

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

10 VIA ROMA - 16121 GENOVA

Tel. 010-586.441
Fax 010-594.805
E-mail presidenza@aidim.org
Website www.aidim.org

VESSEL NOMENCLATURE

RESPONSES OF THE ITALIAN MARITIME LAW ASSOCIATION TO THE QUESTIONNAIRE ON VESSEL NOMENCLATURE

General Comments

We have considered the Questionnaire which is believed to be very helpful to seek uniformity on the subject matter.

The Maritime Conventions do not seem to be helpful for the purposes of the interesting enquiry that the Questionnaire intends to make.

In fact from the list of terms used in Conventions attached to the Questionnaire it seems that almost all such terms have merely the purpose of indicating the scope of application of the Conventions, such as the term "ship" in the 1973 Convention for the prevention of pollution from ships. Therefore, they are not definitions in a strict sense. As a consequence are not of assistance for a general definition of the terms "ship" and "vessel".

A distinction between sea going vessels and vessels of inland navigation appears instead to be worthy of an investigation. There may be three basic alternatives: the first is that it is based on the characteristics of the ship, secondly that it is based on the register in which they are registered, thirdly, that it is based on the waters in which the occurrence in respect of which the Convention is applied takes place at sea.

Question 1

Is there a statutory, regulatory or other definition, in your legal system, which conveys a meaning similar to the above definition of either "Vessel" or "Ship"? If so, which is (are) the terms and their corresponding definitions? Please provide details of all qualifiers to such definitions, such as minimum length, tonnage, registry, design, intended trade or usage.

There is a general definition of "ship" in article 136 of the Italian Code of Navigation (CN). It is the following:

Navi e galleggianti. Per nave s'intende qualsiasi costruzione destinata al trasporto per acqua, anche a scopo di rimorchio, di pesca, di diporto, o ad altro scopo.

("Ships and barges. By ship it is meant any construction destined to carriage on water, also for the purpose of towage, fishing, recreation, or other purpose.")

That definition is followed by a distinction between *navi maggiori* and *navi minori* (major and minor ships) and by the statement that are "major" the ships intended for navigation on the high seas and are "minor" the ships intended for coastwise navigation, those intended for port services and those intended for inland navigation.

Art. 136 then says that the provisions applicable to ships apply, unless otherwise stated, to floating crafts intended for any service whatsoever relating to navigation and trade in marine and inland waters.

Question 2

In your system, does the definition of "vessel" (or equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labor, environmental, casualty, insurance or taxation law?

The terms above indicated are generally used for all purposes, except that for pleasure crafts, that in the code regulating pleasure navigation are called "*unità da diporto*" (pleasure units). There is a distinction based on length and the terms used are "*nave da diporto*" (pleasure ship) for units with an overall length of more than 24 meters, "*imbarcazione da diporto*" (pleasure boat) for units with a length between 24 and 10 meters and "*natante da diporto*" (pleasure craft) for units with a length of less than 10 meters and for rowing boats. A variety of names is used in respect of special types of pleasure crafts.

Question 3

Does your legal system provide for a unique process of seizure, foreclosure, forced sale or ranking and priority of claims against vessels that is different from such processes for other types of property? If so, please explain.

There are special rules in the code of navigation on the seizure and forced sale of ships (articles 643-685). The proceedings commence with the seizure of the ship and rules are dictated on the sale and the distribution of the proceeds of the sale.

Question 4

Has the 1993 Convention on Maritime Liens and Mortgages ("MLM-93") been adopted or followed in your jurisdiction?

Italy has acceded to the MLM Convention of 1926 and its provisions have the force of law.

Question 5

In your jurisdiction is the acceptance by a registrar or other governmental body of property as a "ship" or "vessel" or equivalent term dispositive of its status under your law?

The registration of a ship in the ships register is not dispositive of its status, nor is it dispositive of the title to or right on a ship. It is possible to challenge a registration and apply for its amendment and if such application is rejected proceedings may be brought in order to have the registration amended or cancelled.

Question 6

If property is categorized as a "vessel" in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?

This question is very theoretical and describes a situation very unlikely to occur. In any event we believe that the Italian Courts (there are no precedents), if the property is registered in a foreign register as a ship and flies the flag of a foreign State, would treat such property as a ship unless that would be in conflict with Italian public order. The basic rules on choice of law is in fact that the law of the flag would apply.

Question 7

Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property:

To our knowledge there are very few reported decisions which address some of the types of craft enumerated under nos. 1 to 13. They will be mentioned below.

Introduction

The statutory provisions that may be relevant in connection with the properties reference to which is made in this Question are the following:

Art. 136 CN which provides the definition of ship and floating barges as reported in the answer to Question 1 and art. 140 CN which provides that “major” ships are distinguished by a name whilst art. 141 CN says that “minor” ships and barges are distinguished by a number.

1. Non-self-propelled barges

By judgment of 19 July 2006, *Mutuelles du Mans Assurances v. SAIPEM*, 2007 Dir. Mar. 1249, the Tribunal de Commerce of Marseilles held that a dredger without autonomous means of propulsion is not a ship for the purposes of the limitation of liability.

By judgment of 22 February 2005, *Willard Steward v. Dutra Construction Co*, 2007 Dir. Mar. 1272 the U.S. Supreme Court held that pursuant to the definition of “vessel” under s. 3 of the 1873 Statutes according to which is such “every description of water craft used, or capable of being used, as a means of transportation on water”, a dredger, even if deprived of autonomous propulsion, must be deemed to be a vessel in as much as during its operation it carries on water machinery, instruments and a crew.

2. Self-propelled barges

There are in Italy no reported decisions.

3. Accommodation barges

There are in Italy no reported decisions.

4. Mobile offshore drilling rigs

There are in Italy no reported decisions.

5. Wind turbine towers (floating or permanently fixed)

There are in Italy no reported decisions.

6. Jack up drill rigs

By judgment of 25 February 2010, *Rossi Costruzioni v. Navale Assicurazioni*, 2012 Dir. Mar. 1138, the Court of Appeal of Venice held that a jack-up platform must be qualified as a mobile floating construction that as such is subject to their administrative rules.

7. *Construction barges*

By judgment of 16 June 2010, *Toro Assicurazioni v. Impresa Costruzioni Mentucci*, 2011 Dir. Mar. 1277, the Court of Appeal of Turin held that a huge caisson, employed for construction purposes, that sank during towage, could not be considered a ship.

8. *Submarines*

There are in Italy no reported decisions.

9. *Seaplanes*

There are in Italy no reported decisions.

10. *Hydroplanes*

There in Italy no reported decisions.

11. *Vessels under construction*

Pursuant to art. 244 CN after launching a ship under construction may be registered on the ships register and, therefore, is entitled to fly the Italian flag during the essays.

12. *Unmanned vessels*

There are in Italy no reported decisions.

13. *Vessels devoted temporarily or permanently to storage of bulk commodities*

There are in Italy no reported decisions.

14. *Vessels in "cold layup"*

There are in Italy no reported decisions.

15. *Derelict Vessels or "Dead Ships"*

By judgment of 24 August 1959 No. 2546, *Rottamindustrie v. S.p.a. Messina*, (1959) Dir. Mar. 545, the Supreme Court held that the sale of a ship intended for breaking up may consist of the sale of a specified quantity of materials or of the sale of a ship and in this latter case the quantity and quality of materials, unless specified, is irrelevant.

By judgment of 1 June 1995, No. 429, *Fortunato Fattorini v. Guernica Shipping, Inc.*, (1997) Dir. Mar. 429, the Supreme Court held that the destination of ships to the carriage, that is essential for the qualification of a construction as a ship, is not lost in case of temporary loss of seaworthiness, whilst the ship is not such anymore and becomes a wreck, in case of substantive and definitive alteration of its constituent elements.

16. *Vessels under conversion or renovation*

There are in Italy no reported decisions.

17. *Floating dry-docks*

This item is added to the list because the Italian Supreme Court with judgment of 15 November 1994, no. 9589, (1996) Dir. Mar. 1008 held that a floating dry-dock, even if it is mobile and may be moved on the sea (in the relevant case it had been imported in Italy from the United Kingdom) cannot be qualified as “ship” under art. 136 C.N.

Question 8

We attach a most excellent summary by Professor Bülent Sozer of Istanbul regarding the variations in definitions, usages and limitations on application of terms in many international conventions. Please identify any of the Convention usages and limitations which are at variance with equivalent terms in your national system and explain the variations.

It is not clear what is meant by “usages and limitations”. The term “usages” seems inappropriate. In fact the conventions set out rules of law that States parties undertake to include in their national legislation.

As said in the General Comments, definitions in the Conventions may have often the purpose of indicating which is the scope of application of a given Convention. As regards “limitations”, we understand that what is meant is the limits in the scope of application of a Convention. If the understanding is correct, it is quite possible that a definition of “ship” given in a Convention differs from the equivalent definition in Italian law. But if Italy ratifies or accedes to that Convention, its rules become part of Italian law and whatever is the notion of “ship” under Italian law, for the purpose of the implementation of any given Convention, what is relevant is the notion of “ship” adopted in such Convention, and its provisions apply within its scope.

Question 9

Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of “vessels”, “ships” or equivalent terms have impacted results in any legal proceeding of which you are aware? If so, please provide details.

If Italy becomes part of a Convention, its provisions become part of the Italian legal system and where the definition of “ship” is at variance with its definition under Italian law, in order to establish the scope of application of that Convention the relevant

definition is that included in that Convention. But that does not affect the Italian definition of “ship” for other purposes.

It is suggested that the purpose of this enquiry is to compare the notion of “ship” or “vessel” existing in the various legal systems, and that it would not assist to consider the definitions contained in the Maritime Conventions when, as previously stated, almost always they have merely the purpose of indicating the scope of application of the relevant Convention.

Genoa, 18 April 2016