Latvia** (Maritime Code, S. 47(2) and 55-56); **Morocco** (Maritime Commerce Code, Art. 111 *et seq.*); **Netherlands** (Civil Procedure Code, Art. 562a *et seq.*); **Panama** (Maritime Commerce Act 55 of 2008, Art. 272); **Poland** (Code of Civil Procedure, Art. 1014 and 1022, § 1); **Spain** (Maritime Navigation Act 14/2014, Art. 480 *et seq.*); **UK** (Civil Procedure Rules, Part 61 - Admiralty Claims, Rule 61.10). The CMI prepared the United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022) (the 'Beijing Convention on the Judicial Sale of Ships'). The matter dealt with it in that instrument can at this stage not support any further lex maritima Principle.

[289] 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.*). There are countless examples of such national provisions, so no further illustrations are provided here.

[290] For example, SOLAS, MARPOL and Port State Control arrangements.

[291] **Liens and Mortgages Convention 1967**, Art. 6; **Liens and Mortgages Convention 1993**, Art. 7.

[292] **Current law**: for example, **Argentina** (Shipping Act, Art. 486); **Bahamas** (Merchant Shipping Act, S. 280); **Barbados** (Shipping Act, S. 341); **Belgium** (Shipping Code, Art. 3.2.3.21 *et seq.*); **CEMAC** (CEMAC Merchant Shipping Code, Art. 76); **Chile** (Commercial Code, Art. 856-857); **China** (Maritime Code, Art. 25); **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). In many countries, the right of retention is

*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[293] and various national laws.[294]*

*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[295] and national laws.[296]*

regulated within the framework of general contract law and a right of retention on a ship can be exercised on that basis. References to such general, not specifically maritime provisions are not included here.

[293] **Arrest Convention 1952**, Art. 2; **Arrest Convention 1999**, Art. 2(2).

[294] **Current law**: for example, **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); **China** (Special Maritime Procedure Law, Art. 21-22); **Denmark** (Merchant Shipping Act, S. 91-92); **Finland** (Maritime Act, Chapter 4, S. 3-4); **Georgia** (Maritime Code, Art. 83.1); **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); **South Africa** (Admiralty Jurisdiction Regulation Act 105 of 1983, S. 1(1) and 3); **Spain** (Maritime Navigation Act 14/2014, Art. 472); **Sweden** (Maritime Code, Chapter 4, S. 3); **Turkey** (Commercial Code, Art. 13521); **Ukraine** (Merchant Shipping Code, Art. 42-43); **Venezuela** (Maritime Commerce Act, Art. 92-93); **Vietnam** (Maritime Code 2015, Art. 139).

[295] **Arrest Convention 1952**, Art. 5; **Arrest Convention 1999**, Art. 4.

[296] **Current law**: for example, **Algeria** (Maritime Code, Art. 156); **Argentina** (Shipping Act, Art. 540); **Belgium** (Shipping Code, Art. 2.2.6.20); **China** (Special Maritime Procedure Law, Art. 18); **Ecuador** (Commercial Code, Art. 928 and 932); **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); **South Africa** (Admiralty Jurisdiction Regulation Act 105 of 1983, S. 3(10); Admiralty Proceedings Rules); **Turkey** (Commercial Code, Art. 1370-1371); **UK** (Civil Procedure Rules, Part 61 - Admiralty Claims, Rule 61.6 *et seq.*); **Ukraine** (Merchant Shipping Code, Art. 44); **Venezuela** (Maritime Commerce Act, Art. 98); **Vietnam** (Maritime Code 2015, Art. 137 and 142). No reference is made to general, non-maritime provisions that may apply to the arrest of ships.

***Principle 25 − Time bars***

**It is common for the positive maritime law to 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, or other events having similar effect have not occurred, within a specific period.**

***Commentary***

*Numerous international unification conventions[297] and almost countless national statutory provisions[298] define specific time bars or limitation periods for several categories of maritime claims (whether substantive rights or rights of action, which some legal systems distinguish[299]). 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 in the Principle, but in many cases*

[297] Except where indicated, all the following conventions 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**, Art. VIII (3 years); **Rotterdam Rules**, Art. 62.

[298] **Current law:** for example, **Algeria** (Maritime Code, Art. 289, 331, 356, 648, 722, 737, 853, 919 and 926); **Argentina** (Shipping Act, Art. 226, 240, 258, 293, 345, 357, 370, 385 and 407); **Austria** (Business Code, § 901 *et seq.*); **Bahamas** (Merchant Shipping Act, S. 240); **Barbados** (Shipping Act, S. 292); **Belgium** (Shipping Code, Art. 2.3.1.18, 2.4.2.13, 2.6.1.30, 2.6.1.87, 2.6.1.110, 2.6.1.113, 2.6.2.33, 2.6.2.49, 2.7.1.10, 2.7.2.11 and 2.7.5.27); **Bermuda** (Merchant Shipping Act, S. 186); **Brazil** (Commercial Code, Art. 449 *et seq.*); **Canada** (Marine Liability Act, S. 14, 20, 23, 77(6), 135(1) and 140); **CEMAC** (CEMAC Merchant Shipping Code, Art. 48, 226, 254, 276, 299, 366.3, 474, 581, 621.4, 633, 641, 659, 663 and 707); **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.*); **Ecuador** (Commercial Code, Art. 1210 *et seq.*); **Finland** (Maritime Act, Chapter 19); **France** (Transport Code, Art. L5413-5, L5421-6, L5421-12, L5422-11, L5422-18, L5422-25 and L5423-4); **Germany** (Commercial Code, § 605 *et seq.*); **Hong Kong** (Merchant Shipping (Collision Damage Liability and Salvage) Ordinance, S. 7); **Georgia** (Maritime Code, Art. 175.2 and 369 *et seq.*); **Greece** (Code of Private Maritime Law, Art. 280 *et seq.*); **Ibero-America** (IIDM Maritime Model Law, Art. 246, 320, 365, 376 and 460); **Indonesia** (Commercial Code, Art. 741 *et seq.*); **Italy** (Navigation Code, Art. 383, 395, 418, 438, 481, 500, 509 and 547); **Japan** (Commercial Code, Art. 789, 806 and 812; Commercial Code, Art. 585 *j°* Act on the International Carriage of Goods by Sea, Art. 15); **Latvia** (Maritime Code, S. 325 *et seq.*); **Liberia** (Maritime Law, §155); **Lithuania** (Law on Merchant Shipping, Art. 75); **Malaysia** (Merchant Shipping Ordinance 1952, S. 517); **Mexico** (Navigation and Maritime Commerce Act, Art. 83, 105, 117, 127, 137, 147, 150, 156, 160 and 200); **Morocco** (Maritime Commerce Code, Art. 298 and 309); **Netherlands** (Civil Code, Book 8, Art. 1750, 1750a, 1751, 1770, 1780, 1790 *et seq.*, 1820, 1830-1833b); **Nigeria** (Merchant Shipping Act, S. 343); **Norway** (Maritime Code, S. 501 *et seq.*); **Poland** (Maritime Code, Art. 108, 199 and 262); **Romania** (Commercial Code, Art. 677); **Russia** (Merchant Shipping Code, Art. 408 *et seq.*); **Saint Vincent and the Grenadines** (Shipping Act 2004, S. 292(1) and 353); **Singapore** (Merchant Shipping (Wreck Removal) Act 2017, S. 13); **Slovenia** (Maritime Code, Art. 658); **South Africa** (Merchant Shipping Act, S. 344); **South Korea** (Maritime Act, Art. 814, 840, 851, 875, 881 and 895); **Spain** (Maritime Navigation Act 14/2014, Art. 115, 120, 142, 202, 278.4, 286, 306, 313, 337, 355 and 438); **Sweden** (Maritime Code, Chapter 19); **Switzerland** (Federal Law on Maritime Navigation under the Swiss Flag, Art. 87.2); **Tanzania** (Merchant Shipping Act 2003, S. 330 and 366); **Tanzania Zanzibar** (Maritime Transport Act 5 of 2006, S. 381 and 406); **Turkey** (Commercial Code, Art. 1188, 1270 and 1319); **UK** (Merchant Shipping Act, S. 190); **Ukraine** (Merchant Shipping Code, Art. 388 *et seq.*); **USA** (46 U.S.C. 30106); **Vanuatu** (Maritime Act, S. 95 and 151); **Venezuela** (Maritime Commerce Act, Art. 253, 308, 319, 330, 370, 453, 454 and 456); **Vietnam** (Maritime Code 2015, Art. 43, 66.5, 169, 195, 214, 219, 241, 246, 262, 274, 290, 297 and 336).

[299] For an earlier overview, based on a CMI questionnaire, see Berlingieri 1993, 1 *et seq.*

*this possibility exists[300] and is used in practice. The other 'events' that might suspend or interrupt the running of a time bar vary widely according to the positive maritime law.*

[300] **Current law:** for example, **Poland** (Maritime Code, Art. 8).

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| 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 |
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| ILO | International Labour Organization |
| IMO | International Maritime Organization |
| International Regulations for Preventing Collisions at Sea, 1972 | see COLREG |
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| para | paragraph(s) |

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| UNCLOS | United Nations Convention on the Law of the Sea, 1982 |
| UNECE | United Nations Economic Commission for Europe |
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