

CMI Ad Hoc Committee on Vessel Nomenclature

Background and Framework

In September of 2014, the U.S. MLA proposed that CMI:

undertake a new project to study the meaning and uses of the terms “ship,” “vessel,” “watercraft” or other relevant terms for marine property subject to international agreement and national laws. MLAUS believes that a global comparative study of the different regimes and approaches to this area would be invaluable to the CMI and its members. This would include, for example, the meaning of these terms when applied to registration, documentation and mortgaging of ships, applicability of civil and criminal statutes to vessels and their crew members, continued coverage of insurances as vessels move in, out of or through different geographical jurisdictions or in or out of different uses, such as service as FPSO’s, or in and out of cold layups or “permanent mooring.” The study would also consider the effects of gross tonnage, length, or area of usage of such property as it relates to inclusion or exclusion under concerned statutes.

On consideration, the CMI EXCO adopted the following resolution:

Resolution: That the CMI shall undertake research into the definitions of a ship, vessel and similar legal terms in various maritime jurisdictions, and into the legal significance thereof, as a new project to lead up to the New York Conference; that the Secretary-General convene and chair a start-up Ad Hoc Committee for this purpose, and shall invite the President of the US MLA to nominate a US member for that committee. The start-up committee shall then make recommendations to EXCO as to further membership and shall formulate for the

approval of EXCO, its terms of reference. Once the membership is expanded by EXCO, EXCO may consider upgrading the committee to an International Working Group.

Organization and Initial Steps

To date, Stuart Hetherington, CMI President, has appointed Francis X. Nolan, III (United States), as chair of the Ad Hoc Committee to pursue this matter and Edmund Sweetman (Ireland) as Rapporteur. Other Committee members include Jens Mathiasen (Denmark), Lawrence Teh (Singapore) and Ricardo Rozas (Chile). The first organizational meeting of the Ad Hoc Committee will be held during the Istanbul Meeting, June 7-9, 2015.

Objectives

The initial objective of the Ad Hoc Committee will be to gauge the scope and dimension of the variances in terminology and application of definitions from country to country and under international conventions, such as the Civil Liability Convention (1992). In addition, the Ad Hoc Committee should assess the severity of any problems and risks resulting from the variances and recommend to CMI EXCO what next steps should be taken, if any. Regardless of whether the Ad Hoc Committee recommends any remedial action by way of draft convention or otherwise, the Ad Hoc Committee shall be tasked to provide a report of its findings.

A questionnaire should be prepared by the Ad Hoc Committee to be sent to the CMI members requesting their input on the definitions of "ship," "vessel," "barge," "offshore" or "floating equipment" and comparable terms in their respective jurisdictions as applied to property registered in their jurisdiction, not registered anywhere and property registered elsewhere that enters into the respondent's jurisdiction.

In order to help put the responding MLA's into the picture, the Ad Hoc Committee should develop a prologue explaining by example the sorts of issues which concern us. A very early draft of comments for that purpose is attached here for consideration and further input from other Committee Members is invited.

Draft Statement of the problem:

There are terms in our various languages that call to mind what, in our English speaking world, might be categorized variously as “ships,” “vessels,” “barges,” “floating equipment.” Our individual legal systems as well as international conventions have used these terms to identify property for applications of various regulatory regimes, civil duties, privileges and obligations. In the first instance, categorization may depend on size and fact of self-propulsion. More troubling, individual nation states sometimes create different descriptive categories for the same physical property when employed in different functions or when not employed in any function. A striking example of this approach is recent U.S. case law which has effectively held that property is a vessel when capable of being used in transportation over water, but not when “permanently moored” or “withdrawn from navigation.” This same issue is understood to exist with respect to the meaning and use of the term “Ship” in English law.

One American lawyer complained that U.S. courts now fail to recognize the “existential vessel,” and instead define the term with reference to its present uses or employment, which are changeable. The result is that property which might be a “vessel” today, may not be such tomorrow. Will maritime liens, privileges and mortgages continue to attach to the property after its status changes?

Consider, for example, various types of floating exploration, production, storage and offloading vessels. Will these be treated the same as “trading vessels”? What is the status of quarter barges, power barges and other towable floating property with some specialized use? What is the status of unmanned submersibles and surface craft?

The results are sometimes uncertain within individual nations and flags. This becomes even more ominous where nation states differ in determining the status of the same movable property as it crosses from one jurisdiction to another.

Consider the case of trading vessels that are devoted either temporarily, permanently or indefinitely to stationary, non-traditional uses such as floating storage units. Are these no longer vessels? Or ships? Or barges? Do they re-enter the catalogue of vessels, ships or barges if and when they resume movement? Are the persons who work on such equipment or who encounter them treated differently depending on the use of the equipment at different points in time? How do underwriters categorize these and calculate risks and appropriate pricing?

What law will apply to them if they are no longer considered “vessels” or “ships” in the jurisdiction in which they are flagged (if flagged and registered)?

What law will apply in a jurisdiction other than the flag jurisdiction if and when they are employed or laid up away from home?

What constitute "dead ships", ships in "cold layups" or "permanently moored" vessels or ships? (Compare 1 year standard, versus 8 hours standard of the U.S. Coast Guard for determining "permanently moored.")

If the Marshall Islands registers a drill rig and allows recordation of a preferred mortgage on it, will another nation enforce the mortgage as such if, under the laws of the state of foreclosure, the rig would not be regarded as a "vessel" or "ship?"

What is the status and priority of a mortgage in such a case, if it fails as a preferred mortgage or hypothecation because the equipment is being used in such a way that the state of enforcement deems it not a "ship" or "vessel?"

As technological innovation and economic change multiply the uses for waterborne equipment, uniformity treatment of these assets appears to be suffering.