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THE NOTION OF 'SHIP' IN THE POLISH LAW.
SOME REFLECTIONS ON THE BASIS OF RESEARCH
CONDUCTED FOR THE PURPOSES
OF THE CMI QUESTIONNAIRE

The variety of definitions of the word '*ship*' is not only present in the laws of many countries around the world. It also appears in the maritime conventions. The first factor that should be noted at this stage is that these differences in the exact definition of 'ship' must be considered on two levels: firstly, in terms of the differences between national laws, and secondly in terms of the disparities which exist between the maritime conventions. The multiplicity of the conceptual terminologies currently employed by the international maritime conventions is not consistently reflected in various nations' legal systems. What is undoubtedly *simpler* than this, (although still not exactly straightforward in itself), are the systems prevailing in the countries where the Anglo-Saxon maritime conceptual grid has already been long-established. In such countries, the concepts of ships, vessels and boats are employed far more intuitively than where the above is not the case. An example of the Irish notion of 'ship' and 'vessel' will be discussed below. In Poland, as is the case with the majority of the countries of the Central and Eastern Europe, no such intuitive lexical ease is present – in these places the basic concept is the concept of a ship.

Recently the authors of this article have been involved in preparing the answers to the questionnaire for the purposes of the Comité Maritime International on the

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Polish regulations and case law concerning the definition of ‘ship’¹. Research has led to some interesting conclusions which will be shared with in this article. The main purpose of the article is to present a patchwork of notions of ‘ship’ under the Polish law, and with assistance of limited comparative research, to discover reasoning underlying the different approaches to this central object of the Polish maritime law.

Primarily, Polish law lacks a single definition of ‘ship’ since different understandings stem from the multiple international conventions as well as numerous statutes under national law. Poland is a party to many international conventions which contain the definitions of ‘ship’. According to the Constitution of the Republic of Poland of 2nd April 1997 the ratified international agreements are universally binding law of the Republic of Poland. Moreover, an international agreement ratified upon the prior consent granted by the statute (*ustawa*) enjoys precedence over the statutes in case of a collision². As such, the maritime conventions with their definitions of ‘ship’, after their proper promulgation, become a part of the domestic legal order and are to be applied directly (unless their application depends on the enactment of a statute). Moreover, the Polish Maritime Code adopts a legislative method of incorporation of an international convention consisting in the regulation of certain matters by referring, in the domestic legislation, to rules of international treaties³. Technicalities of such a method include indicating the title of the convention and place of its publication in the Polish Journal of Laws, but without reproducing its text in the Code. The implementing provisions are added if necessary. The incorporation method provides for the optimal convergence with international law⁴. Such a method has been adopted in respect of the Convention on Tonnage Measurement of Ships of 1969, CLC/FUND 1992, London Protocol 2003, BOPC 2001, LLMC 1996 and the Athens Convention of 1974. In cases of other areas of maritime law the Polish Maritime Code was modelled as to reflect the conventions’ content, for example: the Hague-Visby Rules, the SALVAGE Convention, the Brussels Collision Convention of 1910, the Liens and Mortgages Conventions of 1926⁵. In cases not governed by the conventions, Polish

¹ CMI International Working Group on Vessel Nomenclature, Questionnaire #1 (March 2016), available at: <http://www.cmi2016newyork.org/session-13>, last access: 13 July 2016.

² Article 87 and 91 of the Constitution of the Republic of Poland, Journal of Laws from 1997 No 78, item 483.

³ J. Łopuski, *The new Polish Maritime Code in: Maritime Law in the second half of the 20th century*, Toruń 2008, p. 90.

⁴ M. Dragun-Gertner, *Polskie ustawodawstwo morskie a prawo międzynarodowe*, Studia Iuridica Toruniensia, *Przemiany polskiego prawa*, t. II, (ed.) E. Kustra, Toruń 2002, p. 133.

⁵ The method of incorporation has been used also in the Prevention of Pollution from Ships Act as to, *inter alia*, the MARPOL Convention Journal of Laws 2015 item 434.

law provides its own definitions of 'ship'. The Polish Maritime Code in Article 2 contains a definition of 'seagoing ship', which is defined as any floating structure appropriated for or, used in maritime shipping⁶. The above definition indicates that it is enough for the floating structure to fulfil one of the prerequisites mentioned to be qualified as a ship. Therefore, the qualification depends either on the intention and will of the ship's operator⁷ to exploit a ship on the sea or the fact that a ship is used in such a way. The above definition led to the inconsistent qualifications of different floating structures, as floating cranes or floating drilling platforms by the Polish legal doctrine. Relying on the fact that a ship's main and predominant purpose should be operating in shipping some of the authors rejected floating cranes or a mobile drilling unit as ships⁸. Others were of the opinion that the floating crane or the floating drilling platform fulfils the prerequisites of Article 2 regardless of having or not having its own means of propulsion⁹. In our opinion, a narrow interpretation of the definition of 'ship' provided by Article 2 of the Maritime Code can be reasonably questioned. The floating platform or crane which is actually used in maritime shipping, even if not predominantly intended for that purpose, should be considered a ship under the Maritime Code. However, the above illustrates that the definition raises some concerns, and may lead to the different solutions what will be further developed while commenting on Polish case law. Thus, an attempt of clarifying the concept of a ship has been undertaken by the Codification Commission for Maritime Law, what will be discussed below. On the other hand, a common understanding is that a ship converted into a hotel or a wreck does not constitute a ship within the meaning of the Maritime Code¹⁰. Moreover, it is pointed out that a small floating structure such as a kayak or a raft does not fall within the definition of 'ship', although in the definition itself no measurement requirements exist (they appear at the stage of the ship's registration)¹¹. However, that has been the basis of many courts' decisions

⁶ Article 2 of the Maritime Code: *Statkiem morskim jest każde urządzenie pływające przeznaczone lub używane do żeglugi morskiej, zwane dalej "statkiem"*, Journal of Laws 2016 item 66. We believe it is necessary to clarify that a word 'ship' is employed by the authors, instead of 'vessel'. Although the drafters of the questionnaire suggest that a widespread understanding of a ship is adopted in MARPOL, including *inter alia* fixed platforms or air-cushion vehicles, we intentionally used a word 'ship', even though the definition in the Maritime Code does not cover such objects. Our decision was dictated by the understanding of 'vessel' under the SALVAGE convention.

⁷ In Polish: '*armator*', which is similar to the French concept of *armateur* or the Spanish *Es armador*: one who operates in shipping in his own name with his or somebody else's ship, Article 7 of the Maritime Code.

⁸ J. Młynarczyk, *Prawo morskie*, Issue 3, Gdańsk 2002, p. 78.

⁹ J. Łopuski, *Prawo morskie*, (ed.) J. Łopuski, t. II. 1, p. 52.

¹⁰ *Id.*, p. 51.; J. Młynarczyk, *op. cit.*, p. 79.

¹¹ S. Matysik, *Podręcznik prawa morskiego*, Warszawa 1975, p. 54.

discussed below. The Maritime Code furthermore divides the ships into three categories, depending on their purpose: merchant seagoing ships, seagoing ships employed exclusively for scientific research, for sports or recreation and seagoing ships used solely in special state service. The first category is the central object of the Maritime Code's norms. A merchant seagoing ship is defined as a ship appropriated for or employed in economic activity, in particular: the carriage of cargo or passengers, sea fisheries or exploitation of other maritime resources, towage, salvage, recovering sunk property, exploitation of the seabed mineral resources or resources of the inside of the Earth below the seabed¹². The above enumeration is only of the exemplary nature, which means that economic activity in which a merchant seagoing vessel maybe employed is not limited to those types. However, the above examples give an interpretative clue how to understand conducting economic activity in the maritime environment. The examples of bunkering or dredging activities are also suggested¹³. On the other hand, the seagoing ships used exclusively in special state service are in particular: hydrographic, supervising, firefighting, telecommunication, customs, sanitary, training, pilot ships, as well as the ships used only for saving life at sea or for ice braking¹⁴. The Maritime Code is applicable to this category of ships in the limited respect, i.e. with the exclusion of the norms on the carriage of goods, carriage of passengers, general average and maritime lines. The similarly limited applicability concerns the ships employed exclusively in sports, recreation or scientific research since the norms on the carriage of goods and passengers and general average are inapplicable¹⁵. In this instance particular attention should be drawn to the word 'exclusively'. If otherwise a seagoing recreational ship carries passengers for commercial benefit it is considered as a merchant seagoing ship by the Maritime Code. For the purposes of hypothecation and/or mortgage a concept of a seagoing ship under construction has been introduced to the Maritime Code, understood as a ship whose keel has been laid or similar construction work has been made in the place of launching [thereof], until the end of its construction.

It results from the above that generally the Maritime Code considers the seagoing merchant ships as the main object of its regulation. That is due to the fact that the Maritime Code of 2001 is of the predominantly private law nature. Contrary

¹² Article 3§2 of the Maritime Code: *Morskim statkiem handlowym jest statek przeznaczony lub używany do prowadzenia działalności gospodarczej, a w szczególności do: przewozu ładunku lub pasażerów, rybołówstwa morskiego lub pozyskiwania innych zasobów morza, holowania, ratownictwa morskiego, wydobywania mienia zatopionego w morzu, pozyskiwania zasobów mineralnych dna morza oraz zasobów znajdującego się pod nim wnętrza Ziemi.*

¹³ J. Łopuski, *op.cit.*, p. 57.

¹⁴ Article 5§2 of the Maritime Code..

¹⁵ Article 4 of the Maritime Code.

to its predecessor it does not include any public law regulations on maritime safety, which are covered by a separate statute. Similar to the solution adopted in international maritime law, also in the Polish legal order, the definition of 'ship' depends on the subject of particular law. The meaning of 'ship' is varied in the Polish Maritime Code, Safety Law, Marine Protection Law and Labour Law.

In the field of safety law the Polish Maritime Safety Act and Prevention of Pollution from Ships Act, contain definitions similar to the definition included in the International Convention for the Prevention of Pollution from Ships, London 1973. Article 5 of the Polish Maritime Safety Act defines the ship as a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating platforms – as long as the definition is not contrary to any of those found in the international conventions. Article 4.1 of the Prevention of Pollution from Ships Act defines a ship as a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, fixed or floating platforms. Those definitions are compatible with the MARPOL convention¹⁶. According to its Article 2/4, [a] 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. The above definition embraces a variety of structures which would not be treated as such under other statutes. The most obvious example being a fixed platform, which is a ship under the Act but definitely not covered by the ship's notion under the Maritime Code. Such a wide understanding of a ship is a natural consequence of the convention's *raison d'être*. It aimed at elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances. On the other hand, the Polish Labour at Sea Act, which implements the Maritime Labour Convention (2006) does not contain the definition of 'ship', basing on the MLC definition by adding the notion of 'non conventional ship' A non conventional ship is defined as a ship to which the convention shall not be applied. According to MLC a ship means a ship other than the one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where the port regulations apply. The Polish regulation contains the exemplification of the types of ships, which are not the subject of the Labour at Sea Act, such as: a ship employed for scientific and research purposes, a special public service ship, a ship engaged in fishing, navigating exclusively in inland waters or waters within, floating or fixed platforms¹⁷.

¹⁶ MARPOL definition pursuant to its Article 2/4 is: "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".

¹⁷ Article 2 of the Labour at Sea Act, Journal of Laws 2015 item 1569.

It would appear that the Polish legal system, in as far as the ship's nomenclature is concerned, mirrors the conventions' definitions of 'ship'¹⁸. Within the Polish legal system, the term 'vessel' seems to have a wider connotation than the term 'ship'. It is important to mention that the mutual relation of the definition of 'ship' and 'vessel' assumed by the Authors of the CMI International Working Group on Vessel Nomenclature, seems to point out that the term 'ship' is wider than the term 'vessel'. On the contrary, the Authors assume for the purpose of this article that the term 'vessel' has a wider connotation than the term 'ship'.¹⁹ The term 'vessel' is contained in Article 1b of the International Convention on Salvage (London, 1989). According to the aforementioned Article, a vessel means: "any ship or craft, or any structure capable of navigation". It is essential to clarify that the requirement of capability for navigation applies on the ground of the convention solely to 'any structures'. Pointing to *travaux préparatoires* F. Berlingieri indicates that the requirement of capability of navigation was meant to concern only otherwise very wide notion of 'structure' in order to restrict it²⁰. Thus, vessels and crafts are covered by the definition, irrespective of their being capable of navigation or not at the time when the salvage services are rendered²¹. Since no definition of 'ship' exists under the convention, the applicable law will determine its scope. Poland, at first, had implemented the provisions of the Salvage Convention into the Polish Maritime Code of 2001, later in 2006 ratified it, making reservations at the IMO. In accordance with the provisions of Article 30, paragraph 1(a), (b) and (d) of the Convention, Poland reserved the right not to apply the provisions of the Convention when: the salvage operation takes place in inland waters and all vessels are inland navigation vessels, or the salvage operations take place in inland waters and no vessel is involved, or the property involved is maritime cultural property and of prehistoric, archaeological or historic interest and is situated on the seabed.

The above mentioned Polish definitions, even if they basically correspond to those included in the maritime conventions, might cause some discrepancy. The basic inaccuracy that appears after comparing the conventional and Polish legal definitions of 'ship' and 'vessel' is the definition covered by the SALVAGE

¹⁸ In the matter of implementing the scope of particular conventions with reference to the goals of the conventions.

¹⁹ This assumption seems to be coherent with the Anglo Saxon conception of 'vessel'. Also the Croatian's response to the CMI Questionnaire seems to adopt a wider scope of the term 'vessel', which contains [a] ship, warship, submarine, yacht and boat.

²⁰ F. Berlingieri, *International Maritime Conventions*, Volume II, 2014, p. 5.2.2.2, available via: I-law. It is worth mentioning that a different view has been adopted by B. Sözer in the comments to the CMI questionnaire delivered where it is assumed that capability of navigation relates to all: vessels, crafts and structures, by such characterizing the notion of 'vessel'. The authors of this article do not share that view.

²¹ *Id.*

convention and the definition of 'ship' included in the Polish Maritime Code. According to SALVAGE, 'vessel' means "any ship or craft, or any structure capable of navigation", while according to Article 2 of the Polish Maritime Code, a ship is any type of vessel indented to use or used in shipping. Also the Polish official translation of SALVAGE convention defines a ship as any type of ship, vessel or structure capable for shipping²². As it is understood, capable of navigation, means capacity to move or to be moved by water. Consequently, this inaccuracy might cause that for example, a cargo vessel used as a warehouse or a passenger ship used as a hotel²³ would be considered as a ship according to the SALVAGE definition as a structure capable of navigation but it would not be considered as a ship according to the Polish definition, as it is not a ship capable for shipping.

The notion of 'ship' has been under the scrutiny of the Polish Maritime Codification Commission. The Codification Commission was proclaimed in 2007. At the beginning of its works there was no *a priori* decision to prepare a proposal of a new maritime code. Rather, relying on the need of codification's stability it has assessed whether a new act is necessary or only amendments to the Code would be sufficient²⁴. However, in the progress of works it became apparent that the necessary changes would be of such gravity that a new maritime code should be adopted. Thus, the Commission has undertaken a task to prepare the proposal of a new maritime code which presumably will replace the Maritime Code of 2001 currently in force.

A draft of the new code's proposal indicates that the new code proposed, adopts the same predominantly private law nature as the act currently in force. Thus, such public law aspects as safety, security or environmental protection will be still regulated in the separate statutes while the maritime code's body will be dedicated to the private law matters with the key issue of the carriage of goods by sea. That feature of a new code determines the definition of 'ship' as adopted under the proposal.

The proposed definition is the same as in the current Article 2 of the Maritime Code with one exception. It describes a seagoing ship as a floating structure intended for and used in maritime shipping. The new definition differs from the current Code's regulation as both prerequisites, the intention for and usage in maritime shipping, have to be fulfilled. Thus, a ship which is only aimed at

²² *Statek oznacza każdy statek lub jednostkę pływającą oraz każde urządzenie nadające się do żeglugi*, Journal of Laws 2006 No. 207, item 1523.

²³ Examples given by B. Sözer in comments to the CMI questionnaire, available at: www.cmi2016newyork.org/session-13, last access on 10 July 2016, p. 6.

²⁴ Komisja Kodyfikacyjna Prawa Morskiego, *Sprawozdanie z Prac Komisji Kodyfikacyjnej Prawa Morskiego w 2010 r.*, available in Polish at: https://mgm.gov.pl/images/gospodarka-morska/sprawozdanie_z_prac_kkpm_w_2010.pdf, last access: 10 July 2016, p. 1.

maritime shipping but not used in that manner will not be treated as a ship under the proposal. More importantly, such a definition allows for the differentiation between the ships and other floating facilities²⁵. Those which do not fulfill both conditions are treated under the proposal as the maritime floating facilities, for which a separate definition is intended. Thus, a major change intended by the new proposal is a straightforward division between the ships and the floating facilities with a new definition of the latter ones. Such a clear indication was necessary as in the passing years the new methods of economic activities based on the marine resources have developed²⁶. Since exploration of the seabed by means of the floating facilities on the Baltic Sea had emerged there was a need to clearly address also the above mentioned units by the maritime code's norms. Therefore, it is provided for in the proposal that the Code's norms will be applicable also to the maritime floating facilities, unless otherwise prescribed. A separate book of ship's registry is intended for the maritime floating facilities. Moreover, as it is currently the case, the new maritime code will be generally applicable to the merchant seagoing ships. Those are the ships as defined above and used for economic activities. Such merchant seagoing ships are the central objects of the proposal's norms. By such, the definition is narrowed to those ships which are intended and used in maritime shipping for economic activities. Thus, again, a ship converted into a hotel or a restaurant, although used for economic activity, will not satisfy the new code's definition as it is not used in maritime shipping. To sum up, it is not surprising that the proposal of the private law maritime code makes a central object of its application those ships which are not only intended for, but also used in shipping for economic activities. Only in some respect, precisely defined by the norms, the new code will be applicable to other than the commercial seagoing ships²⁷. Among them there are the ships used exclusively for the special state service, research and science, recreation or sport purposes. Finally, the proposal of a new code upholds the notion of 'seagoing ship' under the construction. It is defined as a ship whose keel has been laid down or in respect of which similar construction work has been performed. Since technology of shipbuilding has changed, in comparison to the current definition a place of the ship's launching will not be indicative anymore²⁸. As under the current Maritime Code the aim of identifying

²⁵ Komisja Kodyfikacyjna Prawa Morskiego, *Sprawozdanie z Prac Komisji Kodyfikacyjnej Prawa Morskiego II Kadencja, 2011–2015*, available in Polish at: https://mgm.gov.pl/images/gospodarka-morska/sprawozdanie_z_prac_kkpm_w_latach_2011-2015.pdf, last access: 10 July 2016, p. 9.

²⁶ *Id.*, p. 10.

²⁷ *Id.*, p. 9.

²⁸ Komisja Kodyfikacyjna Prawa Morskiego, *Sprawozdanie z Prac Komisji Kodyfikacyjnej Prawa Morskiego w 2010 r.*, p. 3.

the ships under construction is to enable securing interests over that commodity by means of maritime hypothecation or mortgage.

The Polish definitions of 'ship' are quite strictly interpreted by the Polish courts, even if there are not many judgments or reported decisions which address the legal classification of a ship. Nonetheless, most of them will be presented briefly below.

The first relates to the hull of a motorway yacht, which was towed by a tug. The second concerns the banana boat, the third concerns the 'dead ship', which sank while under tow.

In the first case, the Polish court set up for resolving the maritime accidents, found that the hull of the yacht under tow was *not* a ship. The proceedings went through three instances. The court of the first instance (*Izba Morska*) found the yacht's hull under tow to be a ship. That was also a decision on the part of the second instance court (*Odwoławcza Izba Morska*). Surprisingly, the third instance court (*Sąd Apelacyjny*) decided that the said hull had not been a ship, and consequently closed the case. Analyses carried out by the Polish court were performed so for the purposes of recognising the responsibility for damaging the towed hull and were based on the Polish definition of a shipping accident. If such a yacht's hull under tow was accepted to be a ship, the Polish court would be justified in the ruling (investigating) of an accident of a yacht's hull. If it was not recognised as a ship, then the Polish court would not have jurisdiction over the above accident. This presumption is a consequence of the Polish legal definition of 'maritime accident'. A legal definition of 'maritime accident' is contained in the State Commission on Maritime Accident Investigation Act²⁹. According to the aforementioned act, we can divide the maritime accidents into: very serious causalities, serious causalities and maritime incidents. These definitions are based on the International Maritime Organisation's definitions contained in the document: MSC-MEPC.3/Circ.3 dated 18th December 2008³⁰. The Polish Appellate Court has decided that a hull

²⁹ Ustawa o Państwowej Komisji Badania Wypadków Morskich, Journal of Laws 2012 item 1068.

³⁰ Very serious casualties are casualties to ships which involve total loss of the ship, loss of life, or severe pollution. Serious casualties are casualties to ships which do not qualify as very serious casualties and which involve fire, explosion, collision, grounding, contact, heavy weather damage, ice damage, hull cracking, or suspected hull defect, etc., resulting in: – immobilization of main engines, extensive accommodation damage, severe structural damage, such as penetration of the hull under water, etc., rendering the ship unfit to proceed, or

- pollution (regardless of quantity); and/or
- a breakdown necessitating towage or shore assistance.

Less serious casualties are casualties to ships which do not qualify as very serious casualties or serious casualties and for the purpose of recording useful information also include marine incidents which themselves include hazardous incidents and near misses.

under tow can be considered as a “ship under construction” but not as a ship. And such a hull cannot be considered a ship until the construction work is finished, sea trials are passed and the safety certificate is issued by the flag state administration. Consequently, such an accident cannot be considered as a maritime casualty, because the harm has been done to the towed hull, not to a ship.

The similar case – the Georg Büchner – took place on 31st May 2013, near the Gulf of Gdańsk, on the Baltic Sea. The Georg Büchner was a ‘dead ship’. When being towed by the Polish tug ‘Ajaks’ from the Port of Rostock, in Germany, to the breaking yard in Lithuania, it sank. The wreck was located in Polish Territorial Seas. Also, in this case, the Polish State Commission on Maritime Accident Investigation, based on the Polish definition of ‘maritime accident’, rejected the possibility of recognising it as a ship. After this case, the scope of competences of the State Commission on Maritime Accident Investigation Act has been changed. At the moment, the above mentioned Commission has the competence to investigate also very serious casualties involving ships and any other structures during the towage operation. Those legal changes relate only to the competences of the State Commission on Maritime Accident Investigation, not the Polish courts. That is why it is difficult to consider if a maritime accident during the towing operation and involving the structure not being a ship, would be considered as a ship casualty by the Polish court (*Izba Morska*). Georg Büchner’s accident is under investigation by the Polish *Izba Morska* at the moment.

The banana boat has been a subject of the Polish judgment three times and every time it has been found as not remaining in the scope of the ‘ship’ definition³¹. The similar decision was made by Polish second instance (*Odwoławcza Izba Morska*) in reference to water scooter/personal water craft in 1994, when the water scooter was found not designed or used for shipping.³²

In other jurisdictions the similar jigsaw of distinct ‘ship’ notions is noticeable. Such conclusions may be drawn from the answers to the CMI’s questionnaire by Italy, Croatia and Ireland³³. In Italy the main definition of ‘ship’ is found in the Code of Navigation and relies on the function of a specific construction, i.e. carriage, including that for towage, sport, recreation, fishing or other purposes³⁴. The

³¹ The Banana boat cases however were resolved using the “old”, wider legal definitions of maritime accidents.

The judgment dated 26th August 2009, WMG 23/09. The banana boat accident had been also investigated earlier and found as not a ship. Judgment dated 21st February 1996, WMG 57/95 and judgment dated 13th May 1997, WMG 16/97.

³² Judgment dated 24th October 1994, WMG 63/94.

³³ Croatian, Italian and Irish answers to the questionnaire by the respective Maritime Law Associations are available at: www.cmi2016newyork.org/session-13, last access on 10 July 2016.

³⁴ Associazione Italiana di Diritto Marittimo, *Vessel Nomenclature. Responses of the*

norms applicable to ships embrace also other floating crafts intended for any service related in some way to navigation and trade on sea or inland waters, unless otherwise prescribed³⁵. Croatia, on the other hand, has adopted a wider understanding of a ship, under which the function of carriage is not necessary. The widest concept in the Croatian maritime code is a maritime object which encompasses vessels, as well as floating and fixed facilities. A vessel can be a ship, but also a warship, submarine, boat or yacht. A ship has to be intended for navigation at sea and fulfill the measurement or passengers' carriage capacity requirements but self-propulsion is not required since navigation may be exercised by towage. Thus, a technical vessel as a dredger or floating dock, which aims at carrying technical operations, is considered a ship under the Croatian law³⁶. A floating facility, on the other hand, is not intended for navigation and moored or anchored permanently at sea³⁷. The application of norms on ships to other maritime objects is allowed only if specifically prescribed³⁸. It is expected that the above definition of 'ship' will be applied not only within the maritime law but generally, unless otherwise specifically prescribed³⁹. In Ireland, on the other hand, there is no single prevailing definition of 'vessel', however, the Merchant Shipping Act of 1894 contains both, a definition of 'vessel' and 'ship', the former one being [any] ship or a boat or any other description of vessel used in navigation, while the latter is understood as every description of vessel used in navigation not propelled by oars⁴⁰. Other acts contain different definitions and the above will be applicable only to those that are to be treated as one with the Merchant Shipping Act. Courts will not apply them to other statutes unless they are considered as regulating the same subject matter⁴¹. The Irish report provides an example of judgment where, in absence of a technical term, a court referred to a dictionary definition, or on its own, tried to determine what the ordinary meaning of the term ship and vessel at the time of the act's enactment was⁴².

Italian Maritime Law Association to the Questionnaire on Vessel Nomenclature, available at: www.cmi2016newyork.org/session-13, last access on 13 July 2016, p. 2.

³⁵ *Id.*

³⁶ Hrvatsko Društvo Za Pomorsko Pravo, *The Croatian Maritime Law Association Response to the CMI Questionnaire on Vessel Nomenclature*, available at: www.cmi2016newyork.org/session-13, last access on 13 July 2016, p. 2.

³⁷ *Id.*

³⁸ *Id.*, at p. 1.

³⁹ *Id.*, at p. 3.

⁴⁰ Irish Maritime Law Association, *Response of the Irish Maritime Law Association CMI International Working Group on Vessel Nomenclature*, available at: www.cmi2016newyork.org/session-13, last access on 13 July 2016, p. 2.

⁴¹ *Id.*

⁴² Re: South Coast Boatyard (under voluntary liquidation) Barber v Burke and ors, unreported

The need for the harmonisation of the nations' various domestic maritime laws arises from the fact that shipping is predominantly, by its very nature, international. Historically, the legal commonalities between the different sea-faring nations were the result of a bottom-up action: these commonalities were born out of international trade. In consequence, this harmonisation essentially covered the questions of carriage/transportation. The 20th-century, however, brought an unprecedented development in the international legal maritime regulations relating to the delimitation of marine areas, the protection of the marine environment, prevention of dangers at sea, technological advances and higher levels of the protection of health and life of people at sea, as well as exploring natural resources which are hidden in the seabed.

The movement of people at sea requires lengthy preparation and, of course, costly investment. However, due to the enormous scale of the diversification in the functions of the ships and other maritime machinery used at sea that have come into play over the last two-hundred years, new definitions of the term *ship* were required, in order to regulate, in a consistent manner, the diverse activities which are carried out by people working at sea. This could be done by seeking a compromise in the international arena and by drafting the new maritime conventions which clearly indicated the precise concept of a ship as a concept for the purposes of the conventions, as well as by identifying the specific features of ships. The development of a particular definition depended on whether the actions of the ship fell into the domain of regular shipping (for example, the carriage of either cargo or passengers), or rather into other domains, such as: the protection of marine environment, enhancing maritime safety, the enforcement of claims from the ship or the exploitation of the seabed, and the various characteristics of the ship or machine (vessel) will all be crucial in determining the definition of a ship for the legislative purposes. The definitions, therefore, of 'ship' and 'vessel' shall vary, depending on the regulations contained in the conventions. Some might argue that they are not *sensu stricto* definitions, but just define the scope of the convention's application⁴³.

The features of a ship must be determined simultaneously and precisely and, to the extent possible, generally. This requirement can be put down to the necessity for the conventions to include in their provisions the specific types of ships, whilst simultaneously leaving some room for a certain amount of discretionary power whilst preventing any further extension of the scope of the conventions on vessels; if this is not the case, the specific regulations on maritime activity cannot be created and implemented successfully. The obvious fact is that the regulations

judgment delivered on 31st July 1980.

⁴³ A remark made by the Italian Maritime Law Association in their answer to the CMI questionnaire, *op.cit.*, p. 1 and p. 7.

covered by the conventions will necessarily entail additional responsibilities for entities engaged in the maritime transactions.

Introducing such a definition, which both allows for those requirements of public-law – relating to the protection of certain goods – to be met, but simultaneously doing so without incurring any excessive or unnecessary responsibilities on multiple subjects of the maritime transactions, is a momentous task. Therefore, with regard to those difficulties arising when formulating the adequate definitions in those areas where having a definition within the scope of a convention's provisions is not essential, the creators will derogate from the inclusion of the definition of 'ship', and will, in this respect, turn back to the national legislation once again⁴⁴. This often seems to be the best solution to the problem. The excellent examples of this approach would be the conventions on rights *in rem* on ships (real rights) and the enforcement of claims from a ship: see the Brussels Conventions, 1926, and 1967; Geneva 1993; the Brussels Convention 1952; and Geneva 1992. The inclusion of the definition of 'ship' within these conventions could have led to an absurd situation involving the total failure to recognise them as vessels due to the overly narrow definition.

However, from the perspective of the necessity to protect certain values, those which are internationally recognised as being common and protection worthy,

⁴⁴ Conventions not containing the definition of 'ship':

- a) International Convention for the Unification of Certain Rules of Law Relating to Collision Between Vessels, Brussels, 23 September 1910
- b) Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, Brussels, 23 September 1910
- c) International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Ships, Brussels, 10 April 1926
- d) International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-Going Ships, Brussels, 25 August 1924
- e) International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, Brussels, 10 October 1957
- f) International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels, 10 April 1926
- g) International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels, 27 May 1967
- h) International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952
- i) International Convention on Arrest of Ships, Geneva, 12 March 1999
- j) International Convention on Maritime Liens and Mortgages, Geneva, 6 May 1993
- k) United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980
- l) United Nations Convention on the Carriage of Goods By Sea (Hamburg Rules), Hamburg, 31 March 1978
- m) International Convention on Tonnage Measurement of Ships, London, 23 June 1969.

the clear need for definitions of 'ship' in certain areas of maritime law became increasingly apparent in the 20th century. What unquestionably accelerated this process was the technological advance, which opened new ways of exploration of the maritime resources, on the other hand, increasing the possibility of the pollution or their destruction in an irreversible and previously unimaginable way⁴⁵. The examples of this line of reasoning, which is aimed at protecting certain common values, are the numerous conventions regulating the matter of safety at sea and the protection of the marine environment⁴⁶.

Admittedly, it is not possible to make a simple division in the conventions between those parts containing and those not containing the definitions of 'ship', due to the nature of the matter under regulation, that is, private law and public law. Both private law conventions could, however, be invoked: the convention containing the definitions of 'ship'⁴⁷, as well as the one without it⁴⁸. It nonetheless appears to be a reasonable justification as a general rule, that public law conventions concerning the protection and safety of the marine environment contain, for their own requirement, the definitions of what a ship is.

⁴⁵ Certainly the emergence of the possibility of the exploitation of the seabed using machines which are sometimes actually difficult to define as being ships, or not, as the case may be is worth noting here.

⁴⁶ Conventions containing a definition of 'ship':

- a) Article 1 /d of International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague Rules), Brussels, 25 August 1924
- b) Article 2 of the United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986
- c) Article 1/b and Article 3 of International Convention on Salvage, London, 28 April 1989
- d) Article 1/3 of Athens Convention Relating to the Carriage of Passenger and their Luggage by Sea, Athens, 13 December 1974 and its consolidated text with the Protocol of 2002 to the Convention
- e) Rules for the Assessment of Damages in Maritime Collisions, Lisbon, 29 February 1998
- f) Article II/2 of International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29 November 1969
- g) Article 2/4 of International Convention for the Prevention of Pollution from Ships, London, 2 November 1973 and Protocol, London, 17 February 1978
- h) Article 3/a of Convention on the International Regulations for Preventing Collisions at Sea, London, 20 October 1972
- i) Article I/1 of International Convention on Civil Liability for Oil Pollution Damage, London, 27 November 1992.

⁴⁷ Article 1/2 of International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, London, 27 November 1992.

⁴⁸ For example, the United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980 and the United Nations Convention on the Carriage of Goods By Sea (Hamburg Rules), Hamburg, 31 March 1978.

To sum up, the Polish legal system and the Polish maritime law doctrine represent the same problems in recognising the meaning of 'ship' as many other legal systems. The Polish legal system is based on the conventional regimes in particular subjects of maritime law, such as ship's safety, protection of marine environment, pollution damage and labour at sea. Those definitions in the Polish legislation reflect the conventional definitions, but are applicable only in a specific context. Consequently, it seems to be not possible to find a uniform definition of 'ship' and 'vessel' at the international level by comparing the definitions contained in the maritime conventions. Rather, seeking the general definition of 'ship' should be based on comparing its national meaning. However, also on that level the general conclusion which may be drawn is that the understanding of a ship depends on the aim of a particular regulation and is tailored accordingly.

The one, uniform definition seems to be the goal out of reach at the moment. The differences in definitions mirror the specific maritime law institutions or problems, such as ship's safety and security, real rights, ships' registries, limitation of liability, pollution damage etc. The specific functions of the legal acts mentioned create the need for the existence of many definitions of 'ship'.

