



## **REPLY BY THE NEDERLANDSE VERENIGING VOOR VERVOERRECHT (NVV) (DUTCH TRANSPORT LAW ASSOCIATION) TO THE CMI QUESTIONNAIRE OF 8 MARCH 2016 WITH REGARD TO VESSEL NOMENCLATURE**

### **Introduction**

The Kingdom of the Netherlands is made up of four separate countries:

- the Netherlands
- Aruba
- Curaçao
- Sint Maarten.

Each of the countries has its own government that is responsible for the legislation applying in the particular country. However, within the country of the Netherlands there are two separate legal systems: the one applying in the Netherlands in Europe and the other in the Caribbean Netherlands on the islands of Bonaire, Sint Eustatius and Saba (the government of the Netherlands being responsible for the legislation applying in both jurisdictions). Consequently there are five different legal systems existing within the entire Kingdom. These are all civil law systems, and much of the main statute law applying in the different jurisdictions is identical. Article 39 of the *Statuut voor het Koninkrijk der Nederlanden* (Charter for the Kingdom of the Netherlands) contains the so-called ‘principle of concordance’. It provides:

1. Civil and commercial law, the law of civil procedure, criminal law, the law of criminal procedure, copyright, industrial property, the notarial profession, and provisions concerning weights and measures shall be regulated as far as possible in a similar manner in the Netherlands, Aruba, Curaçao and Sint Maarten.
2. Any proposal for drastic amendment of the existing legislation in regard to these matters shall not be submitted to or considered by a representative assembly until the Governments in the other countries have had the opportunity to express their views on the matter.

With this principle in mind the courts of the different countries within the Kingdom tend to interpret the law in a manner that unifies the law of the countries as much as possible (harmonious or concordant interpretation).

With regard to the topic of this CMI questionnaire the differences between the

separate jurisdictions is not very relevant. The differences mainly arise from the fact that there are inconsistencies in respect of ratification of international conventions: some of the conventions or their latest protocols may not be ratified for each and every jurisdiction, and may therefore have not been incorporated in national law. Furthermore, as there is no inland navigation of note in the Dutch Caribbean (i.e. the Caribbean Netherlands, Aruba, Curaçao and Sint Maarten), provisions of inland navigation enacted in the law of the Netherlands in Europe have not been enacted in the Dutch Caribbean.

This reply is based on the law applying in the Netherlands in Europe. Where relevant we will make some comments about the position in the Dutch Caribbean.

*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.*

**Netherlands:** The equivalents in the Dutch language of the generic terms 'vessel' or 'ship' are *schip* (with the same etymology as 'ship'), *vaartuig* (from *varen* = moving on water (same etymology as 'to fare') + *tuig* = device (same etymology as 'tug')), and, usually for smaller vessels, *boot* (same etymology as 'boat'). These terms are used without too much consistency in a number of statutes. Sometimes the terms are defined to some extent. These definitions very often look rather alike.

The basic definition for *schip* in the context of private law is the one contained in Article 8:1 of the Dutch Civil Code (in force in the Netherlands in Europe since 1 April 1991, in the Caribbean Netherlands, Curaçao and Sint Maarten since 1 January 2001, and in Aruba since 1 January 2002):

1. In this Code 'ships' are all objects, other than aircraft, which, according to their construction, are destined to float and which float or have done so.
2. By Regulation objects which are not ships may be designated as such for the purposes of the provisions of this Code; equally, provisions of this Code may be declared inapplicable to objects which are ships.
3. Propulsion equipment and other machineries become component parts of the ship at the time when, after their installation, their attachment to the ship is such as it will also be after the completion of the ship.
4. The 'ship's appurtenances' are those things which, not being component parts of the ship, are destined to serve the ship durably and which are recognizable as such by their form, as well as the means of navigation and communication connected to the ship in such a manner that they cannot be separated therefrom without significant damage to them or to the ship.
5. Save as otherwise stipulated, the ship's appurtenances are also considered as belonging to the ship. A term containing a derogation can be entered in

- the public registers referred to in Section 2 of Title 1 of Book 3.
6. For the purposes of paragraphs 3, 4 and 5 of this article, a ship also includes a ship under construction.

The use of the words ‘In this Code’ makes it clear that the definition in principle applies throughout the entire Dutch Civil Code. The definition is therefore relevant for issues relating to the law of obligations (contracts of carriage of goods or passengers and related contracts; collision; salvage; general average; third-party liability for dangerous or hazardous goods) and relating to property law (ship registration; rights attaching to the ship such as hypothec, pledge, usufruct, privileges (maritime or statutory liens), the right of detention (possessory lien) and limitation of liability).

However, in other parts of the Dutch Civil Code the basic definition is enlarged, limited or otherwise changed for specific purposes, particularly where the text of the Dutch Civil Code is based on international conventions. We will deal with those in more detail under question 2.

It is noted that ‘construction’ and ‘floating’ are the main criteria for an object to be characterized as a ship. ‘Navigation’ (which is part of the notion of *vaartuig*) was explicitly rejected as a criterion by the legislator, as it would imply an undesirable narrowing of the class of objects. It follows a fortiori that ‘transportation’ or ‘propulsion’ or other criteria (length, tonnage, intended trade or usage) than design (construction) and buoyancy (floating) are not considered relevant for the basic definition.

The legislative history of the article indicates that ‘to float’ was used instead of ‘to float on water’ in order to include submarine craft. It also notes that ‘to float’ (*drijven*) was preferred over ‘to fare’ (*varen*) as the latter would indicate (in Dutch of course) some movement in a certain direction through human interference. The intention, however, was to include objects without means of propulsion and objects towed by other ships. The legislative history also makes it clear that living beings, whales, tree trunks (unless joined into a raft), flotsam, and refuse are not to be considered a ship. A seaplane (float plane, flying boat) is not considered a ship. A hydroplane and a floating offshore installation are considered ships. But when a floating offshore installation becomes permanently fixed to the sea floor it loses its purpose to float, and is no longer a ship. The same applies to floating box caissons which are sunk to become part of some permanent water works. A wreck remains a ship (‘which float or have done so’) unless (or until) it loses its purpose to float. The *Hoge Raad* (the Dutch Court of Cassation) has ruled that a jack-up is a (sea going) ship (HR 28 May 2004, [ECLI:NL:HR:2004:AP0226](#), S&S 2015/13, ‘G’). A ship under construction which has not yet floated is not a ship (yet). In a case of damage caused by a ship under construction while being launched from a slipway, the *Rechtbank Rotterdam* (Rotterdam District Court) ruled that floating means that the weight of the object must predominantly be carried by water. The mere touching of the water by a small part of the object cannot be considered floating, but it would be possible for an object to float although some part of it rests on land (Rb. Rotterdam [ECLI:NL:RBROT:2013:BZ6053](#), S&S 2013/138,

'Oleg Strashnov'). The most notable example of a ship under Dutch law is a rubber duck, provided it was made to float in someone's bathtub and has done so.

Article 8:2 of the Dutch Civil Code (the Civil Codes applying in the Dutch Caribbean differ on certain points) provides the definition of sea-going ship:

1. In this Code 'sea-going ships' are ships which are entered as sea-going ships in public registers referred to in Section 2 of Title 1 of Book 3, as well as the ships which are not entered in those registers, and which, according to their construction, are exclusively or principally destined to float at sea.
2. By Regulation ships which are not sea-going ships may be designated as such for the purposes of the provisions of this Code; equally, provisions of this Code may be declared inapplicable to ships which are sea-going ships.
3. In this Code 'sea-going fishing ships' are sea-going ships which, according to their construction, are exclusively or principally destined for commercial fishing.

Article 8:3 of the Dutch Civil Code (there is no equivalent provision in the Civil Codes applying in the Dutch Caribbean) provides the definition of inland navigation ship:

1. In this Code 'inland navigation ships' are ships which are entered as inland navigation ships in the public registers referred to in Section 2 of Title 1 of Book 3, as well as the ships which are not entered in those registers and which, according to their construction are neither exclusively nor principally destined to float at sea.
2. By Regulation ships which are not inland navigation ships may be designated as such for the purposes of the provisions of this Code; equally, provisions of this Code may be declared inapplicable to ships which are inland navigation ships.

Article 8:3a of the Dutch Civil Code provides the definition of aircraft:

1. In this Code 'aircraft' are all machines which can be kept in the atmosphere as a result of forces that the air exerts thereon, with the exception of machines which, according to their construction, are destined to move on an air cushion that is being kept between the machine and the surface of the earth.
2. (...)

Reading Article 8:1 sub (1) and Article 8:3a sub (1) of the Dutch Civil Code together makes it clear that hovercraft/air-cushion vehicles fall under the general definition of ship of Article 8:1 sub (1) of the Dutch Civil Code. But as will be shown below question 2, hovercraft are explicitly excluded from the more specific definitions.

Although in principle only applying within the ambit of the Dutch Civil Code ('In this Code') the definition(s) provided in the Dutch Civil Code are directly relevant for other

legislation which is based on or directly connected to the subject matter dealt with in the Dutch Civil Code. Some relevant examples would be the Dutch Code of Civil Procedure and the Cadastre Act (the Cadastre being the organization responsible for the public registers and therefore for the registration of ships).

As indicated earlier, the term *vaartuig* is used in other legislation, particularly legislation predating the entry into force of Article 8:1 of the Dutch Civil Code, for instance the Dutch Criminal Code and the Dutch Code of Criminal Procedure. A true definition of *vaartuig* is lacking, and the interpretation may in fact vary for each statute. However, it is clear that motion or navigation (whether or not by its own means of propulsion) is an essential element which, as said, is absent in the definition of *schip* of Article 8:1 of the Dutch Civil Code.

*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?*

**Netherlands:** Yes. See the following particular examples.

*Ship registration; rights attaching to a ship; and rights attaching to objects on board.*

With regard to Sections 2 to 5 of Title 3 of Book 8 of the Dutch Civil Code Article 8:190 of the Dutch Civil Code provides:

1. In Sections 2 to 5, inclusive, of Title 3 'ships' include ships under construction. (...).

Sections 2 to 5 of Title 3 deal with registration of sea-going ships; rights attaching to a sea-going ship such as hypothec, pledge, usufruct; privileges (maritime or statutory liens) and the right of detention (possessory lien); and rights attaching to objects on board. As a consequence an object which is under construction to become a (sea-going) ship, but which has not yet floated, may be registered as a (sea-going) ship, and may be subject to a hypothec (and other rights). This ensures that the construction of the ship may be financed by loans secured by hypothec.

With regard to Sections 2 to 6 of Title 8 of Book 8 of the Dutch Civil Code Article 8:780 of the Dutch Civil Code provides:

1. In Sections 2 to 6, inclusive, of Title 8 'ships' include ships under construction. (...).
2. In Sections 2 to 6, inclusive, of Title 8 'inland navigation ships' also include hydrofoils, ferryboats, as well as dredgers, floating cranes, elevators and all floating equipment, pontoons or equipment of similar nature satisfying the requirements, mentioned in Articles 1 and 3, with respect to inland navigation vessels.

Sections 2 to 6 of Title 8 deal with the same subject matter regarding inland navigation ships as Sections 2 to 5 of Title 3 do regarding sea-going ships, with the addition of hire-purchase of inland navigation ships. (There are no equivalent provisions for sea-going ships on this point.) Article 8:780 sub (2) of the Dutch Civil Code is derived from the [Convention on the Registration of Inland Navigation Vessels, Geneva, 25 January 1965](#), which also shows there is an international basis for including floating objects without their own means of propulsion.

In the absence of inland navigation of note in the Dutch Caribbean Article 8:780 and (Sections 2 to 6 of) Title 8 have no equivalent in Book 8 of the Civil Codes applying in the Dutch Caribbean.

#### *Enforcement/Judicial Sale*

With regard to effecting an attachment for the enforcement of claims against ships and the judicial sale of ships Article 562a Dutch Code of Civil Procedure provides:

In this Title ‘ships’ include ships under construction.

This provision was introduced in the Dutch Code of Civil Procedure at the same time as the entry into force of the Book 8 of the Dutch Civil Code with the new provisions relating to ships.

#### *Contracts for the carriage of passengers*

With regard to contracts for the carriage of passengers by sea Article 8:500 heading and sub (j) of the Dutch Civil Code provides:

In this Section the following terms mean:

(…)

(j) ‘Ship’: a seagoing vessel, excluding an air-cushion vehicle; (...)

This definition is directly derived from Article 1 sub (3) of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 (left unamended by the 2002 Protocol). Although in the Dutch text the word *schip* is used twice (*schip: een zeegaand schip*) the interpretation should follow the convention text, using vessel. This Article 8:500 heading and sub (j) of the Dutch Civil Code was introduced on 31 December 2012 in connection with the ratification of the Athens Convention. Before that time the provisions regarding carriage of passengers by sea did not have a particular definition for ship, and the general definition of ship was applied. As only the Netherlands in Europe is party to the Athens Convention, the Civil Codes applying in the Dutch Caribbean have not been amended, and therefore do not have a particular definition for ship.

The provisions regarding carriage of passengers by inland waterway (which only exist

in the Netherlands in Europe) do not have a particular definition for ship. The general definition of ship is applied.

### *Salvage*

With regard to salvage Article 8:551 heading and sub (b) of the Dutch Civil Code provides:

In this Section the following terms mean:

- (...)
- (b) ‘vessel’: any ship or craft, or any construction capable of navigation;
- (...)

This definition is directly derived from Article 1 heading and sub (b) of the International Convention on Salvage 1989, London 28 April 1989.

The same definition applies for salvage on inland waterways.

### *Third party liability for incidents with dangerous goods*

With regard to third party liability for incidents with dangerous goods on board a sea-going ship Article 8:620 heading and sub (b) of the Dutch Civil Code (only applying in the Netherlands in Europe) provides:

In this Section the following terms mean:

- (...)
- (b) ‘ship’: a seagoing ship, not being an air-cushion vehicle
- (...)

Although the contents of the Section are based on the [Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels \(CRTD\), Geneva, 10 October 1989](#). This convention was not intended to apply to sea-going ships. It has the following definition of ship:

"Ship" means any vessel or craft, not being a sea-going ship or sea-borne craft, of any type whatsoever.

Therefore the Dutch legislator was free to adopt its own definition for sea-going ships. (Air-cushion vehicles are excluded here and treated as road vehicles elsewhere in the Dutch Civil Code in respect.)

Similarly with regard to third party liability for incidents with dangerous goods on board an inland navigation ship Article 8:1030 heading and sub (b) of the Dutch Civil Code (only applying in the Netherlands in Europe) provides:

In this Section the following terms mean:

- (...)
- (b) ‘ship’: an inland navigation ship, not being an air-cushion vehicle
- (...)

#### *Liability for incidents of bunker oil pollution*

With regard to liability for incidents of bunker oil pollution Article 8:639 heading and sub (d) of the Dutch Civil Code (only applying in the Netherlands in Europe) simply provides:

In this Section the following terms mean:

- (a) ‘Convention’: the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, adopted in London on 23 March 2001 (...);
- (b) (...)
- (d) ‘Ship’, ‘person’, ‘bunker oil’, ‘preventive measures’, ‘incident’, ‘pollution damage’, ‘State of the ship’s registry’, ‘gross tonnage’, ‘organization’ and ‘Secretary-General’: the meaning defined in Article 1 of the Convention;

There are no similar inland navigation provisions

#### *Wreck removal*

With regard to wreck removal Article 8:655 of the Dutch Civil Code provides:

In this Section the following terms mean:

- (a) ‘Convention’: the International Convention on the Removal of Wrecks adopted in Nairobi on 18 May 2007 (...);
- (b) ‘Wreck’, ‘ship’, ‘maritime casualty’, ‘hazard’, ‘registered owner’, ‘State of the ship’s registry’: the meaning defined in Article 1 of the Convention;

At this moment the Nairobi Convention only applies in the Netherlands in Europe, so the Civil Codes applying in the Dutch Caribbean contain no equivalent provision.

#### *Global limitation of liability*

With regard to global limitation of liability for sea-going ships Article 8:750 sub (4) of the Dutch Civil Code provides:

In this Title a ‘ship’ means a sea-going ship. A ship under construction is also considered a ship for the purposes of this Title from the time its launching commences. An air-cushion vehicle is not considered a ship for the purposes of this Title. A platform constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof and that can float is not considered a ship for the purposes of this Title during the period that it rests on the seabed.

This definition seems to be a combination of Article 2 (seagoing ship) and Article 15 sub (5) (air-cushion vehicles and platforms) of the Convention on Limitation of Liability for Maritime Claims, London 19 November 1976, with the addition of ships under construction.

With regard to global limitation of liability for inland navigation ships Article 8:1060 sub (4) and (5) of the Dutch Civil Code (only applying in the Netherlands in Europe) provides:

4. In this Title 'inland navigation ships' include hydrofoils, ferries and small craft, dredgers, floating cranes, elevators and all other floating and movable equipment, pontoons or equipment of a similar nature satisfying the requirements of Articles 1 and 3 of this Book with regard to inland waterway vessels.
5. A ship under construction is also considered a ship for the purposes of this Title from the time its launching commences. An air-cushion vehicle is not considered a ship for the purposes of this Title.

This definition seems to be a peculiar combination of Article 1 sub (2)(b) of the [Strasbourg Convention on the Limitation of Liability of Owners of Inland Navigation Vessels \(CLNI\), Strasbourg, 4 November 1988](#) and Article 1 sub 1 (b) of the [Convention on the Registration of Inland Navigation Vessels, Geneva, 25 January 1965](#)

#### *Other*

Where other conventions as listed by Professor Sözer were ratified for the Netherlands in Europe and implemented by more specific legislation, the definition of ship generally follows the convention text closely:

- International Convention Relating to the Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels 29 November 1969 (as amended) – *Wet bestrijding maritieme ongevallen* (Act on the Combatting of Maritime Casualties);
- Convention on the International Regulations for Preventing Collisions at Sea, London 20 October 1972 – *Scheepvaartverkeerswet* (Ships Traffic Act);
- International Convention for the Prevention of Pollution from Ships, London 2 November 1973 (as amended) and the International Convention on Oil Pollution Preparedness, Response and Co-operation, London 30 November 1990 – *Wet voorkoming verontreiniging door schepen* (Act on the Preventing of Pollution from Ships);
- International Convention on Civil Liability for Oil Pollution Damage, London 27 November 1992 – *Wet aansprakelijkheid oliestankschepen* (Oil Tanker Liability Act)(We note the existence of the IOPCF document: [Guidance for Member States 2016 Edition Consideration of the definition of 'ship'](#));
- International Convention of the Establishment of an International Fund for Compensation of Oil Pollution Damage, London 27 November 1992 – *Wet schadefonds oliestankschepen* (Oil Tanker Liability Fund Act).

There is other legislation applying in the Netherlands or the Dutch Caribbean using some variation of the notion of ship. We thought it would be unnecessary to provide a truly comprehensive list. There is a clear general picture: the Civil Code contains a general definition which is very wide; in other places within the Civil Code the definition may be even wider or rather more limited depending on the particular purpose or the origin of the provision (convention). Other legislation may also contain a somewhat different notion of ship, which may or may not be very well defined.

*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.*

**Netherlands:** Distinct statutory provisions will indeed apply, but the procedure is largely similar to the seizure, foreclosure, and forced sale of registered property (real estate) or moveables, depending on whether the ship is a registered ship or not. The one thing that perhaps stands out is that ‘judicial’ sales normally take place before a civil law notary, but that the person enforcing a claim against a foreign ship has the option to have the ship judicially sold by the court. The option was created to increase the chance of recognition of the judicial sale in countries unfamiliar with the civil law or latin notarial system (particularly common law countries).

With regard to the ranking and priority of claims against ships there is a distinct system. The Netherlands is not a party to any of the maritime liens and mortgages conventions (1926, 1967, 1993 – see also question 4). Instead it has based its national system of (ranking of) liens on ships on [Protocol Nr 1 to the Convention on the Registration of Inland Navigation Vessels, Geneva, 25 January 1965](#), regardless of whether the ship is a sea-going ship or an inland navigation ship (the latter of course not recognized as a separate category in the Dutch Caribbean).

With regard to recognizing (foreign) liens on (foreign) ships the Netherlands in Europe has its own distinct conflict of law rule. Article 10:160 of the Dutch Civil Code provides:

1. If, in the event of a bankruptcy or judicial sale, the proceeds of a registered ship are to be distributed in the Netherlands by the court, the question whether a claim submitted in such proceedings exists and, if so, in what amount, shall be governed by the law which is applicable to that claim.
2. Whether a claim as referred to in the preceding paragraph is privileged and, if so, the scope, rank and consequences of such privilege, are to be decided by the law of State where the ship was registered upon commencement of the bankruptcy or sale. In determining the ranking of claims, however, priority over claims secured by hypothec shall only be attributed to those claims which have such priority under Dutch law.

3. No priority shall be attributed to a claim which, under the law applicable thereto, is not privileged on the ship.
4. Subparagraphs 2 and 3 apply mutatis mutandis to the recoverability of a claim against the ship.

Summarizing, there is a two tier system of the *lex causae* and the *lex registrationis* (which may not be the law of the flag) for allowing a claim to be recovered from the ship and enjoy the priority ranking of the *lex registrationis*. For the claim to be ranked above mortgage/hypothec a third test of the *lex fori* has to be passed.

Article 10:160 replaced a two tier system of the *lex causae* and the *lex fori* which was developed in court judgments. The question therefore is whether this system still applies in the Dutch Caribbean, or whether the courts in the Caribbean Netherlands, Aruba, Curaçao or Sint Maarten will – on the basis of the principle of concordance – shift to applying similar rules as laid down in Article 10:160 of the Dutch Civil Code as it applies in the Netherlands in Europe.

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

**Netherlands:** No.

*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?*

**Netherlands:** No. It may be relevant for its status as either a seagoing ship or inland navigation ship under Articles 8:2 and 8:3 of the Dutch Civil Code.

*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?*

**Netherlands:** There are conflict of law rules regarding the recognition of proprietary interests in ships (Article 10:127 of the Dutch Civil Code) or rights attaching to ships (Article 10:160 of the Dutch Civil Code), but these rules presuppose the classification of the object as a ship. This question of classification as a ship is to be regarded as an incidental question in the conflict of laws. Article 10:4 of the Dutch Civil Code provides in this respect:

If, by way of an incidental question, a question arises as to the legal effect to be

given to a fact in connection with any other question subject to foreign law, the incidental question shall be considered as an independent question.

But there is no Dutch (written) conflict of law rule to the question of recognition of foreign registered ships as ships or as registered objects as such. The *lex registrationis* or the *lex fori* (Dutch law) would seem to be the most likely to be applied. One would assume that an object registered as a ship in a certain country would in most cases be regarded a ship under the laws of that country (*lex registrationis*) If, however, Dutch law was to be applied as the *lex fori* it would be difficult to imagine an object registered as a vessel in another jurisdiction not be treated as a ship in the Netherlands in view of the very wide definition of 'ship' in the Dutch Civil Code.

*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*

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*2. self-propelled barges*

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*3. accommodation barges*

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*4. Mobile Offshore Drilling Units*

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*5. wind turbine towers (floating or permanently fixed)*

**Netherlands:** No known decision, but if the tower is floating it seems to be well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code. When it is permanently fixed it would have lost its purpose to float, and would no longer be a ship. (See above on p. 3 with regard to floating offshore installations and floating box caissons.)

*6. jack up drill rigs*

**Netherlands:** The *Hoge Raad* (the Dutch Court of Cassation) has ruled that a jack-up is a (sea going) ship (HR 28 May 2004, [ECLI:NL:HR:2004:AP0226](#), S&S 2015/13, 'G')

## *7. construction barges*

**Netherlands:** No recent decision, but seems well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

## *8. submarines*

**Netherlands:** No recent decision, but specifically mentioned in the legislative history of Article 8:1 of the Dutch Civil Code as falling within the class of objects considered ships.

## *9. seaplanes*

**Netherlands:** A seaplane (float plane, flying boat) is not considered a ship. (See above on p. 3.)

## *10. hydroplanes (air cushion)*

**Netherlands:** As far as we know a hydroplane is not to be confused with an air-cushion vehicle. A hydroplane is a type of powerboat which floats but, when sailing at speed, also uses lift (air) to reduce drag. In that sense a hydroplane is similar to a hydrofoil. There is no known decision on the issue whether a hydroplane is a ship, but as hydrofoils fall within the class of objects considered ships, hydroplanes likely will too. There is no known decision on the issue of air-cushion vehicles being a ship, but it is specifically mentioned in the legislative history of Article 8:1 of the Dutch Civil Code as falling within the class of objects considered ships. As indicated on p. 4 air-cushion vehicles are sometimes explicitly excluded from the more specific definitions of ship.

## *11. Vessels under construction*

**Netherlands:** Following the general definition of Article 8:1 of the Dutch Civil Code an object which has not yet floated (which could be a ship under construction) is not a ship. However, some specific definitions of ships include ships under construction, more particularly Article 8:190 and 8:780 of the Dutch Civil Code (Article 8:780 not applying in the Dutch Caribbean as it concerns inland navigation ships). But the *Gerechtshof 's-Gravenhage* (Court of Appeal of the Hague) ruled that on the other hand a ship which is in the water may still remain a ship under construction if the construction of the ship still needs to be completed ([ECLI:NL:GHSGR:2011:BQ9513](#); S&S 2011/122 – confirmed by the Dutch Court of Cassation in HR 28 February 2014, [ECLI:NL:HR:2014:440](#); S&S 2015/29). In that case 26 hulls of inland navigation vessels were constructed in China, launched into Chinese waters, registered in the Dutch ship's register, encumbered with Dutch registered ship hypothecs, and loaded onto a sea-going pontoon which was then towed to the Netherlands. A creditor of the owner of the hulls attached the hulls on arrival in the Netherlands and contested the ship hypothecs on the basis of the argument that ships under construction may only be registered in the Netherlands if they are under construction in the Netherlands, that

the hulls – although launched into water, and therefore ships – still remained ships under construction, making the registration (of a ship under construction in China) and the hypothecs void at the time. The Court of Appeal agreed.

*12. unmanned vessels*

**Netherlands:** No known decision, manning is not a criterion in deciding whether an object is a ship under Article 8:1 of the Dutch Civil Code.

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

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*14. Vessels in "cold layup"*

**Netherlands:** No recent decision, but is well within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*15. Derelict Vessels or "Dead Ships"*

**Netherlands:** No recent decision, but just like floating structures becoming permanently fixed to the seafloor derelict vessels or dead ships may have lost their purpose to float, and would therefore no longer be classed as ships.

*16. Vessels under Conversion or Renovation.*

**Netherlands:** No recent decision, but is well to remain within the class of objects considered ships under Article 8:1 of the Dutch Civil Code.

*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.*

**Netherlands:** Links to the relevant judgments (in Dutch) were included above.

*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.*

**Netherlands:** See above.

*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.*

**Netherlands:** See under question 7 sub 11 Vessels under construction.

1 December 2016

Committee Ad Hoc

Reinier P. van Campen  
Maarten H. Claringbould  
Pauline F.G.T. Hofmeijer-Rutten  
Willemieke Princée  
Kirsten Redeker-Gieteling  
Taco van der Valk  
Welmoed van der Velde