8 March 2016

Presidents of NMLAs

By email

Dear President

International Working Group on Vessel Nomenclature

I am pleased to attach the first Questionnaire which this International Working Group has prepared. Its purpose is clearly identified in the first paragraph.

Also attached to the Questionnaire, as you will see from paragraph numbered 8, is a summary made by Professor Bulent Sozer of Turkey, who many of you will have met in Istanbul last year.

Please send your responses to the Chair of the International Working Group, Frank Nolan at fnolan@vedderprice.com and the CMI Secretariat in Antwerp at admin-antwerp@comitemaritime.org.

With kind regards

Stuart Hetherington
The purpose of this questionnaire is to identify variations and conflicts in the definitions of “vessel,” “ship” and related terms, both internally in your legal system and externally, between the laws of the member States and then to assess the impact of those variations and conflicts.

We assume for this exercise that the basic general definition of “vessel,” in common understanding, might be that contained in Article 11b of the International Convention on Salvage, done in London 28 April 1989:

“Vessel means any ship or craft or any structure capable of navigation.”

We also assume that the common understanding of the term “ship” is reflected in the International Convention for the Prevention of Pollution from Ships, London, 2 November 1973 and Protocol, London, 17 February 1978

Art. 2/4: Ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

From this vantage point we ask that you respond as fully and completely as possible to the questions which follow.

Questions:

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, etc.
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?

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.

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

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?

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?

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

   1. non-self-propelled barges
   2. self-propelled barges
   3. accommodation barges
   4. Mobile Offshore Drilling Units
   5. wind turbine towers (floating or permanently fixed)
   6. jack up drill rigs

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7. construction barges
8. submarines
9. seaplanes
10. hydroplanes (air cushion)
11. Vessels under construction
12. unmanned vessels
13. Vessels devoted temporarily or permanently to storage of bulk commodities
14. Vessels in “cold layup”
15. Derelict Vessels or “Dead Ships”
16. Vessels under Conversion or Renovation.

If there are any reported decisions on the foregoing, please attach copies. If there are numerous decisions, please attach the most recent or most indicative of your national court’s views.

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.

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.

Note to responders: If you find that these questions do not invite easy or straightforward answers in the context of your legal system, please explain why and provide what information and descriptions you may believe useful to the IWG in its effort to determine the scope of the definitional issues.
ATTACHMENT TO QUESTIONNAIRE

Comments of Dr. Bulent Sözer, Turkey

I. Introduction

Human beings, because of several reasons and originating from different impulses, had, and still have, strong tendency towards moving. To be able to move easily, efficiently, economically, both themselves as well whatever objects they thought of moving; they have invented several means of transportation, which we may collectively refer to as vehicles.

Primitively, they were put to use either through efforts of living beings or by relying upon the means provided by nature. Later on came the technical innovations and the machine; hence the gradual developments from oar and sail to steam, from ox and horse to locomotives and trucks. Birds were always a great source of awe and inspiration, finally leading the way to aircraft.

Looked at from this perspective ship, since the appearance of the first floatable article, whether a raft made by tying together couple of woods or a hollow craft put to sea after carving out a tree, was identified with one purpose or function: Moving/transporting/carriage.

Transporting, carrying human beings and/or goods were, of course, not being done without an objective and plan. Additionally, actual carriage imposed the need for particular plans, rules and procedures and gradually some technical facilities.

Therefore, it is quite understandable and was even logical that the initial definitions for ship in the earlier legal rules took into regard this conventional aspect/function (raison d'etre) of this device, i.e. carriage; sometimes complementing it with a reference to how this function is actually performed, i.e. navigation.

Gradually, the ship, while performing its basic function, started to cause some undesirable consequences, and adversely effect several interests.

They, for instance, sink and depending on the location, create danger for the other ships.

They, despite the vast, and speaking figuratively, the limitless area within which they roam, somehow collide with each other and cause loss of life and limb as well as material harm.

Replacing the means of propulsion that are offered by the nature with the alternative, which is derived from machine gave rise to entirely different category of problems, threatening and indeed severely and relentlessly damaging the nature as well many more interests.

Regarding this latter case, the problem arose from two different sources: Pollution caused during the carriage of the polluting object and caused when such objects were put to use.
Moreover, because of some economic reasons, people were compelled to search for whatever resources may there be under the sea, even underneath the seabed, and had to design and built some, nearly indefinable structures, which became an entirely different source of danger.

With each innovation and development in technology, law was presented with novel areas, actually problems, to regulate and cope with. While trying to discharge this recurrent responsibility, the law necessarily, but perhaps sometimes rather narrowly, approached the problems by taking into regard the core issues and formulated provisions, including of course, the definitions, to address the subject matter (or ratio legis) of the proposed regulation.

This very brief introduction was submitted to remind the members of the profession the difficulty in finding an all-embracing definition for ship.

One possible approach to this problem may be to take the conventional characteristics of this object and use the two basic distinguishing elements, i.e. carriage and navigation, to formulate a definition.

Another option may be to also take into regard the other and more modern functions of ships and such other structures that through some rules were also recognised as ship, and combining the above mentioned conventional elements with the distinguishing features of the contemporary functions of ship. This latter option, admittedly, would be rather a lengthy formula.

The vital point in this task would be to properly discern and extract the core elements/aspects of different services and/or objectives ships are put to use recently.

II. Categorisation of the Relevant Conventions

First it looks appropriate to categorise international conventions into two main groups, based on whether they contain a definition for ship or not:

* For those that contain a definition, see attachment 1
* For those that do not contain a definition, see attachment 2

III. Conventions That Contain A Definition Can Further Be Categorised, First, By Taking Into Regard Their Scope And Objective:

1. Conventions that regulate traditional / ordinary areas of maritime law, (conventions for general maritime operations / general commercial undertakings) particularly carriage:


   Art. 1/d: "Ship" means any vessel used for the carriage of goods by sea.

Art. 2: "Ship" means any self propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of less than 500 gross registered tons.

# Athens Convention Relating to the Carriage of Passenger and their Luggage By Sea, Athens, 13 December 1974

Art. 1/3: "Ship" means only a sea-going vessel, excluding an air-cushion vehicle.

# Consolidated text of the Athens Convention Relating to the Carriage of Passenger and their Luggage By Sea, 1974 and the Protocol of 2002 to the Convention

Art. 1/3: "Ship" means only a sea-going vessel, excluding an air-cushion vehicle.


Art. 15/5-b: This Convention shall not apply to:

(a) air-cushion vehicles;

(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Notes & Comments

These conventions were drafted to cover the most traditional, regular area of the maritime law, i.e. carriage. Therefore, the definitions they give are directed to this area and as can be seen in the list provided in attachment 2, some of the conventions also regulating this area do not even give a definition, because the drafters, most probably, thought it unnecessary to declare what people, particularly at those ages, acknowledge and identify without much discussion.

One common denominator, or in other words, the core, as well as the sole, element in the definitions, is the function to carry / transport. This element is complemented, though in some texts rather impliedly, with the second feature, i.e. navigation.

Therefore, from the point of view of these conventions, to define a ship the central, or distinguishing element would be carriage with the capacity to navigate and the ship would be taken as a physical structure used to carry passenger and/or goods. Any other type / category of physical structure / construction would not be acknowledged as a ship; equally, any type / category of structure not build or available to carry passenger or goods and able to navigate in sea would not be defined as a ship.
This is highly relevant in the *Hague Rules* as well as in the *Convention on Registration of Ships*.

*Athens Convention* and *2002 London Protocol* do not very explicitly mention this element, but, when taken the subject matter together with the definition, it becomes quite apparent that the term *sea-going vessel* includes only the conventional passenger ship, with may be capacity to carry the cars the passengers may like to have within their reach. Exclusion of the *air-cushion vehicles* could support this view, confirming the intention of the drafters to refer only to the traditional / customary ship.

*London Convention of 1976 (LLMC)*, may not reflect this understanding explicitly enough, but the relevant expressions, together with the overall tenor of the LLMC are enough indications that this Convention also takes the traditional / customary ship as the subject matter.

When looked at more closely, the Convention, takes the *seagoing* ship as the focal point, although without further expanding on the concept.

To support this conclusion, we would like to refer, first, to art. 3, which excludes several categories of claims from the application of the Convention that are more likely to be caused by vessels with particular construction and used in more specialised functions.

Art. 15/5 can be indicated as one of the typical provisions leading us to the conclusion that the drafters had in their minds the conventional *ship*.

2. **Conventions that regulate a particular area, especially pollution:**

   # International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29 November 1969

   Art. II/2: "*ship* means

   (a) any *sea-going vessel of any type whatsoever*, and

   (b) any *floating craft with the exception of an installation or device engaged in the exploration and exploitation of the sea-bed and the ocean floor and the subsoil thereof*.


   Art. 2/4: *Ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms*.

   # International Convention on Civil Liability for Oil Pollution Damage, London, 27 November 1992
Art. I/1: "Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.


Art. 1/2: "Ship" [has] the same meaning as in Article I of the 1992 Liability Convention.


Art. 1/1: "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.


Art. 1/1: "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.


Art. 2/3: Ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type.

Notes & Comments

This group of conventions were drafted to address the problems arising from a particular cause and to provide remedies / solutions to the consequences of such causes and / or means to prevent them from materialising.

The main focus of these conventions is protection of the environment and the subject matter is oil. These conventions cover a wide area and each gives a definition, not necessarily by being faithful to the standard characteristics, or defining features, of the ship in its conventional sense, but rather gave prominence to the objective or ratio legis of the convention.

The drafters, understandably, looked into any and all containers, which can hold oil as well as tools / equipment that functions / works with oil and therefore can be a potential source of danger to environment, human beings, natural resources, etc. and tried to identify them as objects of liability. Accordingly, the focal point of the definitions taking place in these conventions is this substance / material, called oil.
Depending on the way the oil was used or where it was put / stored / kept, different definitions were used to cover as much contingency as possible.

However, it should be added that, these conventions still include the characteristic defining element of ship.

3. Conventions that regulate one specific area objective / single purpose conventions:

# International Convention on Salvage, London, 28 April 1989

Art. 1/b: Vessel means any ship or craft or any structure capable of navigation.

Art. 3: This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed minerals resources.

Notes & Comments

This Convention, covering one highly important subject matter, took as a focal point, the most typical defining feature of a ship, navigation (art. 1/b).

The Convention, to confirm this approach, in art. 3, excluded from its application such crafts that are although capable of navigating, when not used for a purpose that requires navigation.

Therefore, capacity to navigate would be the criterion to determine whether a particular object could be taken as a ship or not. Additionally, those objects that are defined in art. 3, while in principle recognised as a ship, shall not be treated as a ship, when employed for stationary purposes, i.e. such purposes that do not require navigation.

These provisions lead to couple of questions:

* Will the objects, coming within the scope of art. 1/b and by definition remain outside of art. 3, be still treated as a ship, while they are used for stationary purposes also, e.g. a cargo vessel used as a warehouse or a passenger ship used as a hotel. It is submitted that they should.

Art. 1/b does not contain any condition as there is in art. 3. Therefore, the objects / structures that are specified in art. 1/b shall always be regarded as a ship, provided they are capable of navigation; in other words, capacity to move or to be moved.

* Art. 3, actually does not only require mere immobility, but provides as an additional condition that the described objects must actually be used for the services mentioned. Therefore, if such objects were not in use for the defined purposes, but merely laid idle or, for instance, waiting to be repaired in a yard, it should safely be claimed that they could still be subject to the convention. Such objects / things while moving under motive power or being towed, in other words, while in movement, would understandably come within the scope of the Convention.
If that should be the case, then the criterion we have indicated, is a qualified one and one may reach the following conclusion: The objects that were not named in art. 3 shall always be treated as a ship, as long they fit into the definition of art. 1.

This element of mobility is also referred to in delimiting the ‘other property’ (arts. 1/a and 1/c), sic ... any property not permanently and intentionally attached to the shoreline ...

It now looks better to suggest that the criterion in this Convention is not navigation in the narrow sense of the word, but the ability / capacity to be able to move or in other words, mobility.

# Convention on the International Regulations for Preventing Collisions at Sea, London, 20 October 1972

Art. 3/a: The word ‘vessel’ includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transport on water.

Notes & Comments

This Convention takes carriage / transport as the criterion. It has a very large scope that includes seaplanes as well as hovercraft and hydrofoils. But, the peculiar point is that, although the objective of the Convention was to ensure safety in maritime traffic, by taking capacity to transport as the criterion, it now looks like it was more interested in ensuring the safety of the goods carried by sea. This, understandably, does not mean that the Convention ignores human life, since “transport on water / carriage by sea” includes carriage of passenger also.

The Convention, quite clearly, refers to any and all structures, that are capable of transporting passenger and/or cargo on water. Therefore, it is submitted that floating platforms, oil-rigs, or similar craft could be defined as a ship, since they all can carry physical objects as well as human beings, if and when that should be necessary.

Besides, this criterion is quite similar to the one used in conventions referred to here in above under II/1; particularly to Brussels Convention, 25 August 1924 (The Hague Rules), the capacity to carry by sea was the criterion used in The Hague Rules as well in the Geneva Convention of 7 February 1986.

Keeping these questions in mind, carriage by sea appears as one of the common denominators in defining a ship.

# Rules for the Assessment of Damages in Maritime Collisions, Lisbon, 29 February 1998

Art. Definitions: “Vessel” means any ship, craft, machine, rig or platform whether capable of navigation or not, which is involved in a collision.
Notes & Comments

This Document, since it is not a convention in the proper sense of the word, takes an occurrence / an incidence, as a criterion: collision. The Convention that regulates collision, i.e. *International Convention for the Unification of Certain Rules of Law Relating to Collisions Between Vessels, Brussels, 23 September 1910*, does not contain any definition.

Drafters of the Lisbon Rules, apparently, was not much interested in what collides with what, but merely with the event itself, i.e. *the collision*.

To be able to navigate was not regarded as an element of definition also.

Only by way of -and rather indirect- inference, one may suggest that the collision needs to take place in the sea and the colliding objects / things ought to be able to keep afloat.

How one can determine whether one or both of the colliding objects could be treated as a ship? Brussels Treaty of 1910, which one could take as the basic document regulating legal issues on collisions, does not include a definition for ship also.

Again by way of inference (more direct this time) one can maintain that the Brussels Convention takes as ship such objects that can both navigate and carry passenger and goods. But, the Lisbon Rules leaves aside both the capacity to navigate and to transport human beings and goods by sea.


Art. 1: *For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any floating craft.*

Notes & Comments

It should be possible to say that this Convention takes, as the distinguishing element, the capacity to float.

Any object / thing that is permanently attached / fastened to the sea-bed, that is to say, such objects / things that are not in a position to move freely, were excluded.

This definition implies capacity and readily availability to navigate. The title of the Convention also indicates that the drafters took navigation as the focal point and thought of providing security for the objects / things that navigate. Therefore, one could say that navigation is the criterion for this Convention.

This definition leads us to accept that the physical appearance and/or structure of the object / thing is not important; also the purpose of the object is not regarded as a defining element.
One aspect of the definition, though, raises a question: What happens when a vessel is not attached to the sea-bed, but tied to shore? Assuming also that the vessel was tied permanently.

Furthermore, being attached to sea-bed and capacity to float are not situations that are mutually exclusive, floating oil-rigs are attached to sea-bed so that they should not drift.
**TERMS USED in CONVENTIONS**


Art. 1/d: "Ship" means any vessel used for the carriage of goods by sea.


Art. 2: "Ship" means any self propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of less than 500 gross registered tons.

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Art. 15/5-b: This Convention shall not apply to:
(a) air-cushion vehicles;
(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.


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Art. 2/3: Ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type.


Art. 1: For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any floating craft.
CONVENTIONS WITHOUT DEFINITION


# Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, Brussels, 23 September 1910

# International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Ships, Brussels, 10 April 1926


# International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, Brussels, 10 October 1957

# International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels, 10 April 1926


# International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952

# International Convention on Arrest of Ships, Geneva, 12 March 1999

# International Convention on Maritime Liens and Mortgages, Geneva, 6 May 1993

