

LEGAL HANDBOOK SHIPMASTER

The standard practical legal guide for the Shipmaster, worldwide

Dr. Peter van der Kruit



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2020

Front cover

The front cover symbolises guidelines for the shipmaster: a nautical chart to guide him through international and national waters and a lawbook to guide him through the complex landscape of legislation.

'*Mare Liberum*', (the Free Seas) is a book written in 1609 by the famous Dutch lawyer Hugo de Groot (Grotius). This was the first publication about the freedom of navigation on the high seas. The book has a lasting impact in the field international law, and it is said to be an antecedent, inspiration and pillar of the modern law of the sea.

Hugo de Groot (1583-1645) can easily be called one of the greatest scholars in the Netherlands' history. He was a philosopher and jurist who laid foundations for international law.



Unless otherwise stated, masculine nouns and pronouns do not refer exclusively to men.
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Legal Handbook Shipmaster

The standard practical legal guide for the Shipmaster worldwide

This Handbook is not only the standard legal guide to the shipmaster, but also to all other seafarers, shipowners and operators. Besides, it is the reference for maritime training institutes and for all government departments involved in Shipping and Maritime Law. All over the world.



The Legal Handbook Shipmaster is an initiative and publication of the Netherlands Shipmasters' Association



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Legal Handbook Shipmaster

by

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Foreword



The main goal of the Netherlands Shipmasters' Association (*Nederlandse Vereniging van Kapiteins ter Koopvaardij*, NVKK) is to improve the safety at sea on board, while protecting the environment and the interests of masters and merchant shipping in general.

In April 1960, the NVKK published 'Enforcement of authority on board merchant ships' to provide the shipmaster with legal tools to guide him/her in maintaining command on board.

A growing need for legal knowledge on board and the international nature of the maritime sector made it necessary to publish an up to date edition in the English language. In October 2013, the NVKK published the first edition of the 'Legal Handbook Shipmaster' in the English language. Over the years this publication has been received with great interest by a wide audience in the maritime sector, including masters, ship owners, authorities, students and many other stakeholders.

The fast changing and increasingly complex maritime legal environment and availability of modern communication technology made it necessary to update the 'Legal Handbook Shipmaster'. This second edition comes in a digital format, which allows frequent updates in the NVKK website.

The shipmaster must deal with both national and international legislation which applies on all seagoing vessels sailing under the flag of the Kingdom of the Netherlands. Therefore, the purpose of this handbook is to provide a good insight with regard to national and international laws and regulations.

The book focuses primarily on the safety of the vessel, the crew, the environment and cargo operations.

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- Stichting Ouderkerk Fonds (The Netherlands Ouderkerk Foundation)
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- Koninklijk College Zeemanshoop (Royal College Zeemanshoop)
- Admiraal van Kinsbergenfonds

Without the financial support of these organizations, the publication of this second edition of the 'Legal Handbook Shipmaster' would not have been possible.

The Netherlands Shipmasters' Association trusts to have met the need for legal knowledge and support in the maritime sector with this renewed publication.

Captain Leen van den Ende
President of The Netherlands Shipmasters' Association
01 January 2020

Legal Handbook Shipmaster

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Preface

This Handbook has been written for the shipmaster, but it can be used by all other interested parties, regardless of the ship's flag state or nationality, worldwide. The national maritime legislation of all states is, more or less, similar because these legislations originate from a variety of international maritime agreements. The most relevant international pillars for national maritime law are:

- United Nations Convention on the Law of the Sea (UNCLOS)
- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention for the Safety of Life at Sea (SOLAS)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)
- Maritime Labour Convention (MLC).

Besides these significant major international agreements, many other international agreements determine national maritime laws and regulations. The influence of EU rules on the national maritime legislation of EU member states is described as well in this Handbook. Often, these EU rules are stricter than the IMO regulations. But it is the national legislation of the flag state which has priority on board unless the vessel is in a foreign coastal state. Therefore, the system of prevailing laws or jurisdictions is the main part of this Handbook, from the point of view of the shipmaster. The national maritime legislation is described extensively, with many examples from national maritime legislations, in particular of The Netherlands.

This Handbook has not been written in legal language, but in the language of the shipmaster, who forms the heart of this book. Explaining and describing precisely various national legal systems and legislations is complicated. But in general, the Handbook is particularly useful for any shipmaster and other interested parties, all over the world and regardless of nationality. Explanation will always be necessary and that is the aim of this Handbook.

The most important legal terms of international and national law are explained for the shipmaster. The definition of legal terms and their meaning only apply however within the relevant national legislation. If unsure always check the official sources for the exact meaning of certain terms according to national law.

This Handbook only describes the main topics of maritime law. The exemptions and interpretations have not been taken into account. These can be found in the official sources, legislation, codes and literature. Not all texts are complete, and some have been derived from websites which means the original texts and legislation have to be read in their official versions.

This standard Handbook comes in three parts. Part 1 is general, serving as a basis for Part 2 and 3. Part 2 contains specific items for the shipmaster; from international agreements (IMO/EU) to national law. Part 3 of the Handbook explains relevant issues for all seafarers and offers the shipmaster an opportunity to inform and advise his crew.

Peter van der Kruit
Schagen (The Netherlands), 01 January 2020

PART 1 GENERAL

I Introduction to law

II International law

III National law

IV Legal maritime affairs

I. Introducing law

1. Introduction

Many rules, ethics and moral values exist upon which all people, including the shipmaster and other seafarers, should base their behaviour. We have religious, legal, decency and moral ethics and standards, but also various sets of rules.

It appears that these various rules and standards may conflict with each other. In general, legal rules supersede other rules and standards, this is also true on board a ship. Law is a formal mechanism of social control and as such it is essential that the shipmaster and other seafarers are fully aware of the nature of that formal structure.

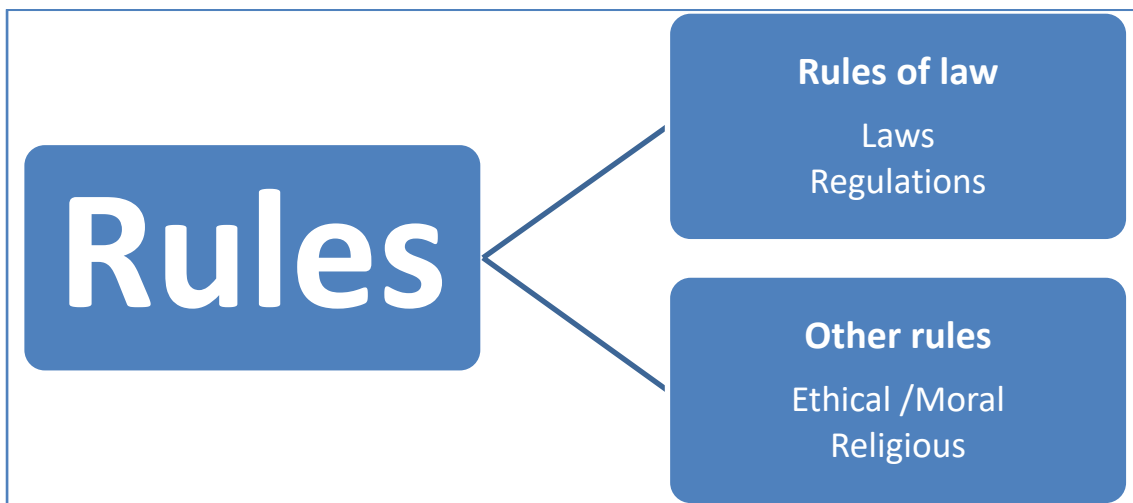


Figure 1 Rules

The law, like merchant shipping, has its own terminology, resources and structure. By way of introduction into the law this section offers a framework outlining the most important legal concepts, including a few maritime aspects of the law.

Part 1 of this Handbook aims to give the background for Parts 2 and 3. Part 1 deals mainly with the terminology, the legal systems including some specific areas of legislation. This might seem a little dull, but it explains the questions that arise in the more practical chapters of the Handbook.

Law

A set of rules used to control behaviour of people in a society and on board.

It tells you:

- to what you are entitled;
- what you must do;
- what you must not do;
- what others may not do to you;
- your rights within your own and other states;
- your responsibilities as a member of society.

In other words, law lays down your legal rights and obligations.

2. Legal systems

Different states may have different legal systems, according to tradition, the need and requirements of that state. One may distinguish civil law and common law systems. Generally, legal systems around the world can be divided into two main systems: common law and civil law.

In common law states (Anglo-America), case law mainly exists in the form of published judicial opinions.
In civil law systems, codified statutes predominate.

But this division is not as unambiguous as it might seem. In fact, many states use a mix of features from common and civil law systems.

Civil law

Civil (civilian) law is a legal system inspired by Roman law, where laws are written. It proceeds from abstractions, formulates general principles and distinguishes substantive rules from procedural rules. Civil law is a comprehensive codification of Roman law in civil codes.

Civil law holds legislation as the primary source of law, and the court system is usually inquisitorial and composed of judges with a limited ability to interpret law. Civil law is a very widespread system of law in the world. Civil law is in force in several forms in about 150 states, including the European Continent.

Common law

Common law is developed by judges through decisions of courts and similar tribunals (case law), rather than through legislative statutes or executive branch action. So, the primary sources of law are court decisions. Common law is also known as the Anglo-American law system.

In its modern form, common law is codified, but more essential to civil law is the notion that judges are bound by statutes, and they may only rule on particular cases without establishing general rules.

About one-third of the world's population lives in common law jurisdictions or in systems mixed with civil law.

The main difference between the two systems is that in common law states, case law (judicial opinions), is of primary importance, whereas in civil law systems the codified laws, statutes and codes predominate.

3. Legal concepts

Legal systems comprise particular ways of establishing and maintaining social order, this is also true on board. Law is a formal mechanism for social control. In society, as onboard merchant ships, law plays an important part in the creation and maintenance of social order.

Law can be written or unwritten and applies to all people and institutions: shipmaster, government, shipowner and seafarers.

Law has its own terminology; some relevant terms will be described in this chapter, to simplify access into this Handbook and into legislation.

Objective law

The term objective law is synonymous with positive law. It is the legal framework that currently governs and regulates society. It is the body of man-made law containing of codes, regulations and statutes imposed by a state.

The concept of positive law is distinctive from natural law, the latter comprising inherent rights, conferred not by acts of legislation but by God, nature or reason.

Objective or positive law is also described as law applying at a certain time (present or past) in a certain state, including on board its ships.

Law can be enforced by sanctions or punishment, often through courts.

Example

A shipmaster leaving harbour without a valid manning certificate commits a crime and may be prosecuted.

Legal subject

A legal subject has legal rights and duties, often rights applicable to a particular person. The legal subject's rights are derived from objective law.

A legal subject can be a human being (natural person) or a non-human legal entity (juridical or artificial person).

A legal entity is characterized by a non-living entity regarded by law to have the status of personhood.

Legal entities can be the state, a county or a province, but also foundations, companies, enterprises or cooperatives.

Example

A seafarer's employment agreement shall be agreed to by the shipmaster as a natural person and the shipowner as a legal person; both being a legal subject.

All legal subjects can maintain legal relationships, such as buying, hiring and signing contracts.

Examples

- A shipmaster signs a seafarer's employment agreement with his employer.
- A company hires a house from a natural person.
- A state buys ICT infrastructure.

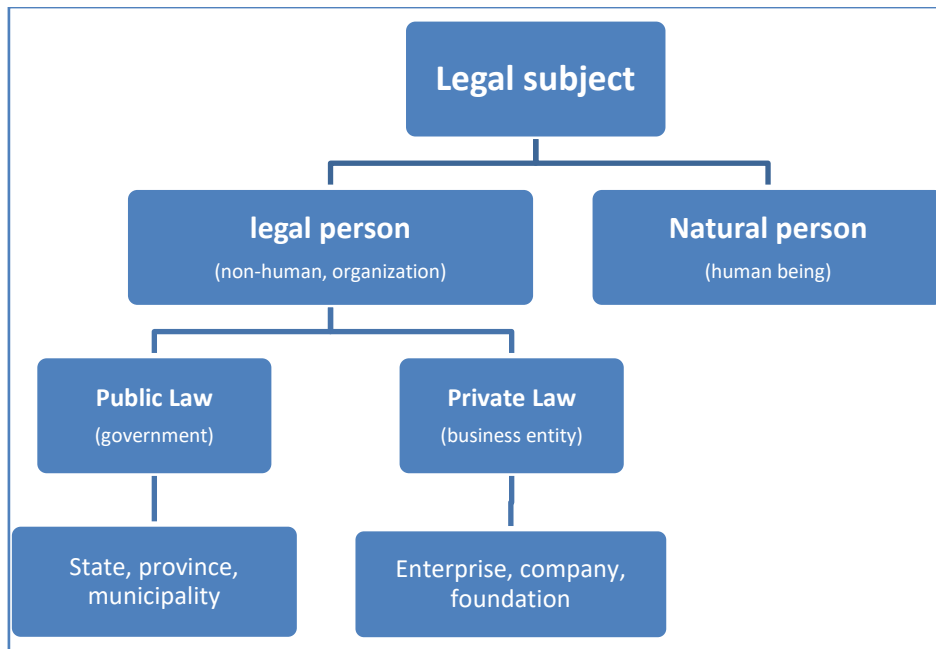


Figure 2 Legal subjects

Sources of law

Law stems from different sources such as legislation, custom, and precedents or jurisprudence. Not only national sources exist, but also international sources as in treaties or resolutions by international organizations, such as the European Union (EU) or the International Maritime Organization (IMO). See also hereafter.

Legislation

Legislation is a direct source of law. Legislation lays down new laws, amends old laws and rejects existing laws. Nowadays this is an important source of law making.

A legislature is the body which has the power to make laws. It may be a Parliament, a Congress, an Assembly, a Province or a Municipality. The national legislature may have the power to pass laws which apply to the whole state, or just to part of it.

Through delegation by law, central government can establish orders in council or in ministry regulations. See section nr. 10 of this Handbook.

In various laws and legal documents, the words ‘article’ and ‘section’ are used for provisions. In a way, it is a matter of semantics. The usages of these words in legal documents refer to major sub-divisions, often numbered. Articles and sections are often used alternatively but not simultaneously.

In the common law systems most statutes appear in sections but it would appear that article is used in most international agreements.

Precedence or jurisprudence

Verdicts passed by judges are another significant source of law. These are distinguished from legislative law, such as laws, regulations and codes enacted by legislative bodies.

When there is no legislation on a particular point of law arising from changing circumstances, courts depend on their own sense of right or wrong and decide on the outcome of disputes. These decisions become the authority or guidance for subsequent cases of a similar nature, and they are called case law, precedent or jurisprudence. Case law is more flexible than regular legislation. Grey areas in this legislation are often clarified in court by case law.

Article 8:261 Section 1 Civil Code (NL)

The shipmaster is obliged to look after the interests of charterers...., and to take all measures necessary for that purpose.

When asked to do so, courts will explain the meaning of ‘all measures necessary’.

Judges generate new provisions by interpreting abstract laws and by filling in the gaps in legislation. In general, interpretations laid down in verdicts of Supreme Courts are adopted by other judges. However, this may depend on the law system as well.

Unwritten law

Unwritten law is law based upon custom and usage, as distinguished from the regular legislation, such as acts and decrees in writing. Traces of unwritten law can still be found, such as reasonableness and fairness. A definition of these terms cannot be found, they depend on facts and circumstances.

Article 6:248 Section 2 Civil Code (NL)

A rule, to be observed by parties as a result of their agreement, is not applicable insofar this, given the circumstances, would be unacceptable to standards of reasonableness and fairness.

Customary law

Customary law, also known as usage, common practice or customary practice, is a source of law. Courts may take customary law into account in its judgment when there are legal conflicts. Customary practice cannot be a source of law when establishing a criminal offence.

Article 6:248 Section 1 Civil Code (NL)

An agreement does not only have the legal consequences agreed upon by the parties, but also those which, in the nature of the agreement, arise from law, usage (common practice) or the standards of reasonableness and fairness.

International sources of law

International sources of law can be agreements between states or international organizations like the UN, IMO and EU, often laid down in treaties. A treaty only binds those states that are party to that treaty. International agreements become national law when implemented into national law. See also section nr. 6 of this Handbook.

Examples

The International Regulations for Preventing Collisions at Sea (COLREGS) have been implemented into Dutch legislation by the Shipping Traffic Act.

The International Convention for the Prevention of Pollution from Ships has been implemented for the Netherlands by the Prevention of Pollution from Ships Act.

Within the EU, member states have handed over a part of their legislative, judicial and administrative powers to several supra-national organs. Also known as a partial shifting of sovereignty to ‘Brussels’. As a result, a lot of (maritime) legislation comes from the EU, such as directives and regulations. Courts in the EU member states have to take this European legislation into account.

4. Areas of law

Law is well defined and organized into several areas that regulate various kinds of relationships between different persons and entities. It can be divided up into national and international law, public and private law, and in substantive and procedural law.

Definitions

- Criminal law controls the relationship between the government and citizens who have committed a crime or an indictable offence.
- Administrative law lays down rules which resolve the relationship between government and citizens concerning public matters, manning certificates for example.
- Private law regulates relationships between citizens and/or entities mutually, for instance damage claims and contracts.

Another, more functional, division of the law is that of Contract Law, Labour Law, Environmental Law, and Law of the Sea, Admiralty Law or Maritime Law.

Private law and public law

One of the oldest divisions in law is that of private law and public law. The differences lie in subject, enforcement and the protection of interests.

Private law

Private law is that part of a civil law legal system which involves relationships between individuals. Private law is the general term for the law regulating the relationships and dealing with conflicts between individual members of the public: natural and artificial persons. The concept of private law in common law countries is a little broader. It also encompasses private relationships between governments and private individuals or other entities.

Hence relationships between individuals, such as the Law of Contracts and the Law of Torts. In the Netherlands, civil law for the shipping branch is regulated for the most part by the Civil Code and in the Code of Commerce.

Public law

Public law is the area of law relating to the organization and tasks of the public sector and of government in relation to its citizens, the relationship between individuals and the state. Government promotes public interest and addresses compliance with the law. Public law is characterized by its legal relationship to the public interest. Public law covers constitutional law, administrative law and criminal law.

Constitutional law

Under public law, constitutional law covers the most important rules concerning the foundations of the state and its governing bodies, and the influence of its citizens.

In addition, constitutional law describes the authority held by these governing bodies.

Administrative law

Administrative law is the area of law that governs the activities and authorities of administrative bodies, a Maritime Authority or Shipping Inspectorate for example.

It prescribes the rules to which public authorities, such as a Maritime Authority or other governmental shipping authorities, must apply in their decision-making process and it regulates relations between the authorities and private citizens.

In the Netherlands, the most important rules are laid down in the General Administrative Law Act, or in specific laws such as the Seafarers Act, Ships Act, and Working Conditions Act. See also Chapter XXIV of this Handbook.

Article 5 Seafarers Act (NL)

1. A ship must have a Manning Certificate, issued by the Minister.
2. A ship must be manned conform the Manning Certificate.

Criminal law

Criminal or penal law is the body of law related to crime. It deals with criminal offences ranging from minor infringements (not stopping at a red traffic light) to serious offences (illicit drug trafficking, theft or murder). Criminal cases are brought before court by the Public Prosecution Service (PPS), anyhow the prosecutor.

In the Netherlands, the most important criminal laws can be found in the Criminal Code and the Code of Criminal Procedures. Other relevant legislation can be found in the Ships Act and the Seafarers Act, which also include criminality. Often required by EU legislation.

Preamble Directive 2005/35/EC (EU)

Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences.

Enforcing law

There is a difference between enforcing public law and private law.

Private law is enforced by the interested parties. If necessary or if the law so prescribes, authorities such as a bailiff or judge can be of use in enforcing private law.

Private Law

If a seafarer does not get his monthly salary from his employer, he may ask court for a verdict to do so.

Under public law (administrative or penal law) authorities lay down normative and concrete rules which they may enforce.

Public/ Penal law

If a shipmaster goes to sea with forged certificates, he can be punished by a fine or even prison.

Judiciary

The judiciary (judicial or court system) is the system of courts that interprets and applies the law. It generally does not make statutory law (legislature) or enforce law (law enforcement agencies), but rather interprets law and applies it to the facts of each case.

However, the judiciary does make common law, setting precedent for other courts to follow. Courts with judicial review power, may annul laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation or provisions of international law.

Example

The Netherlands judiciary is divided into eleven districts, each with its own court. Each court has several sub-districts. The district court is made up of a maximum of five sectors. These always include the administrative sector, civil sector and criminal sector. These sectors have jurisdiction on board NL ship as well.

Judges of the criminal law sector deal with all criminal cases which do not come before the sub-district judge. These cases can be heard by a single judge or before a bench with three judges. The three-judge-bench deals with more complex cases and all cases in which the prosecution may demand a sentence of more than one year in prison.

The civil sector handles cases not specifically allocated to the sub-district judge. Most of these cases are decided by a single judge, but here too there may be a full bench with three judges to deal with more complex cases.

The administrative law sector handles administrative disputes, withdrawing a certificate for example. In many cases the hearing in the administrative law sector is preceded by an objection procedure held under the auspices of the administrative authorities. See also section 13 of this Handbook.

It is usual for cases to be heard by a single judge, but here too the district court can decide to appoint three judges to a case which is complex, or which involves issues fundamental to the law.

An appeal against administrative law judgments can be made to the higher or specialized administrative law tribunal depending on the nature of the case:

- Administrative Jurisdiction Division of the Council of State
- Administrative High Court
- Administrative High Court for Trade and Industry.

Annulments in civil, criminal and tax law cases are judged by the Supreme Court of the Netherlands.

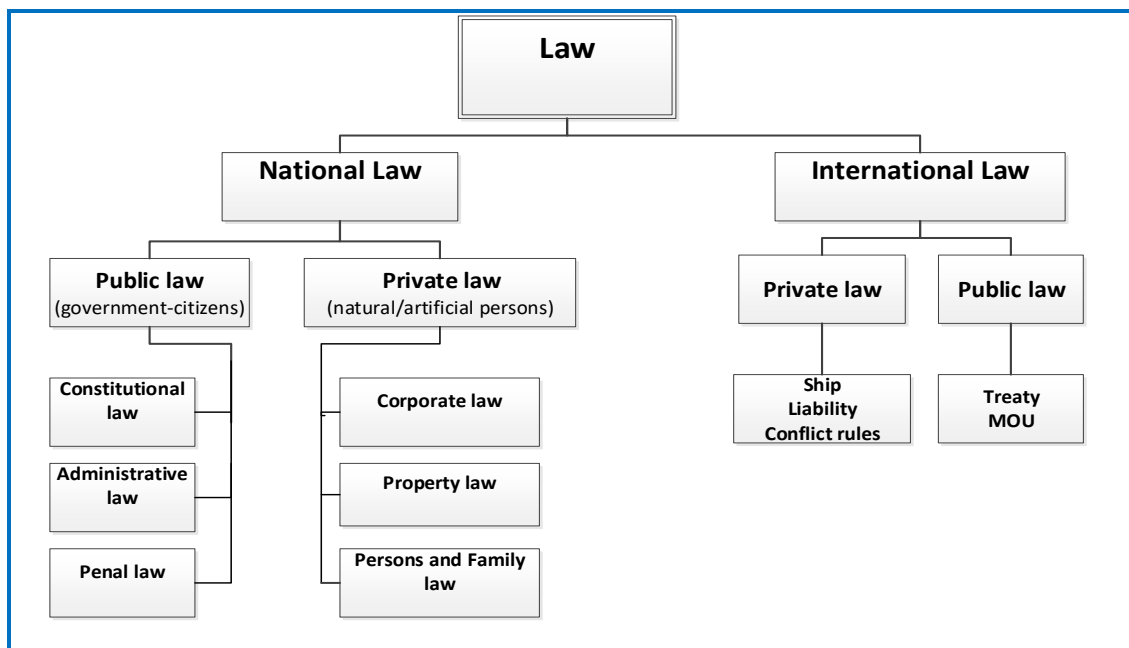


Figure 3 Structure of law

Substantive and procedural law

Within the areas of law, a distinction can be made between substantive law and procedural law. Substantive law is the statutory or written law creating a normative system by defining rights and duties, such as crime and punishment (criminal law) but also civil rights and accountability in civil law. So, there are elements of substantive law in both criminal and civil law.

Article 387 Criminal Code (NL)

The shipmaster who withdraws his ship from the shipowner for his own use can be punished with a maximum sentence of seven years in prison.

Procedural law lays down the rules or formal steps to be taken in enforcing the law. It comprises the rules by which a court hears and decides, as well as the mechanism by which substantive law is made and administered. It governs the mechanics of how a legal case flows, including steps to process a case.

Article 539u Code of Criminal Proceedings (NL)

The shipmaster reports certain crimes committed on board directly to the Prosecutor.

Substantive and procedural law work in tandem.

Mandatory and permissive rules

There is a difference between mandatory and permissive laws or rules. Sometimes the difference can be found in the wording of the law. If the word ‘must’ is used, the shipmaster has to adhere to that article of law.

Permissive law can be applied when a term is used like ‘unless otherwise agreed’; then the parties may deviate from it.

Wording

Word usage and intended meaning in publications is often as follows:

- Shall: indicates the application is mandatory.
- Should: indicates the application is recommended.
- May/ need not: indicate the application is optional.

Mandatory rules

Public authorities have, within their own remit, legislative powers. The laws they enforce are usually binding. People must submit themselves to these rules unconditionally, regardless of whether they want to. The legislation does not permit any other behaviour, mainly for reasons of public safety or ethic.

In general, public law works in this way. When it comes to tax law or criminal law for example it is not up to the individual to decide whether they observe the law or not. They are obliged to do so. If they do not, the law will enforce a fine or prison sentence.

Even when parties have explicitly agreed upon something else, this will be nullified because interests other than their own, those of other people or society as a whole, are involved. Parties remain bound by the mandatory rules of public law.

Permissive laws

In private law, the emphasis is different.

This area of law regulates the legal relationships between people, for instance with regard to their property or their mutual responsibility, in so far as these involve valid rights and obligations.

In principle, people are free to determine for themselves what they want to do with their property. They may transfer it or grant someone else property rights or personal rights of use. They may also enter into an agreement with another individual whereby one of them commits himself to carrying out certain duties on behalf of another, with or without obligating the other party. As long as they both act of their own free will, the government has no right to interfere in their private affairs.

Mandatory rules

Rules identifying actions that are specifically required or prohibited and are characterized using the terms 'shall' or 'shall not'.

Permissive rules

Rules identifying actions that are allowed but not required, are normally used to describe options or alternative methods, and are characterized using the terms 'shall be permitted' or 'shall not be required'.

5. Jurisdiction

Jurisdiction has been defined as the power of a state to prescribe or to enforce a rule of law. As this Handbook deals with various forms of jurisdiction, it seems wise to describe how international law distinguishes between the power of a state to apply laws (prescriptive or legislative jurisdiction) and that state's authority in enforcing its laws (executive or prerogative jurisdiction).

Jurisdiction is an aspect of sovereignty and refers to a state's judicial, legislative and administrative capacity. Prescriptive jurisdiction encompasses those steps taken by a state, usually in the form of legislation, whereby the state asserts the right to deem conduct incorrect. Examples are criminal activity, breaking civil or commercial codes, and regulations governing tax or currency transactions.

Executive or enforcement jurisdiction comprises actions designed to enforce the prescriptive jurisdiction, either by administrative action such as arrest or seizure or by judicial action through the courts or administrative agencies of a nation state.

There can be no executive jurisdiction without prescriptive jurisdiction.

The relationship between the two kinds of jurisdiction is reasonably clear.

There may however be prescriptive jurisdiction without enforcement jurisdiction, for example where the accused is outside the territory of the prescribing state and not liable to extradition. Jurisdiction therefore hinges, fundamentally, on the power to prescribe.

A further distinction common to most legal systems is the distinction between civil and criminal jurisdiction.

Jurisdiction includes public law and private law.

Maritime jurisdictional zones

For jurisdictional purposes, the world's oceans can be divided into three areas. See also Figure 5 and section nr. 8 of this Handbook.

The first area covers waters under the sovereignty of a coastal state. These waters include maritime internal waters and the territorial seas. These waters are subject to the territorial sovereignty of the coastal state, with certain navigational rights reserved for foreign ships.

The second area is that part of the world's oceans under the functional jurisdiction of a coastal state and includes the Contiguous Zone (CZ) and the Exclusive Economic Zone (EEZ). The coastal state only has restricted jurisdiction in this area, related specifically to certain activities. These are waters in which all ships, in general, enjoy freedom of navigation.

The third area is the waters beyond the jurisdiction of a coastal state. This includes the high seas.

Examples

Functional jurisdiction

At sea, a state may extend its jurisdiction over fisheries up to 200 miles off its coast.

Restricted jurisdiction

A state has no enforcing jurisdiction over foreign warships in its waters or harbours.

The tendency in jurisdiction is to identify the rules governing jurisdiction in the form of the principles upon which jurisdiction is commonly based. The principles recognized in public international law authorizing states to put laws into practice, relevant for a shipmaster, will be described.

Territorial jurisdiction

Territorial means the territory of a state. Territory is the land (terrain or ground) and the territorial waters of a state, including the airspace above it. A state has jurisdiction over its territory based on sovereignty.

Territorial principle

This principle acknowledges that a state may prescribe conduct in its sovereign territory. Thus, a state may deem an act to be criminal, such as the possession, use, importation or distribution of narcotics, that occurs in that state's territory. This includes the waters under its sovereignty.

The territorial principle may be regarded as the most fundamental of all principles governing jurisdiction and this principle is generally considered to be the normative basis of jurisdiction.

A state may prosecute a crime on grounds of territoriality even if only a part of the crime was committed in the prosecuting state's territory. This means that a key element of the crime must have taken place in its territory.

Extraterritorial jurisdiction

Extraterritorial means outside or beyond the territory, including the territorial waters, of a state. A state may claim jurisdiction beyond its own territory, as on board foreign ships on the high seas.

The apprehension of suspects on board a foreign vessel on the high seas is not permitted, unless the flag state of that vessel allows it to do so.

Examples

Articles 3-7 of the Criminal Code (NL) extend the jurisdiction of the Netherlands beyond its borders.

The Criminal Proceedings Code (NL) grants outside the Netherlands certain criminal investigation powers to the shipmaster.

Flag principle

A ship is not a floating island belonging to a state. A ship falls under the flag principle. Under this principle, a state may assert jurisdiction over civil or criminal offences committed on board ships flying the flag of that state.

The nationality of a ship is shown by the flag it flies. The flag is the genuine link between ship and state.

The flag principle forms the basis to the concept that a ship in waters beyond coastal state's sovereignty is subject to the exclusive jurisdiction of the state whose flag it flies.

See sections nr. 17 and 40 of this Handbook.

Nationality principle

The nationality principle is based on the concept that a state has jurisdiction over objects and persons having the nationality of that state.

There is general agreement on the basic premise that a state may prescribe the conduct of its own nationals abroad.

The state may apply its laws to its nationals wherever they may be and to all persons, activities, and objects on board ships having that state's nationality.

The nationality principle enables states to exercise jurisdiction over crimes committed abroad if any of the victims have the nationality of that state.

This principle focuses on the nationality of the victim rather than that of the perpetrator.

Universality principle

By virtue of the principle of universality, all states have jurisdiction to prosecute and to judge certain crimes.

Jurisdiction based on the universality principle means that in cases or acts internationally defined as crimes under international law, a state may capture and prosecute a foreign offender.

The applicability of the universality principle to certain crimes can be determined by customary international law or can be stipulated by international agreements.

The universality principle is limited to crimes which the nations of the world have qualified as attacks upon the international order and have mutually agreed to suppress, as in the case of piracy.

II. International law

6. Introduction

International law is important because it influences national law and sometimes even supersedes national law. International law is the set of rules generally regarded and accepted as binding in relations between states. It serves as a framework for achieving stable and organized international relations. International law differs from national legal systems in that it primarily concerns states rather than private citizens.

Treaties such as the SOLAS or MARPOL require national law for their implementation.

International law can be found in jurisprudence, treaties, customary law and binding resolutions from international organizations such as the EU, the UN and the IMO.

Public international law is consent-based governance. This means that a member state of the international community is not obliged to abide by the rule of international law unless it has explicitly consented to a particular course of conduct. This is a matter of state sovereignty.

Private international law oversees the relationship between private parties operating or using seagoing vessels on international voyages. It addresses questions of which jurisdiction may hear a case and which law concerning jurisdiction applies to the issues in that case.

The EU has adopted a comprehensive regulatory framework for maritime affairs. The EU legislation seeks to implement, at European level, rules agreed to at international level, including rules agreed by the IMO.

However, the EU has adopted additional legislation as well, which often goes beyond IMO requirements. For maritime security, the EU legislator is assisted by the Maritime Security Committee (MARSEC).

Explanation EU legislation

The aims of the EU are achieved by several types of legal acts. Some are binding, while others are not. Some apply to all EU member states, others to just a few. EU legislation can be divided into, *inter alia*, the following:

- Regulation: a binding legislative act. It must be applied in its entirety across the EU.
- Directive: a legislative act that sets out a goal that all EU member states must achieve. However, it is up to the individual member state to devise their own laws on how to reach these goals.

The national maritime legislations for ships are, to the greater extent, laid down at an international level. In most states, maritime law follows a separate code and is an independent jurisdiction from national laws.

The UNCLOS, SOLAS, STCW, MLC and MARPOL, with all the accompanying codes, resolutions and circulars from the IMO and the ILO, form the main framework. UN member states (IMO & ILO) incorporate these agreements into their national legislation and can develop these provisions further.

See also the list of international maritime agreements at the Annex nr. 3 to this Handbook.

7. International agreements

Treaty

A treaty is a specific agreement under international law entered into by actors in international law, namely sovereign states and international organizations. A treaty may also be known as an (international) agreement, protocol, covenant or convention, among other terms. Regardless of terminology, all these forms of agreement are, under international law, equally considered to be treaties and the rules are the same.

Treaties can be compared to contracts: both are means by which willing parties take on obligations between themselves and a party that fails to live up to their obligations can be held liable under international law.

National maritime legislations are supported by pillars of dominant international maritime treaties by international organizations, IMO and ILO.

Therefore, national law of maritime states is, more or less, all equal, because it originates from international maritime agreements. The most relevant four international pillars for national maritime laws are:

- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention for the Safety of Life at Sea (SOLAS)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)
- Maritime Labour Convention (MLC).



Figure 4 Fundament and structure for national maritime legislations

One should note that the UN Convention on the Law of the Seas (UNCLOS) is considered to be the Constitution of the Oceans and a fundament for national maritime legislations. This convention defines the rights and responsibilities of states in their use of the world's oceans, establishing guidelines for businesses, the environment and the management of marine natural resources. The breadths of the different maritime zones, such as the territorial waters are also defined in this treaty.

Definition

A treaty is a formal written legal and binding agreement between two or more states and/or international organizations.

States decide for themselves whether or not they become party (member) to a treaty, which is expressed by signing or ratifying that treaty. Only member states to a treaty are bound by that treaty. Treaties may include public and civil law.

Example

The ILO's Maritime Labour Convention (MLC) provides comprehensive rights and protection at work for the world's more than 1.2 million seafarers. This Convention aims to achieve both acceptable work conditions for seafarers and secure economic interests in fair competition for quality shipowners. The Convention sets out seafarers' rights to decent conditions of work on a wide range of subjects, and aims to be globally applicable, easily understandable, readily updatable and uniformly enforced.

The provisions of treaties have to be implemented into national law.

Example

The provisions of the International Convention for the Prevention of Pollution from Ships have been implemented into Dutch national legislation by the Act for the Prevention of Pollution from Ships.

Self-executing treaties also apply in some states. A self-executing treaty is a treaty that becomes judicially enforceable upon ratification, as opposed to a non-self-executing treaty which becomes judicially enforceable through explicit implementation into national legislation. Through a system of dynamic referencing changes or amendments in treaties, IMO Codes etc. may come into force directly. In this way, changes or amendments are directly implemented into national legislation and immediately become applicable, because the national regulations refer directly to changes in international agreements.

Article 5.1 Ships Decree 2004 (NL)

For ships engaged in international voyages, the following international safety certificates referred to in regulation I/12 of the SOLAS Convention shall be required:

- a. for passenger ships: the passenger ship safety certificate;
- b. for cargo ships of 500 GT or above: the cargo ship safety certificate;
- c. for cargo ships between 300 GT and 500 GT: the cargo ship radio safety certificate.

Article 17a Regulation Prevention of Pollution from Ships (NL)

This Regulation is equally binding to the codes and resolutions which are applicable under this Regulation.

The EU has adopted a comprehensive regulatory framework for maritime affairs. It has adopted additional legislation as well, which often goes beyond IMO or ILO requirements. Some provisions of the EU legislation are self-executing within national legislation of EU member states.

EU Regulation 725/2004/EC: Enhancing ship & port facility security

A Regulation is a legal instrument adopted by the EU. It achieves its intended purpose in the Member states as a self-executing provision without the need for any implementing measures at national level

MOU

A memorandum of understanding (MOU) is a document describing a bilateral or multilateral agreement between states and/or international organizations. It expresses a convergence of will between parties, indicating an intended common line of action. Those parties are not necessary always governments, it can be a sole ministry or department as well.

A MOU is often used in cases where parties either do not apply a legal commitment or in situations where the parties cannot reach a legally enforceable agreement.

It can be seen as a more formal alternative to a gentlemen's agreement: morally or politically binding.

Examples of an agreement in a MOU are:

- Combined and joint approaches to safety at sea;
- Exchange or training of personnel;
- Logistic and financial support.

Paris Memorandum of Understanding on Port State Control

The Paris Memorandum of Understanding on Port State Control is a system of harmonized inspection procedures designed to target sub-standard ships with the main objective being their eventual elimination. The MOU has 27 members, the so-called Maritime Authorities.

Regulations use of force

Rules of Engagement (ROE) are rules for military units, including individuals, in which the use of force is defined:

- under what circumstances
- under what conditions
- to what extent
- when applicable
- who authorizes?

ROE are important when a shipmaster embarks military personnel to protect the crew and vessel against piracy. The restrictions for those military personnel are laid down in their ROE; therefore, the shipmaster should be aware of these regulations.

Normally, police forces are non-military organizations. Therefore, the regulations governing use of force for the police can be found in different national legislation from the military ROE. So, there may be a difference between the use of force by the police and by the military. Within the Private Maritime Security, the term 'Rules for the Use of Force' (RUF) is often used. This not a legal definition in all national legislations. RUF do not originate from the national government, it often originates from private contracts between Private Maritime Security Companies. So, these private rules are not always official public law supported and enforced by the flag state.

Use of force regulations

- ROE are rules for the military, such as warships and navy personnel.
- Rules for police units have been laid down in national legislation.
- Rules for the use of force (RUF) are used in the Private Maritime Security.

8. Dividing the sea

The United Nations Convention on the Law of the Sea (UNCLOS) defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment and the management of marine natural resources.

One of the important elements of the UNCLOS is the division of the ocean into various zones with a view to exercising jurisdiction. The definition of maritime zones and the allocation of jurisdiction therein are important themes of the UNCLOS (see figure below) and for the shipmaster.

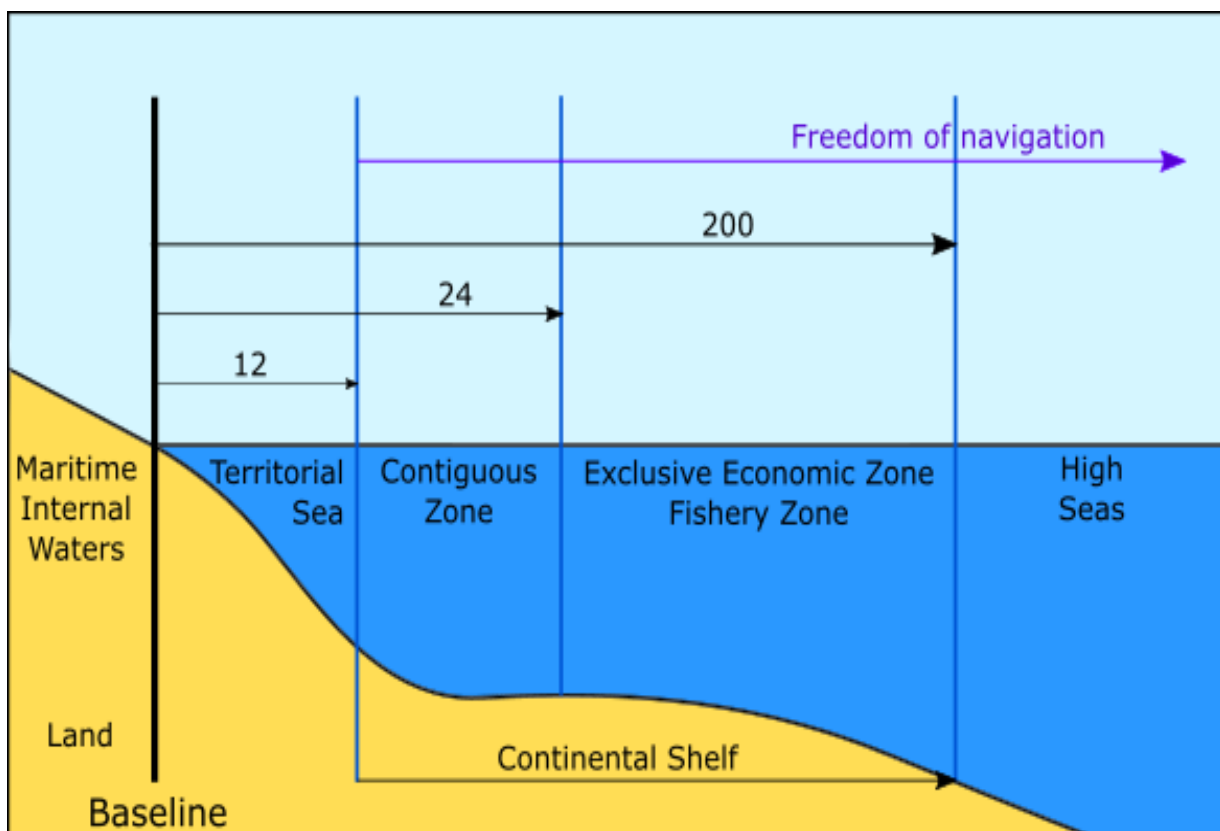


Figure 5 Maritime zones

Baseline

Limits of all maritime zones are measured from the baseline. Normally, a baseline follows the low-water line of a coastal state.

When the coastline is deeply indented, has fringing islands or is highly unstable, straight baselines may be used, as in the Norwegian fjords.

Maritime internal waters

Waters on the landward side of the baseline form part of the internal waters of that state. Maritime internal waters are that part of internal waters openly connected to the ocean.

The maritime internal waters are part of the territory of a coastal state. These waters are in principle subject to the national law of that coastal state.

A ship may navigate the maritime internal waters unless officially forbidden to do so by the coastal state.

Territorial Sea

Every state has the right to establish the breadth of a belt of water round its territory up to a limit not exceeding 12 nautical miles, measured from the baseline.

This belt is called the territorial sea. In this maritime zone the coastal state is, in principle, entitled to enforce its entire body of national legislation.

Innocent passage

The UNCLOS deals extensively with the issue of innocent passage through the territorial sea. It provides that 'ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea'. Furthermore, it specifies that such passage 'shall be continuous and expeditious'.

However, the right of innocent passage is subject to the important qualification that a vessel cannot engage in any act that is prejudicial to the peace, good order or security of the coastal state.

A coastal state may not stop and search a ship using its right of innocent passage, unless that ship violates certain laws of pollution or safety.

Transit passage

Transit passage is to transit an international strait, which is a narrow, typically navigable channel of water that connects two larger, navigable bodies of water, like the Strait of Gibraltar or the Strait of Hormuz.

Transit passage allows a vessel the freedom of navigation solely for the purpose of continuous and expeditious transit of an international strait.

The requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a state bordering the strait, subject to the conditions of entry to that state.

A coastal state may not stop and search a ship using its right of transit passage, unless that ship violates certain laws of pollution or safety.

Passage

Right of innocent passage applies in the territorial sea.

Right of transit passage applies in an international strait.

Territorial Waters

Maritime internal waters together with the territorial sea are also known as territorial waters (TTW or TW), or national waters. Beyond territorial waters are international waters.

Contiguous Zone

The contiguous zone is a zone of sea contiguous to and seaward of the territorial sea, which may extend up to 24 nautical miles from the baseline. In addition to their right to enforce their domestic legislation within their territorial seas, coastal states may, in the contiguous zone, exercise supervision (control) necessary to prevent or punish infringements of certain laws and regulations. The contiguous zone is located in the EEZ or on the high seas.

The freedom of navigation is applicable to the contiguous zone.

EEZ

The exclusive economic zone (EEZ) cannot extend more than 200 nautical miles seaward from the baseline. In the EEZ, a coastal state has sovereign rights to explore and exploit, conserve and manage natural resources. The coastal state has jurisdiction over artificial islands, like drilling rigs, but also when it comes to pollution or scientific research.

Other states retain the freedom of navigation in the EEZ.

Fishery Zone

In the fishery zone (FZ) a coastal state may exercise its sovereign right and exclusive authority to explore and exploit, conserve and manage the fishery resources of the (super)adjacent waters, the seabed and subsoil therein. The FZ may embrace the same area as the EEZ, where freedom of navigation for all ships applies.

Continental Shelf

The continental shelf of a coastal state comprises the seabed and subsoil of the sub-marine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline where the outer edge of the continental margin does not extend to that distance.

High Seas

The high seas are a maritime zone beyond the jurisdiction of coastal states. The high seas are those parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a state. Ships of all states are free to navigate the high seas, but this freedom must be exercised with due regard for the interests of other ships in their right to exercise freedom of the high seas.

Freedom of navigation

Freedom of navigation is a principle that, apart from the exceptions provided for in international law, ships flying the flag of any sovereign state shall not be hampered by other states. The exceptions provided in international law are:

- Piracy
- Slavery
- Illegal broadcasting
- Statelessness.

In all other cases the permission of the flag state is necessary to stop and search a suspect vessel on the high seas.

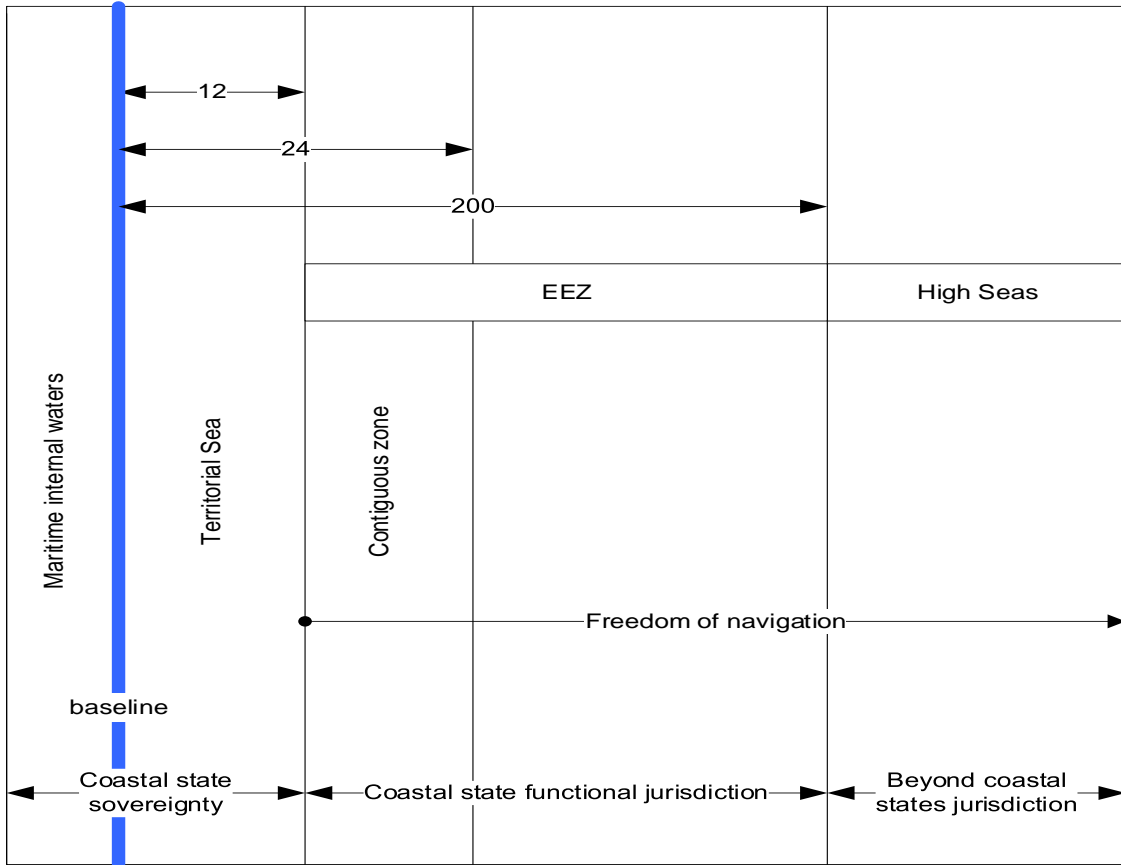


Figure 6 Maritime jurisdictional zones

III. National law

9. Introduction

National law is the domestic legislation of a state and applies in that state, including its territorial waters and the air space above it, but also on board vessels flying the flag of that state. Anybody inside that state, including on board the ships of that state shall obey the legislation of that state.

The legislature constitutes national law, which is enforced by the competent authorities, such as the police, the Maritime Authority or Shipping Inspectorate.

The Public Prosecutor Service and the courts use domestic legislation, which can be found in laws, regulations and jurisprudence.

Since national maritime legislations of states finds its origin in international agreements, these national maritime legislations are quite similar.

10. Laws, regulation and policy

Here, as an example, the legislation of the Netherlands is described. For other national laws and regulations see the legislation and legislature of the respective state.

The primary and most important law-making body in the Netherlands is formed by the Dutch Parliament (two Chambers) in cooperation with the Government. When operating jointly to constitute laws they are commonly referred to as the Legislature.

The power to constitute new legislation can be delegated to lower governments or specific organs of the state, but only for a prescribed purpose. An overview of law and rules:

- Acts: Government & Parliament
- Decrees: Government
- Regulations: Minister
- Directives: Provinces or local Councils.
- Policy rules: rules provided by the administration.

Policy rules are neither really law nor regulations. Policy rules do have to be complied with and can be enforced by the authorities.

Some IMO Codes, Resolutions or Memoranda not yet in force, may be given the status of policy rules in the Netherlands. Often referred to as ‘soft law’.

Legislation contains binding regulations or policy rules, applying to anybody at any time.

Terms used in NL legislation	
Kingdom Act	Act effective in the whole Kingdom
Act	Decision by the Government and Parliament together
Decree	Decision by the Government
Ministerial Regulation	Regulation made by one or more ministers
Provincial Directive	Rules of a province
Council Directive	Rules of a local council
Policy Rules (soft law)	Supplement to or interpretation of legislation
Memorandum, guideline	Interpretation of legislation or plans and executing rules

Figure 7 Terms used in NL legislation

Example	
Kingdom Act	Kingdom Act approval the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
Act	Ships Kingdom Act Seafarers Act Civil Code
Decree	Manning Decree Working Conditions Decree
Ministerial Regulation	Shipping Regulations for Territorial Waters
Provincial Directive	Waterway By-Laws of Province South-Holland
Council Directive	Rotterdam Port Management By-Laws
Policy Rule	Policy Rule Manning
Memorandum	Port Waste Handling Plan 2015 Rotterdam

A set of hierarchic legislation is often referred to as a family of laws.

Example	
Law:	Seafarers Act
Decree:	Seafarers Decree Seafarers Order Merchant Shipping and Sailing
Ministerial Regulation:	Regulation seafarers

Hierarchy legislation

Sometimes laws and regulations conflict with each other. Conflicting normative values may arise when one rule is in contradiction with another rule. Therefore, a hierarchy exists:

1. A higher ranked law has priority over a lower ranked law, irrespective of the moment at which both laws came into force. The ranking order is as follows:
 - Treaties
 - Constitution
 - Acts of Parliament
 - Decrees
 - Ministerial Regulations
 - Provincial Directives
 - Council Directives.
2. When laws of equal ranking conflict with each other, the most detailed rule of law supersedes the more general rule of law.
3. If both conflicting laws are ranked equally and they both give a detailed regulation for the same situation, although with a dissimilar result, then the law that came into force most recently has precedence over the older law.

Private law regulations

Normally regulations and rules arise from public law and are controlled by the government. Certain private rules arising from contracts exist as well: rules dealing with the relationships between both natural and artificial persons, such as companies.

On board a NL ship the Seafarer Employment Agreement exists between the shipowner/ employer and the seafarer/ employee, including its regulations. In the Netherlands, rules for collective employment agreements (CAO) can be found, including its own regulation or statute.

Article 18 CAO Regulations (private law)

Tender transfers ship/shore

- If a ship stays in harbour or on the roads longer than 24 hours, the shipmaster will ensure free transfers between ship and shore.
- The shipmaster decides the time of departure and arrival.

11. Liability/ accountability/ responsibility

Legislation often states that the shipmaster is liable, accountable or responsible for his behaviour and his actions, including the consequences. What exactly is the meaning of liable, accountable and responsible for the shipmaster as an individual?

The terminology concerning accountability, liability and responsibility will be described in brief. One has to bear in mind that not everybody in the world uses the same terminology. Often it is mixed-up and/or synonymous.

Liability

Liability mainly originates from private law or contracts and is often based upon financial claims or damages. It is an obligation that legally binds an individual or company to settle a debt. When one is liable one is responsible for settling a debt or making amends for any wrongdoing. The main rule about liability is the fact that the person causing the damage will pay. Liability has legal and financial aspects:

- legally responsible;
- liable under civil law;
- liable under criminal law;
- liable for damages.

Article 8:545 Civil Code (NL)

If two or more ships have jointly caused a collision by their fault, then the owners thereof shall be liable; they shall not be jointly and severally liable for the damage caused to ships which were at fault too and to the property on board of these ships; they shall be jointly and severally liable for all other damage.

Accountability

Accountability refers to the internal and external accountability of organizations, units and individuals (i.e. the shipmaster is accountable to the shipowner; a government is accountable to Parliament). To say that a shipmaster is accountable to another is to say that he is liable to provide something to another person.

Accountability is the obligation of the shipmaster to account for his activities, to accept his responsibility for them and to disclose the results in a transparent manner. It also includes the responsibility towards his crew and for his ship or other entrusted properties.

Example

A shipmaster is accountable for his conduct and actions. He can be called upon to justify his professional actions. The criteria against which the shipmaster can be held accountable are those embodied in the normative standards of his profession, such as good seamanship.

Responsibility

Responsibility is the duty or obligation to perform satisfactorily or complete a task (assigned by someone else or created by one's own promise or circumstances) that one must fulfil, and which has a consequential penalty for failure.

There is a relation between the shipmaster as the one responsible and the shipowner as the one responsible to. There are more forms of responsibility, such as:

- financial: spending money;
- process: executing tasks;
- policy: effectiveness and efficiency of execution;
- vertical: shipmaster to shipowner;
- horizontal: voluntarily, like shipmaster and crew.

A shipmaster is responsible to the shipowner in various ways.

Guilt/ risk

In legislation the terms guilt or culpability are often used. From a legal perspective, culpability describes the degree of one's blameworthiness in committing a crime or offence (penal law).

Except for strict liability crimes, the type and severity of punishment often depend on the degree of culpability. The keyword here is avoidable: could a person avoid this action or behaviour? In penal law guilt can be averted in different ways, such as self-defence during an attack by pirates.

See section nr. 91 of this Handbook.

Example

If a shipmaster enters an area with a threat of piracy without any preparation and some of his crewmembers are injured or killed, then the shipmaster may be guilty of manslaughter.

Under private law a line can be drawn between guilt and risk.

Contractual risk refers to the risk of contracts not being fulfilled properly or not within the agreed time limit, which can result in losses and other consequences for the shipowner.

The latter may start a liability risk survey and insure a ship or voyage through liability insurance.

Act of God

An inevitable, unpredictable, and unreasonably severe event caused by natural forces without any human interference, and over which an insured party has no control, such as an earthquake, flood, hurricane, lightning, snowstorm. Acts of God are insurable accidents and valid excuses for non-fulfilment of a contract. Also: act of nature or *force majeure*.

Risk-liability is free from guilt. If a risk materializes one is directly accountable.

Duty

Responsibility brings some rights but also some duties. The rights are a necessity to fulfilling one's duties. In Part 2 of this Handbook the duties of a shipmaster are extensively described. Duty is behaviour showing a proper regard or sense of obligation. A duty is something you must do by virtue of your position and is a legal or moral obligation.

Article 8:261 Civil Code (NL)

The shipmaster is obliged (duty) to look after the interests of charterers and proprietors and of property on board the ship, if possible, also after unloading and to take all measures necessary to this end.

Limits on liability, accountability and responsibility

Liability, accountability and responsibility have their limits, as laid down in the law or in common practice. The shipmaster is not always responsible for everything, on board.

He might transfer some of his tasks to other officers on board, for example the navigation of the ship. When he has delegated one of his tasks, he should give sufficient and effective directions how to execute this task. The shipmaster ensures that the delegated task will be executed within his given directions. The shipmaster is responsible unless this cannot reasonably be expected.

Generally, the shipmaster is not responsible for misconduct of his crew or third parties, especially when this conduct stems from intent to cause damage or is due to negligence.

Article III, 2 International Convention on Civil Liability for Oil Pollution Damage

No liability for pollution damage shall be accounted to the owner if he proves that the damage:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- (b) was wholly caused by an act or omission made with intent to cause damage by a third party, or
- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

If the owner proves that the pollution damage resulted wholly or partially either from an act or omission made with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such a person.

12. Law enforcement

All states have the right to enforce their legislation. When a normative value has been violated a sanction can be applied.

In this Handbook enforcement means complying with the legislation and regulations by supervision (control) or by criminal investigation (detection). These words may be used differently in national legislations. The Public Prosecution Service is engaged with criminal investigation. Other ministries concentrate more on supervision or control. On board supervision and control is mainly executed by the Maritime Authority or the Shipping Inspectorate.

Enforcement of legislation

- Supervision: without suspicion violating law (control, non-criminal)
- Criminal investigation: suspicion violating the law (suspect)
- Sanction or measure

Terminology NL Shipping Inspectorate

- Enforcement: enforcing compliance with legislation by explanation, information, supervision, control and criminal investigation.
- Supervision (control): collecting information as to whether an action or behaviour matches with the prerequisite requirements, followed by a judgment and when necessary starting an intervention under administrative law.
- Intervention: an enforcement measure to compel a lawbreaker to comply with the law.
- Criminal investigation (detection): collecting information based upon directions or reasonable suspicion that a violation of criminal law has taken place or still takes place. The aim is to apprehend.

Supervising (control, inspection) and criminal investigation may be brought together in one person. Control may then transfer easily into criminal investigation. An example can be found in the NL Ships Act, which includes control (administrative law) and criminal investigation (penal law). If a supervisor (control) has no criminal investigating powers (penal law) he has to inform a policeman when he comes across a suspected criminal offence.

Example

An official of the NL Shipping Inspectorate often has the authority of a supervisor (control) as well as the authority of a criminal investigator (suspect). When he becomes aware of a criminal offence while executing supervisory activities, he has the authority to act as a policeman to handle this criminal offence.

Enforcement can be divided into supervising/control and criminal investigation. Both have instruments to enforce the law, such as sanctions, punishment and measures: so-called enforcement instruments.

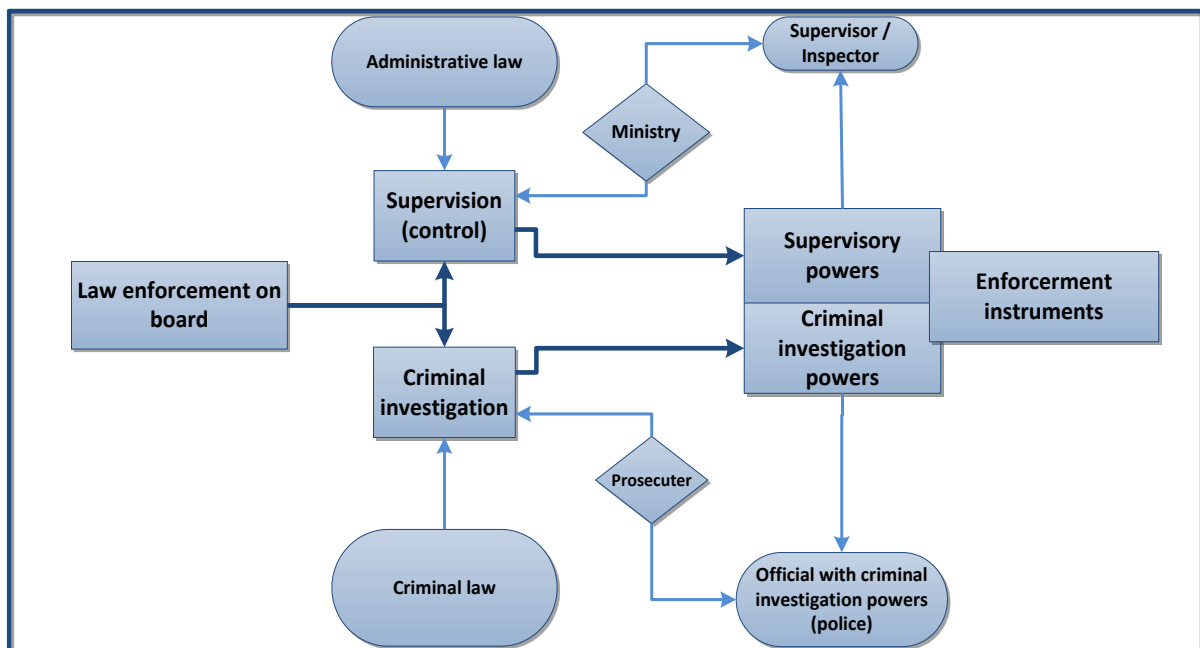


Figure 8 Enforcement structure (supervision/criminal investigation)

More supervisory bodies and enforcement organizations are authorized within the various ministries. Their levels of authority often vary as does their area of supervision. Cooperation is therefore necessary both to ensure that a good shipmaster is not burdened unnecessarily and to encourage other shipmasters to meet their obligations.

Law enforcement	
Supervision	Criminal investigation
Supervisor or inspector	Official with criminal investigation powers
Constituted by specific administrative laws	Constituted by general or specific criminal laws
General supervising/control compliance of law	Specific and reasonable suspicion
Various laws and regulations	Code of Criminal Proceedings
Mandatory cooperation	No mandatory cooperation
Administrative legislation	Penal provisions
Warning, permits, orders	Formal Report, prosecution
Sanctions in General administrative law act	Sanctions laid down in Criminal Code
Supervisory powers in general administrative law act and specific acts	Powers laid down in Code of Criminal Proceedings and specific acts
May request help of police	Criminal investigation powers
Lead by Administration	Lead by the Public Prosecution Service
Indirect	Direct
Use of force by supervisor laid down in various laws	Use of Force in Police Act

Figure 9 Differences between supervision and criminal investigation

Often, authorities have general and specific enforcement instruments to make the shipmaster or ship-owner comply with the law, including powers to stop and seize a ship. Other enforcement instruments are available as well.

Example
The authority to stop a vessel may be found in the NL Ships Act, the Port State Control Act and the Law of Loading and Unloading Seagoing Vessels. The latter also contains the authority to stop loading or unloading a vessel.



Figure 10 Hierarchy of enforcing/intervening instruments

13. Supervision (control)

Supervision (control or inspection) is aimed at influencing the behaviour of supervised shipmasters or shipowners. This can be done by providing information, giving instructions, offering compliance assistance and/or imposing compulsory measures.

Many supervisory authorities are authorized to use enforcement instruments, such as withdrawing a certificate, imposing an order subject to a penalty or imposing an administrative penalty, sometimes in combination with the publication of the enforcement measures in question.

Supervision
To control compliance with legislation.

Supervision falls under administrative law (NL). It can be found in:

- General administrative law: General Administrative Law Act
- Specific administrative law: Ships Act, Seafarers Act, Fishery Act etc.

Administrative supervisory authorities may also work together with judicial authorities. For example, supervisory authorities can pass on to criminal investigating officers (police) much of the information obtained during the supervision.

These criminal investigation officers can use the information obtained, where appropriate, in criminal investigations against the supervised party. All the more reason to give some thoughts to the role and position of supervisory authorities and the parties supervised by them.

Supervisory authorities supervise compliance with legislation and regulations. This involves all activities that are carried out to verify whether regulations are being observed and complied with.

A differentiation is often made between preventive and repressive supervision.

Preventive

Preventive supervision means the regular supervision of the applicable rules without there being any reason to suspect that the rules are being violated. The emphasis here is on providing information and advice to promote compliance with the legislation and regulations.

If a supervisory authority establishes a breach of the rules, it will urge the shipmaster to put an end to it. If the shipmaster appears to be uncooperative, the supervisory authority may exercise its supervisory enforcement powers.

Repressive

Repressive supervision means that the control by the supervisory authority is aimed at investigating offences.

The supervisory authority may have indications that a certain ship or shipowner appears to be violating the rules.

The supervisory authority will then specifically investigate whether the rules are being correctly observed. If an offence is established, enforcement measures will often be taken.

Example
If a shipmaster leaves harbour without correct certificates, the authorities may stop the ship, in accordance with the local administrative law (based upon international agreements).

Overlapping supervisory

It should be noted that ships may be subject to the supervision of several supervisory authorities.

Example

In the case of a collision or a serious environmental accident, various supervising authorities may be authorized to investigate the incident in question, which they may do either jointly or individually. These supervising authorities may originate from the flag state or/and the coastal state.

To ensure that an investigation is performed properly and to avoid a great deal of extra or unnecessary work for the shipmaster, it may be important that all competent authorities consult internally to establish an investigation coordination.

Sanctions/measures

1. Administrative: obligation imposed by an administrative authority.
2. Reparation: administrative sanction intended to undo a violation.
3. Punitive: administrative sanction intended to punish violator.

Supervisor

Supervisor

A supervisor (inspector) is an official who has been officially entrusted with supervising the observance of the provisions made by any national regulation.

A supervisor (inspector) has been appointed by the competent national authorities, based upon a specific administrative law. This law constitutes the authority and powers of the supervisor as well. This law is national law, often based upon international agreements. Small differences between various national laws are always possible. Therefore, read the applicable law.

When performing his duties, a supervisor will carry an identification card issued by the competent authority under whose responsibility the supervisor works.

A supervisor will immediately produce his identification card on request.

The identification card shows a photograph of the supervisor and always states his name and position. The format of the identification card has been devised by the national competent authorities, so it is an official identification document.

A supervisor will exercise his powers only when necessary to fulfil his duties. The powers to which the supervisor is entitled may be limited by regulation or by orders of the competent authority which designates the supervisor as such.

A supervisor will be entitled to enter any place, sometimes including the accommodation (cabin) without the consent of the resident (seafarer). If necessary, the supervisor may gain entry with the assistance of the police.

The shipmaster and his crew are obliged to cooperate fully with a supervisor, who may make reasonable demands when exercising his powers. The shipmaster and his crew have to cooperate within such reasonable time limit as the supervisor may specify.

Resistance against a supervisor might be a criminal offence. The seafarer resisting then officially becomes a suspect under criminal law.

Supervision shipping

The shipmaster is responsible for complying with legislation in the areas of safety, security, environment and working conditions. He has the duty to administer all mandatory certificates on board his ship. He must show these certificates on first demand of the official authorities, otherwise he might commit a criminal offence.

Merchant shipping is subject to international, European and national regulations and therefore supervision. See section nr. 33 of this Handbook.

Port State Control (PSC) is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules. Many of IMO's most important maritime treaties, codes and regulations contain provisions for ships to be inspected when they visit foreign ports to ensure that they meet IMO requirements. Port State Control inspections are carried out in accordance with the national maritime legislation, which is, *inter alia*, based on IMO and EU Directives.

Port State Control inspections in Europe are harmonized through the Paris Memorandum of Understanding (Paris MoU).

The European Maritime Safety Agency (EMSA) plays an important role as well. EMSA's mission is to reduce the risk of maritime accidents, marine pollution from ships and the loss of human life at sea by implementing the EU legislation.

The Netherlands Shipping Inspectorate and the EMSA coordinate as much as is needed and work more or less in tandem.

The shipmaster has to take into account that all coastal states in the world have their own national inspectorates, with their own national legislation, although based on international agreements like SOLAS and MARPOL. On board, the shipmaster may expect various supervisors or inspectors to inspect/survey his ship, cargo, crew and the required certificates.

The national NL Ships Act plays a central role in this. This legislation applies to all seagoing vessels flying the national flag. It focuses on the safety of ships and their crews, their operations and their cargo.

The Netherlands Shipping Inspectorate monitors vessels flying the Dutch flag, foreign vessels, crews, shipping companies and classification organizing bodies. The Netherlands Shipping Inspectorate has authorized a number of organizations to perform certain inspections. These organizations conduct inspections and certification on seagoing vessels. Supervision of these organizations is a responsibility of the Shipping Inspectorate.

In the Netherlands, including its national waters, vessels flying a foreign flag are inspected and surveyed in accordance with the Paris Memorandum of Understanding on Port State Control. See section nr. 33 of this Handbook. Vessels flying a foreign flag have to comply with international rules and regulations such as SOLAS, MARPOL, STCW and MLC.

Supervisory powers

Supervisory authorities usually have very broad powers to investigate whether a supervised ship is obeying the rules. Their standard powers or instruments include the authority to:

- stop a vessel;
- direct the vessel to a safe harbour;
- enter premises and ships;
- demand information;
- inspect and make copies of business records and documents;
- inspect and take samples of goods from the cargo;
- search and seize a ship and its cargo.

Supervisory authorities may also require the shipmaster to report certain information to the supervisory authority.

In addition to these powers, they may also be awarded extra powers under a special act. However, these powers may be exercised only if it is reasonably necessary to perform the supervisory task. Also, the least onerous method must be used.

The shipmaster may be forced to comply, within the stipulated term, and offer all the cooperation that the supervisory authority may reasonably demand in exercising its powers. Failure to comply is a criminal offence.

For the Netherlands, supervisory powers can be found in the General Administrative Law Act, but also in specific laws and regulations like the Seafarers Act and the Fishery Act 1963. The supervisor may execute his powers without any suggestion of suspicion because it all falls under administrative law and is Control.

Suspicion is originated in criminal law. See section nr. 14 of this Handbook.

Shipmaster's protection under (NL) administrative law

The shipmaster is dependent on the decisions of a supervisor, the so-called order or administrative decision.

Definitions

- Decision: a written decision of an administrative authority constituting a public law juridical act.
- Individual decision or order: a decision which is not of a general nature, but specific.
- Objection: exercising the right conferred by law to request the administrative authority that took a decision to reconsider it.
- Appeal: lodging an appeal with an administrative court.
- Appeal higher court: review a judgement by a court of appeal.
- Provisional relief: an expedited process, immediate judgment.

A negative decision (order) by a supervisor may deeply influence the management on board a ship, especially when this decision contains sanctions or measures. Therefore, the shipmaster should be able to object to appeal decisions which are not correct in his view. Naturally, the shipowner needs the same legal protection. No objection or appeal may be lodged against a decision containing a generally binding regulation or policy rules, such as criminal law. These rules have their own legal safety net.

NB

For the Netherlands, this described legal protection for the shipmaster (shipowner) is laid down in administrative law. In other states a different legal protection system may be applicable.

If the shipmaster has the option to make an objection or to lodge an appeal against an order, this must be stated when giving notification and communicating the order. At the same time, it will be stated by whom, within what time limit and with which authority an objection may be made, or an appeal may be lodged. Roughly, legal protection against orders of the supervisor consist of three phases:

1. To submit an objection to the administrative authority (supervisor) constituting the decision.
2. An appeal to an administrative court shall be lodged by submitting a notice of appeal to that court.
3. An appeal to a higher administrative court shall be lodged by submitting a notice of higher appeal to that court.

Objection

A shipmaster submits an objection to the supervisor who made that decision. The time limit for submitting notice of objection or appeal is six weeks, starting on the day after that on which the order was notified in the prescribed manner. The authority to whom a notice of objection is submitted must acknowledge its receipt in writing. The objection will not suspend the decision against which it is brought unless otherwise provided by or pursuant to statutory regulation. Before an administrative authority decides on an objection, it will give the interested parties, the shipmaster or shipowner the opportunity to make their case. At the request of the interested party, witnesses and experts whom he has brought with him may be heard. The costs of witnesses and experts will be borne by the interested party who has brought them with him.

In so far, as the objection authority considers that the objection is admissible and well founded, it may annul the disputed decision and, in so far as is necessary, make a new order to replace it. The decision on the objection will be based on valid reasons, which will be stated when the decision is communicated. If it has been decided not to have a hearing, it will also be stated on what grounds.

Appeal

When the shipmaster does not agree with the decision on his objection he may appeal to the district court against that decision, which is again a decision (order). Cases brought before the district court shall be dealt with by a single-judge bench or a three-judge bench. Parties who have been summoned by the district court to appear in person are obliged to appear and provide the information required.

In the case of a legal entity or an administrative authority, the district court may summon one or more specified administrators or members. The district court may appoint interpreters and experts. After the preliminary inquiry the shipmaster will be called at least three weeks in advance to appear in court at the time and place specified for the hearing. The district court will close the hearing when it considers it to have been completed. Before the hearing is closed, the shipmaster shall have the right to speak, his is 'the last word'. As soon as the hearing is closed, the presiding judge will announce the verdict.

The district court will give judgment based on the notice of appeal, the documents submitted, and the proceedings during the preliminary inquiry and the hearing. The district court will supplement the legal basis at its own discretion. The district court may supplement the facts at its own discretion.

The district court may rule that the appeal:

- lacks jurisdiction
- is inadmissible
- is unfounded, in full or in part
- is well-founded.

Appeal higher court

The shipmaster has the right to lodge an appeal in a higher court. The same procedure will be followed as described above.

Provisional relief

Sometimes an order from the supervisor may cause delay of the ship or other inconvenience. In this case there are expedited proceedings available. If the case is urgent the district court may order that the proceedings be expedited. In this case the district court may reduce the time limits referred to in administrative laws.

If the district court orders the proceedings to be expedited, it must set the time for the hearing to take place as soon as possible and inform the parties without delay.

If the district court finds, when processing the case, that it is not sufficiently urgent to justify expedited proceedings, or that it requires an ordinary procedure, it will order that the case be dealt with further in the normal way.

Example

When the shipmaster receives a decision constituting a ban on leaving harbour, then that order remains in force until all proceedings (objection/appeal) have been completed. Expedited proceedings may suspend the order banning leaving harbour. This is a decision made by the district court.

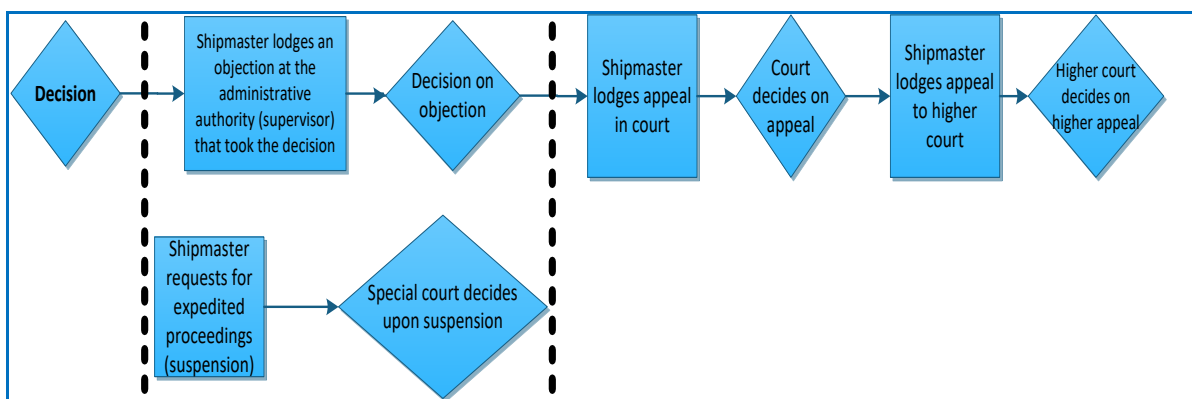


Figure 11 Objection and appeals, including expedited proceedings (NL)

14. Criminal investigation

In the previous section the topic was supervising (Control), now we turn to criminal investigation, also called detection.

Criminal investigation involves the investigation of violations of criminal law. In a criminal investigation, the state is responsible for investigating the case and presenting it in court.

This responsibility includes ensuring that all witnesses (prosecution and defence alike) appear at the trial. More concretely, the aim of criminal investigation is to identify a suspect or to determine whether or not a criminal offence has been committed.

Criminal investigation versus Supervision

- Supervision: Administrative authorities under administrative law
- Criminal investigation: Judiciary authorities under criminal law

Categorization

Criminal investigation is carried out by law enforcement or investigating officers (police), with criminal investigation powers. The police are responsible for the practical side of criminal investigation. They collect evidence, interview witnesses and victims and arrest suspects. They are required to keep a complete record of the case in the form of an official report.

However, the Public Prosecution Service has ultimate responsibility for the criminal investigation. The police have to account for their actions to a Public Prosecutor.

Every criminal investigation is carried out under the instructions of a Public Prosecutor, who ensures that the police observe all the rules and procedures laid down by law. This is of particular importance in the case of a serious offence, where the Public Prosecutor will be in direct charge.

The Public Prosecution Service is also responsible for supervising criminal investigations carried out by other authorities, such as the Shipping Inspectorate or other Inspectorates. The Public Prosecution Service does not have unlimited powers, and certain measures may only be taken with permission from court, such as telephone or internet tapping.

Article 3 Criminal Code (NL)

Dutch criminal law is (also) applicable to anyone committing any criminal offence outside the Netherlands on board a Netherlands ship.

Criminal investigation is conducted under criminal law, which applies in the national waters of a coastal state and on board all ships of that coastal state, worldwide.

On board the shipmaster may have certain limited investigation powers.

Criminal law can be divided into substantive criminal law and procedural criminal law. Substantive criminal law deals with criminal offences and sanctions. It can be found in the Criminal Code (Penal Code).

Procedural criminal law deals with the procedures, such as rules for criminal investigation. Procedural criminal law describes the procedures for arresting a suspect, how to bring the suspect to court and the process during the trial. It can be found in the Criminal Proceedings Code.

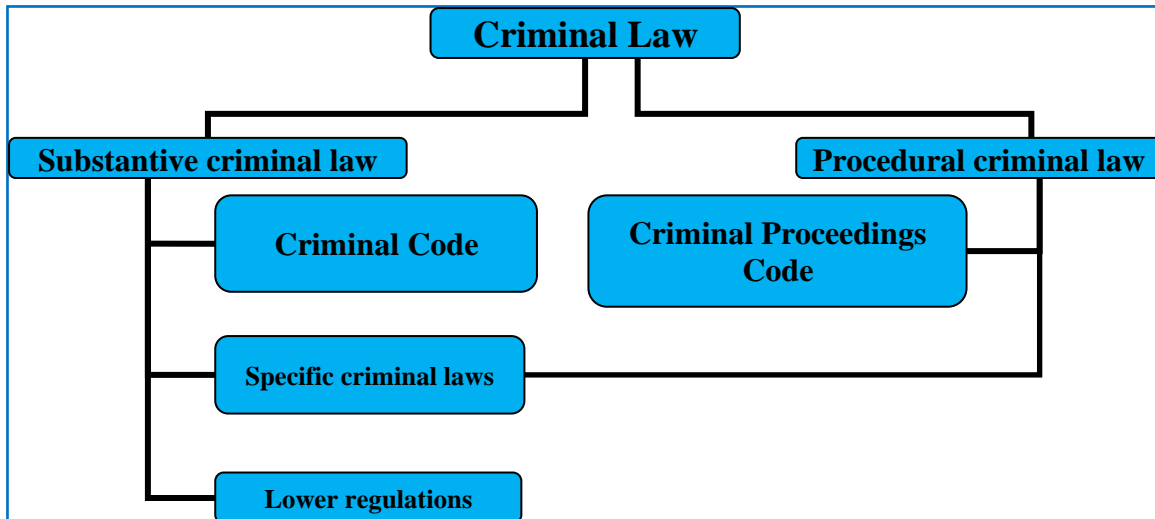


Figure 12 Criminal law

Criminal offence

An action may only be punished when it has previously been deemed to warrant punishment. This cannot be done in retrospect.

Thus, you cannot be punished for doing something that, at the time, did not qualify as an offence. The law states which offences may be punished.

Criminal offence

Criminal offences, like crimes can be found in general criminal legislation such as the Criminal Code and in more specific laws like the Opium Act or the Ships Act.

Criminal offences can be divided into serious or major offences like crimes and minor offences like traffic violations.

Criminal offence

Major criminal offence: crimes like murder, robbery or piracy.

Minor criminal offence: infringement or infraction like public drunkenness.

Shipping offences

The Criminal Code (NL) comprises special chapters and articles covering specific criminal offences for shipping. These are criminal offences connected with the exploitation of the ship (minor shipping offences) and to do with the safety of the ship, crew and cargo (major shipping offences, crimes). See section nr. 23 of this Handbook.

Article 7 Criminal Code (NL)

Dutch criminal law is applicable to the shipmaster and those on board a Netherlands ship if they, outside the Netherlands on board as well as ashore, commit any of the punishable acts defined in Title IX, Book 3 (minor shipping offences) or Title XXXIV, Book 2 (major shipping offences).

Suspect

A suspect is a person suspected of having committed a criminal offence. There must be reasonable suspicion, originating from facts and circumstances, so not from rumours, vague ideas or a general presumption.

- Facts: action, behaviour
- Circumstances: essentials or particulars pertaining to the facts

Suspicion must be reasonable, not only to the police but also in general. It is more than a general presumption. Suspicion must be directed to a certain specific crime, so not in general.

The suspect has to be told that he is a suspect. He then has the right to remain silent.

The police have to respect the rights of a suspect, otherwise the police themselves are committing a crime and the suspect will not be brought before court.

A serious objection is something more than mere suspicion. The probability that the suspect has committed a crime is greater than suspicion alone. There are strong indications that the suspect is involved in a criminal offence.

To be caught red-handed is to be caught in the act of committing a criminal offence or immediately afterwards, with the evidence there for all to see.

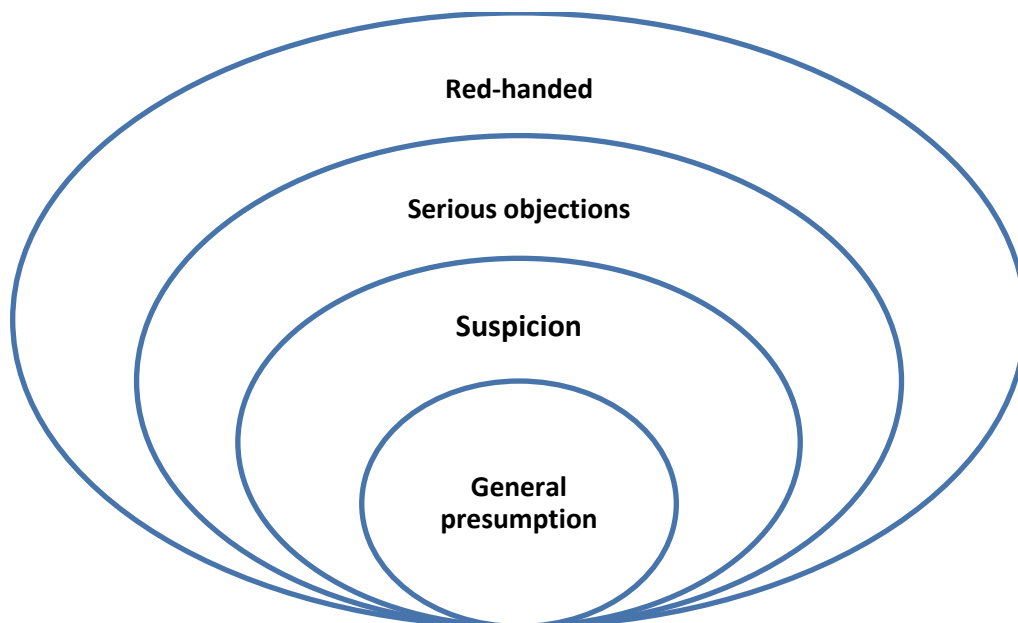


Figure 13 From general presumption to red-handed.

Resistance by a suspect

It is not always necessary for a suspect to cooperate actively, but he has to submit to the investigation powers of a policeman.

When being searched the suspect does not empty his pockets himself, but must succumb to a police search, if necessary, with the use of minimum force.

When a suspect actively resists a policeman, he is committing a criminal offence. Any active use of force against a policeman, including the threat of using force constitutes resistance. If a suspect does not obey an order given by a policeman, he commits a criminal offence.

Information

- **Intent** willingly and knowingly committing a crime
- **Negligence**
 - Conscious ○ taking a considerable and unjustifiable risk
 - Unconscious ○ not aware of risk, but should be aware (carelessness)
- **Attempt** manifest intention of initiating a crime, no completion of crime
- **Preparation** attempt without initiating a crime
- **Complicity** involvement in a crime
 - Principal ○ personally or jointly committing a crime
 - Accessory ○ intentionally assisting in a crime

Evidence

Under criminal law evidence is the information suggesting that the suspect has committed the offence of which he stands accused. Evidence may be:

- statement by a witness
- official report by the police
- suspect's statement
- pictures, tapes or digital footage
- objects such as the murder weapon.

Evidence must be legal and conclusive, according to law.

Legal evidence

- complies with legal requirements;
- complies with the minimum legal norm.

Conclusive evidence

- The judge has to be convinced personally by the evidence that the suspect has committed the criminal offence of which he stands accused.

Reasonable doubt is a term used in jurisdiction of common law countries. See also section nr. 2 of this Handbook. Evidence that is beyond reasonable doubt is the standard of evidence required to validate a criminal conviction.

Evidence

Legal but not conclusive evidence

Legally obtained evidence is available, but the court is not convinced that the suspect has committed the offence, because the possibility exists that another person may have committed the offence.

Convincing but not legal evidence

The evidence only consists of a statement by the suspect, which does not meet the minimum legal norm for giving evidence.

Illegal evidence

Evidence has to be obtained in accordance with national law. Evidence obtained by the police using methods which violate a person's rights against unreasonable search and seizure is illegally obtained evidence. That evidence cannot be submitted in court.

House search

To enter and search a house (ashore) is an infringement on the privacy of the resident; therefore, a search warrant is necessary. On board exemptions exist, see section nr. 85 of this Handbook.

Official report

An official police report is a written, physical record of an incident deemed to be illegal or potentially illegal. It is taken by a policeman and filed according to national procedures. The official report will be used by the prosecutor and by court.

The facts written down in the official report have been observed by the policeman himself.

An official report by the police:

- is legal evidence in court;
- complies with the legal requirements;
- has been written by the policeman in person.

Prosecution and trial

The Public Prosecution Service and the courts together make up the judiciary. The Public Prosecution Service decides who has to appear before a court and on what charge.

Prosecution

Prosecution begins as soon as a court becomes involved in a case, even if no one has actually appeared in court. For instance, the courts may be asked to issue an order remanding a person in custody if he is suspected of having committed a serious offence.

The Public Prosecutor may decide not to prosecute a case if, for example, the police have not managed to collect sufficient evidence.

The Public Prosecution Service settles cases out of court, as well. This can be done by imposing a fine.

Prosecution shipping (NL)

Within the Dutch Public Prosecution Service there is a specific prosecutor, the North Sea Prosecutor. He advises on and supports all legal maritime matters taking place in the North Sea and on board Netherlands ships. Criminal offences in the areas of environment, traffic safety and fishery are monitored by the North Sea Prosecutor.

Certain criminal offences committed on board Netherlands vessels, have to be brought to the attention of the North Sea Prosecutor. This has to be done by the shipmaster.

Inside the territorial waters of a foreign coastal state, as in a foreign harbour, that coastal state has primary jurisdiction, superseding national jurisdiction.

North Sea Prosecutor

For the Netherlands, the North Sea Prosecutor is responsible for the coordination of criminal offences committed inside the Netherlands territorial waters and on board of Netherlands ships, worldwide.

Trial

The case against a suspect is presented in court by the Public Prosecutor. After he has explained in full the charges that have been brought, the court questions the suspect, who is now the defendant. The Public Prosecutor is also given an opportunity to question the defendant.

He then gives his verdict on the case and recommends that the court impose what he considers an appropriate punishment (charging). This may be a fine, an alternative sanction or a prison sentence.

The suspect's counsel, his defence lawyer, speaks on his behalf, and the suspect himself may also give his version of events.

It is the court (judge) who decides upon guilt and sentence.

Application

Another main task of the Public Prosecution Service is supervising the enforcement of sentences. The Public Prosecution Service is responsible for ensuring that all sanctions or orders imposed by the courts are enforced and that fugitives are traced.

IV. Legal maritime affairs

15. Introduction

This chapter focuses on some relevant legal maritime affairs, amongst which maritime crimes, are described. These subjects have relevance for the shipmaster, because he has to deal with these matters and their consequences and might be prosecuted if a maritime crime is committed on board.

Further on in the Handbook (Chapter XIII) the position of the shipmaster will be explained from the point of view of criminal law, including the rights and obligations of the shipmaster.

16. Piracy

On the high seas, coastguard vessels and warships may stop and seize ships suspected of piracy. Within territorial waters this offence is referred to as armed robbery. See Chapter XIV of this Handbook.

Piracy consists of the following acts:

- any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship and directed:
 - on the high seas, against another ship or against persons or property on board such a ship;
 - against a ship, persons or property in a place outside the jurisdiction of any state;
- any act of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship;
- Any act of inciting or of intentionally facilitating an act described above.

Piracy:	illegal act, high seas, private ends, two ships.
Armed robbery:	inside territorial waters.

17. Stateless vessel

Every state has to maintain a register containing the names and particulars of the ships flagged out to it. A ship has the right to fly the flag from the state where she is registered. That ship carries the official papers from the flag state. See section nr. 40 of this Handbook.

Every state must agree to the conditions for granting its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. Ships take the nationality of the state whose flag they are entitled to fly.

A genuine link between the state and the ship must exist. A ship not registered has no official papers and no right to fly the flag of any state; it is a stateless vessel or a vessel without nationality.

18. Human trafficking

Human trafficking, smuggling migrants and illegal immigration are often intertwined. Smuggling involves state border crossing.

All of these acts are offences and could occur on board a ship under the responsibility of the shipmaster. Human trafficking and smuggling migrants are criminal offences, while illegal immigration may be considered an administrative offence.

Illegal immigration

Illegal immigration refers to migration of persons into a state in ways that violate the immigration laws of that state, or persons remaining in a state no longer having the legal right to remain. Illegal immigration is a violation of the immigration laws and regulations.

Various forms of illegal immigration are:

- illegally entering a state by ship;
- legally entering a state but not leaving in due time;
- illegally entering a state by ship with forged papers.

Smuggling migrants

Smuggling of migrants is a crime involving the procurement for financial or other material benefit of illegal entry of a person into a state of which that person is not a national or resident. This criminal offence includes the crossing of a state border; it also includes bringing illegal aliens into a state.

Human trafficking

Human trafficking is trafficking in persons, which is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own state and abroad. Almost every coastal state is affected by trafficking, whether as a state of origin, transit or destination for victims.

Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them.

Trafficking in people is also defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

19. Terrorism

Maritime terrorism is the undertaking of terrorist acts and activities within the maritime environment, including merchant naval vessels. Another definition of maritime terrorism is the use or threat of violence against a ship, its passengers, sailors, cargo or a port facility.

This definition can be expanded to include the use of the merchant naval vessels to smuggle terrorists or terrorist materials into a state.

Maritime terrorism is motivated by political or religious goals, contrary to the private (financial) goals of piracy.

20. Render assistance

The shipmaster has an obligation to render assistance to those in distress at sea regardless of nationality, status or the circumstances in which they are found. This is a longstanding maritime tradition as well as an obligation enshrined in international law, called ‘brotherhood at sea’.

Compliance with this obligation is essential to preserve the integrity of maritime search and rescue services. It is based on the UNCLOS and the SOLAS conventions.

Examples of need for assistance are:

- lack of seaworthiness;
- circumstances on board causing immediate danger;
- malfunctioning steering or propulsion.

The method for rendering assistance may include the decision of the shipmaster to supply extra food, water and fuel to a vessel. The shipmaster decides whether or not that is safe and wise for that vessel at that moment, taking into consideration the weather and other relevant circumstances. Coastguards or SAR-authorities should be informed by the shipmaster.

If a shipmaster has rescued people in distress by taking them on board, he has to disembark those rescued persons in the nearest safe harbour. This in accordance with the local SAR-authorities.

21. Asylum/refugees

A refugee is a person who has been forced to leave his country in order to escape war, persecution, or natural disaster. An asylum seeker is an individual who is seeking international protection and whose claim has not yet been finally decided on by the state in which he has submitted it. Not every asylum seeker will ultimately be recognized as an official refugee.

If people rescued at sea make known a claim for asylum, then the key principles as defined in international refugee provisions need to be upheld. While the shipmaster is not responsible for determining the status of the people on board, he needs to be aware of these principles. The shipmaster should not start a procedure for asylum seekers, but he is definitely not allowed to return a refugee to the place where they are threatened. The shipmaster must coordinate with the shipowner, national government and the local authorities in solving the problem.

Refugee

A displaced person who has been forced to cross national boundaries and who cannot return home safely. Such a person may be called an asylum seeker until granted refugee status by a state if they formally make a claim for asylum.

22. Minor shipping offences

For the Netherlands, minor criminal shipping offences (infringements) can be found in the Criminal Code under Title IX of the Third Book starting with article 469.

In brief, some minor criminal offences are described:

- The shipmaster leaving for sea without the enrolment form having been made up, signed and forwarded to the authorities.
- The shipmaster leaving for sea without having on board the ship's papers, books or documents required by law.
- The shipmaster undertaking a voyage without a valid Certificate of Accommodation.
- The shipmaster not supervising the official keeping of logbooks, and not showing these logbooks when and where law requires him to do so.
- The shipmaster not keeping the register of criminal offences required by law in pursuance of legal regulations or does not show this when and where the law requires him to do so.
- The shipmaster not complying with his legal obligation concerning the official registration procedures for births and deaths occurring during a voyage.

23. Major shipping offences

Major criminal shipping offences (crimes) deal with danger and safety for ships and seafarers. The major criminal shipping offences can be found in the Criminal Code at Title XXIX of the Second Book starting with article 381.

In brief, some relevant shipping crimes are described:

- Piracy or using force against other ships or against persons or goods on board.
- The shipmaster drawing up a ship's protest in the knowledge that its contents are in contravention of the truth (forged ship's protest).
- The shipmaster purposely neglecting the command of a ship, if this behaviour endangers the safety of those on board, the ship or the goods.
- Insubordination.
- Assaulting the shipmaster, opposing him with violence or the threat of violence or purposely depriving him of his freedom to act.
- Not obeying any order given by the shipmaster in the interests of safety on board.
- Not rendering assistance when aware that the shipmaster has been deprived of his freedom of action.
- Being aware of an intention to commit insubordination purposely neglecting to inform the shipmaster of this in time.
- Not obeying any order given by the shipmaster for maintaining order and discipline.
- Wilfully destroying, damaging or rendering unusable cargo, ship's stores or provisions on board.
- The shipmaster flying a nation flag without being entitled to do so.
- Without necessity acting as shipmaster, mate or engineer without being qualified.
- Wilful non-observance of rendering assistance by the shipmaster involved in a collision.

In legislation other than the Criminal Code, major and minor criminal shipping offences can also be found as in the Ships Act or Seafarers Act.

Article 56.2 Ships Act (NL)

Behaviour contrary to provisions of this Act, regarding seaworthiness or rescue means, are crimes insofar as they have been committed intentionally, otherwise minor offences.

PART 2 SHIPMASTER & ...

- V Shipmaster**
- VI ... Foreign coastal states**
- VII ... Ship**
- VIII ... Cargo**
- IX ... Crew**
- X ... Environment**
- XI ... Safety**
- XII ... Security**
- XIII ... Criminal investigation**
- XIV ... Piracy**
- XV ... Registrar & notary**
- XVI ... Safety Board**
- XVII ... Maritime Disciplinary Court**

V. Shipmaster

24. Introduction

Sometimes the shipmaster is referred to as master mariner, which he is. Captain, commander and skipper are used at random. Sometimes one and the same person is meant, at other times a clear distinction exists.

The definition of the term should be looked up in the relevant national laws or regulations. Some of the problematic terms are set out below.

Example (IMO)

Nr. 2 Preamble ISM Code: invited all Governments to take the necessary steps to safeguard the shipmaster in the proper discharge of his responsibilities with regard to maritime safety and

Article 5.1 ISM Code: The Company should clearly define and document the master's responsibility with regard to

Example (NL)

Article 85 Criminal Code: A skipper shall be understood to be every commander of a vessel, or one who replaces him.

Article 1 Seafarers Act: A master is the commander of a Dutch vessel.

Article 26 Seafarers Act: A master of a fishing vessel shall have the title of skipper.

Definition	Meaning
Shipmaster	Commander of a vessel
Shipmaster fishing vessel	Skipper
Employer	Shipowner or bareboat charterer
Ship's officer	Crewmember being an officer according to the crew list or a crewmember, not being the shipmaster, holding the position of chief officer, deck officer (mate), engineer or maritime officer on board of a ship.
Rating	Crewmember, not an officer; shipmate
Crewmember	Person on board with an employment agreement; a seafarer
Seafarer	Any person on board who is employed, engaged or works in any capacity; mariner.
Crew	Ship's manning
Administrator	Owner, bareboat charterer or a company to which the owner has transferred the responsibility for the exploitation of the ship.

Figure 14 Terms used in legislations

25. Shipmaster under international law

IMO

The IMO has a dominant legislative role affecting the position of the shipmaster. The operations of the shipmaster are regulated to a large extent by the IMO. The IMO issues a variety of regulations, such as conventions and circulars.

However, the regulations of the IMO have to be transferred into national maritime legislation of all member states of the UN. This implies that the national maritime legislations concerning the shipmaster are quite uniform all over the world. Due to possible substantial exceptions a shipmaster should refer to his national maritime legislation as well.

Master's discretion (IMO/SOLAS, Chapter V Regulation 34-1)

The owner, the charterer, the company operating the ship, or any other person shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgement, is necessary for safety of life at sea and protection of the marine environment.

Shipmaster authority (IMO/SOLAS/ISM Code 5.2)

The shipmaster has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention.

See also Chapter XI and Chapter XII of this Handbook.

Besides other mentioned conventions, the IMO has adopted the STCW as well. The main purpose of this Convention is to promote safety of life and property at sea and the protection of the marine environment by establishing, in common agreement, international standards of training, certification and watchkeeping for seafarers.

The shipmaster has a prominent role in checking the relevant certificates of his crew. Chapter II of the Part A of the STCW Code deals with the standards regarding the shipmaster.

Master (STCW Code Annex 2 Chapter I Section B-I/14)

The master should take all steps necessary to implement instructions, such as:

1. identifying all seafarers who are newly employed on board the ship before they are assigned to any duties.
2. providing the opportunity for all newly arrived seafarers to:
 - visit the spaces in which their primary duties will be performed,
 - get acquainted with the location, controls and display features of equipment they will be operating or using
 - activate the equipment when possible and perform functions using the controls on the equipment
 - observe and ask questions of someone who is already familiar with the equipment, procedures and other arrangements, and who can communicate information in a language which the seafarer understands.
3. providing for a suitable period of supervision when there is any doubt that a newly employed seafarer is familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of his or her duties.

Besides the legislative role of the IMO, other international bodies deal with maritime laws.

ILO

The ILO also promulgates conventions and by-law relevant to shipping and the position of the shipmaster, mainly in the field of minimum living and working standards.

The MLC provides international standards for the shipping industry. The MLC is also known as the 'seafarers bill of rights', with an important role for the shipmaster. The MLC applies to all seafarers working on commercial vessels flying the flag of states party to it.

Shipmaster/seafarer (definition MLC)

A seafarer means any person who is employed or engaged or works in any capacity on board a ship to which the MLC applies.

This means that the shipmaster is a seafarer as well, according to the MLC.

As a seafarer, the shipmaster is entitled by the MLC. As a shipmaster, he needs to ensure some parts the implementation of the MLC on board. The MLC complements the nautical, commercial and public functions of the shipmaster, including responsibilities. See also Part 3 of this Handbook.

EU

The EU has some regulations in place about the level of training of seafarers. These regulations endorse and supplement the STCW Convention. It is the shipmaster who has an important role in checking all prescribed certificates on board his vessel.

Penalties or disciplinary measures shall be prescribed and enforced in cases in which a shipmaster has engaged a person not holding a certificate as required.

26. Shipmaster under national law

However, this section is named ‘under national law’, the position of the shipmaster under national law is deeply influenced by international law described before.

The shipmaster has many tasks granting him far-reaching representative authority, but he is also an employee. According to law, the shipmaster must fulfil three tasks: statutory, technical and commercial.

Firstly, the statutory tasks have to do with public law which means that the shipmaster has public authority, including the authority to take the necessary measures.

The shipmaster is a bit like a mayor representing local government. In this capacity, he may also act as a registrar of births and deaths, a solicitor and a criminal investigating officer.

Secondly, the technical tasks mean that the shipmaster will keep the ship safe to complete a successful voyage. In this sense he is the legal representative of the shipowner. He will control the muster roll and ensure technical maintenance of the ship.

At last, the shipmaster's commercial tasks mean that he represents the owner for the ship and its cargo. He represents the shipowner, the shipper and freighter. This means that the shipmaster is responsible for the cargo for which he takes receipt. He may also be responsible for loading the ship and stowing cargo, even when this is carried out by a third party.

Thus, the tasks of the modern-day shipmaster become increasingly more challenging and infinitely complex. So, much more is demanded of the shipmaster that he must learn to anticipate.

His tasks are varied and must be executed worldwide in swiftly changing circumstances. This requires training, expert knowledge, experience, but sometimes also legal support, because the environment surrounding the shipmaster is becoming subject to an increasing juridification, or even criminalisation.

In Dutch legislation, the word ‘shipmaster’ can be found in nearly 900 legal provisions.

Shipmaster

- Commander
- Employee
- Employer
- Representative shipowner
- Official public authority
- Mayor
- Criminal investigator
- Registrar of births and deaths
- Solicitor

Shipmaster's deputy

Should the shipmaster be absent for a long time or be unable to work, the chief officer will take his place. Should the chief officer not be present a person appointed by the shipowner will act as shipmaster. Any absence and replacement of the shipmaster must always be documented in the ship's logbook.

27. Seafarer's employment agreement

National laws and regulations provide terms regarding the seafarer's employment agreement (maritime employment contract) between the shipmaster as employee and the employer (managing owner, shipowner or bareboat charterer).

These provisions about seafarers' employment agreements are based on the Maritime Labour Convention (MLC). See also MLC Regulation 2.1. Seafarers' employment agreements and Chapter XX of this Handbook.

For the Netherlands, the seafarer's employment agreement between the employer and the shipmaster is governed by the general provisions of the Dutch Civil Code, but also by the specific provisions from Book 7, Title 10, Part 12, Sections 694 *et seq.*

Article 7:694 Civil Code (NL)

The seafarer's employment agreement is the employment contract, which includes the secondment contract, where the seafarer binds himself to perform labour on board a seagoing vessel.

The seafarer's employment agreement between the employer and the shipmaster must be agreed upon in writing. A seafarer's employment agreement always terminates in a harbour.

The Dutch Collective Labour Agreement (NL: CAO) shows the rules and regulations as well as the salary scales which may also apply to the shipmaster. The seafarer's employment agreement will state the date upon which the agreement begins. The moment the seafarer's employment agreement begins the shipmaster must be available for the appointed ship.

The employer may also appoint him to another ship on the condition that this is one of the ships used by the employer for navigation at sea.

The shipmaster is employed on board a ship from the date upon which he assumes his duties as shipmaster up until the day he is relieved of his duties. During the time the shipmaster is employed on board a ship, he is entitled to wages, food and accommodation. The shipmaster also has a right to holidays and, should it be necessary, repatriation.

A difference may exist between the function of shipmaster and the seafarer's employment agreement. A shipowner may remove a shipmaster from his function as shipmaster on board a ship, while the seafarer employment agreement may continue.

Termination seafarer's employment agreement

The seafarer's employment agreement for the shipmaster may be terminated:

- by operation of the law:
 - death;
 - end of employment period;
- by mutual agreement;
- resignation;
- annulment by the court.

The shipmaster who terminates his employment agreement during the voyage remains obliged to maintain the safety of the ship, people and property on board. The termination of the seafarer's employment agreement does not terminate then after entering a harbour.

Should the seafarer's employment agreement, for the shipmaster, be terminated abroad, he will be entitled to free repatriation to his home state, unless of course he is liable to pay compensation due to the way in which the employment agreement was terminated.

None of this takes away from the fact that the employer retains the authority to take away command of the ship (function) from the shipmaster at any time.

Urgent reasons

Sometimes there are urgent reasons to terminate the seafarer's employment agreement, both on the part of the employer and of the shipmaster as employee. These may be found in the applicable national general provisions.

For the Netherlands, these provisions can be found in the Dutch Civil Code, but also in the special provisions for the seafarer's employment agreement.

Instant dismissal

- Urgent reasons
- Immediate notification

Urgent reasons for dismissal of the shipmaster by his employer are, among other things:

- fraudulent use of certificates;
- serious unsuitability;
- intoxication or immoral behaviour;
- abuse, bullying;
- reckless endangerment of ship and crew;
- refusal to perform duties;
- relief of his certificate of competency;
- smuggling.

Urgent reasons for the shipmaster to resign as employee are, amongst other things:

- lack of wages;
- lack of proper food and accommodation;
- fear of serious endangerment to life, health, morality or reputation;
- orders that are in violation of the seafarer's employment agreement or of the law;
- destination of the ship being a country involved in an armed conflict, or being a blockaded harbour;
- orders to depart to a hostile harbour;
- use of the ship in an armed conflict;
- use of the ship for the perpetration of criminal acts;
- threat of abuse on board;
- loss of the right to fly the flag of the flag state;
- orders in breach of the seafarer's employment agreement.

Serious grounds

Upon request from the employer or the shipmaster as employee, the district court of Rotterdam (for the Netherlands) may annul the seafarer's employment agreement on serious grounds.

Serious grounds are urgent reasons, described above, and changes in circumstances.

These grounds are such that the seafarer's employment agreement, for the sake of fairness, will be terminated immediately or at short notice.

Changed circumstances may include poor working relationships or lack of competence.

In the event that the seafarer's employment agreement is dissolved at the request of the shipmaster on the basis of serious grounds, he will only be entitled to the costs of repatriation if the employer is liable for compensation.

28. Foreign shipmaster

EU regulations and national legislations have made it possible to allow some other nationals to become eligible for the position of shipmaster on a ship of an EU member state or more specifically on board of a Dutch ship. Subject to certain conditions, it became possible for shipowners to be exempted from the obligation to appoint Dutch shipmasters to Dutch ships (the so-called dispensation scheme). The only people who may be appointed as the shipmaster of a Dutch ship are those holding the nationality of:

- the Kingdom of the Netherlands;
- an EU member state;
- another state with which the Netherlands has signed an agreement.

A foreign shipmaster may thus be exempted from the requirement of the Dutch nationality. This exemption for a shipmaster from the abovementioned states may only be granted when:

- the master's certificate is approved;
- the approval procedure has been completed.

A foreign shipmaster will however need to comply with the Dutch requirements of professional knowledge and skills inherent to the tasks of the shipmaster, such as criminal investigation officer, notary and registrar of births and death. See section nr. 96 of this Handbook.

Therefore, a foreign shipmaster needs to understand Dutch national law and that is why he is required to obtain the (Dutch) certificate for legislation and official authority.

This education must include:

- knowledge and understanding of Dutch legislation related to merchant shipping;

- knowledge of the provisions and codes regarding exercising official authority on board, and the skill to implement it;
- knowledge of the measures to be taken for the security of the ship and the ability to act in harbours and at sea when security affairs are concerned.

Article 8.41 Regulation Seafarers (NL)

For the issue of the certificate for legislation and official authority, the applicant has successfully completed an education on legislation and official authority, acknowledged by the Dutch authorities.

Exemption from Dutch nationality may be subject to restrictions or further conditions. The shipowner will provide proof of permission to allow a foreign shipmaster to sail on a Dutch ship. This proof must be included on board with the crew list.

Furthermore, there are certain rules that regulate the labour market for the Dutch shipmaster. This does not concern rules and regulations pertaining to public law (government), but rather regulations under private law (employers/employees). These regulations contain a complaints procedure for chief officers who, in their own opinion, have not been appointed as a shipmaster of a Dutch ship for reasons that are incorrect.

29. Rights & duties shipmaster

A shipmaster has many obligations on board. Failure to comply with these may result in criminal proceedings being brought against him. See section nr. 23 of this Handbook.

Hereafter follows some information on the applicable rights and obligations:

- The shipmaster is obliged to ensure seaworthiness and safety of the ship and people on board.
- The shipmaster will not embark unless the ship is suitable and appropriately equipped and sufficiently manned.
- Underway or faced with a hazard, the shipmaster may not abandon ship, unless his absence is absolutely necessary, or if his life is threatened.
- The shipmaster must be able to present the mandatory documentation on board.
- The shipmaster will ensure that a ship's logbook (daily register or journal) is maintained on board, noting meticulously anything that occurs during the voyage.
- After arrival in a harbour, the shipmaster may have a report drawn up by a lawyer about irregularities during the voyage.
- When necessary for the preservation of the ship or its cargo, the shipmaster will be authorised to both jettison the ship's appendages and parts of the cargo, as well as to consume them.
- In case of an emergency during the voyage, the shipmaster will be authorised to take food products belonging to persons on board or that are part of the cargo, for the purpose of consuming.
- The shipmaster is obliged to provide all assistance to persons who are in danger without exposing his own ship and persons on board to danger.
- The shipmaster has to oversee everything in connection with loading and unloading of the ship.
- The shipmaster will be obliged towards his employer to act in accordance with the provisions under which he has been appointed and the orders issued him pursuant to said appointment, subject to the proviso that these provisions are not in violation of the obligations, imposed on him by law in his capacity as commander.

- The shipmaster will continuously inform his employer of everything concerning the ship and matters on board and will request orders from the employer before proceeding to take measures with financial consequences.
- The shipmaster will represent the employer in the execution of the seafarer's employment agreement with the seafarers.
- The shipmaster will keep a record of working hours up to date in a register intended for that purpose.
- The shipmaster, being informed that the flag state has become involved in war, will be obliged to sail into the nearest neutral port and remain there until the moment that he may safely depart, or until he has received orders to depart to a safe harbour.
- In the event that it becomes apparent to the shipmaster that the port the ship is destined for is blockaded; he will be obliged to sail into the most suitable nearest port.
- The shipmaster may deviate from the passage he must follow, for the purpose of saving human lives.

Balance between rights and duties

Sometimes there is a delicate balance between the many tasks and duties of a shipmaster, so also between his rights and obligations.

If the shipmaster runs a good and proper crew, which is a statutory obligation, he will not suffer any disadvantage from this with the shipowner, for instance because of the costs being too high. This protection also applies when the shipmaster's advice (point of view) was asked by competent authorities, in connection with the issue of a crew certificate. The advice of the shipmaster may lead to additional costs being incurred by the shipowner.

In both situations there is a delicate balance between legal rights and obligations of the shipmaster on the one hand and his position of employee in the service of the shipowner on the other.

The protection of the position of shipmaster relative to his employer in these situations has been laid down in legislation. The shipmaster is protected against prejudice such as involuntary transfer, demotion, suspension or dismissal.

Invoking the law, the shipmaster may defend himself against this before the district court, in a case where the prejudice is connected to the manner in which the shipmaster has fulfilled his statutory rights and obligations.

Obviously, the shipmaster needs not passively await his legal position to be damaged by the shipowner, he may also defend himself against the impending threat of impairment to his legal position.

30. Legislation

International

- STCW Convention
- MLC
- STCW Code

EU

- Directive 2008/106/EC
- Directive 2009/13/EC
- Directive 2012/35/EU

National (NL)

- Civil Code
- Code of Criminal Procedure
- Collective Labour Agreement
- Exemption Regulations Foreign shipmaster sector Merchant Shipping
- Penal Code
- Regulation Seafarers
- Seafarers Act
- Seafarers Order Merchant Shipping and Sailing

VI. Shipmaster & foreign coastal states

31. Introduction

When the shipmaster enters a foreign harbour, he is faced with varying laws and regulations and governing bodies. International provisions such as those from the UN Conventions on the Law of the Sea (UNCLOS) regulating maritime zones, but also national law, such as the prioritized domestic law of the coastal state the vessel is visiting.

Both the law of the state which the shipmaster is in and that of his flag state must be enforced on board. To an extent this also applies in foreign territorial waters and EEZ where he sails.

Authorities from the coastal state have a right to come on board for inspections, they may start an investigation and if needed make arrests.

However, if the shipmaster is only sailing through a coastal state's territorial sea underway from and to another state, then the ship may not be boarded by the coastal state, except in special circumstances (see below).

The rights and obligations of the shipmaster in different maritime zones and in harbour are dealt with, as are the ship's papers which the shipmaster must be able to show to the local competent authorities at their request.

32. Jurisdiction

Jurisdiction has been defined as the power of a state to prescribe or to enforce a rule of law. Distinction can be made between the power of a state to apply laws (prescriptive or legislative jurisdiction) and that state's authority in enforcing its laws (executive or prerogative jurisdiction). See also section nr. 5 of this Handbook.

Jurisdiction is the right a state has to make and impose rules and to bring anyone breaking these rules to justice.

A state has legal rights over a ship flying its flag, which apply all over the world and in all maritime zones. In some maritime zones the state to which the ship is flagged must share jurisdiction with a coastal state. See section nr. 8 and figure 15 of this Handbook.

The rule of law of the coastal state where the ship is located usually takes precedence over the state under whose flag it sails. Similarly, the flag state may not apprehend anyone in another state without that state's permission. This may depend on mutual agreements between states such as extradition.

Hereafter follows a description of what the shipmaster can expect from the law in each maritime zone, whether his ship can be stopped and searched by foreign legal officers, and also whether civil law applies, such as confiscation, foreclosure or a lien.

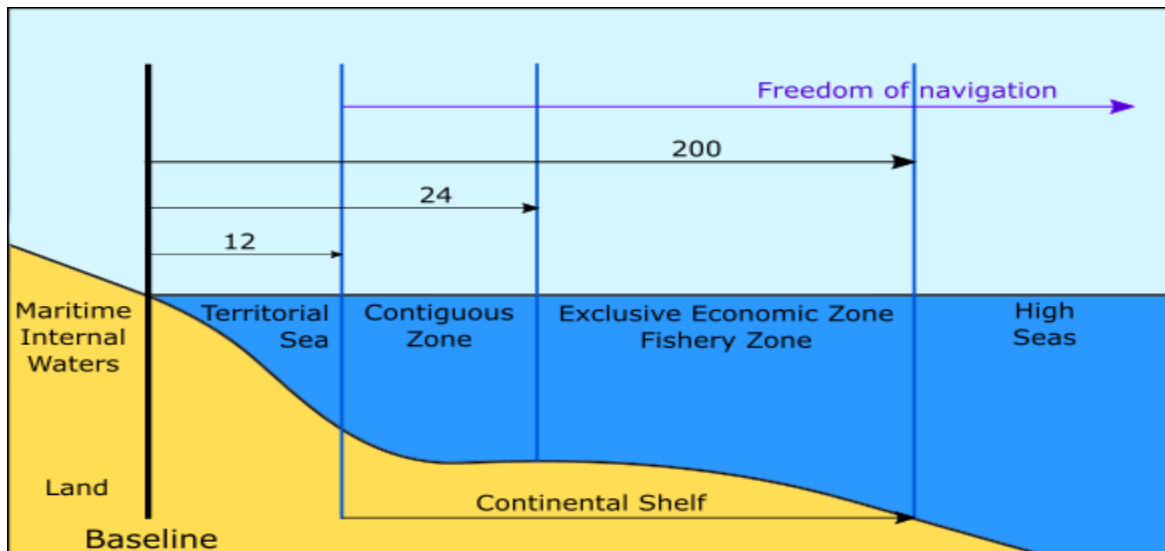


Figure 15 Maritime zones

Maritime zones

A description follows of how the shipmaster may enter a harbour from the high seas. The closer he is to the coast, the more he has to adhere to that coastal state's laws.

On the high seas the shipmaster only needs to adhere to the lawfulness of the flag state, but in a foreign coastal state that state's laws not only apply but take precedence. It is also possible that the legislation of the home state of foreign crewmembers apply, but this legislation does not take precedence. See section nr. 5 of this Handbook.

Law applying on board in a foreign harbour:

1. Coastal state
2. Flag state
3. Home state of seafarer

High Seas

On the high seas the freedom of navigation exists. On board the law applies of the state under whose flag the ship sails. On the high seas that flag state is obliged to apply its laws and to control the following:

- Administrative
 - crew's qualifications
 - logbooks
 - certificate of tonnage / certificate of registry
- Technical
 - build
 - equipment
 - seaworthiness
- Social
 - terms of employment
 - working conditions
- Safety
 - collision avoidance
 - aids to navigation
 - security
- Maritime pollution

These points should be regulated on board a ship on the high seas. The control however usually happens ashore by the relevant authorities, unless the shipmaster has a task to control, such as the ship's log, journals and working conditions during the voyage.

Collision

On the high seas, only the state under whose flag the ship sails can hold the shipmaster accountable. National law then applies, excluding the law of foreign states.

The Dutch Safety Board is an example of this as described in Chapter XVI of this Handbook. Only the flag state has the power to withdraw a certificate of competency or another national issued certificate or document, no other state. The shipmaster can however be asked by another state to be a witness or to make a statement. A foreign master on a Dutch ship can also be held accountable to the laws or regulations of his home state

Detention

A ship involved in a collision on the high seas may only be stopped and searched by the flag state, this is also true in an investigation. Thus, a foreign state has no authority in this on the high seas. The flag state has the authority to direct the ship to a particular harbour for investigation or to the next harbour on its itinerary.

On the high seas, only the flag state has jurisdiction over a ship and its crew. On the high seas, a state other than the flag state is not allowed to stop and search a ship.
Exemptions are:

- Piracy
- Slave trade
- Illegal broadcasting
- Statelessness.

Should a state wish to stop and search a foreign ship on the high seas then it can ask permission from the flag state to do so. That flag state can allow this with or without prerequisites. Permission can only be given by an official representative of the flag state and this is not the shipmaster on board. The shipmaster may however invite foreign legal officials on board for an investigation, whether or not this is at the request of those officials.

EEZ / Fishing Zone

In the Exclusive Economic Zone (EEZ) the coastal state may only stop and search those foreign ships suspected of breaking the laws on gas and oil exploitation and exploration, or on maritime pollution.

In the Fishing Zone (FZ), the coastal state may only stop and search foreign ships suspected of breaking the fishery laws of that coastal state.

Contiguous Zone

The Contiguous Zone (CZ) is an extra specific zone for the enforcement of laws to do with:

- customs and excise
- tax
- public health
- immigration
- archaeology.

The coastal state has the right to stop foreign ships in the CZ in order to enforce the laws mentioned above (supervision/detection), but these ships must be on their way to or from that coastal state.

If a ship is only passing through the CZ, so not entering or leaving the coastal state, the coastal state is not allowed to stop these ships.

Territorial Sea

In the territorial sea it is the law and the regulations of the coastal state to which these waters belong that apply. In the territorial sea the coastal state will, based upon territoriality and sovereignty, be able to exercise all supervision and enforcement powers allowed by law of that coastal state, except for stopping foreign warships and state vessels which are granted immunity. There are two other exceptions: right of innocent passage and transit. See also section nr. 8 of this Handbook.

Innocent passage

Ships exercising their right of innocent passage through the territorial sea of a foreign coastal state may only be stopped and searched when they have broken specific laws such as:

- safety of navigation and the regulation of maritime traffic;
- the protection of navigational aids and facilities;
- the protection of cables and pipelines;
- fishing;
- pollution;
- scientific research.

For criminal offences (detection and suspicion) there are a few exceptions as well.

Criminal investigation is permissible during innocent passage by a foreign ship when:

- an offence has consequences for the coastal state;
- an offence disrupts the public order in the coastal state;
- at the request of the shipmaster or consular official of the flag state;
- suspicion of smuggling drugs.

A ship suspected of trafficking drugs may be stopped and searched in the territorial sea by the coastal state, even when this ship is exercising the right of innocent passage.

A ship in innocent passage through a foreign territorial sea may not be stopped by the coastal state for civil matters such as damage claims or civil legal processes such as that of financial executor. Unless the damages have been incurred during the passage through the territorial waters: *in casu* the territorial sea or maritime internal waters.

Transit passage

The second exception is when a foreign ship is using its right of transit through a sea strait as in the Straits of Gibraltar and Hormuz. The coastal state can only stop and search these ships when under suspicion of breaking certain regulations such as:

- safety and shipping regulations
- pollution
- fishery protection
- loading or unloading people or goods (drugs).

Maritime internal waters

In maritime internal waters, such as in harbours and on the roads, the laws and regulations apply of the coastal state to which these waters belong. In maritime internal waters the coastal state may, on grounds of territoriality, apply all measures for supervision and enforcement allowed by the law and regulations of that coastal state.

In the maritime internal waters, the legislation and jurisdiction of the coastal state take precedence of that of the flag state, both criminal and civil. The rule of law of the coastal state applies to all ships in its maritime internal waters. Foreign state vessels such as warships cannot be stopped as they have a right to immunity.

Law and order internal to the ship

Ships can be considered as self-contained units, they have their own internal system for law and order, that of the flag state; in foreign harbours also. These are laws concerning national labour agreements, minimum wages, disciplinary regulations and social security.

The enforcement of laws relating only to the internal economy of a ship tend in practice to be enforced by the flag state. The coastal state only enforces its own laws and regulations, where their interests are engaged.

Example

Should drugs be found on board a Dutch ship in a foreign harbour it is the coastal state that has primary investigating authority.

Should specific Dutch rules for social security be broken on board a Dutch ship in a foreign harbour, then the Netherlands as flag state will investigate, not the coastal state.

33. Port State Control

Port State Control (PSC) is the control local authorities have over foreign ships in a harbour. Port State Control is aimed at keeping out ships not meeting the international standards.

A ship can be inspected in a harbour by the local authorities as a control that the ship meets international requirements and regulations laid down by SOLAS, MARPOL, STCW, MLC etc.

Foreign ships in port or on roads, are subject to inspection by local Port State Control. As soon as ships enter a harbour, they will be picked out according to Port State Control criteria for inspection. Should a ship neither meet these criteria nor fulfil the correct standards they can be arrested with the aim of fixing the deficiencies.

Actions or sanctions may include:

- Rectify deficiencies before departure;
- Rectify deficiencies at next port;
- Rectify deficiencies whilst being detained;
- Banning and no longer accepted into certain harbours.

Worldwide

Seagoing ships can be inspected in all harbours worldwide as a control that they meet the standards of the international regulations. If during Port State Control deficiencies are found affecting safety and security of the ship or its crew, or that might cause pollution or an environmental hazard, the ship can be detained. Port State Control is usually agreed upon in a Memorandum of Understanding (MOU). See section nr. 7 of this Handbook.

There are MOUs for a number of areas in the world such as the Paris MOU, Mediterranean MOU, Tokyo MOU and US Coastguard. See figure 16 of this Handbook, as an illustration. The most relevant worldwide Port State Control MOUs are:

- Paris MOU
- Tokyo MoU
- USCG Port State Control
- Vina del Mar Agreement
- Mediterranean MoU
- Indian Ocean MoU
- Riyadh MoU
- Black Sea MoU
- Caribbean MoU
- Abuja MoU

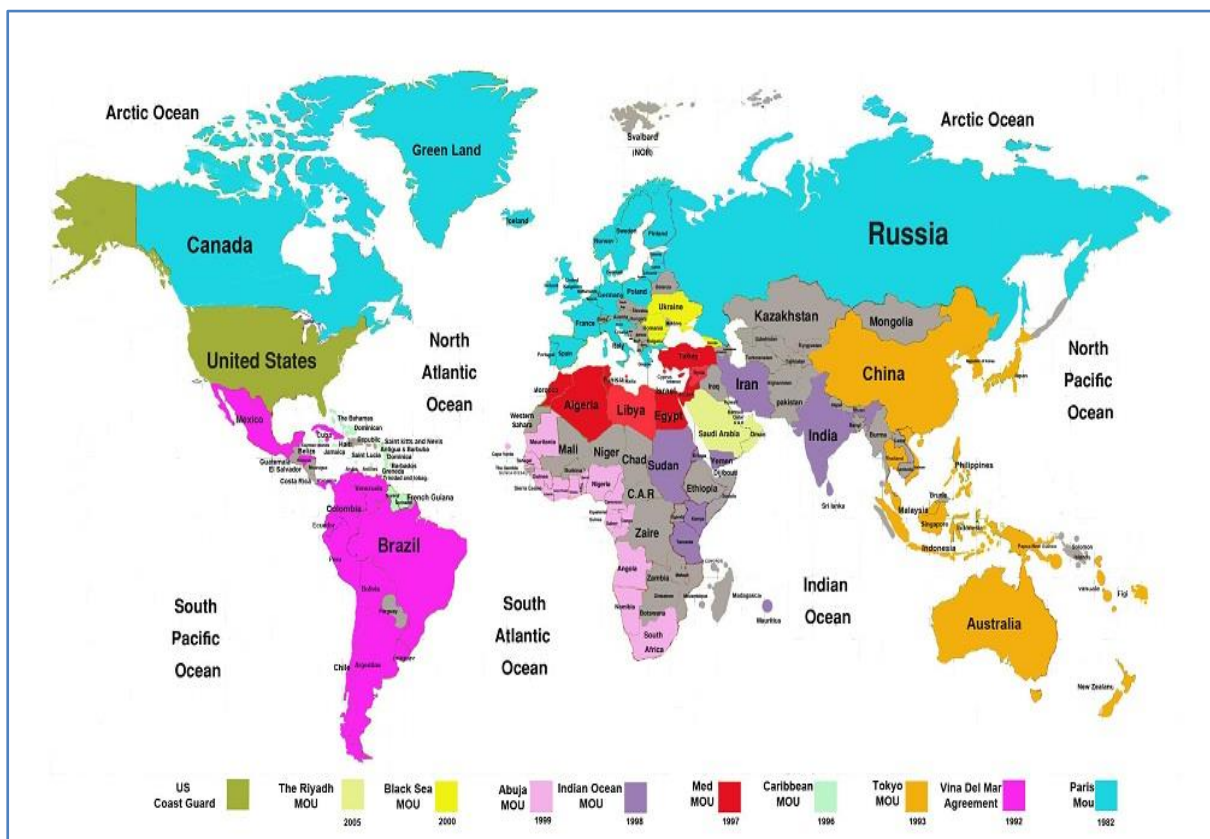


Figure 16 Overview worldwide MOUs PSC (MEDMOU)

It can happen that inspections are carried out by classification bureaus or other civil firms. They do these inspections on behalf of the government of the coastal state. For example, the detention list of the Tokyo MOU entails about 100 detained vessels.

Europe

Paris MOU

In waters of European coastal states and the North Atlantic basin from North America to Europe, Port State Control is harmonized by the Paris Memorandum of Understanding (PMOU). The PMOU lays down the agreements made on how to control that international standards are met, and rules and regulations are upheld. This happens in 27 states which have signed the

PMOU. Port State Control also takes place on ships flying the flag of non-member states in accordance with treaties and national law of the coastal state.

Within the Paris MOU region about 50 ships are detained and 100 are banned, due to deficiencies. On some ships of limited size or lesser propulsion not all the provisions need to be met. Port State Control is carried out on these ships to make certain that there is a level of safety, reasonable living and working conditions and regard for the environment on board.

Within the EU there is cooperation with the European Maritime Safety Agency (EMSA) and there is an electronic information system to exchange data on inspections, evaluations and findings. The EMSA also ensures synergy with the European rules in terms of training and assessing the competence of inspectors in the member states.

The EU do have legislation about Port State Control of their own.

National, The Netherlands

All foreign seagoing ships visiting Dutch harbours can be checked for safety and the technical state of the ship, skill and number of crew. Work and living conditions and compliance with environmental law will be inspected as well.

The inspections are unannounced. Control is carried out based on the NL Port State Control Act, but also the Shipping Act, the Prevention of Pollution from Ships Act and the Certificate of Tonnage Act 1981. Those national laws are based upon international agreements.

In the Netherlands the Shipping Inspectorate, based in The Hague, is the organizing body.

About 1,500 foreign vessels are inspected by Port State Control in the Netherlands each year. Onboard inspections are unannounced. Annual concentrated inspection campaigns also take place.

34. Ship's papers

In a foreign port the shipmaster may be asked to produce certain documents (forms & certificates) for the local authorities. Refusal to do so can give rise to problems. Not showing the necessary papers may mean that the ship is not allowed to leave the harbour or only after a long delay.

All ships are required to carry certificates that establish their seaworthiness, type of ship, competency of seafarers and so on. These certificates are provided by the flag state of the ship and may be inspected by port state control officers. See also the IMO Circular List of Certificates and Documents required to be carried on board ship, 2017.

Further on in this Handbook, some of the relevant papers are described and explained.

English	Dutch
Advance electronic cargo information for customs	Aanmelding digitale ladinginformatie voor risico-inventarisatie door Douane
Advances notification for waste delivery to port reception facilities	Digitale aanmelding voor scheepsafvalaanbieding bij een havenontvangstinstallatie
Bill of Lading (B/L)	Cognossement
Cargo Securing Plan	Sjorhandboek
Certificate of Registry	Zeebrief
Certificate of seaworthiness	Certificaat van deugdelijkheid
Certificates for masters, officers or ratings	Bemanningscertificaten
Charter Party	Bevrachtingsovereenkomst
Crew list	Bemanningslijst

Garbage Management Plan	Afvalbeheersplan
International Load Line Certificate	Internationaal certificaat van uitwatering
International Tonnage Certificate	Meetbrief
Manifest	Lading manifest
Maritime Labour Certificate	Certificaat Maritieme Arbeid
Minimum safe manning document	Verklaring minimumbemanningsterkte
Muster roll/Enrolment form	Monsterrol
Oil Pollution Certificate	Bewijs van financiële zekerheid Wet aansprakelijkheid olietankschepen
Security-related information cf. SOLAS	Veiligheidsinformatie conform SOLAS
Ship's journal/logbook	Scheepsjournaal of logboek
Stores' list	Voorraadlijst
Stowage plan	Stuwplan

Figure 17 Ship's documents to be carried on board (not limitative or exhaustive)

35. Rights & duties shipmaster

- The shipmaster is obliged to abide by the laws of the coastal state when present in the territorial waters, the EEZ or in the Fishing Zone.
- The shipmaster is obliged to show certain ship's papers and cargo papers to the local authorities.
- The shipmaster is obliged to comply with Port State Control.
- The shipmaster has the right to visit all harbours unless specifically forbidden by the coastal state.
- The shipmaster has the right to navigate in the territorial sea of all coastal states: the right of innocent passage.
- The shipmaster has right of transit passage in an international sea strait.

36. Legislation

International

- | | |
|--|--|
| <ul style="list-style-type: none"> • Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) • International Convention for the Prevention of Pollution from Ships (MARPOL) • International Convention on Load Lines • International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) | <ul style="list-style-type: none"> • International Convention on Tonnage Measurements of Ships • United Nations Law of the Sea Convention (UNCLOS) • Paris MOU Port State Control • International Convention for the Safety of Life at Sea (SOLAS) |
|--|--|

EU

- | | |
|--|--|
| <ul style="list-style-type: none"> • Directive 1995/21/EC • Directive 2002/59/EC • Directive 2009/16/EC • Directive 2009/17/EC | <ul style="list-style-type: none"> • Regulation 428/2010/EU • Regulation 801/2010/EU • Regulation 802/2010/EU |
|--|--|

National (NL)

- | | |
|--|---|
| <ul style="list-style-type: none"> • Act on Liability of Oil Tankers • Certificate of Tonnage Act 1981 • Certificate of Tonnage Decree 1981 • Certificates of Registry Act • Civil Code • Code of Commerce | <ul style="list-style-type: none"> • Fishery Act 1963 • Kingdom Act implementing Contiguous Zone • Kingdom Act implementing EEZ • Kingdom Act implementing Fishery Zone • Port State Control Act • Port State Control Regulation 2011 |
|--|---|

VII. Shipmaster & ship

37. Introduction

The rank and tasks of the shipmaster cannot exist without the ship under his command. This ship has an owner, a nationality and a certain size. A description is given below of matters relating to the ship from the shipmaster's perspective. The words 'ship' and 'vessel' are both used. For this Handbook, no difference exists both words are used at random.

Vessel (COLREGS Rule 3)
<ul style="list-style-type: none">• vessel includes every description of watercraft, including non-displacement craft, WIG craft and seaplanes.• power-driven vessel means any vessel propelled by machinery.• sailing vessel means any vessel under sail provided that propelling machinery, if fitted, is not being used.• vessel engaged in fishing means any vessel fishing with nets, lines, trawls or other fishing apparatus

Ship (IMO/SOLAS Chapter 1, Part A, Regulation 2)
<ul style="list-style-type: none">• Passenger ship is a ship which carries more than twelve passengers.• Cargo ship is any ship which is not a passenger ship.• Tanker is a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of an inflammable nature.

According to international law, a distinction can be made between seagoing vessels, ships used for commercial shipping (merchant navy, passenger ship, and craft for civil engineering) and seagoing vessels used for recreation.

Many conventions, circulars and regulations have been adopted by the IMO. The most relevant ones are described hereafter, under the heading of national law as well. Including certificates such as load line certificate and safety certificates, but also pilotage and shipping rules.

38. International

IMO

In the various legal regulations one single definition cannot be found for the word ship: sea going vessel, deep sea vessel, or craft are also used. While there are no universally applicable definitions of ship types, specific descriptions and names are used within IMO treaties and conventions. In the SOLAS some definitions may be found, but national law may define ships as well.

IMO/SOLAS

- A passenger ship is a ship which carries more than twelve passengers.
- A cargo ship is any ship which is not a passenger ship.
- A tanker is a cargo ship constructed for the carriage in bulk of liquid cargoes of an inflammable nature.
- A fishing vessel is a vessel used for catching fish, whales, seals, walrus or other living resources of the sea.
- A nuclear ship is a ship provided with a nuclear power system.

IMO number

No ship may be missing its own unique IMO ship identification number. The IMO number was made mandatory in 1994. It is a measure aimed at enhancing maritime safety, pollution prevention and to facilitate the prevention of maritime fraud. The IMO number is an aid to checking international regulations as laid down by the IMO and ILO.

An IMO number is made up of seven digits. This number is assigned to the total portion of the hull enclosing the machinery space and is the determining factor should additional sections be added. The IMO number is never reassigned to another vessel and is shown on the ship's certificates. IHS Markit is the authority for identifying and assigning an IMO number. IMO numbers are issued by IHS Markit on behalf of the IMO.

The IMO number is permanently marked in a visible place either on the ship's hull or superstructure. Passenger ships should carry the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

There are exceptions to this such as fishing boats, dredgers and floating docks.

IMO ship identification number

A unique internationally recognized number made of the three letters 'IMO' followed by the 7 digits number which no ship may be missing.

EU

Maritime transport within the EU is subject to complex administrative procedures even when vessels ply only between EU ports. These procedures involve a wide set of mainly EU legislation made up of customs and transport rules, veterinary and plant-protection regulations, and formalities for vessels arriving in or departing from ports and have been identified as a major hindrance to maritime transport.

The EU is in the process of achieving maritime transport without barriers, by eliminating or simplifying EU procedures.

The EU does not have significant regulations about ship registration by the EU, this is a national case. EU regulations, however, require the international trades of EU member states to be open to ships of any flag.

Flag based restrictions on international trades are now confined to some developing states and to some states with state-controlled economies.

39. National

The Dutch Civil Code defines a ship thus:

Ship (NL Civil Code)

All things, not being aircraft, that according to their construction are intended for floating, and that do float or have been floating.

In accordance with the applicable legislation, the Netherlands distinguishes between different types of seagoing vessels:

1. Merchant vessel

Seagoing ships used in commerce:

- Cargo ships
- Passenger ships
- Dredgers
- Pontoons
- Moveable offshore drilling rigs

2. Commercial Cruising Vessel (CCV)

Seagoing cruising vessel for commercial use, longer than 12 meters, designed and built for recreational use by passengers which is:

- Completely or mainly mechanically driven and not equipped to carry more than 12 passengers
- Mainly sail driven and equipped to carry no more than 36 passengers

3. Pleasure craft

Seagoing pleasure craft designed and built to be used by people on board for non-commercial activity and recreation.

40. Ship registration

Something must be said here about registration because the shipmaster plays a part in recording the nationality of his ship.

Flagging or registration is an embodiment of the legal principle that every ship, like every person or enterprise should belong to a state. In order to be within the law, a ship must belong to a state. A ship that does not belong to any state is, like a stateless person, outside the law.

The registration may vary in every flag state. The international basis for ship's registration is the UN Convention on the Law of the Sea (UNCLOS).

Seagoing vessels can sail under Dutch flag if they are registered at the NL Ships Register Code or in the Bareboat Charter Register. Each type of ship requires certain inspections and certificates. The terms and conditions for registering a seagoing ship used for commercial shipping are not entirely similar to a ship used for recreation.

Registration

Ship registration for seagoing ships has more objectives and more legal aspects both civil and public.

Private law

In private (civil) law the context of record is important in terms of a register open to all showing the details describing the ship and identifying it with a specific trademark.

Civil legal information like property and mortgage can then be associated to that ship which is important for banks and investors.

This use of civil law makes known what rights the ship has and thus these rights can be protected. The cadastral register in the Netherlands and the records for open registers on Aruba, Curacao and Saint Martin are vital in this.

Public law

In the context of public law, the nationality granted to seagoing ships is kept separate in the legal sense from the civil law record.

A seagoing vessel is not automatically granted its nationality by making a civil law record, but it must be entered into a public flag register of The Kingdom of the Netherlands. Also known as the Dutch Shipping Register.

Identification of ship and owner is an important condition for being entered into the flag register. Evidence is given by the person applying to be registered by submitting evidence of its record thus making the genuine link between registration and being granted nationality.

Nationality of the Kingdom of the Netherlands

The United Nations Convention on the Law of the Sea (UNCLOS) as well as the IMO and EU regulations state that every seagoing ship must be granted the nationality of a state. This state's nationality then applies to that ship.

For the Netherlands this nationality is that of the Kingdom of the Netherlands consisting of the following four countries:

1. The Netherlands, including Bonaire, Saint Eustatius and Saba (BES islands)
2. Aruba
3. Curacao
4. Saint Martin

By entering a seagoing ship into the flag register for one of those countries within the Kingdom of the Netherlands the ship is granted the nationality of the Kingdom of the Netherlands.

For as long as that seagoing ship has the nationality of the Kingdom of the Netherlands it may sail under the Dutch flag.

The internationally agreed number of this ship and its home port, lying in the country where it is registered, are displayed clearly on the side of the ship.

The ship and business concerning it must adhere to the legislation laid down in the country where that ship has been entered into the flag register.

Registering / Recording.

Entering it into a flag register determines a ship's nationality. A flag register of seagoing ships falls under public law

Recording is when a ship is entered into an open register. This falls under civil (private) law.

Bareboat charter registration

The second option for registering a seagoing vessel in the Netherlands is as a bareboat chartered vessel. A seagoing vessel that is registered outside the Netherlands may be registered in the Dutch Bareboat Register.

Registration of ships under bareboat charter is governed by the NL act called 'Seagoing Vessels under the Act of the Nationality of Ships on Bareboat Charter'. The minister can apply conditions to ensure that labour agreements for shipmaster and crew are correctly implemented.

Shipowner

The term shipowner is not consistently used in international documents.

Terminology

Shipowner

- Owner of one or more ships.
- Owner of a ship used by a commercial company.

Shipping company

- Two or more owners of a ship.
- Joint owner of a ship making him by law member of the shipping company.
- Employs an accountant.

Ship controller

- Natural or legal person in charge of daily running of the ship from a company office in the flag state, may also be the owner of the ship.
- Owner or broker of a ship or a company to which the owner has handed over responsibility for operating the ship.

The shipowner usually has offices in the state where the ship is registered. The owner ensures that there is someone with responsibility for that ship, its shipmaster and the rest of the crew and people on board.

Should the ship be property of the shipmaster (master/owner) then he ensures that he has a representative ashore who is constantly available and has the executive power to act quickly in situations as and when needed

41. Ship certificates

A lot of things on board a ship require certification with a certificate to prove it.

Many of these certificates stem from treaties or are based on other international regulations which themselves are laid down in national legislation. The shipmaster plays a crucial part in controlling and managing the certificates.

Certification

Certification refers to the confirmation of certain characteristics of an object, person, or organization. This confirmation is often provided by some form of external review, inspection, assessment or audit.

International and national regulations have provisions to ensure that the shipmaster adheres to the requirements on the certificates and the applicable regulations, such as those to be found in SOLAS, MARPOL, the International Convention on Load Lines, and other treaties and codes.

Example

The shipmaster is forbidden to leave harbour without the required certificates.
The shipmaster is required to show the certificates to the competent authorities.

If the shipmaster cannot produce a valid certificate the ship may be prevented from leaving harbour. Hereafter, some relevant ship certificates are described in short.

International Load Line Certificate

The load line certificate stems from the International Convention on Load Lines. For ships longer than 24 meters taking on international voyages an international load line certificate is required.

The regulations for the Netherlands are laid down in the 2004 Ships Decree. For every voyage the shipmaster ensures that the freeboard of the ship is not lower than permitted for that ship on that voyage. The freeboard demanded for each voyage can differ depending upon factors such as sea area and season.

In the law and regulations, the world is divided into zones. There is a minimum freeboard specified for each zone. This also depends on the climate and the time of year. Some situations can mean that when leaving a harbour, the minimum freeboard cannot be achieved exactly, because the ship must take into consideration that it may later enter an area where a higher freeboard is required. As a result, the ship will have to be less deeply loaded on departure.

Article 60 Ships Decree 2004 (NL) Load line requirements

1. The shipmaster must ensure that the ship does not have a freeboard during a voyage lower than that specified for that ship on that voyage.
2. The first paragraph is equally applicable to ships longer than 24 meters where a national safety certificate is required and with which international voyages will be undertaken.

International Safety Certificate (SOLAS)

Article 5 Ships Decree 2004 (NL) International safety certificate

For ships undertaking international voyages the following International Safety Certificates are required i.a.w. paragraph I/12 of the SOLAS:

- a. passenger ships: the safety certificate for passenger ship
- b. cargo ships above 500 GT: the safety certificate for cargo ship
- c. cargo ships between 300-500 GT: the radio safety certificate for cargo ship

NB

Should the requirements mentioned above change in the SOLAS then these changes are automatically implemented into Dutch law because this law refers directly to the articles in the SOLAS.

International or national safety certificate

The NL 2004 Ships Decree covers a number of basic rules for the required safety certificates: for passenger ships and cargo carriers of more than 500 GT undertaking international voyages, an international safety certificate is needed in accordance with the SOLAS.

For other ships in general a national certificate is required. As a supplement to these general rules the 2004 Ships Decree makes it possible to demand special certificates for certain categories of ship. These are mainly certificates based on IMO Codes or EU regulations. The group of cargo carriers smaller than 500 GT is split into two groups for technical reasons, namely longer or shorter than 24 meters. Another group is yachts sailing commercially with a maximum of 12 passengers.

Noteworthy, although SOLAS constitutes either three separate safety certificates (Safety Radio, Safety Construction and Safety Equipment) or an alternative one (Cargo Ship Safety Certificate), the Dutch Ships Decree 2004 only allows for this Cargo Ship Safety Certificate.

Article 6 Ships Decree 2004 NL) National Safety Certificate

For a ship where an International Safety Certificate is not required a National Safety Certificate is required. This does not apply to cargo ships shorter than 12 meters.

Certificate of Registry

A ship that has been granted the nationality of the flag state is awarded a Certificate of Registry by the authorities as evidence of this nationality and giving it the right to fly the flag of that flag state, see section nr. 40 of this Handbook.

Should the shipmaster not have a Certificate of Registry or has one that is invalid then the ship is often not allowed to leave the harbour until a valid Certificate of Registry or other proof of nationality has been issued. The Certificate of Registry is in principle permanently valid unless details change such as the ship's name, exchange of property rights or a new engine.

For a ship in commercial use the Certificate of Registration states the following:

- name of the seagoing ship and the office where it is registered;
- name of the owner or broker to whom the ship belongs;
- gross or net tonnage of the seagoing ship according to the safety certificate;
- description of the seagoing ship which must include:
 - type design
 - material from which the hull is made
 - specific characteristics
 - unique ship's identification number
 - name and location of ship builder's yard
 - year and number of build
 - number of motors in propulsion system
 - type, capacity and factory number of every motor
 - period for which the certificate has been given
 - IMO number.

Besides the standard Certificate of Registration awarded to a ship recorded in the flag register there are three more certificates for specific cases:

- provisional
- extraordinary
- exceptional

The provisional and extraordinary certificates of registration are a temporary measure awarded to ships not yet recorded in the flag register.

The exceptional certificate is intended for international traffic in the Caribbean (NL), in a limited area around the ship's home port.

A certification of registry is not valid if:

- it has expired;
- it was given to a ship which is no longer seagoing;
- the name and dimensions are no longer correct;
- the ship has been scrapped.

International Tonnage Certificate

Within the IMO it has been agreed that ships making international voyages must have an International Tonnage Certificate. This is a certificate issued to a shipowner by a government department in the case of a ship whose gross and net tonnages have been determined in accordance with the International Convention of Tonnage Measurement of Ships.

The certificate states the gross and net tonnages together with details of the spaces attributed to each.

These certificates serve as a base for the fees and tolls for harbours and canals etc. but also influence the owner's responsibility. These certificates can also be used to define the applicability of certain treaties such as SOLAS rules for ships larger than 500 GT.

There are three kinds of tonnage certificate for seagoing ships:

- General international tonnage certificate
- Suez Canal Tonnage Certificate for Transiting
- Panama Canal Tonnage Certificate

In the Netherlands this is further laid down in the law: The Certificate of Tonnage Act 1981 (*1981 Meetbriefwet*). Written into the International Tonnage Certificate is the fact that the shipmaster of a Dutch ship may only undertake a voyage when the ship has been given the certificate. Not doing this is in contravention and is punishable with a hefty fine.

When leaving or entering a Dutch harbour every ship, regardless of under which flag it sails must have a valid certificate, more specifically:

- International Certificate of Tonnage
- Provisional Certificate of Tonnage
- Recognised Certificate of Tonnage or one awarded by an authority empowered to do so.

42. Logbooks

The shipmaster ensures that there is a ship's logbook or journal maintained on board in which anything at all of any importance that happens during the voyage is accurately noted down. In addition, the shipmaster must ensure that a member of the engine room personnel keeps an engineering logbook.

The logbook is kept daily and signed by the shipmaster and the crewmember tasked with keeping the logbook.

The shipmaster is obliged to show the book to relevant authorities on request and at their expense provide copies of it. On Dutch ships, only official logbooks may be used.

Article 64 Ships Decree 2004 (NL) Keeping logbooks

The shipmaster ensures that the logbooks kept on board are maintained i.a.w. the treaties and codes defining and laid down in this decree.

The obligation to keep a ship's logbook stems from international regulations. Treaties and codes contain many criteria for what should be kept in the logbook and how. The criteria vary from whether watertight doors are closed to firefighting exercises and evacuation drills. These international regulations are laid down in national laws and regulations.

Regulation 28 Chapter V SOLAS (Summary)

- Key navigational activities to be logged.
- A complete record of the voyage must be able to be restored.
- Daily reports to be sent to the company.

43. Shipping

The International Regulations for Preventing Collisions at Sea (COLREG) stem from the IMO. Those rules are aimed at doing just that and to organize shipping traffic and navigation on the high seas and all adjacent waters navigable for seagoing vessels (maritime internal waters).

The COLREG apply to all ships. The shipmaster is responsible when these Regulations are applied and when they are not, and for the consequences of not doing so. Certain breaches of these Regulations are in fact criminal offences such as the provisions for:

- look out
- safe speed
- avoiding collisions
- narrow channels
- traffic separation schemes
- overtaking
- use of navigational lights
- towing
- sound and light signals.

The Netherlands

In the Netherlands, including its territorial waters, the safety of shipping is laid down in the Maritime Traffic Act.

Netherland's waters

NL law provides a legal framework to regulate shipping traffic in Dutch territorial waters, but also for keeping shipping traffic correctly organized in shipping routes off the Dutch coast beyond the territorial waters. The latter being inclusive to the regulation of shipping traffic in the Dutch EEZ.

The NL Maritime Traffic Act is, amongst other things, worked out in shipping regulations for territorial waters which lay down further rules for organizing shipping traffic in these waters. Amongst other things this is to do with regulations for:

- reporting, listening and communication procedures;
- obligation to report accidents;
- exceptional transport;
- events;
- anchoring.

In addition, these regulations form the base of rules for timely reporting when entering harbours, anchorages or for loading and unloading.

These regulations also include rules against sailing under the influence of alcohol, including sanctions. Other laws also contain articles aimed at safe shipping, think of the Mining Act, applicable to the Netherlands EEZ.

Article 43 Mining act

1. Around a drilling installation the minister can implement a safety zone, the size of which he decides, but not further than 500 meters measured from the edge of the installation.
2. It is forbidden, unless excepted by the minister, to enter the zone described in paragraph 1 or to have any object of any sort within, other than for purposes of carrying out surveying work or backed by a licence to research or find minerals etc.

44. Pilotage

The IMO has adopted various resolutions encouraging the use of pilots in certain areas, and resolutions including recommendations on training, certification and operational procedures. Pilotage is defined in national legislations in many ways. Sometimes, the definition is general applying to all types of pilotage, while in others it is specifically defined, like harbour pilot, river pilot or deep-sea pilot.

However, it is the case that the nature of pilotage varies between states and local circumstances. Being a pilot is habitually an independent and autonomous profession. With the shipmaster's permission the pilot takes over the navigation on board and is the shipmaster's adviser.

The pilot advises the shipmaster, the shipmaster has legal authority on board.

The combination of the skill to navigate ships conform all safety and environmental rules and local knowledge makes the pilot indispensable. As well as advising the shipmaster the pilot also frequently takes over all the communication.

The pilot adheres to the laws, rules and regulations of the coastal state in which he carries out his pilotage duties.

Thus, the shipmaster is confronted by shifting rules in this regard. Particularly when it comes to responsibility and liability between shipmaster and pilot, the shipmaster must keep his wits about him. In many states a pilot is obligatory, but sometimes there are waivers to these duties. These apply to a particular shipmaster or to a particular ship and then no pilot is required (Pilot Exemption Certificate, PEC); so-called PEC holders.

A pilot can refuse to come on board or abort his duties on the grounds of safety reasons.

Article 2 Pilotage Act (NL)

1. On board, the pilot advises the shipmaster on the navigation to be conducted by him. With consent of the shipmaster, the pilot may act as a traffic participant.
2. Insofar as the pilot cannot carry out his function on board of the ship to be piloted, he may advise the shipmaster from shore or from another ship and in so far as article 9 of the Maritime Traffic Act allows to give trafficking information in the event of poor visibility, heavy weather or other exceptional circumstances.

Liability

The main rule is that the shipmaster remains responsible and liable for his ship and that the pilot advises him in navigating, based on his local knowledge. In many states this is laid down in law, but there are exceptions in national regulations as in parts of Norway, in Poland and in Greece.

Should, in these states, the pilot make a mistake he may be held responsible and liable for any damages. In other states, often a combined liability with the shipmaster and pilot exists. See section nr. 11 of this Handbook.

Liabilities of pilot and shipmaster reflect national judicial traditions

In most of the cases, PEC holders can incur civil and/or criminal liability, when making a mistake. This also depends on whether this is an intentional or negligent act.

With regard to civil liability, a heavier compensatory burden is sometimes applicable to PEC holders who do not enjoy limitations on their liability, as contrasted to the limitations applicable to pilots. A PEC holder should carefully read his PEC and the applicable national law of the coastal state in which waters he sails as a PEC holder.

45. Rights & duties shipmaster

- The shipmaster is obliged to maintain the ship's certificates, and to show them to the authorities.
- The shipmaster is obliged to keep and check the requisite logbooks and journals and must show them to the authorities.
- The shipmaster is obliged to ensure that the rules and regulations for preventing collisions at sea are followed on his ship.
- The shipmaster has the right to consult his crew on serious ship matters.

46. Legislation

- | | |
|--|---|
| <ul style="list-style-type: none">• Convention on the International Regulations for Preventing Collisions (COLREGs)• IMO Identification Number Schemes• International Convention on Load Lines | International <ul style="list-style-type: none">• International Convention on Tonnage Measurements of Ships• SOLAS Chapter 1• UNCLOS |
| <ul style="list-style-type: none">• Directive 2001/96/EC• Directive 2002/84/EC• Directive 2003/25/EC• Directive 2009/45/EC• Directive 2010/36/EU | EU <ul style="list-style-type: none">• Directive 2014/90/EU• Regulation 2003/1726/EC• Regulation 2004/789/EC• Regulation 2006/336/EC |
| <ul style="list-style-type: none">• Act Foreign Seagoing Vessels• Certificate of Tonnage Act 1981• Certificate of Tonnage Decree 1981• Certificates of Registry Act• Civil Code• Code of Commerce• Decree Application International Regulations Preventing Collisions at Sea | National (NL) <ul style="list-style-type: none">• Decree on Authority of Pilots 1995• Decree on Market Control of Registered Pilots• Kingdom Act Nationality Seagoing Vessels• Logbook Decree 1970• Maritime Traffic Act• Mining Act• Pilotage Act• Port Security Act |

Legal Handbook Shipmaster
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- Port State Control Act
- Port State Control Regulation 2011
- Regulation for Licenced (Maritime) Pilots
- Regulation on Market Oversight Pilots Act
- Regulation Safety Seagoing Vessels
- Regulations Determining Models of Certificates of Registry
- Regulations Registry Provisions
- Seafarers Decree
- Seafarers Order Merchant Shipping and Sailing
- Shipping Regulations for Territorial Waters
- Ships Act
- Ships Decree 1965
- Ships Decree 2004
- Ships Equipment Act 2016

VIII. Shipmaster & cargo

47. Introduction

The shipmaster is responsible for the safe loading and unloading of the ship under his command. Before loading or unloading begins he will carry out certain tasks and duties.

The shipmaster is responsible during loading, for transport and during unloading.

The shipmaster holds tremendous responsibility for the safe transport of the cargo. Shipping of cargoes is subject to many international regulations laid down in treaties. More dangerous cargoes do have their own code and provisions.

Hereafter, some items of ship cargo will be described. Firstly, from the aspect of international law, followed by the aspect of domestic law. Bearing in mind that domestic laws all over the world are mostly based upon international law, such as conventions and regulations.

The description of the rules about general cargo, will be followed by the rules about dangerous cargoes. Both do need to be escorted by the proper documents, in which the shipmaster has an important role to play.

48. International

UN/ General cargo

Transport of general cargo on seagoing ships is regulated under international agreements by the UN. The shipmaster is responsible for the transport of cargo by sea and has to apply all provisions from these UN conventions.

The contract between the carrier and the shipper is concluded before issuing the bill of lading when the cargo is loaded on the ship. This is done to safeguard the shipper in case the cargo is damaged before loading it on board the vessel and to help the shipper in the claim process. For the relevant stakeholders, the bill of lading will act as the actual contract of carriage. See section nr. 51 of this Handbook. The convention which governs the contract of the carriage is usually stated in the first page of the bill of lading.

The used UN conventions and rules which cover the contract of carriage for carrying goods by sea are described below. The Hague Rules (1924) represented the first attempt by the international community to find a workable and uniform way to address the problem of shipowners regularly excluding themselves from all liability for loss or damage to cargo. The objective of the Hague Rules was to establish a minimum mandatory liability of carriers. The Hague Rules were slightly amended to become the Hague-Visby Rules. In addition, the UN established a fairer and more modern set of rules, the Hamburg Rules (1992).

The Rotterdam Rules (United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea) is a treaty proposing new international rules to revise the legal framework for maritime affreightment and carriage of goods by sea. The aim is that the Rotterdam Rules will replace The Hague Rules, The Hague-Visby Rules and the Hamburg Rules. The Rotterdam Rules aim to achieve uniformity of law in the field of maritime transport. These Rules are the first regulations governing the carriage of goods by sea and connecting previous transport by land. This land leg used to require separate contracts. Responsibility and liability during the whole transport process are clearly demarcated in the Rotterdam Rules.

Furthermore, these Rules put in place the infrastructure for the development of e-commerce in maritime transport, which will lead to less paperwork.

The carrier's liability for damage to the cargo has been increased by the Rotterdam Rules, while the shipper's obligations are also more clearly defined, such as its obligation to have the goods ready for transport in a timely manner. Goods loaded in containers and trailers must be stowed in such a way that they are able to withstand the sea voyage. In addition, in case of damages the claims procedure is made easier, according to the Rotterdam Rules.

As of the time of writing this Handbook, The Rotterdam Rules are not (yet) entered into force.

IMO/Dangerous goods

Dangerous goods are products or materials with hazardous items in them. If they are not safely stored, controlled or transported, they may become a potential hazard to human health and safety, infrastructure and their means of transport. Therefore, dangerous goods require special safety focused handling and transportation, where the shipmaster has an active role.

Dangerous goods (DG)

Items or substances that when transported are a risk to health, safety, property or the environment

The transportation of dangerous goods is controlled internationally and nationally by various regulatory authorities. Some of the most common frameworks for the transportation of dangerous cargo include: The UN Recommendations on the Transport of Dangerous Goods and the IMO's International Maritime Dangerous Goods Code.

Dangerous goods are divided into nine different classes, based on the specific chemical characteristics producing the risk and for each of them specific safety requirements have to be met. A list is drawn up by the United Nations in which every dangerous substance is given a UN number and a hazard category.

The International Maritime Dangerous Goods (IMDG) Code was developed as a uniform international code for the transport of dangerous goods by sea covering such matters as packing, container traffic and stowage, with particular reference to the segregation of incompatible substances.

IMDG Code

The provisions are applicable to all ships to which the SOLAS applies and which are carrying dangerous goods as defined in Regulation 1 of part A of chapter VII of SOLAS.

The carriage of dangerous goods and marine pollutants in seagoing ships is respectively regulated in the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL).

Relevant parts of both SOLAS and MARPOL have been worked out in great detail and are included in the International Maritime Dangerous Goods (IMDG) Code, thus making this Code the legal instrument for maritime transport of dangerous goods and marine pollutants.

For maritime pollutants and the MARPOL see section nr. 64 of this Handbook.

Before leaving harbour, the shipmaster has to correct any breaches to do with surplus manifests, missing documentation, incorrect labelling and transport units in the wrong place. If for certain transport units, the problem cannot be solved that container must be unloaded. In such cases an official report will be made.

Hazardous Noxious Substances by Sea Convention (HNS Convention)
This convention covers hazardous and noxious substances that are included in the IMDG code.

Various codes dangerous goods

Here fore, the IMDG has been described.

Many more codes to regulate the transport of hazardous substances by sea have been adopted by the IMO. These codes supply the shipmaster with the provisions for safe transport of these materials. These codes are (not limited or exhaustive):

- Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code)
- International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code)
- Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code)
- International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)
- International Maritime Dangerous Goods Code (IMDG Code)
- International Maritime Solid Bulk Cargoes Code (IMSBC Code)
- Annex I, II and III of the MARPOL
- International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code).

Material Safety Data Sheet

Classification is vital when transporting dangerous goods. The manufacturer is obliged to fill in a Material Safety Data Sheet for every new product, the MSDS. Although the term MSDS is used internationally, different states have different content requirements. However, an internationally harmonized 16-heading MSDS format has been developed, and adopted by the EU, the ISO and the ILO.

It is a document that contains information on the potential hazards (health, fire, reactivity and environmental) and how to work safely with the product. It also contains information on the use, storage, handling and emergency procedures all related to the hazards of the material.

The MSDS contains much more information about the material than the label. It is intended to tell what the hazards of the product are, how to use the product safely, what to expect if the recommendations are not followed, what to do if accidents occur, how to recognize symptoms of overexposure, and what to do if such incidents occur.

The MSDS is intended to provide the shipmaster with procedures for handling or working with that substance in a safe manner, and includes information such as physical data, melting point, boiling point, flash point, toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

MSDS formats may vary from source to source within a country depending on national requirements.

Material Safety Data Sheets describe the hazards of a product and enable users to take the necessary measures relating to protection of human health and safety in the workplace, and protection of the environment.

The MSDS is used for transportation and includes the:

- UN number
- official name on documents
- class of hazard
- additional dangers
- type of packing.

The aim of the MSDS is to provide the shipmaster with clear, concise and accurate information on health and the environmental effects of toxic substances.

UN number

Four-digit United Nations number is assigned to dangerous, hazardous and harmful substances, materials and articles most commonly transported

Information shipmaster

For the shipmaster it is possible to tell from the MSDS which requirements apply to the transport of the hazardous substance such as:

- special instructions
- packaging requirements for transporting
- emergency guidelines
- requirements for segregation and stowage
- information on special characteristics of the hazardous substances.

All documents connected to the transportation of dangerous goods by sea must be classified with the correct transportation name, trade names alone must not be used. Also, the correct description must be given corresponding to the classification stated in the IMDG Code.

The person responsible for packaging or loading dangerous goods in a container provides a signed container packaging certificate in which it is confirmed that the cargo in the container is correctly packed and secured and that all applicable criteria for transport have been met.

When there are grounds to suspect that a container in which dangerous goods are packed does not meet the criteria or when the container certificate is missing the container cannot be accepted for transport.

A detailed stowage plan may be used instead of a special list or manifest indicating the category and location of all hazardous substances stowed on board. A copy of one of these documents must be made available to the authorities of the harbour state.

News item

Along with the shipmaster a loading agent responsible for drawing up an incorrect manifest for hazardous substances of a seagoing container ship has also been fined by inspectors from the ministry. The shipmaster was fined € 30,000 following the inspection. When the transport documents were checked, including the ship's manifest many shortcomings were found. The ship was banned from sailing until it had thoroughly cleaned the holds and had made the documentation as required. The loading agent chose to unload some containers because the paperwork for these could not be brought on board on time.

49. EU

The European Union has passed numerous directives and regulations to avoid the dissemination and restrict the usage of hazardous substances. Not specific for shipping.

European law distinguishes clearly between the law of dangerous goods and the law of hazardous materials. The first refers primarily to the transport of the respective goods including the interim storage, if caused by the transport. The latter describes the requirements of storage (including warehousing) and usage of hazardous materials. This distinction is important, because different directives and orders of European law are applied.

In view of the high number of shipping accidents involving bulk carriers with an associated loss of human lives, measures have been taken to enhance safety in maritime transport within the framework of the common transport policy. An EU directive was adopted about establishing harmonized requirements and procedures for the safe loading and unloading of bulk carriers.

The EU do have some guidelines on loading and unloading cargo. Here the tasks of the shipmaster are described as well.

EU guidelines on loading/unloading

Prior to and during loading or unloading operations the shipmaster shall ensure that:

1. the loading or unloading of cargo and the discharge or intake of ballast water is under the control of the ship's officer in charge;
2. the disposition of cargo and ballast water is monitored throughout the loading or unloading process to ensure that the ship's structure is not overstressed;
3. the ship shall be kept upright or, if a list is required for operational reasons, it shall be kept as small as possible;
4. the ship remains securely moored, taking due account of local weather conditions and forecasts;
5. sufficient officers and crew are retained on board to attend to the adjustment of the mooring lines or for any normal or emergency situation, having regard to the need of the crew to have sufficient rest periods to avoid fatigue;
6. the terminal representative is made aware of the cargo trimming requirements, which shall be in accordance with the procedures of the IMO Code of Safe Practice for Solid Bulk Cargoes;
7. the terminal representative is made aware of the requirements for harmonisation between de-ballasting or ballasting and cargo loading or unloading rates for his ship and of any deviation from the de-ballasting or ballasting plan or any other matter which may affect cargo loading or unloading;
8. the ballast water is discharged at rates which conform to the agreed loading plan and does not result in flooding of the quay or of adjacent craft. Where it is not practical for the ship to completely discharge its ballast water prior to the trimming stage in the loading process, he agrees with the terminal representative on the times at which loading may need to be suspended and the duration of such suspensions;
9. there is agreement with the terminal representative as to the actions to be taken in the event of rain, or other change in the weather, when the nature of the cargo would pose a hazard in the event of such a change;

10. no hot work is carried out on board or in the vicinity of the ship while the ship is alongside the berth, except with the permission of the terminal representative and in accordance with any requirements of the competent authority;
11. close supervision of the loading or unloading operation and of the ship during final stages of the loading or unloading;
12. the terminal representative is warned immediately if the loading or unloading process has caused damage, has created a hazardous situation, or is likely to do so;
13. the terminal representative is advised when final trimming of the ship has to commence in order to allow for the conveyor system to run-off;
14. the unloading of the port side closely matches that of the starboard side in the same hold to avoid twisting the ship's structure;
15. when ballasting one or more holds, account is taken of the possibility of the discharge of flammable vapours from the holds and precautions are taken before any hot work is permitted adjacent to or above these holds.

50. National, The Netherlands

The Dutch provisions for shipping general cargo can be found in the Civil Code, *c.q.* in Book 8. Here the rules from the UN conventions described before can be studied.

The Dutch provisions for shipping dangerous goods can be found in the Regulation Transport of Dangerous Goods by Oceangoing Vessels.

A practical explanation of the laws and regulations for transporting hazardous substances by sea can be broken down into the following subjects:

- Classification of hazardous substances and criteria for transport.
- Requirements for:
 - packed dangerous substances
 - loading sea containers and vehicles
 - transporting hazardous substances by seagoing ships.

A ship that has loaded dangerous material and hazardous substances is not allowed just to come alongside in a Dutch harbour. In terms of docking there are various regulations that apply:

- Regulation Transport of Dangerous Goods by Oceangoing Vessels
- Environmental Management Act
- Environmental certificates
- Harbour directives.

51. Bill of Lading

Before loading cargo, the shipper must make sure that the gross weight of the cargo agrees with what is given in the ship's documents. The cargo documents drawn up by the shipper must contain the fact that the freight is suitably packed, marked and labelled but also that it is in a stable state to be transported. The prerequisites for transporting goods by sea are laid down in the Bill of Lading (BOL, Blading, B/L or *cognossement*).

The bill of lading is an ancient multiple purpose document. It has been described in the UN treaties, such as the Hague-Visby Rules. See section nr. 48 of this Handbook.

The transporter is the one to distribute the B/L. The shipmaster is authorized to issue Bills of Lading for goods which have been received and accepted for carriage.

The Bill of Lading fulfils three important tasks:

- proof of receipt
- evidence of a transport agreement
- property rights.

Bill of Lading

A document of title to the goods being carried on the ship, which acts as a receipt for the cargo and contains the terms of the contract of carriage.

The B/L is a document signed by the shipmaster and has the following functions:

1. It is a receipt for goods, signed by the shipmaster or other authorized person on behalf of the carrier. The bill of lading shows the shipmaster's name, loading port, consignee's name at destination, notify party if the lading is negotiable, quantity of goods, type of goods, indications if any of that goods were not received in good condition, how freight is payable (pre-paid, collect, or payable as per charter party). The bill of lading is issued by the carrier against delivery of mate's receipt and payment of freight, if so required by contract of affreightment.
2. The bill of lading is a document of title. If it is made out to order, it is negotiable. Negotiable or order bills of lading must be duly endorsed and surrendered to the carrier as a condition precedent to delivery of the goods, unless receivers are willing to post an indemnity bond. Sometimes negotiable ladings are made out to shipper's order and are endorsed in blank. In this manner, control of the goods remains with shipper (seller) until payment is made in exchange for the bill of lading and other shipping documents. Straight bills of lading are not negotiable,
3. The bill of lading serves as evidence of the terms and conditions of carriage. However, if the contract of affreightment is a charter party, the bill of lading does not contain detailed contractual conditions. Bills of lading are usually issued in three originals, all of which are acquired by buyer, against payment. Once one of these originals has been surrendered to carrier, the other two become null and void.

B/L Article 8:377 Civil Code (NL)

A 'contract of carriage under a bill of lading' means: a contract of carriage embodied in (covered by) a bill of lading or any similar document forming a title for the carriage of goods by sea; it also means the contract of carriage embodied in (covered by) a bill of lading or similar document as aforesaid issued under or pursuant to a charter party (i.e. a contract of chartering embodied in a standard document) from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

Essential things to put into the B/L are:

- shipper
- notify party (who takes receipt)
- recipient (who is the cargo for)
- name of ship
- loading harbour
- port of destination for unloading
- marks and numbers of the goods and/or containers

- number and type of packages
- description of the goods
- gross weight of the goods
- sizes and volume of the goods
- location for payment
- number of B/Ls distributed (written in full not just in letters)
- place and date of issue (loading harbour and day of loading)
- name and signature (and ship's stamp).

Conditions for delivery are stated in the incoterms which are international agreements on international transportation of goods.

The B/L shows amongst other things:

- Declaration by the transporter that he:
 - has taken receipt of the goods;
 - will transport them to the location indicated;
 - where he will hand them over to a particular person.
- Terms and conditions of delivery.

Incoterms

The incoterms rules or International Commercial Terms are a series of pre-defined commercial terms that are widely used in international commercial transactions.

Transferability of the B/L means:

- B/L by name: only the person named may take receipt of the goods.
- B/L to bearer: anyone holding the B/L can receive the goods.
- B/L to order: B/L can be endorsed for a third party.

Exclusively the legal and regular bearer, if a bill of lading has been issued, has the right to demand delivery of goods in accordance with carrier's obligations from the carrier under the bill of lading.

Guarantees given in the B/L:

- Clean B/L: no clauses indicating damage to goods.
- Foul B/L: clauses indicating shortfalls.
- Warranty: the freighter draws up warranty so that not all clauses have to be in the B/L and frees the freighter and the shipmaster of liability.

Bill of Lading

A bill of lading is a legal document used by the shipper of particular goods and a carrier. This document is issued by the carrier and completed by the shipper. It details the type, quantity and destination of the goods being carried. The bill of lading also serves as a receipt of shipment when the goods are delivered to the predetermined destination. This document must accompany the shipped goods, no matter the form of transportation, and must be signed by an authorized representative from the carrier, shipper and receiver. The bill of lading is one of the most important documents in the transportation business, and it is enforceable in a court of law. The bill of lading will

also be the reference in the event of loss, damage or overcharge claims. A bill of lading will contain the following information as a minimum requirement:

- shipper's name and address
- receiver's name and address
- carrier name
- description of the items that are being transported
- gross weight and dimensions of the shipment
- classification of the commodity being shipped
- nomination and identification of the party who is paying for the transportation.

The B/L is also often used for the carrier to accurately bill the shipment; therefore, it is quite important that the freight is well described in order to prevent undercharging or overcharging.

52. Rights & duties shipmaster

- The shipmaster is responsible for the safe loading, transportation and unloading of the cargo.
- The shipmaster oversees everything to do with loading and unloading the ship.
- Should there have been any damage to the cargo on board the shipmaster is obliged, within 48 hours after arrival to make an initial report. An initial report must be followed by a full report within eight days.
- The shipmaster has the executive power for saving the ship or cargo by using or jettisoning parts of the cargo and ship's appurtenances.
- The shipmaster has the executive power in an emergency to take and use any part of the cargo.
- The shipmaster may not carry any cargo in the ship for his own profit unless he has permission from the owner.

53. Legislation

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|--|--|--|
| | International | |
| <ul style="list-style-type: none">• IMO Codes, such as IMDG, IGC, IMSBC• MARPOL• SOLAS• UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules)• UN International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules, The Hague-Visby Rules) | <ul style="list-style-type: none">• UN International Convention on the Carriage of Goods by Sea (Hamburg Rules)• UN Recommendations on the Transport of Dangerous Goods• International Convention for Safe Containers (CSC)• Code of Safe Practice for Cargo Stowage and Securing (CSS Code). | |
| | EU | |
| <ul style="list-style-type: none">• Directive 2001/96/EC | <ul style="list-style-type: none">• Directive 2009/16/EC | |
| | National (NL) | |
| <ul style="list-style-type: none">• Act on Transport of Dangerous Goods• Civil Code• Code of Commerce• Decree Transport Dangerous Goods• Loading and Unloading of Seagoing Vessels Act | <ul style="list-style-type: none">• Prevention of Pollution from Ships Act• Regulation Transport of Dangerous Goods by Oceangoing Vessels• Ships Decree 2004 | |

IX. Shipmaster & crew

54. Introduction

The shipmaster plays a vital role in controlling the quality and quantity of his crew. For a safe voyage the crew of a seagoing ship must be in possession of certain personal documentation such as a seaman's book, also called a seaman's discharge book, and a valid appropriate certificate for his function or duty: certificate of competency.

The seaman's book shows work experience and training whilst the certificate is awarded when the requirements of training, experience and for physical fitness have been met.

Often, there is a central register of crew details in which the ministry registers the seaman's discharge books, the provisional seaman's discharge books, seaman's books given out and withdrawn as well as the exemptions and dispensations and the details for that seaman from the muster roll.

A seaman discharge book is issued by a state to a seafarer, according to national law of that state.

The shipmaster plays a role in both the seafarer's certificate of competency and the seaman's discharge book which can be referenced to in the national legislation, the act covering manning, and showing all relevant regulations.

Usually, in this act a distinction is made between a certificate of competency for general duties and one for leadership tasks, the responsibility for which a seafarer can only be entrusted after a few years' experience.

To avoid problems during Port State Control, tasks, skills and competencies are shown on the official manning certificate (see further on) in exactly the same way as on the certificate of competency.

The idea is that the shipowner is primarily responsible for manning his ships in such a way that the ships may sail safely and without any threat to the environment. The shipmaster is, along with his other functions, the shipowner's representative.

During the ship's voyage situations can arise that could not have been foreseen. The shipmaster takes the appropriate measures in the area of manning, as and when the actual situation in his view requires it. This means that he can take on additional crewmembers. He can also decide not to go to sea until the circumstances change.

IMO

Safe manning is a function of the number of qualified and experienced seafarers necessary for the safety of the ship, crew, passengers, cargo and property for the protection of the marine environment and that ability of seafarers to maintain observance of the requirements is also dependent upon conditions relating to training, hours of work and rest, occupational safety, health and hygiene and the proper provision of food.

55. Manning plan/ manning certificate

The safe manning is a subject of national law, inspired by the IMO principles of safe manning. The IMO recommends that governments, in establishing the minimum safe manning levels for ships flying their states' flag, observe the Principles of safe manning and take into account the Guidelines as adopted and issued by the IMO.

A manning plan or manning proposal is a document drawn up by the shipowner indicating the minimum crew composition with which he intends to man a vessel. The IMO provides a model form of minimum safe manning document. The information provided in the plan includes the number of crew members along with their duties, based on the operations of the vessel in question.

On the basis of the manning plan the shipowner can show that, with the crew composition, seafaring operations can take place in a manner that is safe and responsible, in environmental terms and otherwise. Once the manning plan has been approved a minimum safe manning document will be issued by the flag state.

The minimum safe manning certificate lists the minimum number of officers and other crew members that must be on board and the conditions that need to be met (shipping area, training, radio, etc.).

The shipmaster must inform the owner when the complement is not conforming to the manning plan. The owner then finds extra crew. For conflict of interests see section nr. 29 of this Handbook.

When the manning plan has been approved a minimum safe manning document can be issued by the flag state: Minimum Safe Manning Certificate. On this manning certificate the minimum number of officers and seamen is given.

This manning certificate not only shows the minimum number of personnel required on board but also the qualifications required.

Whether someone meets the required qualifications can be seen from the seaman's certificate of competency.

It is possible that a manning certificate is issued with more than one crew composition, for example in relation to different trades or operational circumstances. At the same time only one crew composition can be applied. The shipmaster is obliged to log changes in the ship's journal.

The composition of crew that is drawn up in the manning certificate is initially sufficient to keep the ship safe and to present no threat to the environment.

Under normal circumstances the shipmaster is entitled to this crew composition. This also means that a ship may not depart or find itself at sea with fewer people than shown on the minimum manning certificate, nor with people who hold incorrect qualifications.

Hereafter, a few national (NL) legal provisions regarding the shipmaster are described.

Shipmaster and the Seafarers Act (NL)

Article 6

The shipmaster ensures that a copy of the valid manning certificate is clearly displayed on board the ship.

Article 8

The shipowner provides the shipmaster with the manning plan belonging to a valid manning certificate.

Article 10

The shipmaster shall record in the ship's logbook:

- a. according to which composition the ship is manned, should there be more than one composition included the manning certificate;
- b. facts or circumstances that are not in accordance with the information in the manning plan.

Article 12

Should circumstances demand the shipmaster requests the shipowner to provide the necessary means motivated by him within a given period. A verbal request must be followed up as quickly as possible in writing.

Article 56

It is prohibited to take a ship to sea, to send a ship to sea or to use or allow the use of a ship without a valid manning certificate on board the ship.

Article 57

It is prohibited to man a ship with less crewmembers than given in the manning certificate.

Article 58

It is prohibited to allow crew to function as look out, navigational watch on the bridge or officer in charge in the engine room when they do not have the required qualifications for these duties.

The prohibition on tasking crewmembers with duties for which they are not qualified does not apply to training tasks or in the case of unforeseeable events (*force majeure* or Act of God).

56. Certificate of competence

The certificate of competence originates from international law but is issued under domestic law by the administration of a state. Every seafarer must be in the possession of a valid certificate of competence, should he be appointed to a function that demands this.

To become eligible for a certificate of competence, a seafarer must have established knowledge and experience (service) and have taken certain training courses. The requirements vary depending on the function, although the same requirements are internationally applicable. These requirements have been laid down in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

Certificate of competence (STCW)

Issued by states to masters, officers, radio operators and ratings forming part of a watch who meet the standards of competence relevant to their particular functions and level of responsibility onboard.

The STCW applies to ships of flag states that have signed the convention (member states) but also for ships of non-member-states to the convention, visiting a port of a member state to the

convention. This ensures, amongst other things, that the convention can be enforced world-wide. Ships, regardless of under which flag they sail, may be subject in harbour to Port State Control whereby inspections will be carried out on whether they fulfil the criteria laid down in the STCW. The seaman's certificates of competency will be checked as well.

This international convention has been implemented into Dutch legislation by the Seafarers Act.

Certificate of equivalent competency (NL)

If a shipmaster or other seafarer has a Certificate of Competency issued by his home state, and he is going to work on a ship of another state, he must have a certificate issued by that other state, a so-called Certificate of Equivalent Competency (CEC). The Certificate of Equivalent Competency may be issued, on application to the competent authorities, to seafarers who are not nationals but who hold STCW certificates issued by certain other maritime administrations. The competent authorities will need to be satisfied that there are no significant differences from the standards which are applied to candidates for their national existing Certificates of Competency.

Definitions

Certificate of Competency: a certificate issued and endorsed for masters and officers in accordance with the provisions of chapters II, III, IV or VII of this annex to the STCW and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein.

Certificate of Proficiency: a certificate, other than a certificate of competency issued to a seafarer, stating that the relevant requirements of training, competencies or seagoing service in the STCW have been met;

International and national regulations demand that officers on board of a Dutch ship, not holding a Dutch Certificate of Competency are in possession of a Dutch Certificate of Equivalent Competency. The Netherlands has agreements in place with certain states to regulate this subject originating from the STCW.

The Dutch seaman's Certificate of Competency will be issued to foreign seafarers in possession of the STCW Certificate of Competency awarded by a state with which the Netherlands has an agreement to do so. Additional requirements for the application for an equivalent certificate of competency exist for foreign officers.

In order to apply for a Dutch certificate of competency, shipmasters who qualified abroad are required to be familiar with the relevant Dutch maritime legislation. Certification that one has attained a minimum level of knowledge of the Dutch legislation can be obtained by passing a Dutch law exam.

STCW prescribes that a seafarer sailing aboard a vessel flying the flag of the Netherlands possesses a Dutch Certificate of Competency. The Netherlands issues officers from other EU member states and states with which it has concluded an agreement, a Dutch Certificate of Competency based on their own national Certificate of Competency. Ratings may apply for a regular Certificate of Competency.

Dispensations

In exceptional situations, such as a sick crewmember, dispensation can be granted to a person or ship that due to unforeseen circumstances cannot make a planned voyage with the appointed crew. Prerequisites are no danger to persons, property or surroundings. Types of dispensations are:

- Personal dispensation: granted to a crewmember with regard to the obligation to have a valid certificate of competency.
- Ship's dispensation: given to the ship with regard to manning in accordance with the manning certificate.

No dispensations will be granted to a shipmaster or chief engineer, except in highly exceptional, unforeseeable circumstances and then only for the shortest possible time. A few legal provisions are paraphrased in short below:

Seafarers Act (NL)

Article 18

Anyone appointed to a ship in a function where these criteria apply must be in possession of a valid appropriate certificate of competency for that function.

Article 22

The minister may recognize certificates of competency issued by a competent authority of another state.

Article 24

1. The minister shall withdraw a certificate of competency when a person:
 - a. no longer meets the intended professional requirements;
 - b. is medically unfit.
2. A certificate of competency can be withdrawn by the minister when it is apparent that the incorrect details were given or falsified documents supplied.

Article 25

The minister may grant dispensation.

In the Netherlands, the seafarer's Certificate of Competency and dispensations can be requested through the KIWA-Register, a governmental qualified organization issuing documents such as certificates and permits.

57. Maritime Labour Certificate

The Maritime Labour Certificate (MLC Certificate) is based on the Maritime Labour Convention (MLC). Ships of 500 GT and more engaged in international voyages must have a MLC Certificate, the rules for which can be found in the Seafarers Act (NL). These specific provisions from this act are based upon the MLC. The MLC Certificate shows that the ship in question has been inspected to satisfaction and meets all the requirements for living and working conditions. See also Part 3 of this Handbook.

Two declarations are taken up in the certificate Declaration of Maritime Labour Compliance (DMLC) Part I and Part II.

1. The DMLC - Part I shall be drawn up by the national authorities and identifies the list of matters to be inspected, the relevant national requirements, ship-type specific requirements under national legislation, any substantially equivalent provisions, and any exemption granted.

2. The DMLC - Part II shall be drawn up by the shipowner and it shall be issued by the national authorities. This will be done after a successful onboard inspection, to confirm compliance with the law and regulations.

ML Certificate

The ML Certificate affirms that seafarer's working and living conditions aboard a ship meet all the national laws and regulations that govern the implementation of the MLC. The national competent authority issues for a ship bigger than 500 GT engaged in international voyages, on request, a Maritime Labour Certificate if the declaration drawn up by the shipowner states that after inspection the ship in question meets the criteria of the Maritime Labour Certificate Part II for:

1. minimum age
2. medical certification
3. qualifications of seafarers
4. seafarers' employment agreements
5. use of certified or regulated private recruitment and placement service
6. hours of work or rest
7. manning levels for the ship
8. accommodation
9. onboard recreational facilities
10. food and catering
11. health and safety and accident prevention
12. onboard medical care
13. onboard complaint procedures
14. payment of wages.

58. Mustering (NL)

Muster roll

On board a ship there is a muster roll or ship's articles, drawn up and changed by the shipmaster. In the muster roll the names and functions they fulfil according to the manning certificate, at least, of crew members are listed. The muster roll will not be valid for more than a year.

The shipmaster informs the authorities, via the shipowner, within one week or in the first harbour to be visited next of any changes made to the muster roll he has drawn up. In exceptional cases dispensation may be given for the muster roll.

Once it has been drawn up or changed the muster roll is signed by or on behalf of the employer, by the shipmaster. The shipmaster is obliged to keep the muster roll on board. When drawing up the muster roll the employer, aided by the shipmaster, is obliged to discuss the seafarer's labour agreement concluded with the seafarer. This entails that the content of the seafarer's labour agreement is understood by the seafarer and has been signed by the relevant parties. A statement to this effect is entered into the muster roll.

The copies of the seafarers' employment agreements certified by the shipmaster are enclosed in the copy of the muster roll which is kept on board.

Every seafarer must be given the opportunity on board to see his employment agreement. This is also true of the collective labour agreements on the grounds of which one or more employment agreements has been made with the seafarer named in the muster roll. Details that differ

from the seafarer's employment agreement are null and void as they are if a supplement has been added to it.

Every change in the muster roll must be correctly communicated and maintaining it incorrectly and not informing the competent authority of changes is a criminal offence.

Article 59 Seafarers Act (NL)

It is prohibited to neglect to draw up, draw up again or change the ship's articles, or to neglect to inform the minister of the drawn-up ship's articles or any change therein.

Seaman's discharge book

Every seafarer must have a seaman's discharge book. This book contains all key data on career experience and courses completed. The seaman's discharge book is a sort of passport for seafarers, which is required in order to apply for a certificate of competency.

A seaman's book will only be issued to persons who require it for their work on board. A seaman's book is only valid if it has been signed by the bearer and is considered invalid if unauthorised parties have altered it.

The seaman's discharge book is the source document for registration of the crew. It is only issued if people need it for their work on board or are following specific training of which tasks on board are an essential part. The shipmaster signs off the following in the seaman's book:

- joining date;
- day of discharge;
- function to which the crew member was appointed;
- name and call sign of the ship.

The shipmaster is custodian of the seaman's discharge book after embarking and gives it back to the seafarer on disembarking.

Should the shipmaster be unable to return the book to the seafarer he should send it to the shipowner.

Should the seafarer believe the shipmaster has made an incorrect report he may file a complaint. The entitlement of a seafarer to file a complaint expires after four weeks from day of discharge in a Dutch harbour and six months after day of discharge outside the Netherlands.

59. Seafarer's employment agreement

Seafarer's employment agreement

Labour agreement in which a seaman commits himself to work on board a ship. It includes both a contract of employment and articles of agreement.

Seafarer

The word 'seafarer' is inconsistently defined in legislations, the words mariner, sailor and seaman are also used. Seafarer applies to anyone on board a seagoing ship who is employed in labour whether as employee or self-employed.

The shipmaster also comes under the broader understanding of the word seafarer.

Seafarer

Maritime Labour Convention:

Any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.

Dutch Seafarers Act:

The natural person who carries out work of any kind on board a ship.

For many national legislations, including the Dutch one, there are possibilities to make an exception.

The Dutch Civil Code is introducing new specific definitions that a seafarer is someone with a seafarer's employment agreement, meaning employed in labour on board a seagoing ship, but there is room for exceptions. This means that it is important for a seafarer to acquire a seafarer's employment agreement in order to fulfil duties on board a ship.

For seafarers with no seafarer's employment agreement, self-employed or engaged in temporary work for instance, a different labour agreement will have been made.

A collective labour agreement (*CAO*) is an accord agreed upon by one or more employers' organizations and one or more employees' organizations. Individual and collective relations between employee and employer are regulated. The rights and duties of both parties are determined by this document and there is often talk of regulations that belongs to a particular collective labour agreement.

The shipmaster represents the employer in implementing the employment agreement of the seafarers.

The shipmaster divides the labour for the seafarers according to legislation and regulations but also conform the employment agreement.

The shipmaster is obliged to keep a record of overtime in a specific register.

Employer

Officially, the employer is the shipowner, but in the broader sense of the word.

Shipowner

The owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the MLC, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

Not only the shipowner may act as employer but also another organization or person who has taken over responsibility for the operation of the ship. Moreover, they have agreed when accepting the responsibilities to accept all lawful tasks and responsibility.

The shipowner or the shipmaster as his representative is the point of contact for the seafarers on board.

Ship controller

The owner, bare boat charterer or enterprise that deals with manning the ship, as part of the control process, and has everyday leadership over this.

In many cases the owner or bare boat charterer will function in all aspects as the ship controller.

There are also constructions thinkable and useable in practice whereby the owner is no longer directly involved in putting together the crew. This can arise when a foreign enterprise has the property right. In this case the Dutch government can no longer hold an owner based abroad accountable when Dutch manning regulations are not followed. Provision has been made for this in legislation whereby a representative of the foreign owner always has daily supervision over the ship.

The seafarer's employer might also be the owner of a shop or café on board, particularly on a cruise ship. When the personnel in a shop or restaurant have been given an employment agreement to carry out work on board a seagoing ship this will comprise a seafarer's employment agreement. When the personnel have been given a normal labour agreement ashore and is temporarily not working ashore but at sea there is no question of a seafarer's employment agreement.

Article 7:703 Civil Code (NL)

The shipmaster represents the employer in implementing the seafarer's employment agreements with the seafarers who are on board the ship under his command.

Recruitment and placement

An agreement for temporary labour is the agreement whereby the employee (temp/interim) is made available by the employment agency to do certain work for someone else's enterprise (one hiring).

Temping triangle

Employment agency:	employer
Temp:	employee (seafarer)
One hiring:	third party (owner, ship controller)

The seafarer's employer can be the ship controller, but this does not necessarily have to be the case. The employer can in fact be the employment agency.

The rules in the civil code on temporary work agreements are for the most part considered to be relevant to the seafarer's employment agreement. The hiring party, the owner or ship controller, can be held accountable for meeting certain obligations, such as payments or holidays, should the employer (employment agency) be in breach of this.

The employee (seafarer) should first approach the employment agency as the employer. Only when the agency is in breach, then the one hiring (shipowner) becomes accountable. The shipowner, as the one hiring, is therefore also sometimes accountable for meeting certain obligations neglected by the employer. This construction is known as double employment and protects, especially, the interests of the foreign seafarer.

Seafarer recruitment and placement service

Any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners.

In shipping, business is also done with employment agencies that are not based in the flag state. Bearing this in mind, it is important that the standards are met of national legislation and regulations applicable with regard to (temporary) work carried out on board a ship when the situation is such that the employment agency is not based in the flag state. That agency is then the one owing pay and other expenses to which the employees are entitled working for the ship controller or in similar functions. See also section nr. 117 of this Handbook.

Terminating seafarer’s employment agreement

The employment agreement for the seafarer can be terminated in the following ways:

- By operation of the law:
 - death,
 - end of set period, in the first harbour;
- by mutual agreement;
- resignation;
- by court.

Sometimes there are urgent reasons to undo the seafarer’s employment agreement and these exist for both employer and employee as stated in the (NL) Civil Code.

Immediate dismissal

- Urgent reasons
- Informed immediately

Urgent reasons for dismissal employer

For the employer, represented by the shipmaster, urgent reasons can give rise to the termination of the seafarer’s employment agreement prematurely. For example, when the seafarer does any of the following:

- The shipmaster or anyone else on board is by him:
 - assaulted
 - verbally abused
 - seriously threatened
 - encourages (or tries to) activities against the law or morally unacceptable;
- does not muster on time;
- reports on board too late;
- drunkenness or immoral behaviour;
- refuses work;
- loses his competencies/skills;
- smuggles.

Urgent reasons for resignation seafarer

The seaman can also appeal to end the seafarer’s employment agreement prematurely. For example:

- when the ship loses the right to fly the national flag;
- no pay;

- poor food and accommodation;
- fear that his life is in danger, his health, morality, integrity or good name;
- orders conflicting with seafarer's employment agreement or with legal obligations of the seafarer;
- heading for a state in armed conflict or a blockaded harbour;
- leaving for a hostile harbour;
- using the ship in an armed conflict;
- using the ship to commit a crime;
- serious threat of assault.

Reasonable grounds

The court (the Netherlands: Rotterdam) can, at the request of the employer or the seafarer, undo the seafarer's employment agreement for urgent reasons.

These are urgent reasons as described above, and changes in circumstances in such a way that the seafarer's employment agreement is ended fairly, actually or ended shortly.

Changes in circumstances might be breakdown in relations between certain parties or incompetence.

Should the seafarer's employment agreement be undone at the seafarer's request then he only has a right to paid repatriation when the employer is liable to do so.

Overview crew documentation

- Manning plan

Basis of the manning certificate. A copy must be on board.

- Manning certificate

Every ship must have a valid manning certificate granted by the authority. Also, the ship must be manned in accordance with the manning certificate.

- Maritime Labour Certificate

Proof that the ship reaches the international standards for accommodation, food etc.

- Seaman's discharge book

Crew members must be in possession of a seaman's book. Foreign officers must be in possession of a national seaman's book. For foreign seamen a national seaman's book is not obligatory but they must have one from the country of origin.

- Certificate of competency

Everyone who fulfils a function on a sea going ship where the law sets legal prerequisites crew members must be in possession of a certificate of competency. Foreign officers must be in possession of a flag state Certificate of Competency. For foreign seamen a flag state certificate of competency is not obligatory, but they must have a certificate of competency from the country of origin.

- Medical certificate

Every crewmember must be in possession of a medical certificate stating that he is fit enough to go to sea.

- Seafarer's employment agreement

Every crew member must be in possession of a valid seafarer's employment agreement showing the relationship between crew member and ship.

60. Disciplinary measures

It is laid down in law that the shipmaster has powers over all persons on board. The shipmaster may use this power by taking reasonably necessary measures. This may be done from the point of view of maintaining public order and the safety on board.

The word used is ‘measures’ which are not legally seen as punishment but are experienced by the seaman as just that.

These measures mentioned here, should be regarded separately from disciplinary law as is applied by the Maritime Disciplinary Board, see Chapter XVII of this Handbook.

Article 27 Seafarers Act (NL)

1. The shipmaster is responsible for maintaining public order on board and exercises authority over all those on board. To enforce his authority the shipmaster may take any measure reasonably necessary.

4. The persons on board are obliged to follow the orders given in the interest of safety or to maintain order, including public order, by the master.

61. Rights & duties shipmaster

- The shipmaster is tasked with keeping public order and has executive power over everyone on board.
- The shipmaster does not task a crewmember with something for which he is not qualified.
- In unforeseeable circumstances the shipmaster has the right to deviate from the above (*force majeure*).
- The shipmaster has the right to keep seamen on board, but he must report the reasons why.
- The shipmaster may not go to sea without a valid manning certificate.
- The shipmaster is obliged to place the manning certificate where it can be easily seen.
- The shipmaster has the right to ask for supplements on the manning certificate.
- The shipmaster is obliged to supervise the correct implementation of the manning certificate and seafarer’s certificate of competency.
- The shipmaster keeps the muster roll up to date and looks after the seaman’s books.

62. Legislation

- | | | |
|---|----------------------|---|
| | International | |
| <ul style="list-style-type: none">• STCW Convention• STCW Code | | <ul style="list-style-type: none">• MLC |
| | EU | |
| <ul style="list-style-type: none">• Directive 2005/36/EC• Directive 2008/106/EC• Directive 1999/95/EC | | <ul style="list-style-type: none">• Directive 2012/35/EU• Directive 2018/239 (Proposal) |
| | National (NL) | |
| <ul style="list-style-type: none">• Civil Code• Code of Commerce• Decree Claims of Seafarers, Recruitment and Placement and Temporary Agency Work of Seafarers• Decree Designating Supervisors Seafarers Act• Maritime Traffic Act• Merchant Shipping Medical Examination Regulations 2012 | | <ul style="list-style-type: none">• Policy Rule Manning• Recognition Regulation Maritime Crews Training• Seafarers Act• Seafarers Order Merchant Shipping and Sailing• Working Hours Act• Working Hours Decree |

X. Shipmaster & environment

63. Introduction

Shipping is a growing source of transport greenhouse gas emissions and is also a major source of pollution and has a negative impact on the climate. Because there are so many ships at sea shipping remains a prime source of pollution and disruption of the environment.

Damage to the environment comes from dumping waste, air pollution from exhaust fumes, rinsing of anti-fouling paint, pollution from toxic substances due to accidents, introduction of sea life and plants in places where they are not normally found.

The United Nations' global shipping body, the International Maritime Organisation (IMO), is acting now, while the EU in parallel includes shipping in its 2030 reduction commitment.

The shipmaster has an important role to play in and a responsibility to prevent damage to the environment. Normally, it is the shipmaster who stands accused of environmental offences.

The environment can be seen as a part of sustainability.

Sustainability

The IMO, shipowners and other stakeholders are genuinely concerned with the sustainable development of the worldwide shipping, in short sustainability. The IMO 2020 theme is: 'Sustainable shipping for a sustainable planet'. The IMO has set ambitious targets for the shipping industry, such as the 2020 Global Sulphur Cap, greenhouse gas targets for 2030 and even more ambitious emissions goals for 2050. Means to achieve those targets are new technology, slower speeds, more operational efficiency, alternative fuels etc.

Definition

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

In the context of worldwide transport, three dimensions of sustainable development are equally important:

- economic
- environmental
- social

These aspects have been separately regulated by rules and regulations applicable to the shipmaster. Sustainability as a whole is more a subject for the legislature, shipowners, industry and innovators. Therefore, the sustainability in combination with the responsibilities of the shipmaster will not be described yet.

Many actions are needed for a futureproof sustainable maritime transportation system. These actions can be:

- Safety Culture and Environmental Stewardship
- Education and training in maritime professions, and support for seafarers
- Energy efficiency and ship-port interface
- Energy supply for ships
- Maritime traffic support and advisory systems

- Maritime Security
- Technical co-operation
- New technology and innovation
- Finance, liability and insurance mechanisms
- Ocean Governance

When a shipmaster adheres to all existing rules and regulation covering these subjects, he helps to achieve the goals for a sustainable shipping as well.

64. International/IMO

MARPOL

MARPOL is the International Convention for the Prevention of Pollution from Ships. MARPOL is short for marine pollution. The MARPOL was adopted in 1973 at IMO.

Various Protocols and Annexes have been added to the MARPOL. These documents regulate and prevent the pollution by oil, noxious liquid substances in bulk, harmful substances, sewage, sulphur oxide and nitrogen oxide.

The MARPOL is one of the most important international marine environmental conventions. It was designed to minimize pollution of the seas, including dumping, oil and exhaust pollution. The MARPOL has been updated by amendments through the years.

MARPOL objective

To preserve the marine environment through the complete elimination of pollution by oil and other harmful substances, and the minimization of accidental discharge of such substances.

All ships flagged under states that are member to MARPOL are subject to its requirements, regardless of where they sail. Member states are responsible for vessels registered under their respective nationalities.

The MARPOL comprises several protocols and annexes that can be ratified by individual states. In these protocols and annexes the way in which substances should be handled by ships during normal activities are laid down such as handling:

- oil
- noxious liquid substances
- harmful substances
- sewage
- garbage
- air pollution
- emissions.

The MARPOL includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations - and currently includes six technical annexes. Special areas with strict controls on operational discharges are included in most annexes.

AFC Convention

The International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFC Convention) was adopted by the IMO and entered into force in 2008. Various Resolutions and Guidelines have amended this convention.

Anti-fouling paints are used to coat the bottoms of ships to prevent sea life such as algae and molluscs attaching themselves to the hull, thereby slowing down the ship and increasing fuel consumption.

Anti-fouling (AFC Convention)

A coating, paint, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms.

The AFC Convention prohibits the use of harmful organotin compounds in anti-fouling paints used on ships. It has established a mechanism to prevent use of other harmful substances in anti-fouling systems. An international Anti Fouling System Certificate is issued by the flag state of ships above 400 GT and engaged in international voyages.

BWM Convention

The International Convention for the Control and Management of Ships' Ballast Water and Sediments (Ballast Water Management Convention or BWM Convention) is an IMO international maritime treaty which requires flag states, being party to this convention, to ensure that ships flagged by them comply with the provisions about ships' ballast water and sediments. This convention entered into force in 2017.

BWM Convention objective

To prevent the spread of harmful aquatic organisms from one region to another and halt damage to the marine environment from ballast water discharge, by minimizing the uptake and subsequent discharge of sediments and organisms.

From 2024 all ships are required to have an approved Ballast Water Management Treatment System.

The IMO has released various documents regarding the BWM Convention, such as Guidelines for Ballast Water Sampling, Guidelines for Ballast Water Management and Guidelines for Ballast Water Exchange.

EU & environment/pollution

The EU is genuinely concerned about the environment and pollution as well. They work together with other partners towards a long-term objective of 'zero-waste, zero-emission' maritime transport in line with European environmental and transport policy. The EU has completed additional legislation.

The European Maritime Safety Agency (EMSA) is responsible for providing technical, operational and scientific advice to the EU member states in the development, implementation and enforcement of international and European legislation. In particular, EMSA support a coherent implementation of legal requirements and best practices.

All EU member states have to implement the MARPOL and EU legislation into their national legislations.

The Netherlands implemented the MARPOL and EU legislation through the Prevention of Pollution from Ships Act. This might be an example for other national legislations, because this act is based upon international and EU regulations. This act applies to NL ships, but also to foreign ships sailing in NL waters, including the EEZ.

65. Prevention of pollution from ships

The Prevention of Pollution from Ships Act (NL) is an executive law containing general rules. Rules for preventing and restricting the dumping or leaking of harmful substances into the sea. It is about substances that are generated by normal operational activity by ships, such as waste from cargo, leftover fuel and lubricants, sewage and garbage.

The act was made as a means of implementing into the Netherlands legislation the protocols originated in MARPOL. The act serves as a legal basis for resolutions made to implement the clauses stipulated in the MARPOL. The act also forms the basis for implementing the International Convention on the Control of Harmful Anti-Fouling Systems on Ships (AFS Convention) and the International Convention for the Control and Management of Ships' Ballast Water and Sediments (Ballast Water Convention).

The pollution act also forms the basis for implementing the EU-regulations aimed at preventing pollution at sea by ships.

The NL pollution act applies to ships sailing under the flag of The Netherlands wherever in the world they may be and to foreign ships visiting Dutch harbours or sailing in Dutch territorial waters or EEZ.

The pollution act comprises a general prohibition on dumping harmful substances into the sea from ships, except where this method has been legally accepted in the rules and regulations for dumping at sea. These national rules of the Netherlands thus also apply to foreign ships in Dutch territorial waters and EEZ. The same goes for the obligation to report illegal dumping. The mechanism to execute the act, including the regulations on dumping, are laid down in regulations such as the Decree on the Prevention of Pollution by Ships. This decree comprises a raft of stipulations to which a ship must adhere to obtain a certificate. It also contains regulations for dumping and other activity as well as operational regulations.

This act and decree refer dynamically to the MARPOL and its protocols, whereby the international rules become immediately applicable in the Netherlands.

This means that neither the Dutch act nor decree have to be changed or amended separately. The decree also applies to the AFS-Convention and the Ballast Water Convention in so far as these are applicable to the Netherlands.

66. Enforcement

Enforcement of the law consists of governmental supervision and criminal detection, see section nr. 14 of this Handbook. The Act on the Prevention of Pollution from Ships is enforced both by criminal detection and governmental supervision. The regular controls (supervision/inspection) that the law is adhered to is executed by controllers or supervisors from the ministry, who are also appointed as special investigation officers.

Supervision

For governmental supervision see section nr. 13 of this Handbook. Supervision is achieved using controllers or inspectors. Who they are exactly is laid down explicitly in the Act on the Prevention of Pollution from Ships.

For supervision as well as (civilian) recognised organisations are called in, and they carry out the investigations to control certificates. They expressly act on behalf of or with authorization from the government. This is governmental supervision.

A ship may be stopped in cases where it is not, or not yet, certain that an offence has been made or in which the ship refuses to cooperate. Both decisions are, when put in writing, decisions that are open to protection by law (appeal and higher appeal). The Act on the Prevention of Pollution from Ships includes the right to administrative appeal against the controllers after which an appeal in court can be made, see section nr. 13 of the Handbook.

A few articles from the act are paraphrased below.

The Act on the Prevention of Pollution from Ships (NL)

Article 20

1. The shipping inspectorate may arrest a ship:
 - a. when the ship is not in possession of all the required valid certificates or documentation.
 - b. when the official establishes that the ship does not meet the standards required for obtaining those certificates.
 - e. when the official has grounds to believe that the shipmaster is acting or will act in contravention of the rules.
 - i. when the official is obstructed in carrying out his task.

Article 22

The decision to arrest a ship is made known by announcing the decision to the shipmaster.

Article 23

1. The shipmaster of a detained ship is obliged after detention to moor his ship at the location as directed by the official of the ministerial shipping inspectorate and in agreement with the harbour master.
2. For as long as the detention lasts the shipmaster is forbidden to move the ship without prior permission from an official of the shipping inspectorate.
4. When the ship is detained in a foreign harbour by a competent authority with this power i.a.w. the MARPOL or other governmental measure the shipmaster is forbidden to leave harbour.

Criminal offence

The enforcement of the standards of the Act on the Prevention of Pollution from Ships is directly addressed to the shipmaster and is part of criminal law. That is why the repercussions are almost always punishable by penal law.

The penal element of the pollution act comes from the NL Economic Offences Act. The sanctions from this act can thus be applied when enforcing the Act on the Prevention of Pollution from Ships.

The Act on the Prevention of Pollution from Ships (NL)

Article 36

1. Dutch penal law applies to anyone guilty of illegal dumping outside the Netherlands.
2. Dutch penal law applies to anyone in the EEZ guilty of not reporting an incident.

Article 37

1. On suspicion of an offence a shipmaster can be ordered to move to a Dutch harbour or that the ship may not leave the harbour, until a sum of money will be deposited according to the prosecution of the offence. When necessary the order may be forcefully applied.
2. The order referred to in the first article is under the auspices of the Public Prosecutor given by the judge pursuing or who will pursue the case. The shipmaster will be heard beforehand, at least properly summoned. The penalty is immediate and communicated without delay to the shipmaster.
3. The suspect may appeal to the court within 14 days. The court will respond as quickly as possible.
4. Once the verdict has become irrevocable, the sum of money deposited will be paid to the lawful party after any fine incurred has been deducted.
5. The first article also applies to foreign ships in so far as the stipulations of that article are aimed at them.

67. Rights & duties shipmaster

- The shipmaster has a duty to maintain a journal in which he logs any activity involving harmful or dangerous substances.
- The shipmaster is obliged to allow access to this journal and to provide a verified copy of it.
- The shipmaster is obliged to report any environmental incident on board his ship to the authority in the closest coastal state.
- The shipmaster is obliged to report any environmental incident around his ship such as floating containers or oil slicks.
- The shipmaster is obliged to cooperate with the executive authority to limit the above.
- The shipmaster is obliged to inform the harbour master of any relevant environmental issues within 24 hours before arrival.
- The shipmaster is obliged to deposit his ship's waste and possible other harmful or dangerous substances in the harbour depositaries unless there is enough capacity on board to do this in the next harbour.
- The shipmaster is obliged on leaving the harbour to have a valid certificate proving that the ship meets the requisite (environmental) standards.
- The shipmaster has the right to receive an official report containing the necessary information should there be dangerous substances offered up for transportation. The shipmaster is obliged to share this information with the operator ashore.

68. Legislation

International

- Annex I Regulations for the Prevention of Pollution by Oil
- Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk
- Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form
- Annex IV Prevention of Pollution by Sewage from Ships

- Annex V Prevention of Pollution by Garbage from Ships

- Annex VI Prevention of Air Pollution from Ships (including a chapter for reducing greenhouse gas emissions)
- MARPOL

EU

- Directive 2000/59/EC
- Directive 2005/33/EC

- Directive 2012/33
- Regulation 2015/757

National (NL)

- Decree Appointing Persons Enforcing the Act Preventing Pollution by Ships
- Decree on the Prevention of Pollution by Ships
- Economic Offences Act
- Environmental Management Act
- Maritime Casualties Control Act
- Policy Guideline Granting Exemption Ship Waste Disposal

- Port State Control Act
- Prevention of Pollution from Ships Act
- Regulation Prevention of Pollution by Ships
- Ships Equipment Act 2016
- Spatial Planning Act
- Water Act

XI. Shipmaster & safety

69. Introduction

Safety has many facets on board a vessel, such as safety of navigation, radiocommunication, fire protection, life-saving appliances, carriage of cargoes. Including the management for safe operation of ships.

The shipmaster plays a crucial role in maintaining safety on board his ship (for security see Chapter XII of this Handbook). On the shipmaster's shoulders rests the responsibility for the operational safety of the ship and the personal safety of the people on board.

Before beginning a voyage, the shipmaster must be sure that the ship is seaworthy and properly fitted and equipped. During the voyage, the shipmaster must ensure that any deficiencies in ship or equipment are rectified as well as they can be. Above all he must take appropriate measures to protect the ship and those on board against the dangers of the sea and against other dangers that can occur on a ship such as the danger of fire.

Example

The shipmaster must ensure that the crew and passengers know how to use the lifeboats and that evacuation exercises and fire drills are held.

Furthermore, the shipmaster is responsible for the safety of the navigation, safety of his own ship but also that of shipping traffic in general.

70. IMO/ SOLAS

The SOLAS is the most important treaty concerning the safety of merchant ships. The main objective of the SOLAS is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. The SOLAS includes articles setting out general obligations, amendment procedure and so on, followed by an Annex divided into 14 Chapters, such as Chapter 1 General Provisions and Chapter IX Management for the safe operation of ships (ISM Code). Other IMO safety rules originate from other international agreements, such as the STCW, International Certificate for Load Line, International Safety Certificate and Certificates for Equipment.

Maritime legislation does not stand still. Technical developments come fast and furious. From the IMO new guidelines and recommendations are regularly published which in turn can appear in national law and regulations.

Certification

The safety on board is for the most part organized using certificates issued by the flag state but based upon IMO or/and EU rules. Flag states are responsible for ensuring that ships under their flag comply with its requirements, and several certificates are prescribed in the SOLAS as proof that this has been done.

The flag state may have authorised several organisations to perform certain inspections, the so-called Recognized Organizations (ROs). These organizations conduct inspections and certification on seagoing vessels, marine equipment, inflatable life rafts, rescue boats etc. Supervision of these organisations is a responsibility of the flag state. The Recognized Organizations are often on a global scale active in the certification of ships.

In brief, certificates are issued by the flag state, often based on surveys carried out by RO that investigate whether a ship complies with the (international) rules.

Enforcement

The national Maritime Authority or Shipping Inspectorate check that national shipping adheres to the laws and regulations.

Control provisions also allow coastal states to inspect ships of other states if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of the SOLAS (Port State Control). By Port State Control the adhering to these international rules by foreign vessels is taken care of.

The shipmaster is responsible for the adherence to the law and these regulations on board his ship in matters of safety.

71. ISM Code

The International Safety Management Code (ISM Code) provides an international standard for the safe management and operation of ships and for pollution prevention. All member states to the IMO have to adhere to this ISM Code, including the enforcement of this Code.

The ISM Code contains Part A and Part B as well.

Part A Implementation is the mandatory part, while Part B Certification and Verification is not mandatory to all states.

Purpose of ISM Code:

- ensure safety at sea;
- prevent human injury or loss of life;
- avoid damage to the environment and to the ship.

The ISM Code applies to ships of 500 GT and above, involved in international voyages. For implementing ISM code on board, the ship owner, the national government (maritime authority), and the shipmaster together play an important role. Every shipmaster should know the important aspects of the ISM code in order to create a safe working environment while at sea. Another requirement of the ISM Code is for the ship to be maintained in conformity with the provisions of relevant rules and regulations and with any additional requirements which may be established by the shipowner.

Safety management system

The ISM Code establishes safety-management objectives and requires a safety-management system (SMS) to be established by the shipowner.

Shipowner

The owner or any other organization or person, such as the manager or bare-boat charterer, who has assumed responsibility for operating the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the ISM Code.

The shipowner is required to establish and implement a policy for achieving these safety objectives. This includes providing the necessary resources and shore-based support. Each ISM compliant ship is audited, first by the shipowner (internal audit) and then every two or three years by the flag state, or RO on its behalf, to verify the fulfilment and effectiveness of their Safety Management System (SMS).

So, in order to comply with the ISM Code, each ship must have a working Safety Management System (SMS).

Each SMS consists of the following elements:

- commitment from top management
- top tier policy manual
- procedures manual that documents what is done on board the ship, during normal operations and in emergency situations
- procedures for conducting both internal and external audits to ensure the ship is doing what is documented in the procedure's manual
- designated person ashore to serve as the link between the ships and shore staff and to verify the SMS implementation
- system for identifying where actual practices do not meet those that are documented and for implementing associated corrective action

A Safety Management System (SMS) is a structured and documented system for a shipowner. He must put his personnel in a position whereby they can implement efficiently the shipping company's safety policy.

The safety management system and its implementation are the responsibility of the shipowner.

A safety management system incorporates the following:

- policy for safety and protecting the environment
- instructions and procedures that will ensure safe use of ships in accordance with international regulations and those of the flag state
- clearly defined lines of authority and communication channels between shore and ship personnel and between personnel amongst themselves
- procedures for:
 - reporting accidents and offences
 - being prepared for and reacting to emergencies
 - performing internal audits and policy renewal.

The owner must ensure that the SMS used on board a ship contains a clear explanation in which the authority of the shipmaster is emphasized. The owner must lay down in the SMS that for all decisions with regard to safety the highest authority just as the responsibility lies with the shipmaster.

Safety Management System (SMS) means a structured and documented system enabling the shipmaster to effectively implement the shipowner's safety and environmental protection policy.

Shipmaster

In the area of safety, the shipowner must clearly define the responsibilities of the shipmaster, in particular:

- the implementation of the safety policy of the owner
- the motivation of the crew to keep to his policy
- the giving of suitable orders and instructions in clear and simple language
- the control that standards are met
- renewal of the safety management system
- reporting any deficiencies that might arise to the management ashore.

The shipowner should ensure that the SMS operating on board the ship contains a clear statement emphasizing the shipmaster's authority. The shipowner should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the shipowner's assistance as may be necessary.

DPA

To ensure safe use of every ship and as a communication link between shipmaster and shipping company every shipowner must appoint a person ashore who has a direct line to the highest authority in the shipping company: Designated Person Ashore (DPA). This person is responsible for and has the executive power to control the operating standards of every ship. He must also ensure that sufficient means and assistance are made available from shore.

Designated Person Ashore (DPA)

The person to provide the structure and support for an efficient and effective Safety Management System onboard a vessel. Required by ISM Code for all commercial vessels over 500 GT, the DPA is especially designated to ensure a reliable connection between the company and the shipmaster and to supervise the safe operation of the vessel.

Document of compliance

Once the SMS is verified and it is working and effectively implemented, the ship is issued with the Safety Management Certificate and the shipowner with a Document of Compliance. A document of compliance (DOC) is given to all shipowners who fulfil the stipulations of the ISM Code. This document is given by the flag state or RO on its behalf.

A copy of this document must be kept on board a ship so that the shipmaster can have it checked, should he be asked to do so.

Document of Compliance

Document issued to a shipowner which complies with the requirements of the ISM Code.

Safety management certificate

A safety management certificate is a document given to a ship in which can be seen that the working method of the owner and the operations on board conform to an approved safety management system. The safety management certificate for a ship is issued by the flag state or RO on its behalf for a maximum of five years.

In issuing this certificate the relevant national ministry must be certain that an approved safety management system has been agreed upon. The certificate should be regarded as proof that the ship meets the standards of the ISM Code. Intermittent checks can take place, wherever in the world.

Safety Management Certificate (SMC)

Document issued to a ship which signifies that the shipowner and the shipmaster operate in accordance with the approved SMS.

72. EU

Additionally, the EU constitutes maritime legislation, including regulations on safety. For the EU member states the EU has implemented the IMO/ ISM Code as well. These states must comply with Part A and Part B of the ISM Code.

The EU objective is to ensure that shipping companies (shipowners) comply with the ISM Code by means of establishment, implementation and proper maintenance of safety management systems on ships and on shore and their control by flag state and port state administrations.

EU regulations constitute that member states shall ensure that all companies operating ships falling within the scope of these regulations comply with the provisions of the ISM Code and the relevant EU regulations.

If an EU member state considers it difficult in practice for some shipowners to comply with certain ISM Code rules for specific ships exclusively engaged on domestic voyages, it may exempt them from those rules by imposing equivalent measures. In such a case, the EU member state has to notify the EU accordingly. If the proposed exemption is not justified, the state has to amend or refrain from adopting these measures.

73. National (NL)

Hereafter, the Netherlands national view and interpretation of the international rules on safety are described. This might be the same as other states because the national rules are based upon the international agreements and codes.

The ISM Code is laid down in Dutch law and regulations, often by use of a direct and dynamic reference to this Code. If the Code changes the Dutch law and regulations change automatically. See the example below.

Article 9 Ships Decree 2004 (NL)

1. For a ship where a safety certificate is required the following certificates are also required: the safety management certificate i.a.w. the ISM Code.
2. To operate the ship as referred to in article 1, a conformity document is required for the type of ship concerned i.a.w. the ISM Code

Because Dutch laws and regulations often directly refer to international IMO provisions, amendments in the IMO regulations apply immediately in the Netherlands legislation. New IMO regulations have to be ratified by the Netherlands and subsequently transferred into Dutch legislation.

Ships Act (NL)

The Ships Act is a Kingdom Act, thus applies to the entire Kingdom of the Netherlands. This law incorporates many provisions about safety on board. Its aim is to avoid shipping disasters.

As has been described above a seagoing ship must be in possession of certain certificates before it may go to sea. For this it must fulfil a number of criteria, such as carrying nautical charts, rescue and safety equipment.

In the Ships Act including its regulations such as the Ship Decrees, more provisions are dedicated to the obligations of the shipmaster. Many of these can also be found in the NL Code of Commerce, starting at article 341. In brief, some articles from the Ships Act are laid down below (paraphrased).

Ships Act (NL)

Article 4, 1

The shipmaster is obliged, before he undertakes a voyage with his ship, to ensure that:

- a. the ship is completely seaworthy and that all hatches above and below deck are properly closed;
- b. the required rescue and safety equipment is on board as is medical equipment including instructions for use;
- c. present on board are the required charts, sailing instructions and instruments and these are meticulously kept up to date revised or reviewed;
- d. all aids necessary to fulfil the regulations for the prevention of collision at sea are on board and in good condition, the lights used in the regulations can be placed, that equipment on the ship in general is in a state of seaworthiness and meet the safety requirements;
- e. the bilge pump works and is of sufficient capacity.

Article 9

1. The shipmaster is obliged to:

- a. conning in a direct sense;
- b. during the voyage everything to do with the equipment on board is kept in a good state ready for immediate use, that hatches above and below decks are properly closed, pipes and commands are exercised and all standards in the regulations are met;
- c. should during the voyage the machinery or equipment become defect that this is repaired as quickly as possible;
- d. the draught of the ship is continuously measured when taking on fuel and the freeboard is no less than the minimum given in the certificate.

3. In the case as meant in the first article under c, the shipmaster is constantly obliged in the first harbour to rectify the shortages in so far as this is necessary for the safety of the ship and the people on board.

Behaviour in contravention of the abovementioned stipulations are offences, breaches or crimes. By contravening one or any of the abovementioned stipulations the shipmaster can be punished with a fine or prison sentence. This is established in the criminal court where judgment will also be made as to whether this was intentional.

Safety committee on board

In the NL Ships Act it is laid down that on every ship there will be a safety committee. The aim of the committee is to prevent labour related accidents on board by, for example, informative and motivating activities by the committee members. These members try to make the entire crew safety aware.

This might be through their own work ethic or by gathering information from others on board, but also by observing the way work is done on board and the use of personal protective equipment.

However, the safety committee never takes over responsibility from the shipmaster in terms of safe labour on board. Tasks of the safety committee are:

- Advising the shipmaster on measures to be taken to prevent labour related accidents by:
 - regularly doing safety rounds through the ship;
 - identifying unsafe situations, activity or use of unsafe material or tools;
 - supervising the correct use of prescribed personal safety equipment;

- investigating a labour related accident in order to advise the shipmaster so as to prevent a similar accident happening again.
- Informing the general commission for preventing labour related accidents for seafarers. This means:
 - collecting information when the shipmaster has no or insufficient follow up to the advice from a safety committee on board;
 - as well and as often as possible collect information about fundamental and recurring problems to do with work safety.

The shipmaster preferably nominates volunteers to be members of the safety committee. The nominees must have had at least one year of experience at sea. Both officers and seamen as well as the various branches on board should be represented.

In some cases, a one-man-committee will suffice. The composition of the safety commission is recorded in the ship's logbook and the letters VC from the Dutch abbreviation for the committee are added after the members' names on the muster roll.

The committee meets once a month, even the one-man-committee, and notes any possible points for action each month. Should the committee deem action necessary written advice is presented to the shipmaster. The shipmaster decides whether immediate action is possible and necessary. The shipmaster informs the committee in writing what measures have been taken. Should the committee not approve the measures or how they are implemented a note is made of this in the ship's log.

Working conditions act (NL)

Employees have a right to a safe and healthy work environment. This right is firmly rooted in labour law like the Working Conditions Act, which applies to merchant shipping vessels.

The Shipping Inspectorate checks that the law is followed for the Ministry. In addition, there are the Working Hours Decree Transport, the Working Conditions Decree and Regulations etc. See also Chapter XXIV of this Handbook.

Article 6.4:2 Working Hours Decree Transport (NL)

The shipmaster ensures that adequate work and rest periods for every seafarer are registered no later than after a week on a worklist. The completed list is signed by the shipmaster and the relevant seafarer and the shipmaster makes sure that every seafarer receives a copy of the list. The shipmaster ensures that the complete and signed list is made available to the ship controller within eight weeks of completion.

Catalogue

A so called ARBO catalogue is based on the Working Conditions Act, and a distinction is made in it between the public domain and the private domain. In the public or governmental domain (acts, decrees, regulations) the government makes sure there that is a clear legal framework and as little administrative burden as possible. In the private (civil) domain, employers and employees make agreements together on how the government directives will be manifested in merchant shipping. These agreements are laid down in the ARBO catalogue.

Working with a good ARBO catalogue the shipmaster can be sure of adhering to the Working Conditions Act.

Employers and employees are personally responsible for the content and distribution and application of the ARBO catalogue. The ARBO catalogue for Shipping lays down the measures for meeting the requirements of the law. For merchant naval ships it covers risks when using, amongst other things, hatch covers cranes, and when unmooring. Developments can be used to keep the ARBO catalogue current.

74. Rights & duties shipmaster

- The shipmaster is obliged to ensure that his ship can begin and end its voyage safely.
- The shipmaster ensures a safe working environment.
- The shipmaster is obliged to maintain safety on board.
- The shipmaster maintains the safety management certificate as well as all other relevant certificates.
- The shipmaster has the right to nominate members of the safety committee.
- The shipmaster has the right to discuss matters and ask advice from the safety committee.
- The shipmaster is obliged to report work related accidents.
- The shipmaster organizes the work and rest periods and ensures that these are registered.

75. Legislation

- IMS Code
 - Guidelines on Implementation of the ISM Code
 - Directives
 - 1992/29/EEC
 - 1998/41/EC
 - 1999/5/EC
 - 1999/35/EC
 - 1999/63/EC
 - 2003/25/EC
 - 2009/16/EC
 - Act Foreign Seagoing Vessels
 - Code of Commerce
 - Decree Appointing Controllers Ships Act
 - Decree Claims of Seafarers, Recruitment and Placement and Temporary Agency Work of Seafarers
 - Decree ex. Article 22 Ships Act
 - Decree Recognized Organizations Ships Act
 - Directions Enforcement Working Conditions Act
 - Instruction for Shipping Inspectorate Officials
 - Policy Rule Safety Seagoing Vessels
 - Regulation Recognized Organisations Ships Act
- International**
- SOLAS
- EU**
- 2009/45/EC
 - Regulations
 - 2006/336/EC
 - 2008/540/EC
- National (NL)**
- Regulation Safety Seagoing Vessels
 - Seafarers Act
 - Ships Act
 - Ships Decree 1965
 - Ships Decree 2004
 - Ships Equipment Act 2016
 - Working Conditions Act
 - Working Conditions Decree
 - Working Conditions Policy rules
 - Working Conditions Regulation
 - Working Hours Act
 - Working Hours Decree Transport

XII. Shipmaster & security

76. Introduction

The shipmaster has a vital task and responsibility regarding the security of his ship. For safety and the SOLAS see Chapter XI of this Handbook.

Since the 9/11 terrorist attacks the security of seagoing ships has become much tighter. The IMO International Ship and Port Facility Security Code (ISPS Code) has been published and is an international set of rules for the security of ships and harbour complexes.

The ISPS Code does not specify specific measures that each ship must take to ensure the safety against terrorism because of the many different types and sizes of ships. Instead it outlines a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.

For ships the framework includes requirements for:

- ship security plans
- ship security officers
- company security officers
- certain onboard equipment.

77. IMO/ SOLAS/ ISPS Code

The crux of security measures can be found in the International Ship and Port Facility Security Code (ISPS Code). This contains both security directives for ships and for port facilities. The Code expects an analysis of the risks and control of them through proper and adequate security measures. In the Code a standard set of instruments is developed whereby the risks of a terrorist attack can be evaluated. The ISPS Code governs the security situation on board ships and in places where ship and dock come together, the ship/port interface.

The ISPS Code can be found in SOLAS Chapter XI-2, Special Measures to Enhance Maritime Security. It exists out of:

- Part A: Mandatory Requirements Regarding the Provisions of Chapter XI-2 of the Annex to the SOLAS.
- Part B: Guidance Regarding the Provisions of the Annex to the SOLAS and Part A of this Code.

The ISPS Code obliges the owner of a ship to appoint a company security officer (CSO) into his company organization who will be responsible for seeing that every ship coming under the ISPS Code carries out a Security Assessment (SA). Based on the SA every ship must then draw up a ship security plan (see below).

The ISPS Code

This is an amendment to the SOLAS on minimum security arrangements for ships, ports and government agencies. It prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to: 'detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade.'

Certification

The security of ships uses a system of investigation, control and certification that conforms to the safety system (ISM). For cargo and passenger ships engaged in international voyages an international ship security certificates (ISSC) is required.

ISSC

A ship that is compliant to the ISPS should have an International Ship Security Certificate (ISSC).

Ships must carry an ISSC by which the flag state administration confirms that the security system has been verified, the ship complies with all requirements and a Ship Security Plan (SSP), approved by the flag state administration, is available.

Example

Article 9 Ships Decree 2004 (NL) Ships Security Certificate (SOLAS)

For a ship required to have a security certificate the following certificate is required:

The international ship security certificate i.a.w. the ISPS Code.

There are other security certificates for less common ships such as high-speed ships. For ships not required to have an international security certificate a national security certificate applies unless the ship is shorter than 12 meters.

The ISSC must be presented regularly at inspections of the ship in ports. A missing or expired certificate may imply heavy sanctions. See also Port State Control, section nr. 33 of this Handbook.

Security levels

The security levels under the ISPS Code describe the current scenario related to the security threat in a country and its coastal region including the ships visiting that country. These are the security levels on which the ship and the port facility will act, once the ship is safely moored; this is laid down in the Declaration of Security (DOS). See further on.

The security levels are decided by the cooperation of ship and port authority keeping the current condition of national and international security. The local government sets the security level and ensures that port state and ships prior to entering the port or when berthed in the port are informed.

The ISPS Code oversees the security of ships and distinguishes three security levels:

1. Normal: be aware of the risk of a terrorist attack but no known threat;
2. Heightened awareness: risk of terrorist attack;
3. High risk: a terrorist attack is highly likely even when the target cannot be identified.

The standard state on board ships is normal, level 1, but the flag state can dictate on board ships under its flag that a higher level must come into force. The shipmaster is obliged to ensure that his ship at least adheres to the security state given by the state under whose flag he sails. It can however happen that in a particular region the local authorities identify a higher security state. In this case the shipmaster must heighten the level of security on his ship – that given by the flag state – to meet the local level. A ship that does not heighten its security level in line with that in a harbour, a higher state of alert, may, on grounds of the SOLAS, be refused entry into that harbour.

Declaration of Security

The Declaration of Security (DOS) according to the ISPS is a document that may be required for a port visit when specific security requirements exist. The Declaration addresses the security requirements that could be shared between a port facility and a ship, or between ships, and states the responsibility for each. A shipmaster can request completion of a Declaration of Security when:

- his ship is operating at a higher security level than the port facility or another ship it is interfacing with;
- there is an agreement on a Declaration of Security between governments covering certain international voyages or specific ships on those voyages;
- there has been a security threat or a security incident involving the ship or involving the port facility, as applicable;
- his ship is at a port which is not required to have and implement an approved port facility security plan;
- his ship is conducting ship to ship activities with another ship not required to have and implement an approved ship security plan.

Ship security plan

Based on the Ship Security Assessment a Ship Security Plan (SSP) will be drawn up. The SSP shows what security measures, for all levels of security, must be in place on board. The SSP contains amongst other things:

- procedures for a change in security level;
- security measures to be taken at levels 2 and 3;
- reports to CSO, flag state and coastal state;
- testing and maintenance of security equipment;
- drills, exercises and briefings;
- audits of security measures and the SSP;
- review of the SSP;
- record keeping;
- document security of records;
- identification, entry and search of restricted areas;
- procedures for the use of security equipment such as cameras;
- lighting on deck and at entrances and exits;
- watchkeeping procedures and control of entry at all security levels;
- security assistance from shore such as patrol boats and guards;
- ship security alert system (SSAS).

Exercises

If a ship during inspection abroad is not able to show valid documentation on Exercises & Drills, then this will be considered as a deficiency and the ship may be detained.

Control of entry

Control of entry applies to ships, not necessarily gangway watch. Other possibilities are a lookout on the bridge or on deck, security cameras or external guards. The crux is that there is always control over who comes on board and that visitors are asked to confirm their identity before arrival.

SSO

On board every ship where the ISPS Code applies a Ship Security Officer (SSO) must be appointed, tasked with security of the ship and responsible for executing the ship security plan. The SSO holds a ship's security officer certificate and maintains contact with CSO of the ship-owner.

Regulation seafarers (NL)

Article 8.38

To gain a certificate as ship security officer (SSO) the applicant:

1. meets the requirements enclosed in the STCW Convention;
2. has completed the recognised courses and training in the STCW Code.

A ship must have a Ship Security Alert System (SSAS), whereby the authorities and the owner can be warned should the security of the ship be compromised or when there is a threat of terrorist attack.

The Ship Security Alert for ships registered in the Netherlands goes to the Coastguard Centre in Den Helder (NL).

CSR

A Continuous Synopsis Record (CSR) is distributed by the flag state and describes the administrative history of a ship, the flag, identification details, owner, controller and relevant investigation agencies. Changes must be reported. On the CSR changes must be reported as they happen together with the entire history of the ship and the CSR must remain on board.

The CSR provides a historical record of ship related information

Shipmaster

The obligation to develop a ship security plan lies with the owner, but the shipmaster is responsible for actually putting it into practice. This does not take away from the fact that the ship security plan can be delegated to a member of the crew.

For the security of the ship that will be the ship security officer (SSO) on board. Every ship must have a ship security officer in accordance with the ISPS Code, EU regulations and national legislation. Final responsibility however always lies with the shipmaster.

The regulations empower the shipmaster, should the safety of the ship in his opinion be at risk due to measures in the ship security plan, to temporarily suspend the ship security plan: shipmaster's discretion.

The shipmaster has the right to give the safety of his ship priority over security.

The obligation to maintain a ship's logbook for security is an important part of the regulations. These and the codes comprise a lot of rules to adhere to; what details should be entered into the official logbook such as the current security levels and security against pirates. If only certain details have to be recorded the shipmaster needs to find a suitable way of doing this.

The shipmaster is responsible for:

- Commanding his ship at all times and for the safety and security of the crew, other employees, visitors, ship and cargo in accordance with maritime law.
- Taking any action within his authority and capability to prevent or minimize the loss or damage of their crew ship / cargo from theft, espionage, sabotage and other criminal activities.
- Promoting security awareness in the ship's crew.
- Ensuring that the information in the Security Manual is distributed as necessary and that the crew practice acceptable security standards.
- Assisting the SSO in the production and development or update of the Ship Security Plan.
- Listening to the advice of the SSO and making adjustments if in agreement.
- Retaining authority to change the security levels.
- Requesting manpower augmentation at increased alert states.
- Ensuring that appropriate members of the crew receive adequate shipboard training and, when required, formal training.
- Ensuring that shipboard drills are carried out quarterly.
- Including security readiness as a separate item in the shipmaster's assessment report for periodic inspections.
- Establishing the level of security complying with the security level set in ports.
- Ensuring exercises are carried out as detailed by the Company Security Officer.
- Having overriding authority and responsibility to make decisions with respect to the security of the ship. He has to be aware that safety has priority.

78. EU/ Security

The ISPS Code has been adopted as has EU legislation whereby this Code has become obligatory in the European context. On some points the European legislation goes further than the security rules in the SOLAS.

Ships registered in an EU member state must conform to the EU Regulation 2004/725/EC, which includes the ISPS Code. The main objective of this Regulation is to implement EU measures aimed at enhancing ship and port facility security in the face of the threats posed by international unlawful acts.

In order to monitor the application of EU Regulation 2004/725/EC, and to verify the effectiveness of the security measures at member state level, in 2005 the EU adopted Regulation 2005/884/EC laying down procedures for conducting inspections in the field of maritime security. In 2008, The EU adopted Regulation 2008/324/EC laying down revised procedures for conducting EU inspections in the field of maritime security.

The European Maritime Safety Agency (EMSA) is to provide technical assistance in the performance of their inspection tasks. In providing this technical assistance, EMSA is making technical experts available to participate in maritime security inspections, including the related preparatory and reporting phases. EMSA also contributes to the continued updating and enhancement of the methodology on performing maritime security inspections.

79. National security (NL)

For Dutch ships many of these international regulations have been laid down in the NL 2004 Ships Decree referring directly to the ISPS Code and EU legislation. See also the NL Regulation Safety Seagoing Vessels.

Control over Dutch vessels in terms of security falls to the NL Shipping Inspectorate.

For Dutch ships the inspections and certification for the international security certificate may be carried out by the organizations appointed by the Dutch ministry. These are called Recognized Security Organizations (RSOs).

RSO
The Shipping Inspectorate has authorised several organizations to perform certain inspections. These RSOs conduct inspections and certification. Supervision of these organizations is a responsibility of the Inspectorate. RSOs operate on behalf of the Dutch government and check whether all ship security plans conform to the regulations. In some states the requirements are stricter due to local legislation. The CSO and SSO should take this into account when planning the voyage

Abbreviation	English term	Dutch term
CSO	Company Security Officer	Veiligheidsbeambte van de rederij
ISSC	International Ship Security Certificate	Internationaal scheepsbeveiligingscertificaat
RSO	Recognized Security Organization	Erkende veiligheidsorganisatie
SSA	Ship Security Assessment	Beoordeling van de scheepsbeveiliging
SSAS	Ship Security Alert System	Scheepsveiligheidsalarmsysteem
SSO	Ship Security Officer	Scheepsveiligheidsbeambte
SSP	Ship Security Plan	Scheepsveiligheidsplan

Figure 18 Terminology security

For Dutch ships, the current security level state is made known by the Coastguard Centre in Den Helder (NL).

80. Rights & duties shipmaster

- The shipmaster ensures that the directives of the international ship security certificate and other certificates in the area of security are adhered to.
- The shipmaster maintains the security management certificate and the ship security plan and ensures they are applied.
- The shipmaster ensures that the logbooks on board are maintained in accordance with the law and regulations in the codes.
- The shipmaster ensures that adequate security exercises take place.
- The shipmaster ensures effective entry control, dependent on the security level.
- The shipmaster maintains the Continuous Synopsis Record.
- The shipmaster has the right to give the safety of his ship priority over security.

81. Legislation

- IMO Guide to Maritime Security and the ISPS Code
 - Directive 2005/65/EC
 - Directive 2010/65/EU
 - Regulation 2003/415/EC
 - Decree Recognized Organisations Ships Act
 - Interpretations Legislation Shipping Security
 - Policy Rule Safety Seagoing Vessels
 - Regulation Seafarers
 - Regulation Safety Seagoing Vessels
- International**
- ISPS Code (ChapterXI-2 SOLAS)
- EU**
- Regulation 2004/725/EC
 - Regulation 2005/884/EC
 - Regulation 2008/324/EC
- National (NL)**
- Ships Act
 - Ships Decree 2004
 - Seafarers Order Merchant Shipping and Sailing

XIII. Shipmaster & criminal investigation

82. Introduction

A shipmaster can be tasked with the criminal investigation of suspects on board his ship. He may then apply certain enforcement measures (coercive means). Criminal investigation (detection of crime) falls under the national penal code which is part of criminal law. Control or inspection do not, see section nr. 13 of this Handbook. Criminal investigation is a national interest. International or EU penal codes and criminal proceeding codes are non-existing.

The Netherlands criminal law system will be described hereafter. The main reference for criminal investigation in the Netherlands is the Code of Criminal Proceedings, but it can also be found in specific legislation such as in the area of shipping, drugs and weapons.

Many flag states have a comparable criminal law system. Therefore, a shipmaster sailing on a ship from one of these flag states does have a law system which gives him a possibility to use some criminal investigations powers. These powers and authorities to use coercive means are controlled by the flag state, in one way or another. A shipmaster has to check the national criminal law of the flag state of his vessel.

Criminal investigation

Unlike control/inspection which is a governmental task (administrative law), criminal investigation is a judicial task (criminal law).

Criminal investigation is carried out by national law enforcement officers, such as the police, who have been given the authority to conduct the investigation. That authority can be exercised by a law enforcement officer when there is suspicion that a crime has been, or will be, committed.

The authority to investigate is a general term which also includes the right to use coercion or enforcement measures, which is a right to infringe on a person's rights: telephone tapping, arrest, and search. In principle criminal investigation begins with suspicion that a crime has been committed.

83. Criminal investigation authority

A law enforcement officer or an investigation officer has general or special authority to conduct a criminal investigation which may only be applied when there is suspicion that a crime has been committed. The Public Prosecutor is central to criminal investigation. He leads the criminal investigation by giving guidelines to the law enforcement officers thus he can check that they remain within their authority.

Having investigation authority is important because the court can only judge a suspect on an official report from someone with this authority. This report can therefore be of the utmost importance and contain special or unique evidence. Resisting a law enforcement officer is a crime.

84. Shipmaster and criminal investigation

As has been mentioned previously the term shipmaster is not used consistently in the law and regulations. Sometimes in the NL penal code the word skipper is used and he can be given investigation authority in special cases.

Terminology in NL criminal law

Skipper: In command of a Netherlands merchant vessel or sea going fishing vessel or his replacement.

Commanding officer: In command of a Netherlands warship.

In principle investigation activity may only begin when a criminal offence has been committed. A shipmaster can be granted (limited) investigation powers by the Public Prosecutor, the shipmaster then has the right to apply certain enforcement (coercive) measures.

Shipmaster tasks

The shipmaster also has legal obligations namely reporting certain crimes to the Public Prosecutor and registering certain offences committed on board.

The shipmaster shall, promptly and in the quickest possible manner, notify the Public Prosecutor of any serious offence, committed on board, which endangers the safety of the vessel or of the persons on board or causes the death of a person or grievous bodily harm.

The shipmaster shall ensure that there is a register of criminal offences on board, which is numbered page by page. He must enter in this register any serious crime committed on board or by a person on board. The shipmaster will write down the place where and the time at which the offence was committed, the personal details and nationality of the suspect and of the witnesses, as well as the measures taken by the shipmaster. The entries in the register shall be dated and signed by the master. At the first request of a competent authority, the shipmaster shall present the register to him for inspection.

85. Shipmaster enforcement measures at sea

Beyond the jurisdiction of the Dutch court (at sea) the shipmaster sometimes has enforcement measures at his disposal.

‘At sea’ in this context means beyond the jurisdiction of the Dutch court. This begins at the low water line, the base line, of the Netherlands and so further seawards. This therefore includes a foreign harbour, but here the coastal state has jurisdiction as well, so overlapping and concurrent jurisdiction. See section nr. 5 of this Handbook.

Within the maritime internal waters of the Netherlands (harbours and roads) the shipmaster has no entitlement to use enforcement measures. Here he is obliged to call in the help of law enforcement officers from ashore, such as the police.

At sea

At sea begins at the baseline (low water line) and so seaward, including foreign harbours. In other words, beyond the Netherlands.

It must be stressed that the shipmaster may only employ enforcement (coercive) measures at sea when authorized to do so by the Public Prosecutor, unless there is no time to ask for this, in which case the Public Prosecutor must be informed afterwards as soon as possible. And of course, only on his own ship.

Criteria for the use of enforcement measures by the shipmaster

1. Beyond the Netherlands (at sea, including NL Territorial Sea and abroad).
2. Appointed by the Public Prosecutor unless haste required.
3. Public Prosecutor informed afterwards.

A shipmaster has several enforcement measures, with conditions, at his disposal; these are described hereafter. The numbered articles mentioned are from the NL Code of Criminal Procedure, more specific from Part VIA of this Code (*WvSv*). Other flag states do have similar legislation constituting investigating and coercive powers to the shipmaster on board his ship.

Collecting information and evidence

The shipmaster may gather information and evidence when there is a crime at hand. The information and evidence may be used in the case unless the Public Prosecutor rules otherwise (article 539c *WvSv*). This includes the hearing of witnesses. Pressure may not be applied.

Stopping

The shipmaster can stop a suspect (article 539g *WvSv*) in order to ask for his personal details (article 52 *WvSv*). Possible witnesses can also be stopped. The aim is to take down name, address, current residence etc. of the suspect or witness. To do so the freedom of movement can be restricted, by force if necessary.

Arresting

Everyone whether shipmaster, engineer or seaman can arrest a suspect who is caught red handed committing a major offence (crime): during or directly after the deed. The shipmaster may also make an arrest in the case of:

- a minor offence caught red handed;
- a crime not caught red handed (suspect);
- giving a false name and address.

The Public Prosecutor can task the shipmaster to arrest a suspect on board. The shipmaster must hand over the suspect to a law enforcement officer (police) as soon as possible. Should this not be possible the shipmaster himself remains responsible (article 539h *WvSv*).

Questioning

Questioning means interviewing or interrogating the suspect with regard to the crime. Before questioning the suspect should be made aware of his rights:

- nature and reason of the arrest, the charge;
- right to remain silent;
- right to legal counsel.

In the absence of a law enforcement officer (police) the shipmaster, when appointed by the Public Prosecutor, may question the suspect (article 539j *WvSv*). The questioning may not last longer than six (6) hours whereby the time between midnight and 09.00 hours does not count (article 539k *WvSv*). After questioning the suspect should be let go.

Detaining for questioning

The suspect can in certain cases be detained (keeping) longer than six (6) hours for questioning when:

- there is an order to take the suspect into provisional custody (pre-trial detention);
- the suspect is suspected of a serious crime and an order to take the suspect into provisional custody (pre-trial detention) might be issued.

The decision to keep a suspect for questioning is made by the Public Prosecutor, but when his response cannot be expected the shipmaster can take the decision (article 539k *WvSv*).

The Public Prosecutor must be informed immediately because he must issue a warrant for remand in custody (article 539l *WvSv*). The suspect must be handed over to the Public Prosecutor as quickly as possible (article 539m *WvSv*).

A suspect held on the above grounds may not undergo more measures than are strictly necessary to deprive him of his freedom (article 539n *WvSv*). Should the suspect be on board and there is no more reason to keep him in arrest, then he may go free.

Release suspect

If the stipulations to keep a suspect for questioning cannot be fulfilled, the suspect must be let go.

For information

To stop:	stop a person and require proof of identity.
To arrest:	arresting or apprehending a suspect.
Police custody:	Public Prosecutor decides if the suspect should be held longer in the interests of the investigation.
Provisional custody:	investigating judge decides about remand custody.
Detention:	investigating judge decides about longer remand in custody.
Detention in custody:	district court decides about longer custody.
Imprisonment:	verdict by the court for a major offence (crime).
Detention:	verdict by the court for a minor offence.

Body or clothing search

A suspect may carry evidence such as drugs or weapons. To find these the suspect may sometimes be subjected to a clothing search, also called frisking. A physical examination or body search (intimate search) is more serious. These searches encroach on certain rights and permission must be granted to carry them out. The Code of Criminal Proceedings (*WvSv*) endows the shipmaster with the power to do this but only under certain conditions. In the absence of a law enforcement officer (police) the shipmaster has the authority to search the clothing of a suspect accused of a serious crime. The shipmaster is, in the absence of the investigation or law enforcement officer, authorized to perform a body search (article 539o *WvSv*). There must be serious reasons to do so, which are laid down in the Code of Criminal Proceedings.

Seizure

Seizure is to do with objects. The aim is to make certain objects available to the legal process. Conditions:

- objects are useful to the case;
- seizure is possible if objects may:
 - establish the truth;
 - be declared to have been confiscated;
 - be removed from traffic.

Seizure can happen to suspects, witnesses or bystanders. A receipt must be given. After seizure the object must be given immediately to the Public Prosecutor enclosed in a sealed envelope or with a label showing name, date, contents in brief and a signature.

Should no investigation officer be present the shipmaster, in the case of the suspect being caught red handed, can seize objects relevant to the case (article 539p *WvSv*).

Seized objects must be handed over to the Public Prosecutor (article 539p *WvSv* jct. article 539i *WvSv*). The Public Prosecutor can have an object returned to a suspect by the person holding it, for example by the shipmaster (article 539q *WvSv*).

Entry into places and accommodation

In order to arrest a suspect or seize objects the shipmaster may enter any place he considers reasonable (article 539s *WvSv*). This includes accommodation on the ship thus also the suspect's cabin. When entering a cabin, the shipmaster is accompanied by certain persons (article 539s *WvSv*). After entry against the suspect's will the shipmaster must submit an official report within 48 hours.

House search

At sea (beyond the Netherlands) and in the case of suspicion, the shipmaster does not need authorization (warrant) to enter accommodation and cabins on board. Legitimacy, intent and an official report must be given.

Enforcement Measures Shipmaster (at sea)			
Enforcement measure	Fact	Aim	Particular
Collect information and evidence	Offence	Investigation	PP can forbid
Entry into accommodation including cabins	Offence	Arrest Seizure	Reasonable grounds
Questioning	Offence	Establishing truth	< 6 hours
Stopping	Suspect	Personal details	
Arresting	Crime, offence, breach: red handed, false name	Bringing in	Order PP
Clothing search	Crime Serious objections	Interests of case	
Body search	Crime Serious objections	Interests of case	Order PP
Body search/examination	Crime Serious objections	Interests of case	Order PP
Seizure	Red handed	Evidence	

Figure 19 Enforcement measures shipmaster at sea (article 539a etc. *WvSv*)

Enforcement measures

A shipmaster at sea can only apply the above when appointed by the Public Prosecutor, unless in an urgency. Always inform the Public Prosecutor.

86. Suspect on board

A suspect is a person suspected of a crime. There must be good reasons for suspecting a person: facts and circumstances, not rumours or vague accusations. So, more than an inchoate and unparticularized suspicion (hunch). Specific and articulable facts. A suspect remains suspect until the process stops, or a verdict is given.

Suspicion

- Concrete facts and circumstances
- Reasonable suspicion of guilt
- An offence

Facts are deeds, activity or events that have actually happened.
Circumstances are happenings or irregularities that belong to the facts.

There must be reasonable grounds for suspicion, not just for the investigation officer but in general. The suspicion must be of a particular crime so not the suspicion of crime in general. The suspect must be told that he is under suspicion. He then has the right to remain silent.

The shipmaster and his crew must respect the rights of the suspect, otherwise they themselves commit a crime. A suspect on board should be handled as a suspect. He has all the rights and obligations of a suspect.

The shipmaster should ensure that the suspect does not escape or maintain contact with undesirable, but the suspect does have a right to food, drink, decent accommodation etc.

The suspect may not be subject to any restrictions other than absolutely necessary to attain the goals of the investigation. In agreement with the Public Prosecutor the shipmaster is to all intents and purposes in charge. A suspect who is detained must be brought before the Public Prosecutor as soon as possible, until then the shipmaster is responsible and follows the guidelines of the Public Prosecutor who is in charge of the investigation. A suspect should be brought before a judge without delay, within the legal timeslot. This magistrate will judge whether detaining the suspect is fair and just. The speed depends upon circumstances on board.

The hearing is arranged by the Public Prosecutor and if necessary, by video link; so a direct video hearing. In the meantime, the shipmaster is responsible for the suspect. In the interests of ship safety or public order on board, the shipmaster may apply certain measures against the suspect.

Article 5 Decree ex. article 539n Criminal Proceedings Act (NL)

1. The shipmaster or his representative having questioned the suspect and deeming the facts to be irreconcilable with good order and discipline may apply the following means of enforcement:
 - a. handcuffs for a maximum of 14 days;
 - b. bread and water for no more than four weeks, on the understanding that if it goes on longer than two weeks that this is on alternate days;
 - c. withdrawal of privileges.

Right to remain silent

The suspect's right to remain silent must be respected, which means the suspect does not have to reply during questioning. Before questioning begins the suspect must be told that he is not obliged to answer, this is referred to as cautioning or reading his rights (Miranda rights). Not reading his rights to the suspect may have consequences during trial.

Questioning

Frequently the shipmaster or his representative may have a talk with the suspect, in fact this begins when the suspect is stopped and asked for his personal details. The latter does not form part of the questioning (interrogation). As soon as the suspect is asked about things relevant to the suspected crime the interrogation begins and the caution (reading his rights) must be given. In practice the caution (reading his rights) is usually given when the suspect is stopped, when his name and place of residence are known. Often these details will be used to inform his family.

Legal counsel

A suspect restricted in his freedom may, for the purposes of defence, ask to have a legal counsel (lawyer) present. This is a fundamental right. The legal counsel may see the suspect at will who according to legal stipulation has been deprived of his freedom. He has a right to speak in private with the suspect. In the interests of the investigation some restrictions can be placed on the amount of contacts. In severe cases the Public Prosecutor may forbid contact if there are serious grounds to believe that this would be detrimental to the investigation. Where practical the shipmaster can provide a communication system between suspect and his legal counsel. This applies only to the penal process such as questioning. The Public Prosecutor gives guidelines for this, leads the investigation and further legal processes.

87. Rights & duties shipmaster

- The shipmaster can be tasked with criminal investigation, he then has certain enforcement measures (coercive means) at his disposal.
- The shipmaster is obliged to report certain serious crimes to the Public Prosecutor.
- The shipmaster is obliged to treat the suspect on board according to national law and regulations.
- The shipmaster is obliged to maintain a register of offences.

88. Legislation

IMO

- Maritime criminal acts

EU

- Directive 2017/541/EP/EC
- Directive 2005/35/EC

National (NL)

- Code of Criminal Proceedings (Penal Proceedings Code)
- Criminal Code (Penal Code)
- Decree ex. article 539n Criminal Code
- Directions pre-investigation, investigation and prosecution of maritime offences

XIV. Shipmaster & piracy

89. Introduction

Robbery on the high seas, piracy, is a classic maritime crime. It is an illegal act of violence, detention or plundering committed on the high seas by the crew or passengers of a private ship, for personal gain, aimed at another ship. Thus, two ships are involved: the predator and the prey, perpetrator and victim.

Within the territorial waters of a coastal state this is called armed robbery.

Piracy:	illegal action, high seas, two ships, personal gain
In territorial waters:	armed robbery

When there are grounds to suspect that a vessel is engaged in piracy it may be stopped seized and the people on board arrested. Permission from the flag state to do so is not required. The state making the arrest may prosecute the suspects. Other states may do so as well, based upon the principle of universality. See section nr. 5 of this Handbook.

In legal terms piracy only becomes piracy when it takes place on the high seas, which is beyond territorial waters of any state, or there where the freedom of navigation applies. In the case of piracy, the EEZ can be considered as to be non-existing.

As well as the characteristic that it must occur on the high seas, piracy can be defined by three other elements. Should an accumulation of all four criteria not exist then, in legal terms, it is not piracy which again has consequences for the authority to detain a ship suspected of piracy. Besides happening on the high seas, piracy is for personal gain. Should this be carried out by a state, for political gain for example, then in legal terms it does not constitute piracy. The third criterion is that two ships are involved: the robber and the robbed, perpetrator and victim. The final criterion is that it involves a private ship, attack by a warship is not in legal terms piracy, attack on a warship by another ship is.

Shipowners are primarily responsible for protecting their seagoing personnel and ships against piracy. The obligation for the shipowner as employer towards the crew plays a part in the labour agreement. This means that owners in a patriarchal and legal sense must take the right precautions, risk analysis for example, and consider alternative routes of passage and possibly refusing the cargo. The shipowner must have a certified security plan as outlined in the national, EU and IMO regulations for shipping.

Furthermore, shipowners are advised to apply the current Best Management Practices (BMP) against piracy. Owners can insure themselves against piracy whereby the P&I Clubs (Insurance) frequently demand precautionary measures against piracy as warranties from the insured, the shipowners.

But it is the shipmaster on board who is responsible for implementing all these rules and codes. He is in command during the voyage.

90. Combating piracy

Combating piracy on the high seas can be broken down into passive and active measures. Some measures are taken as part of the passage planning (preventative) others can only be applied during an actual attack by pirates.

All measures must meet the stipulations of the law and regulations of the flag state, the shipmaster is responsible for this. Imagine here an illegal fence of electrified barbed wire around the ship, using forbidden firearms or shooting without warning.

In the territorial waters of a coastal state the rules of that coastal state apply as well, thus also rules about the use of firearms on board.

Best Management Practices (BMP) are not obligatory but do act as a guideline that the shipmaster can use to his advantage should an after-action analysis report be made following an attack by pirates.

Preventative

As part of the voyage-planning many measures are possible, this also depends on the characteristics of the ship such as freeboard and speed. It mostly begins with a good risk analysis upon which to base many of the measures, such as:

- plan of action
- decision on hiring armed guards
- informing crew
- exercising with crew
- testing security measures such as alarms
- making and exercising emergency plans
- establish AIS policy (on/off)
- reporting to protecting organizations such as NATO or EU
- implementing special security measures such as:
 - lookout with special (night vision) equipment
 - special radars
 - cameras
 - barbed wire
 - fire hoses
 - personnel protective clothing and equipment
 - adjust speed
 - readiness to manoeuvre
 - report position, course and speed
 - follow warnings and information in the area.

Active

Active measures might be sailing in convoy or along particular corridors protected by warships. The chance of an attack then is very slight and more to the point help is directly available.

The use of violence (force) during an attack by pirates also falls under active measures. This happens just before or during the attack by pirates or aggressive approach of small boats possibly with armed people on board. These measures are also the responsibility of the shipmaster or of the team leader of the armed guards.

Here the legal crux lies in when and how to use violence on board, in the first place to prevent pirates from coming on board but also to avoid innocent fishermen becoming victim to the too hasty use of firearms.

91. Use of force and self-defence

Choosing to guard a ship against pirates brings with it the chance that force may be used. This use of force (violence) can only be legally condoned in cases of self-defence. For this reason, something must be said about self-defence, because the shipmaster has a huge legal obligation in this that frequently can only be analysed after the event.

Normally, the use of force is legally forbidden and will therefore be punished. But it is possible that the shipmaster uses force and will not be punished, because the shipmaster acts in self-defence. He claims to have used force as a form of self-defence.

Self-defence

There are conditions applying to self-defence.

Firstly, there must be an immediate danger. That is when the attack by pirates has not yet begun but is imminent and dangerous such as the aggressive approach of pirates where ladders and weapons can be seen. Averting an attack by pirates too soon with firearms might not constitute self-defence.

Secondly, the use of force must be proportional, that means using no more force than is necessary and when all other means fail. The use of weapons against a fast-moving boat, which could be fishermen, does not constitute self-defence.

Lastly, the ship must not have put itself into danger by entering a dangerous area without taking the proper precautions. The judge can take this into account when considering a plea of self-defence.

Besides self-defence there is something called ‘self-defence excess’ (unreasonable or improper use of self-defence) that goes beyond the boundaries of self-defence as described above. This excess is the immediate consequence of emotions such as panic, anger or fear, brought about by the incident with pirates.

The shipmaster must be able to make the use of force justifiable. For example, by pictures or videos of the pirates’ attack, but also of any bullet holes. Statements from the crew can play a vital role in this.

92. Firearms on board

Legal weapons

Having weapons on board (possession) that are not forbidden by law such as some cross bows or knives is of course permitted. But the use of these weapons will be judged by the Public Prosecutor after the event.

Having firearms to hand on board of ships is often only allowed when a national official licence has been issued. A European Firearms Pass is only valid in EU member states.

Should military personnel be embarked this is different in legal terms and because it is organized directly by the Ministry of Defence.

Should the shipmaster of a Dutch ship make a voyage to an area where there is a danger of pirates it is possible to be granted an arms licence. A licence to carry firearms on board is primarily for a handgun, pistol or revolver, and/or a rifle. The weapons and ammunition have to be kept separately on board in a well secured area that is not open to everyone, such as an armoury.

A firearms licence granted according to national law and regulations is not automatically valid in other states. The shipmaster would therefore be wise to check the rules on having firearms to hand applicable in the coastal states to be visited during the voyage. The shipmaster with a national firearms license may otherwise find himself in breach of the law in a foreign harbour because that state has its own gun laws and does not automatically recognize those of the shipmaster’s flag state.

It is advisable to have a national licence translated by an official translator into various languages and to show this to the local authorities on arrival. For a Dutch firearm license the following conditions apply:

- weapons must remain on board during the voyage;
- weapons must be securely stowed when in Dutch territorial waters;
- within two weeks of returning to the Netherlands the licence must be handed in.

Having firearms on board comes under the responsibility of the shipmaster. There must be a license for every weapon on board otherwise it can be a criminal offence. This does not apply to arms belonging to military personnel.

The shipmaster is not only responsible for having weapons on board but also for the expertise in any use of these weapons. When the shipmaster has a firearms licence and other seafarers use these firearms, they should not only be trained in how to use the weapons but also when and how to apply the rules on the use of force.

When a shipmaster does not have a licence but he (or other seafarers) do use firearms during an attack by pirates then it is possible that the shipmaster is answerable to the judge for both possessing firearms and using them or having them used. The judge can clear the shipmaster for the use of (illegal) firearms because the shipmaster has acted out of self-defence (see above). The shipmaster can however be prosecuted for the illegal possession of firearms because he did not have a licence.

A national firearms licence is (mostly) not valid in a foreign coastal state which has its own law and regulations on this.

93. Armed guards

Should a choice for armed protection be made then there are two options, namely:

- Military
 - Escort of the own ship by a warship.
 - Military personnel on board own ship.
- Private
 - Escort of own ship by a privately-owned armed vessel.
 - Privately contracted armed security personnel on board own ship.

All advantages and disadvantages must be thought through but so must the consequences they may have for the shipmaster.

For information, at the time of writing (December 2019) having privately contracted armed security personnel (PCASP) on board of Dutch ships is not yet permitted. A new law, the Act on Protection of the Merchant Navy, has passed the parliamentary process and may enter into force within the coming years, probably after 2020. All by-laws and regulations are in the process of drafting.

Many other flag states allow PCASP, including firearms, on board their vessels. In that case, the shipmaster should apply the national law of the flag state.

Military guards (NL)

According to the Constitution, the Netherlands can deploy military guard teams on board a ship. This is carried out by the Ministry of Defence. To protect very vulnerable or large Dutch sea transports against pirates, the Ministry of Defence sends, in some cases, military guard teams along on parts of the voyage. These so-called Vessel Protection Detachments (VPDs) are made up of heavily armed marines.

Beside the VPDs there is an Autonomous Vessel Protection Detachment (AVPD). This independent team mainly protects humanitarian food transports for the World Food Organization against pirates. An AVPD too consists of heavily armed marines.

Between the owner of a ship needing protection and the Ministry of Defence there are agreements. These written agreements are to do with tasking, authority and responsibility of the parties involved. For the shipmaster, this is the starting point.

Military guards come from official government organizations and have their own instructions for the use of force with them, their Rules of Engagement (ROE), see section nr. 7 of this Handbook. These instructions for the use of force are based on the right to self-defence. There is a legal basis for having weapons on board and their eventual use.

The shipmaster has the task of making sure that weapons and ammunition are securely stored in an armoury, especially when his ship is in harbour or not as yet in a dangerous area.

Use of force must be proportional and applied as a last resort and it must be reported to the Public Prosecutor who will investigate this after the event and then draw conclusions. Military personnel are specifically trained to judge when and how violence (force) may be applied. Above all they have experience and are situated in a chain of command.

In general, the shipmaster is not responsible for the use of force by the military on board his ship, including collateral damage that may arise. Proper agreements with the Ministry of Defence and the military personnel on board as to the storage of weapons etc. helps to relieve much of the responsibility of the shipmaster.

Private armed security

A Private Security Company (PSC) provides Privately Contracted Armed Security Personnel (PCASP) on board tasked to provide an armed guard against pirates. These are not military personnel or official representatives of the state in any other way. The shipowner has a contract with a private security company. The shipmaster can also hire in local armed guards with all the responsibilities this brings.

It is a given that the use of force is primarily the prerogative of government. At the time of writing (December 2019), a legal basis for PCASP on board of Dutch merchant naval vessels does not yet exist. However, an act to do so has passed pPrliament and waits to be entered into force.

If the shipowner has made provisions for PCASP on board then the shipmaster may be liable for prosecution because he might be the one responsible for using weapons, storing them etc. Possessing firearms in the territorial waters of a foreign coastal state it is also frequently a breach of the local law and regulations. Deploying PCASP with illegal weapons may lead to more criminal offences committed by the shipmaster. Possessing or having access to certain crossbows or knives is according to national law not always an offence. Using these in self-defence is in principle allowed. There are other legal weapons such as laser dazzlers and sound barriers.

The use of force is thus not condoned. Self-defence is pretty much the only way to legitimize the use of force. In general, private guards must adhere to their rules of using force (RUF) and these must be approved by the shipmaster, according to national law of the flag state.

Should PCASP use too much violence or use it too swift, or do not comply to their rules of force, then this might be the responsibility of the shipmaster who must have done everything he can to prevent it. The right to self-defence is inherently bound to the individual thus also to the PCASP.

But this is not all for the shipmaster. The liability of the shipowner, the private security company, the shipmaster and the government must be arranged.

Should all the government stipulations be met to deploy PCASP it is possible that (international) liability exists to dictate and restrict it. The shipmaster who has PCASP on board must remain thoroughly aware of the situation and circumstances where force is applied. All scenarios and rules of the use of force must be rehearsed just as the military and the police do. The seafarers too must exercise in knowing how and when to follow the rules of force during an incident. The fact remains that it is the shipmaster who might be liable and responsible for deploying PCASP on board.

In general, the shipmaster has the leadership and command over his ship: he makes the decisions and he has the responsibility. Also known as overriding authority. If there are PCASP on board, he must ask himself the question who can authorize the use of force. First, the question whether who has the responsibility during the use of firearms should be answered and laid down on paper. Is it the team leader of the private armed guards or the shipmaster?

Example

What should be done with a private guard who breaks the rules of the use of force?

Is this a breach of contract and damages be attributed to the private security company?

What effect does this have on admissible evidence?

What are the legal consequences for the shipmaster?

A legal issue not yet developed is the escort of the own ship by another ship with private armed security personnel on board. It depends whereabouts the ship is: in territorial waters or on the high seas. Does the shipmaster have an agreement with that ship? Can he influence the use of force by that ship?

In brief, deploying PCASP might possibly reduce the success of an attack by pirates but it brings with it a raft of legal risks for the shipmaster.

The Netherlands

In the Netherlands, a legal framework for PCASP is in progress, named Act on Protection Merchant Navy. When this legislation, act and regulations enters into force, the shipmaster must investigate whether the quality of the private security companies is up to standard, and whether they may carry firearms, particularly in a foreign port. He must also check that they are professionally trained and what their chain of command is. A solution to these problems might be a certification system for PCASP and their weapons, controlled by the government. When this new law comes into force, it is the team leader of the private armed guards who is responsible and liable for the use of force on board; so, not the shipmaster.

Carrying firearms (possession) on board a Dutch ship without a licence is an offence, also for the shipmaster, under the NL Weapons and Ammunitions Act. This will be changed when the new act enters into force. Reporting of a shooting incident to the NL national authorities will be conducted by the shipmaster and the team leader. Probably, the new act will enter into force after 2020.

Armed guards

Military guards provide security where the use of force is entrusted to a professional and authorized government organization and not to the shipmaster. When employing PCASP, this is not always the case. Some states have made the shipmaster responsible for the use of force by PCASP. In the Netherlands the shipmaster will not be responsible for the use of force by private armed guards, if the new act enters into force.

94. Rights & duties shipmaster

- The shipmaster has the right to defend ship and crew against an attack by pirates.
- The shipmaster has the right to detain pirates on board his ship.
- The shipmaster has the right to ask for a firearms licence.
- The shipmaster is obliged to prepare his ship for attacks by pirates.
- The shipmaster is responsible for firearms on board and for storing them securely.
- The shipmaster may be responsible for the use of force on board his ship, unless this is done by the military or otherwise legally concluded.

95. Legislation

- Best Managing Practices (IMO)
 - Guidance on Piracy (IMO)
 - Directive 1991/477/EEC
 - Directive 2008/51/EC
 - Recommendation 2010/159/EU
 - Act on Protection of the Merchant Navy (not yet in force)
 - Circular Weapons and Ammunition 2018
 - Criminal Code
 - Criminal Proceedings Act
 - Directions pre-investigation, investigation and prosecution of maritime offences
- International**
- Law of the Sea Convention (UNCLOS)
- EU**
- Regulation 2004/725/EC
 - Regulation 2012/258/EU
- National (NL)**
- Policy on Military Vessel Protection Detachment (VPD) for individual protection of ocean-going transport
 - Regulation Weapons and Ammunition
 - Weapons and Ammunition Act

XV. Shipmaster & registrar and notary

96. Introduction

One of the special functions for a shipmaster is that of government official, albeit in a few clearly defined roles: births and deaths should these happen on board. Another role is that of notary or solicitor whereby a last will and testament can be drawn up by the shipmaster on board, depending on national law. The situation in the Netherlands is described, other flag states have regulations of the same kind.

97. Birth

In the case of a birth on a Netherlands ship during a voyage the shipmaster is obliged to draw up a provisional birth certificate within twenty-four hours and to enter the birth in the ship's logbook in the presence of two witnesses and the father. The shipmaster sends a copy of the provisional certificate to the registrar of births in The Hague (NL) as quickly as possible. The latter will draw up a birth certificate using the copy received knowing that some details may be missing or be not quite correct and he will improve them as much as he can. The official birth certificate is then sent to the people concerned and if necessary, it can be translated into other languages.

Provisional birth certificate

On board, the shipmaster completes a provisional birth certificate. Normally there are ready-made specimens for this purpose on board. The following at least should be included:

- surname of child
- first name of child
- day, hour and minute of birth
- place of birth
- sex of child
- surname and first name of father
- surname and first name of mother
- place and date of birth of father and mother
- surname, first name, place and date of birth of the person giving notice of the birth.

The shipmaster drawing up the provisional birth certificate establishes the identity of the notifier (giving notice of the birth) from an official document such as a passport or driving licence. Also, on the provisional certificate will be noted:

- name and initials of the shipmaster drawing up the certificate;
- place and day the provisional certificate is made;
- signature of the shipmaster drawing up the certificate and that of the applicant.

Should a baby be stillborn (dead) a provisional birth certificate must still be made but with the understanding that a name and surname need only be added if the parents wish to do so. When a new-born baby dies both a provisional birth certificate and a provisional death certificate must be drawn up, see below.

98. Death

In the case of a death during a voyage on a Netherlands ship the shipmaster is obliged to draw up a provisional death certificate within twenty-four hours and to write this in the ship's logbook in the presence of two witnesses. The shipmaster sends a copy of the provisional death

certificate to the registrar of deaths in The Hague (NL), who draws up a death certificate using the copy received in the knowledge that some details may be missing or incorrect and he will where possible improve these. A copy of the official death certificate will be sent to those people concerned and when necessary translated into other languages.

Anyone on board knowing of a death is obliged to report this to the shipmaster.

Provisional death certificate

The shipmaster fills in a provisional death certificate. Normally readymade specimens are on board. The provisional death certificate contains at least the following:

- surname and first name of deceased
- place and date of birth of deceased
- sex of deceased
- place of residence of deceased
- day, hour and minute of death
- place of death
- surname, first name of person to whom the deceased was married at time of death
- surname and first name of parents of deceased
- surname and first name of person to whom the deceased was previously married
- surname and first name and place and date of birth of the notifier.

Should a corpse (body) be found on board and the place and time of death cannot be accurately established the following must also appear on the certificate:

- day and hour corpse is found;
- place where corpse is found as accurately as possible.

Disposal of the corpse

Should somebody die on board consideration must be made for the wishes of the deceased and/or family. When no other wishes are made the corpse will be sent back to the deceased's country for burial. If there are known wishes for the body to be buried at sea, then this cannot happen until 36 hours after time of death. When health issues require the shipmaster can decide, taking into account the deceased's wishes and having consulted a doctor or members of the crew, to put the corpse overboard within 36 hours of time of death.

Should the corpse be put overboard it must firmly be wrapped and weighted so that it will sink and remain underwater. The geographical position of the ship at time of putting overboard must accurately be noted.

When there is any sign or indication of death other than by natural causes or when circumstances are such that this cannot be ruled out, the corpse must not be moved until the shipmaster has begun an investigation. Depending on how long the corpse must remain on board it must be carefully stored considering refrigeration and location. There are a few guidelines for this.

The shipmaster makes an inventory of the deceased's property in the presence of two witnesses who sign it with him. Of the death and all other details described above an entry must be made in the ship's logbook.

99. Marriage

It is quite normal for a government official to perform a marriage. This official works for a municipality or local council. A shipmaster is not always empowered to perform a marriage in accordance with national law. This rule applies to international waters and ports.

In the Netherlands, the only exception to this is when the shipmaster has been given special authority. It is organized in such a way that a government official extraordinary may perform a marriage. Special places can be appointed such as a ship. So, in theory the shipmaster may obtain a temporary authorization to perform a marriage as a government official on board his ship. In this case it is allowed by Dutch law.

100. Last will and testament

A will is drawn up by a solicitor and is called a testament in which someone leaves his inheritance according to his wishes. Whether a shipmaster may draw up a last will depends on the national law of the flag state.

In the Dutch law and regulations, the word testament is no longer used and has been replaced with last will (NL: *uiterste wilsbeschikking* or *uiterste wil*).

Article 4:42 Civil Code (NL)

1. A last will is a one-sided (unilateral) juridical act with which the testator makes a disposition that is to be effective after his death and that is regulated in Book 4 of the Civil Code or is recognized by law as an act with such result.
2. The testator may always unilaterally revoke his earlier made last will.
3. A testamentary disposition can be made and revoked only by last will and only by the testator in person. A will is a one-sided legal process whereby a person leaves his inheritance upon his death. That person may change his will at any time.

A last will is drawn up by a solicitor but there are exceptions one of which is the shipmaster on board a ship. People travelling on board a Netherlands ship can make a will with the shipmaster or chief officer and in their absence the person taking their place.

The will is made, drawn up and authorized, in the presence of two witnesses. The person making the will writes as much as possible down and signs it along with the witness and the shipmaster. The witnesses must be 18 or over and understand the language in which the will has been written.

Special instrument

The person writing the will can also leave his inheritance in a testament (last will) signed by himself in the presence of two witnesses and give this to the shipmaster for safekeeping.

The shipmaster immediately makes a deed (instrument/act) to say he has it in his safekeeping. He writes this down whether inside the last will, on the cover of it, or on a separate sheet of paper. The same rules apply when changing or recalling a last will. A person can change his will at any time and give this to the shipmaster for safekeeping. This too must be in writing.

The shipmaster who has a will in safekeeping sends this will as soon as possible in an envelope to the last will (testament) registrar in The Hague (NL).

The shipmaster who has in his keeping a deed containing someone's last will or containing a statement that such a last will is given in safe custody or that it has been recalled, must send this deed as soon as possible in a closed envelope to the Central Register for Last Wills (Testaments) in The Hague (NL).

101. Rights & Duties Shipmaster

- The shipmaster is obliged to make a provisional birth or death certificate.
- The shipmaster is obliged in the case of death to follow the deceased's wishes unless this endangers the crew's health in which case, he may put the corpse overboard.
- The shipmaster has neither rights nor obligations for a marriage.
- The shipmaster has the right to draw up a will or changes to a will.
- The shipmaster is obliged to send all certificates to The Hague (NL).
- The shipmaster is obliged to log all certificates into the ship's journal.

102. Legislation (NL)

- Civil Code, Books 1 and 4
- Decree Registrar 1994
- Decree Special Documents of the Registrar
- Disposal of Dead Act
- Disposal of Dead Decree

XVI. Shipmaster & Safety Board

103. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS) describes the tasks of the national administration in the event of a maritime accident. UNCLOS specifies that every state must have suitably qualified persons to investigate all accidents or incidents at sea involving a ship flying its flag and causing loss of life or serious injury to nationals of its own or another state. The same applies to serious damage to ships or installations or the maritime environment of its own or another state.

In such cases, the flag state and the other state shall cooperate in the conducting of any inquiry held by that state into any such marine casualty or incident. The purpose of the investigation is to determine lessons learned or to prevent repetition in the future, and not to address issues of blame or liability

The basis for international agreements on maritime accident investigation is derived from IMO guidelines, including the safety of shipping and the prevention of environmental pollution by ships. According to SOLAS and MARPOL, every administration undertakes to conduct an investigation into accidents involving vessels registered under its flag, and to subsequently inform the affected parties and the IMO of the findings and recommendations of any conducted investigations.

Many states do have a national safety board, including the field of maritime shipping. These boards are based upon IMO regulations, investigate marine accidents according to national law. Maritime experts conduct those marine accidents. See also the IMO Casualty Investigation Code and the EU rules on this matter.

Hereafter, the Netherlands' variant of a national safety board will be described. Parts of this text have been derived from the website of the Dutch Safety Board (Board): www.onderzoekraad.nl available in the English language as well.

The organization consists of a Board with three permanent members. For specialist knowledge, the Board members can enlist the assistance of the associate members of the Board. The associate members of the Board can offer advice on the entire operating process, from the selection of incidents to be investigated to the drafting of the report and the possible reopening of an investigation due to new facts coming to light. The Board is supported by a bureau consisting of investigators and support staff.

The investigation procedure consists out of phases:

- Call-out
Based on the initial findings, the Safety Board decides whether to open a full investigation.
- Collecting information
One of the outcomes of the collected information will be an account of the facts, which will have a prominent place in the eventual investigation report.
- Analysis
Based on the collected material and the account of the facts, the investigators conduct an analysis of the circumstances leading up to the incident and the underlying causes.
- Review
The Board sends its draft report to the parties involved for a verification of factual inaccuracies and/or points to be clarified.
- Publication

The Board decides independently on the time of publication, it aims to publish reports within a year.

- Roll-out
The Board finds it important that its reports constitute a turning point and that parties take the lessons from the investigation to heart.
- Follow-up recommendations
Most of the Board's investigations include recommendations for improvements. Public parties (the government) must respond to these recommendations within six months, while private parties have a response period of one year. In their response, parties should set out how they are acting on the recommendations and what progress they have made.

The Board conducts independent investigations into the causes of incidents. Its investigations look for any systematic safety-related shortcomings and it issues appropriate reports to the parties involved and to the public. Accordingly, investigations constitute the primary process, with the product being a report in all cases. The key goal of this investigation is to establish the truth rather than to apportion blame.

Investigation powers

Investigators can enter buildings to collect information and take equipment with them to conduct additional technical investigations.

Under Dutch law, every person is obliged to provide all cooperation necessary to investigators in the execution of their duties.

When the investigators work abroad, they do so based on the arrangements in treaties and European directives, or pursuant to the laws and regulations of the country in question.

The purpose of the Dutch Safety Board's work is to prevent incidents or to limit their after-effects, within merchant shipping as well. Accordingly, the Board's investigation aims not only to uncover the actual causes of incidents but also and to bring to light the underlying causes of the incident, so that any shortcomings in the applied system can be revealed.

If the investigation reveals any systematic safety-related shortcomings, then the Board can formulate recommendations so that these shortcomings can be put right. Some recommendations are usually addressed to the authorities, but others may be intended for individuals, organizations or companies.

The Board emphasizes that it is no part of its remit to try to establish the blame, responsibility or liability attached to any party.

Information gathered during the course of an investigation including statements given to the Board, information that the Board has compiled, results of technical research and analyses and drafted documents (including the published report) cannot be used as evidence in criminal, disciplinary or civil law proceedings. However, it is still possible that a (criminal) inquiry to apportion blame could be instituted, although any such inquiry would be quite separate from the Board's own investigation.

Investigation by the Board

The main aim of the investigation is to establish the truth, not liability or blame.

104. Sea shipping

The Board is authorized to investigate incidents in all conceivable sectors. In practice, the Board is currently active in the sector Sea Shipping. Note that for less serious incidents, there may be official bodies other than the board such as the Shipping Inspectorate and judicial authorities who are carrying out their own investigation on the basis of their statutory remit. Such investigations are quite separate from any investigation the Board may be carrying out.

The Board investigates accidents including death, serious injury or considerable damage to a vessel, marine environment or other infrastructure. In general, the Board is authorised to investigate:

- Incidents inside the Netherlands territorial waters;
- A seagoing vessel under the Netherlands flag on the high seas or waters under foreign jurisdiction;
- All roll-on-roll-off-ferries and all high-speed-passengers-vessels coming from a Dutch harbour;
- On request by another land of the Kingdom of the Netherlands

The legislation differs between Netherlands vessels and roll-on-roll-off-ferries and high-speed-passenger-vessels apart from flag (including foreign vessels).

If a foreign vessel is involved, the investigation will be executed in cooperation with the flag state of that vessel, unless that state does not want to cooperate. The ministry can instruct the Board to participate in an investigation started by another state.

Any accident with dangerous goods will be subject to investigation. Roll-on-roll-off-ferries and high-speed-passenger-vessels coming from a Dutch harbour can always be subject to investigation when involved in an accident.

Duty to report marine accidents, injury or death

Any shipmaster has the duty to report when involved in an accident:

- causing death, injury or serious damage to ship, marine environment or infrastructure;
- caused by a Netherlands vessel;
- occurring in European waters under Netherlands' jurisdiction.

The shipmaster of a roll-on-roll-off-ferry and of a high-speed-passenger-vessel also has the duty to report when involved in an accident:

- irrespectively of the nationality of the vessel;
- coming from a Dutch harbour;
- on the high seas or European waters under Netherlands jurisdiction.

105. Rights & duties shipmaster

- The shipmaster must cooperate with the Safety Board.
- The shipmaster must cooperate with other authorities investigating an accident.
- The shipmaster has the duty to report relevant accidents and incidents.
- The shipmaster has the right to legal counsel (assistance) at the investigation.

106. Legislation

- Casualty Investigation Code
 - Code for the Investigation of Marine Casualties and Incidents (IMO)
 - Directive 1999/35/EC
 - Directive 2009/18/EC
 - Decree Safety Investigation Board
 - Kingdom Act Safety Investigation Board
 - Regulation Safety Investigation Board
 - Research Protocol
- International**
- MARPOL
 - SOLAS
 - UNCLOS
- EU**
- Regulation 1995/3501/EU
- National (NL)**
- Safety Investigation Board Act

XVII. Shipmaster & Maritime Disciplinary Court

107. Introduction

Parts of this text have been derived from the website of the Maritime Disciplinary Court of the Netherlands (Disciplinary Court). For more background visit:

- [www. http://www.mdcn.nl](http://www.mdcn.nl) (English)
- www.tuchtcollegevoordescheepvaart.nl (Dutch).

The shipmaster is subjected to disciplinary law if he acts contrary to the rules of good seamanship that he is expected to observe in respect of people on board, the vessel, its cargo, the environment and shipping. The Disciplinary Court of the Netherlands was established on 1 January 2010. From that day it has taken over the disciplinary task from the Dutch Maritime Court.

The Disciplinary Court has its offices in Amsterdam, which is also where the public hearings take place. The Disciplinary Court operates mainly on the basis of Article 55 Seafarers Act (NL). The Disciplinary Court consists of a chairman, two deputies and 32 (deputy) members. These members have or used to have a position in the maritime sector. Subject to disciplinary jurisdiction in maritime shipping are ships' officers of ships sailing under the Netherlands flag such as:

- shipmaster
- navigation officer
- marine engineers
- maritime officers
- radio operators.

The Disciplinary Court deals with cases on the basis of complaints, which can be submitted to the Disciplinary Court by interested parties by means of a complaint. Whether or not a complainant is justified to consider himself as an interested party will be decided by the Disciplinary Court. Interested parties could be:

- crew members
- passengers
- shipowners
- insurers.

In addition, the (NL) Minister of Infrastructure and Water Management can bring a case before the Disciplinary Court by submitting a petition. The criterion for whether or not a disciplinary measure will be pronounced is whether the shipmaster has acted (or has failed to act) in contravention of the care he should observe as a good seaman with regard to crew and passengers, the ship, the cargo, the environment or shipping.

The following (conditional) disciplinary measures can be taken:

- warning
- reprimand
- maximum fine of € 4,500
- suspension Certificate of Competency (shipping permit) max. 2 years.

The decisions of the Disciplinary Court are published anonymously.

108. Procedures

Petition or complaint

The NL Minister of Infrastructure and the Water Management can institute proceedings by filing a petition. A stakeholder can do this by filing a complaint. The petition or complaint must be submitted in writing or in digital form, stating the grounds, to the president of the Disciplinary Court. A petition or complaint must be submitted within two years of the occurrence of the event to which the petition or the complaint relates. The secretary will send confirmation of receipt of the petition or the complaint as soon as possible to the party submitting the petition or the complaint.

The president of the Disciplinary Court can reject the petition or the complaint if he takes the view that the petition or complaint is manifestly inadmissible or manifestly unfounded. The secretary will send the written decision of the president to the petitioner or complainant without delay. The petitioner or the complainant will be given two weeks to object to the president's decision. The decision of the president will be set aside as a result of the objection. The president can decide to test the possibility of an out of court settlement in response to the petition or the complaint. The petition or complaint is discontinued if an out of court settlement is concluded. The petitioner or the complainant can withdraw the petition or complaint.

The secretary will inform the shipmaster concerned as soon as possible. The petition or the complaint is cancelled in the event of the death of the person concerned. The petition or complaint can be altered up to the date of the hearing. The shipmaster concerned will be immediately informed of this. The shipmaster concerned will be given the opportunity to be heard. If the Disciplinary Court judges the amendment to be unreasonable, it can refuse to accept it.

Defence

The shipmaster concerned can be assisted by a defence lawyer. The person filing the petition or complaint can be represented at the hearing by a person authorized for that purpose or can be assisted by a defence lawyer. The shipmaster concerned can submit a statement of defence in written or digital form to the disciplinary court within six weeks of the date on which a copy of the petition or complaint was sent. The president can extend this period.

The secretary will send a copy of the statement of defence to the petitioner or complainant as soon as it is received. Once a copy of the submitted petition has been sent by the secretary, the president may give the petitioner or the complainant the opportunity to submit a reply to the statement of defence. After receiving the reply, the secretary will send a copy of it to the person concerned. Once the copy of the reply has been sent, the person concerned will be given the opportunity to submit a rejoinder.

Investigation

If necessary, a preliminary investigation can be carried out on the instructions of the president. The preliminary investigator appointed by the president is authorized to gain admittance to any place he considers necessary to carry out an investigation, if necessary, with the assistance of the police, with the exception accommodation without the permission of its occupant. He is also authorized to inspect all written documents and data in computer systems found on board and which are relevant to the investigation. He can interrogate the shipmaster concerned and any witnesses or experts. The preliminary investigator will not take part in the hearing of the case in court session.

Hearing

The president will stipulate the time and date of the hearing. The secretary will summon the petitioner, the complainant and the person concerned at least two weeks prior to the date of the court session by registered mail. The shipmaster concerned is obliged to appear.

If the shipmaster concerned does not appear in court, the president can grant leave to proceed in default of appearance or make a request to the Public Prosecutor to serve a summons on the person concerned. The summons will be accompanied by a copy of the petition or complaint and all documents relating to the case in so far as they have not already been sent. The documents will be translated into English or his own language on the request of the person concerned. The hearing takes place in public session. The Disciplinary Court can decide to hear cases (partially) in camera if there are compelling reasons to do so.

The Disciplinary Court can summon and hear witnesses and experts at the court hearing on its own initiative or on the request of the shipmaster concerned or the petitioner or complainant. The secretary will summon the witnesses or experts by registered mail and can make a request to the Public Prosecutor to summon them if they fail to appear at the hearing.

The president of the Disciplinary Court presides over the court hearing. The hearing of the case is concluded when the Disciplinary Court takes the view that the investigation has been completed. The shipmaster concerned has the right to have the last word. The president will state when the ruling will be pronounced.

Decisions

The Disciplinary Court will pronounce its ruling in public session. The Disciplinary Court will make its ruling within two months of the conclusion of the hearing. This period can be extended. The possible decisions are as follows:

- no competent jurisdiction for the Disciplinary Court
- petition or complaint is inadmissible
- petition or complaint is unfounded, in full or in part
- petition or complaint is well-founded.

Appeal

An appeal against a ruling of the Disciplinary Court can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Tribunal, in The Hague (NL). The ruling of the Disciplinary Court is open to appeal by the:

- shipmaster concerned if the petition or the complaint is declared well-founded in full or in part;
- Minister of Infrastructure and Water Management;
- by the complainant if his complaint is declared inadmissible or unfounded in full or in part.

The disciplinary measures constituting a fine and suspension of the Certificate of Competency and publication of the decision may not be executed until the decision has been rendered final and conclusive.

Reopening

If the Disciplinary Court judges that the investigation has not been complete, it can have it reopened. The secretary of the Disciplinary Court will inform the shipmaster concerned and the petitioner or the complainant of this as soon as possible.

109. Rights & duties shipmaster

- The shipmaster must cooperate with the Maritime Disciplinary Court.
- The shipmaster does not have to incriminate himself.
- The shipmaster is entitled to defence, reply and rejoinder.
- The shipmaster is entitled to read all relevant documents.
- The shipmaster has to appear at the hearing.
- The shipmaster is entitled to summon witnesses and experts.
- The shipmaster can have himself assisted by legal defence council.
- The shipmaster is entitled to challenge the Maritime Disciplinary Court.
- The shipmaster has the right to appeal.

110. Legislation (NL)

- Code for Criminal Proceedings
- Regulations governing the Maritime Disciplinary Court of the Netherlands
- Seafarers Act

Part 3 Seafarers

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XVIII. MLC

111. Introduction

Part 1 of this Handbook is a general one, while Part 2 of this Handbook has been written from the point of view of the shipmaster. Meanwhile, Part 3 has been written from the point of view of the crew: the seafarer. See also Chapter IX of this Handbook.

Part 3 of this Handbook mainly deals with the labour and living standards for the seafarers. This Part has been derived from the Maritime Labour Convention 2006 (MLC), EU regulations and national legislation.

Seafarer (Definition (MLC))

Any person who is employed or engaged or works in any capacity on board a ship to which the MLC applies.

In this Part the seafarer can read about his position, working conditions, complaints etc. Also, he can read about his duties and his rights aboard and ashore.

The aim of this Part is to make complex legal problems simpler for the seafarers. In that way the seafarers have easier access into the difficult world of rules and regulations. When they consider themselves maltreated by the shipmaster or the shipowner, they can find their way in this Part to solve the problem. From the other point of view the shipmaster can inform and advise his crew with the help of this Part.

It has to be said again, on ships various legislations apply.

In foreign harbours and territorial waters the legislations of the flag state and that of the coastal state apply, mostly the latter even with a priority. Also, the legislation of the home state of the seafarer may apply.

So, the provisions for the seafarer have to be found in the various legislations, but the labour standards are mainly to be found in the legislation of the flag state. See also Chapter XXVI of this Handbook.

The MLC sets out the minimum standards that must be implemented by all member states to the MLC. These standards must be reflected in national legislation.



Figure 20. The MLC as a Bill of Rights

ILO

The MLC has been established under the regulations of the International Labour Organization (ILO). This is a specialized agency of the UN, just like the IMO. This only tripartite UN agency brings together governments, employers and workers, to set labour standards, develop policies and devise programmes promoting decent work for all women and men, including seafarers. The ILO aims to ensure that it serves the needs of seafarers by bringing together governments, employers and seafarers to set labour standards, develop policies and devise programmes. The very structure of the ILO, where seafarers and employers together have an equal voice with governments in its deliberations, shows social dialogue in action. It ensures that the views of the social partners are closely reflected in ILO labour standards, policies and programmes.

112. Maritime Labour Convention

The Maritime Labour Convention (MLC) applies to commercial seagoing vessels of 500 GT or more, flying the flag of a member state and engaged in international voyages. The MLC covers a wide range of safety and employment issues and is organized into multiple sections. These will be described in this Handbook.

The MLC is a comprehensive international labour convention that was adopted by the ILO in 2006. It contains a set of global standards. The aims of the MLC are to:

- ensure comprehensive worldwide protection of the rights of seafarers;
- establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships.

The convention allows for exemptions and waivers. Many states use these possibilities. The MLC comprises three different but related parts: Articles, Regulations and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory standards) and Part B (non-mandatory guidelines).

The MLC is an international legal instrument and does not, therefore, apply directly to shipowners, ships or seafarers. Instead like most international law, it relies on implementation by states through their national laws or other measures. See also section nr. 7 of this Handbook.

The MLC originated from the International Labour Organisation (ILO), but each member state is responsible for ensuring implementation of its obligations under the MLC on ships that fly its flag.

Certificate MLC

The MLC applies on board many ships. Each ship of 500 GT and more, engaged in international voyages must carry a Maritime Labour Certificate, and a complementary Declaration of Maritime Labour Compliance (DMLC). These certificates are to be posted on board, in English and other languages, as necessary.

Maritime Labour Certificate

Certificate confirming that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance, have been inspected and meet the requirements of national laws or regulations or other measures implementing this MLC.

Issuance of the Maritime Labour Certificate is evidence that the ship has been found to meet the requirements of the national legislation and that the seafarer's working and living conditions meet the national requirements. The certificate is issued by the national authorities following the necessary inspections to verify the vessel is in compliance with the applicable laws and regulations. The certificate is subject to periodic validation based on intermediate, renewal or additional inspections as determined by the flag state. It is initially valid for five years.

Declaration of Maritime Labour Compliance (DMLC)

Document stating the national requirements implementing the MLC for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship concerned.

The Declaration of Maritime Labour Compliance (DMLC) is a unique form that must be completed by both the national competent authority and the shipowner. This declaration shall be attached to the maritime labour certificate. It shall have two parts:

- Part I is completed by the national competent authorities and it provides the requirements for the ship type, details of any substantially equivalent provisions under national law and indicates any exemptions granted by the flag state. It also contains a list of the areas to be inspected together with national provisions and requirements. Detailed national legal provisions can be found in Part I.
- Part II is completed by the shipowner and must be reviewed and approved by the national competent authorities. It consists of the proposed measures that will be taken for initial and on-going compliance with the national requirements contained in DMLC Part I.

EU

The MLC also has relevance to EU rules. The EU has supported the development of the MLC although it is not a party to MLC since it is not a member of the ILO. The EU implemented an agreement of their own on the Maritime Labour Convention, concluded by representatives of management and labour in the EU maritime transport sector. EU member states have brought into force laws, regulations and administrative provisions necessary to comply with the EU directives concerning the MLC, or to ensure that management and labour have introduced the necessary measures by agreement. Accordingly, all EU member states whether they have ratified the MLC or not, had to conform with MLC. Failing to do so, will be in breach of EU law.

The MLC is a mixed agreement in that parts of it fall within the competence of the EU, parts within the shared competence of the member states and the EU and a large proportion within the exclusive competence of the member states.

The EU adopted a decision authorising member states to ratify the MLC for those parts falling within EU competence and urging those states to ratify the MLC. The EU adopted regulations on Port State Control, which will ensure that MLC is included as a part of port state control inspections throughout the EU. Non-ratification of the MLC by a flag state is a factor which may contribute to a vessel being subject to closer examination.

An EU directive entered into force, setting out requirements for member states to establish enforcement and monitoring mechanisms (including inspections) for ships flying their flag. EU member states have transposed this directive into national law (flag state control).

So, provisions of the MLC have been incorporated into EU law by directives, which updated EU law with MLC standards that were more favourable for seafarers than those in place (employment agreements, working hours, repatriation, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures, etc.). These EU rules helped to bring about the uniform transposition of MLC standards in all EU member states and invested the agreement with specific enforcement measures under EU law.

The Netherlands

For the Netherlands, the obligations and provisions of the MLC are laid down in national legislation, like the Seafarers Act. As an explanation to the DMLC Part I, the Dutch government has made an Annex to the DMLC Part I available.

There are 3 different DMLCs Part I and therefore also 3 different Annexes. In the Annex to the DMLC Part I one can find the relevant sections in the Dutch legislation, the Dutch interpretations and implementation of the MLC, and references to documents that can be used as a guidance for the certification (such as work- and rest hours overviews, a specimen of the Dutch medical certificate, a model for the complaint procedure on board).

Enforcement

International

Each member state to the MLC shall implement and enforce laws that it has adopted to fulfil its commitments, with respect to ships and seafarers under its jurisdiction.

These states shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of the MLC.

Each member state shall ensure that ships flying its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by the MLC.

Any ship to which the MLC applies may be inspected by a state other than the flag state, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of the MLC, so-called Port State Control.

Inspections in ports shall confirm that foreign ships comply with the MLC as well. These inspections will be carried out by authorized officers in accordance with the provisions of the MLC and other applicable international arrangements governing Port State Control inspections.

Inspectors are empowered:

- to board a ship that flies the member state's flag;
- to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the MLC standards are being strictly observed;
- to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of MLC, or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

EU

To complement the acquis and to ensure the effective enforcement of these international MLC provisions, EU legislation was introduced regarding flag state responsibilities and port state obligations for the EU member states (see here fore under EU).

A special directive on flag state responsibilities for compliance and enforcement of MLC, ensures that the EU member states concerned effectively discharge their obligations as flag states with respect to the implementation of the relevant parts of MLC. Another EU directive, on Port State Control, obliges EU member states to ensure that the treatment of ships and its crew, flying the flag of a state which is not a MLC member state is not more favourable than that of a ship, and its crew, of a ship flying the flag of a MLC member state.

These EU directives have provided specific regimes for monitoring, compliance and handling of onboard and onshore complaint procedures, depending on whether the state is acting as a port or as a flag state.

National

Each state party to the MLC shall confirm that ships that fly its flag comply with the requirements of this MLC as implemented in national laws and regulations, the so-called flag state control. Therefore, all flag states shall implement and enforce their relevant national laws, regulations or other measures of the MLC with respect to ships and seafarers under its jurisdiction.

The flag state shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of the MLC, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

All regulations derived from the MLC and laid down in Dutch legislation can be enforced by the Netherlands as the flag state and during Port State Control on foreign ships. Enforcement or inspections can be carried out by Inspectors, Recognised Organisation (RO) or by other authorized officers.

XIX. Minimum requirements

113. Introduction

The MLC sets minimum requirements for nearly every aspect of working and living conditions for seafarers.

The EU legislation amended the scope of five EU labour law directives by including seafarers, thus improving their work rights. Therefore, additional EU social law became applicable to seafarers. Consequently, these inclusions give seafarers the same rights as the employees on shore. Furthermore, this leads to an enhancement of their living and working conditions, thus increasing the attractiveness of working in the maritime sector in particular for young people.

EU member states may maintain or introduce more favourable provisions than those laid down in its legislation. This shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of seafarers.

The Dutch legislation has provisions to ensure that the seafarers are well treated on board. Therefore, minimum requirements for seafarers to work on a ship exist. The purpose of these requirements is also to ensure that no underage persons work on a ship, that those persons are medically fit and that they are trained or qualified to carry out their duties on board.

These minimum requirements from the MLC are briefly described hereafter.

114. Minimum age

Minimum age

To ensure that no under-age persons work on a ship

When regulating working and living conditions, all flag states should pay special attention to the needs of young persons under the age of 18, such as:

- Minimum age is 16 years.
- No night work under 18 years unless training purposes.
- No dangerous or hazardous work under 18 years.

The competent national authorities after consultation with shipowners or seafarer's organizations concerned decided what work is likely to jeopardize the safety or health of seafarers under the age of 18. The term 'night hours' can be found in the national legislation. Normally night hours are between 00.00 and 05.00 hours.

115. Medical certificate

Medical Certificate

To ensure that all seafarers are medically fit to perform their duties at sea.

To ensure that all seafarers are medically fit to perform their duties at sea, seafarers shall not work on a ship unless they are certified as medically fit to perform their duties. Exceptions can only be permitted as prescribed.

National legislation shall require that all seafarers shall be medically certified and carry a medical certificate in accordance with their function:

- Only work with a valid medical certificate for
 - hearing
 - sight
 - colour blindness
- No illness
- No endangering the health of other people aboard
- Valid for 2 years
- English language.

A certificate that expires in the course of a voyage continues to be in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period of extension does not exceed three months. In urgent cases, seafarers in possession of an expired medical certificate can be permitted to work for a limited period.

Seafarer medical certificates issued by an EU member state may be submitted at the application for a Dutch endorsement or when embarking a ship registered in the Netherlands.

Mutual recognition of medical certificates is based on common standards for training of approved doctors, medical examination of seafarers and the issue of seafarer medical certificates in accordance with the STCW and the MLC.

Approved medical doctors are bound to the national legislation of their own state and to the mutual agreements.

116. Training and qualifications

Training & qualifications

To ensure that seafarers are trained or qualified to carry out their duties on board ship

To ensure that seafarers are trained or qualified to carry out their duties on board ships the MLC constituted some rules:

- Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.
- Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.
- Training and certification have to be in accordance with national legislation, being based upon mandatory instruments adopted by the IMO, such as the STCW Convention.

117. Recruitment and placement

Recruitment & placement

To ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system

Seafarers should have access to an efficient and well-regulated seafarer recruitment and placement system which is regulated by the national competent authorities. The main issues are that:

- All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board a ship without charge to the seafarer.
- Seafarer recruitment and placement services operating in a flag state shall conform to the standards set out in the MLC and the national legislation.
- Every flag state shall require, in respect of seafarers who work on ships that fly its flag,
- Shipowners who use seafarer recruitment and placement services that are based in states in which the MLC does not apply, ensure that those services conform to the requirements set out in the MLC and national legislation.

Shipowners are not required to use seafarer recruitment and placement services and may directly recruit seafarers to work on their ships. However, where shipowners use a private seafarer recruitment and placement service, they must take steps to ensure that the service is licensed or certified or regulated in accordance with the requirements under national law.

Definition

Seafarer recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners.

XX. Conditions of employment

118. Introduction

Conditions of employment refer to something that both the seafarer and the shipowner agree to at the beginning of a seafarer's employment. Examples of items that might be brought up when discussing conditions of employment include the seafarer's employment agreement, wages, number of leave/vacation days, hours worked each day, work-related responsibilities and repatriation. These conditions can also encompass certain benefits such as retirement plans and health insurance coverage.

119. Seafarer's employment agreement

Seafarer's employment agreement

To ensure that seafarers have a fair employment agreement.

A written employment contract must be concluded between the seafarer and the shipowner. The contract must be concluded no later than at the start of the employment; and for ship-employed seafarers no later than at the start of the service on board.

The seafarer must have a chance of going through the employment contract and seeking advice about its terms before signing it. The seafarer's individual employment contract will set out the rights and duties between him and his employer. That contract may be an individual contract or a collective labour agreement (*NL: CAO*) or a collective bargaining agreement (CBA) produced by unions and employers' associations.

Special contracts exist as well, like the Philippine Overseas Employment Administration (POEA) Contract: Standard Terms and Conditions governing the employment of Filipino Seafarers on board Ocean-Going Ships.

Seafarers' employment agreement

A document including both a contract of employment and articles of agreement.

The seafarer's employment agreement may be directly with the shipowner, or it may be with a manning agent, or it may be with some other agent for the shipowner. All these different arrangements can affect the rights and duties.

It is important that a seafarer has a copy of his employment agreement, that he reads it and that he knows what rights and duties are contained in it.

National legislation about seafarers' employment agreements is to ensure that seafarers have a fair employment agreement. All flag states shall adopt laws and regulations requiring that their ships shall comply with the following requirements:

- Seafarers working on ships shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner, like the shipmaster, providing them with decent working and living conditions on board the ship as required by the MLC or national law;

- Seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;
- Shipowner and seafarer shall each have a signed original of the seafarer's employment agreement;
- Measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers.

In determining the particulars to be recorded in the record of employment each flag state should ensure that this document contains sufficient information, with a translation in English, to facilitate the acquisition of further work or to satisfy the sea-service requirements for upgrading or promotion. A seafarer's discharge book may be helpful here.

120. Wages

Wages

To ensure that seafarers are paid for their services

All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements. Basic pay or wages means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration.

Information

The ILO has agreed on a minimum monthly basic wage for able seafarers of:

- US \$ 618 as of 1 July 2019
- US \$ 625 as of 1 January 2020
- US \$ 641 as of 1 January 2021

EU

The latest EU rules will improve a seafarer's protection in the event of neglect, including when the shipowner fails to pay contractual wages for a period of at least two months, or when the shipowner has left the seafarer without the necessary maintenance and support to execute ship operations.

National

National laws or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided. Without prejudice to the principle of free collective bargaining, each flag state should establish procedures for determining minimum wages for seafarers.

Seafarers on board a Netherlands' ship are entitled to the wages as laid down in Netherlands laws and private regulations like the Collective Labour Agreements (NL: CAO). Minimum wages do not automatically apply on all seafarers on board all Netherlands vessels.

Payments due to seafarers working on ships are made at no greater than monthly intervals and in accordance with any applicable collective agreement. Seafarers shall be given a monthly

account of the payments due and the amounts paid. This includes wages, additional payments etc.

The shipmaster plays a role in the correct execution of the payments, he is the link with the shore or shipowner, if necessary.

The Netherlands require that shipowners take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

121. Working hours

To ensure that seafarers have regulated hours of work or hours of rest, each flag state shall ensure that the hours of work or hours of rest for seafarers are regulated and shall establish maximum hours of work or minimum hours of rest over given periods that are consistent with the provisions in the MLC.

Hours of work

Time during which seafarers are required to do work on account of the ship.

Hours of rest

Time outside hours of work; this term does not include short breaks.

Each flag state shall require that records of seafarers' daily hours of work or of their daily hours of rest be maintained to allow monitoring of compliance with the MLC or national regulations. These records shall be in a standardized format established by the national competent authority. These records shall be in the working or English language.

The seafarers shall receive a copy of the records pertaining to them which shall be signed by the shipmaster, or a person authorized by the shipmaster, and by the seafarers.

The shipmaster

- sees to it that on board a duty roster of himself and his crewmembers has been posted in an accessible place.
- sees to it that within a week the working and resting periods have been recorded on a working list.
- ensures that every crewmember will receive a copy of the duty roster.
- will see to it that the completed and signed duty rosters are delivered to the managing owner at the latest eight weeks after being drawn up.
- will organize work in such a way that his rest times and those of his crew members will amount to at least 10 hours for each continuous 24-hour period, to be counted starting from the beginning of the rest. The rest time can be divided into no more than two periods, one of which contains an unbroken rest of at least 6 hours. In such an instance, the 24-hour period will be counted starting from the beginning of the longest rest time enjoyed. The time between two contiguous rest periods may not amount to more than 14 hours.
- will organize work in such a way that his rest time and those of his crew members amounts to 77 hours in each 7-day period.

EU and working hours

The EU has adopted the standards of the MLC in specific EU rules, constituting that the normal working hours' standard of the seafarer is, in principle, based on an eight-hour day with one day of rest per week and rest on public holidays.

EU member states may have procedures to authorise or register a collective agreement which determines seafarers' normal working hours on a basis less favourable than this standard. The shipmaster shall have the right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

National law and working hours

In the Netherlands, the Working Conditions Act applies. Chapter 6 in the Working Hours Decree Transport is called 'Maritime Navigation'; it reflects international rules, among others in connection with the Standards of Training, Certification and Watchkeeping for Seafarers (STCW). The rules in this Chapter 6 are operative for all those on board beyond passengers, pilots and stevedores. The standards of the NL legislation are more in the seafarer's favour than the standards of the MLC.

Juveniles and working hours

At sea and in port the provisions of the MLC should apply to all young seafarers under the age of 18:

- working hours: max. 8 hours/day and 40 hours/week;
- sufficient time should be allowed for meals, such as one hour for the main meal;
- 15-minute rest following each two hours of work.

Contrary to the provisions mentioned above juvenile crew members may:

- perform a maximum of 12 hours' work in each contiguous 24-hour period if on account of the watch schedule, is actually keeping watch throughout those hours;
- perform work between 00.00 hours and 05.00 hours should this be necessary in connection with his training.

The shipmaster will organize work in such a way that juvenile crewmembers (16-18 years) comply with these rules. These provisions need not to be applied if they are impracticable for young seafarers in the deck, engine room and catering departments assigned to watchkeeping duties or working on a rostered shift-work system or the effective training of young seafarers in accordance with established programmes and schedules would be impaired. Such exceptional situations should be recorded, with reasons, and signed by the shipmaster.

The text of the (NL) Working Conditions Act and Chapter 6 of the Working Hours Decree Transport should be available on board.

122. Leave

To ensure that seafarers have adequate leave, each flag state shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions, in accordance with the provisions in the MLC.

A seafarer taking annual leave should be recalled only in cases of extreme emergency and with the seafarer's consent. Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

EU

EU legislation states that every seafarer shall be entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year, in accordance

with the conditions for entitlement to, and granting of, such leave laid down by national legislation and or/practice. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

National

Under the Dutch Civil Code, a seafarer is entitled to an annual leave (vacation) with pay. The amount of days has been laid down in legislation or in collective labour agreements. Justified absences from work are not to be considered as annual leave.

123. Repatriation

Repatriation

To ensure that seafarers are able to return home

Seafarers should be able to return home when necessary. The costs are to be borne by the shipowner:

- at the end of the period
- illness or injury
- shipwreck
- ship is bound for a warzone
- no fulfilling of the contractual obligations of the shipowner
- personnel reductions.

To ensure that seafarers are able to return home, seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the regulations. Each flag state shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated.

National

National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated the flag state shall arrange the repatriation.

124. Compensation

Compensation

To ensure that seafarers are compensated when a ship is lost or has foundered.

Seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or sinking. The indemnity against unemployment resulting from a ship's foundering or loss should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total indemnity payable to any one seafarer may be limited to two months' wages.

Each flag state shall make rules ensuring that, in every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.

125. Manning level

Manning level

To ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship

The purpose of the manning level is to ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship. Therefore, each flag state shall require that all ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage.

EU

The EU declares, that when determining, approving or revising manning levels, it is necessary to take into account the need to avoid or minimise, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue. If the records or other evidence indicate infringement of provisions governing hours of work or hours of rest, measures, including if necessary, the revision of the manning of the ship, shall be taken to avoid future infringements. All ships shall be sufficiently, safely and efficiently manned, in accordance with the minimum safe manning document or an equivalent issued by the national competent authority.

National

The Netherlands requires that all ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage.

A ship has been provided with a valid manning certificate, and shall be, as a minimum, manned in accordance with the manning certificate. A copy of the manning certificate is displayed at a clearly visible place on board of the ship. Should more than one crew composition apply to a ship, all crew compositions shall be included in the manning certificate in a clearly distinguishable way.

126. Career

Career development

To promote career and skill development and employment opportunities for seafarers.

To promote career and skill development and employment opportunities for seafarers, each flag state shall have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in its territory.

So, it is the national policy to promote career and skill development and employment opportunities for seafarers.

XXI. Accommodation, recreation, food & catering

127. Introduction

Accommodation and recreational facilities

To ensure that seafarers have decent accommodation and recreational facilities on board.

Each member state shall ensure that ships that fly its flag provide and maintain decent accommodations and recreational facilities for seafarers working or living on board, or both, consistent with promoting seafarers' health and well-being.

128. Accommodation

To ensure that seafarers have decent accommodation on board, each flag state shall ensure that ships that fly its flag provide and maintain decent accommodation for seafarers working or living on board. Particular attention shall be paid to ensuring implementation of the requirements of the national law relating to the:

- size of rooms (cabins) and other accommodation spaces
- heating and ventilation
- noise, vibration and other ambient factors
- sanitary facilities
- lighting
- hospital accommodation.

Example

- Separate sleeping rooms (cabins) shall be provided for men and women.
- Sleeping rooms (cabins) shall be of adequate size and properly equipped.
- Separate berth for each seafarer shall in all circumstances be provided.
- The minimum dimensions of a berth shall be at least 198 x 80 centimetres.
- In single berth seafarers' sleeping rooms the floor area shall not be less than:
 - 4.5 square metres in ships of less than 3,000 GT;
 - 5.5 square metres in ships of 3,000 GT but less than 10,000 GT;
 - 7 square metres in ships of 10,000 GT or more.

Additional EU-legislation constitutes, inter alia, that ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices as required by the competent authority.

Under national law frequent inspections are to be carried out on board ships, by or under the authority of the shipmaster, to ensure that seafarers' accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection must be recorded and be available for review.

129. Recreational facilities

On board of ships of 500 GT and over, there have to be recreation areas for the officers and the crew, located in a suitable position and appropriately furnished. Open deck should be accessible for the seafarers when they are off duty. In the recreation area there has to be a bookcase, as well as facilities for reading and writing and if possible, for board games.

The EU added that appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers, taking into account provisions on health and safety protection and accident prevention.

130. Food and catering

Food and catering

To ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions

To ensure that seafarers have access to good quality food and drinking water the flag state shall ensure that ships that fly its flag serve food and drinking water of appropriate quality, nutritional value and quantity. The food and drinking water shall adequately cover the requirements of the ship and takes into account the differing cultural and religious backgrounds. Seafarers on board a ship shall be provided with food free of charge during the period of engagement.

The Dutch legislation requires a ship's cook, or a person certified or instructed in the fields of food, personal hygiene and treatment and storage of provisions.

XXII. Health protection, medical care etc.

131. Introduction

The official title is named “Health protection, medical care, welfare and social security protection” These items are separately described in the MLC. It also includes the Shipowners’ liability, health and safety protection and accident prevention, access to shore-based welfare facilities and social security.

This section of the Handbook will follow the sequences of the MLC.

132. Medical care

Medical care

To protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore.

To protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore the flag state’s legislation shall ensure that all seafarers are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board. The protection and care shall, in principle, be provided at no cost to the seafarers. Every seafarer has the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

National

National laws and regulations shall as a minimum provide for a medicine chest, medical equipment and a medical guide. When necessary a medical doctor has to be embarked.

Persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the STCW.

The national competent authority shall ensure by a prearranged system that medical advice by radio, internet or satellite communication to ships at sea, including specialist advice, is available 24 hours a day. This is free of charge.

Dutch legislation regulates the medical supplies, medical care, including medical first aid. The medical service to ships at sea is organized by the NL Radio Medical Service.

133. Shipowners’ liability

Shipowners’ liability

To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment.

To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment, each flag state shall ensure that relevant measures are in place. The liability of shipowners to bear the costs for seafarers working on their ships in respect of sickness and injury begins on the date when the seafarers commence their duty and ends on the date upon which they are deemed duly repatriated.

Except that, shipowners are also liable with respect to sickness and injury that arises from the seafarers’ employment between the dates of commencement of duty and repatriation.

National laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

134. Health, safety protection & prevention

Health and safety protection and accident prevention

To ensure that seafarers' work environment on board ships promotes occupational safety and health.

To ensure that seafarers' work environment on board ships promotes occupational safety and health, each flag state shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment. Therefore, the flag state shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations.

The primary obligations under Dutch law regarding what is usually called maritime occupational safety and health, can be found in specific laws and regulations. These provisions are also linked to those regarding accommodation and recreational facilities on board ship. A ship's safety committee is to be established when there are five or more seafarers on board the ship concerned. See also section nr. 73 of this Handbook.

135. Welfare facilities

Access to shore-based welfare facilities

Purpose: To ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being

The purpose of including a requirement for shore-based welfare centres is to help ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being. These facilities, which are located in or near ports, are an important way to provide seafarers, who may be on extended voyages at sea, with access to health and welfare services in a foreign country as well as a social network.

National regulations shall establish the principle that seafarers must be granted shore leave to benefit their health and well-being, consistent with the operational requirements of their positions. Although the granting of shore leave may not always be possible in view of the operational needs of the ship or for security reasons, requests for shore leave to access welfare centres should not be unreasonably refused.

136. Social security

Social security

Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection

To ensure that measures are taken with a view to providing seafarers with access to social security protection, each flag state shall ensure that all seafarers have access to social security protection in accordance with the MLC without prejudice however to any more favourable national conditions.

The Dutch social legislation requires that all seafarers be provided with social protection. This covers several complementary requirements including prevention-based approaches in connection with occupational safety and health, medical examinations, hours of work and rest and catering.

These are social subjects such as:

- medical care
- sickness benefit
- unemployment benefit
- old-age benefit
- employment injury benefit
- family benefit
- maternity benefit
- invalidity benefit
- survivors' benefit.

XXIII. Complaints

137. Introduction

Each member state to the MLC shall require that ships that fly its flag have onboard procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the MLC (including seafarers' rights). These states shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint. The provisions in the MLC are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

The EU has amended its legislation to regulate the possibilities of making complaints and the process to handle and solve them. This legislation applies to Port State Control of the EU member states as well.

Netherlands' legislation requires that Netherlands ships have onboard procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the MLC provisions, including seafarers' rights.

The Netherlands ensures that in its laws and regulations appropriate onboard complaint procedures are in place. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases seafarers shall have a right to complain directly to the shipmaster and to appropriate external authorities.

Complaint

A complaint means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

138. Onboard complaint procedure

The onboard complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaint procedures, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term 'victimization' covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not offensive or maliciously made.

In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the onboard complaint procedures applicable on the ship. This shall include contact information for the national competent authority and in the seafarers' countries of residence. Also, the name of the person(s) on board who can provide seafarers with impartial advice on their complaint and otherwise assist them in the complaint procedures should be included.

In the mandatory procedures the following matters should be considered:

- in all cases seafarers should also be able to complain directly to the shipmaster and to make a complaint externally;
- the nomination of a person on board who can advise seafarers on the procedures available to them and attend any meetings or hearings into the subject matter of the complaint.
- complaints should be addressed to the head of the department of the seafarer lodging the complaint or to the seafarer's superior officer;

- the head of department or superior officer should then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;
- if the head of department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the shipmaster, who should handle the matter personally;
- seafarers should always have the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned;
- all complaints and the decisions on them should be recorded and a copy provided to the seafarer concerned;
- if a complaint cannot be resolved on board, the matter should be referred ashore to the shipowner, who should be given an appropriate time limit for resolving the matter;
- in all cases seafarers should have a right to file their complaints directly with the shipmaster, the shipowner and national competent authorities.

139. Onshore complaint procedures

A complaint by a seafarer alleging a breach of legal requirements (including seafarers' rights) may be reported to a local authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation.

Where appropriate, the initial investigation shall include consideration of whether the onboard complaint procedures have been explored. The authorized officer shall seek to promote a resolution of the complaint at the ship level. Where the provisions do not apply and the complaint has not been resolved at the ship level, the authorized officer shall notify the flag state authorities forthwith, seeking advice and a corrective plan of action. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

Onshore, when a complaint is dealt with by a local authorized officer, this officer should first check whether the complaint is of a general nature which concerns all seafarers on the ship, or a category of them, or whether it relates only to the individual case of the seafarer concerned. If the complaint relates to an individual case, an examination of the results of any onboard complaint procedures for the resolution of the complaint concerned should be undertaken. If such procedures have not been explored, the local authorized officer should suggest that the complainant take advantage of any such procedures available.

There should be good reasons for considering a complaint before any onboard complaint procedures have been explored. These would include the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint. In any investigation of a complaint, the local authorized officer should give the shipmaster, the shipowner and any other person involved in the complaint a proper opportunity to make known their views.

Tasks shipowner

- The shipowner should establish a means for receiving, recording, and handling complaints.
- The shipowner must provide seafarers with a means of formally lodging complaints directly to the shipmaster, the shipowner and the national authorities. The contact information for these should be provided.
- The shipowner should develop a standardized complaint form. The complainant should be provided with a copy of the complaint and any decisions made.

- The shipowner should assign a seafarer on board as the focal point for complaints. This designated seafarer should be able to advise other seafarers on the shipowner's procedures for complaints. This designated seafarer should attend meetings or hearings on the complaint if requested by the complainant.
- The shipowner should provide manning agencies with copies of the shipowner's complaint procedure.
- Copies of the complaint procedure should also be made available on board. Posting the procedure in one or more public places on board is one means of providing this information.
- The posted procedures and those provided to manning agencies shall be maintained current through document control measures.
- The contact information of relevant parties who can assist the seafarer regarding a complaint should be documented and made available to seafarers.
- The shipowner should have a documented procedure for handling seafarer complaints.
- Complaints should be addressed to the seafarer's head of department or superior officer.
- The head of department or superior officer should act expeditiously upon complaints.
- The complaint process should define the time limit for which complaints are resolved on board. Escalation clauses for assistance from the shipowner's shore staff should be defined.
- The shipmaster should personally handle all complaints that are not satisfactorily resolved.

Documents required on board by MLC (not exhaustive)

- Declaration of Maritime Labour Compliance, Parts I and II
- Maritime Labour Certificate
- Recent inspection report
- Evidence proving that all seafarers onboard are above 16
- Evidence showing the crewing agencies comply with the MLC
- A Medical Certificate maximum 1-year validity seafarers under 18
- A Medical Certificate maximum 2-year validity seafarers above 18
- Evidence proving no dangerous work or night-time work being undertaken for seafarers under 18
- A Seafarer's Employment Agreement (SEA), signed by the seafarer and ship owner or an authorized representative
- A copy of CAO or Collective Bargaining Act and its English version
- A valid Certificate of Competency
- A valid training certificate for all seafarers onboard
- Records of training in personal safety and safety meetings held onboard
- Records of accidents, incidents, investigations and analysis onboard
- Records of seafarer's familiarisation and for rest/ work hours

XXIV. Working conditions

140. Introduction

The global nature of shipping, with international and different national laws applying depending on the state of the ship owner, the flag state of the vessel or the nationality of the crew, make it difficult for seafarers to know the working conditions applying on board.

To complement the acquis and to ensure the effective enforcement of these international provisions, new additional EU legislation was introduced regarding flag state responsibilities and port state obligations for the EU member states.

On Netherlands ships the working conditions legislation, like the Working Conditions Act (*ARBO-wet*) and the Working Hours Decree Transport (*Arbeidstijdenbesluit Vervoer*) are applicable. The first act constitutes general provisions for sea employers (shipowner, often represented by the shipmaster) and seafarers how to deal with occupational safety and health (OSH, *ARBO*) on board, for example to have a written OSH-policy or a risk inventory. The Working Conditions Act gives certain powers to the NL Shipping Inspectorate, for example to force the sea employer to stop the work on board.

The shipowner is obliged to take care of:

- assisting employees who are not able to work because of illness
- reviewing the risk assessment and evaluation
- conducting the periodic occupational health examination
- conducting the pre-employment medical examination.

These obligations are often taken care of by an external OSH service. The shipowner has to designate an internal employee with some knowledge of OSH as well. This person is called a designated worker or the prevention worker. This prevention worker has to assist the shipowner with the risk assessment and evaluation, and also assist the work council with OSH related matters. Sometimes, it is difficult, especially for small and medium sized shipowners, to find proper solutions and ideas for OSH-problems.

In the Netherlands many branches have made so called OSH-catalogues; in these OSH-catalogues (NL: *ARBO catalogues*) one can find branch specific solutions. These solutions are approved by the NL Shipping Inspectorate.

The employer shall not act or omit to act contrary to working conditions legislation if he knows or reasonably should know that danger of losing life or serious damage to health arises or can be expected. Not observing this obligation is a crime under Dutch Law. The seafarers have some general obligations as well. These are, inter alia, laid down in the provisions of the NL Working Conditions Act.

Duties seafarer

The seafarer shall exercise the necessary caution and carefulness and take care of his own safety and health and that of others. The seafarer is obliged to:

- use labour appliances and dangerous goods in the correct way;
- use safeguarding appliances and personal means of protection in the proper way;
- cooperate in instruction organized on his behalf;
- report dangers to the shipmaster without delay.

XXV. Discipline

141. Introduction

Seafarers are in hierarchy placed under the shipmaster. It is the shipmaster who has overriding authority, especially in the field of safety, public order and security. Some flag states do have special mandatory rules for seafarers under the code of conduct for merchant navy.

So, seafarers do have obligations and they have to obey the shipmaster. Therefore, the shipmaster has some powers over the seafarers. He may take reasonable and necessary measures.

142. Disciplinary measures

It is laid down in law that the shipmaster has disciplinary powers over seafarers. The shipmaster may use this power by taking the necessary reasonable measures. The word used is 'measures' which are not legally seen as punishment but may be experienced by the seaman as just that. It might be regarded as disciplinary law but not as penal law.

Hierarchical disciplinary law: discipline within the powers of someone higher up in the organization.

For The Netherlands, the disciplinary measures executed by the shipmaster should be regarded separately from disciplinary law as is applied by the Maritime Disciplinary Board, see Chapter XVII of this Handbook.

Article 27 Seafarers Act (NL)

1. The master is responsible for maintaining public order on board and exercises authority over all those on board. To enforce his authority the shipmaster may take any measure necessary within reason.
4. The persons on board are obliged to follow the orders given in the interest of safety or to maintain order, including public order, by the master.

So, the shipmaster exercises the disciplinary and public order authority on the ship in tight connection with the compliance of the national laws of the flag state. He can take measures against the seafarers or against the passengers.

143. Criminal investigations powers shipmaster

In relation to one of his tasks the shipmaster is entitled to detect and investigate criminal behaviour. Therefore, the shipmaster has some specific statutory powers such as arrest, custody, and seizure. The shipmaster may use violence in the exercise of his police tasks. Furthermore, the shipmaster may carry out a body search if reasons for safety or evidence collecting so require.

Based on the Criminal Code the shipmaster has the power to use coercive measures and to perform limited invasions of someone's privacy by means of searching a cabin of a suspected seafarer. The criminal investigation powers of the shipmaster are controlled by the Public Prosecutor. See section nr. 85 of this Handbook.

XXVI. Rights & duties seafarer

144. Introduction

A seafarer has rights: employment rights, legal rights, trade union rights and maritime human rights. Also known as the Seafarers' Rights. But a seafarer has duties as well. Seafarers' rights and duties may be a complex area since these rights and duties can exist at different levels and they can be overlapping and sometimes even conflicting. Therefore, if a seafarer has a legal problem, he will need to seek advice from (union) advisers or from a lawyer who will discuss the specific situation. The best way to ensure that the seafarer's rights at work are protected is to report substandard situations to the shipmaster, the shipowner, national competent authorities or officials in a foreign coastal state. The unions might be informed as well, especially when no other ways are effective.

This Handbook is about legal issues, therefore a short and general explanation of the legal sources for the rights and duties of a seafarer are described. In these legal sources the shipmaster and the seafarer can find rights and duties.

145. National law of the flag state

A ship has the nationality of the flag it flies. On board of a ship the law of the flag state applies, regardless of the location of the ship, in general. Therefore, a seafarer on board a ship is entitled to the protection of, and is governed by, laws and regulations of the flag state wherever the ship is and regardless of nationality of the seafarer.

Some exemptions exist, especially in the areas of labour and social security. Whether or not this legislation is applicable on board ships can be found in the legislation itself. Furthermore, the seafarer has to deal with international and national private law, and agreements such as labour agreements.

Example

A seafarer from the Philippines on board a Netherlands ship has rights and duties under laws of the Netherlands.

146. Coastal state law

When a ship enters a port, that coastal state (port state) can exercise certain powers over the ship whilst it is in port. The legislation (jurisdiction) of the coastal state prevails over the legislation of the flag state. Generally, a coastal state does not intervene in the internal affairs of a ship, unless there is a dispute which concerns the peace and good order of the port. For example, if a serious crime is committed on board and a local person of the coastal state is the victim of this crime.

Port State Control

Port State Control (PSC) is the inspection of foreign ships in ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

A ship going to a port in one state will normally visit other states in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely coordinated. This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections.

A seafarer may contact national and foreign inspectors to inform them in case of a serious breach of the national laws or regulations, especially when the working conditions or seafarers rights are at stake. However, firstly the shipmaster has to be asked for a solution to the problem, when circumstances allow.

147. Home state law

Home state law is also applicable to the seafarer. A seafarer will be able to rely on rights contained in his home state law if that law governs his sea employment agreement. When a seafarer is in trouble when abroad, his home state may provide support and assistance through its consular offices.

148. Legislation

International

- MLC (2006)

EU

- Directive 1989/391/EEC
- Directive 1992/29/EEC
- Directive 1999/36/EC
- Directive 1999/95/EC
- Directive 2009/13/EC
- Directive 2009/16/EC
- Directive 2013/38/EU
- Directive 2013/54/EU
- Regulation 2004/883/EC

National (NL)

- Act on Allocation of Workers by Intermediaries
- Civil Code
- Code of Commerce
- Code of Criminal Procedure
- Collective Labour Agreements Act (CAO)
- Criminal Code
- Decree Claims of Seafarers, Recruitment and Placement and Temporary Agency Work of Seafarers
- Decree Seafarers and Merchant Shipping and Sailing Ships
- Economic Offences Act
- Regulation Safety Seagoing Vessels
- Regulation Seafarers
- Seafarers Act
- Seafarers Order Merchant Shipping and Sailing
- Working Conditions Act
- Working Conditions Catalogues
- Working Conditions Degree
- Working Conditions Regulations
- Working Hours Act
- Working Hours Decree Transport

Annex 1 List of Abbreviations

AAIC	Accounting Authority Identification Code	DoS	Declaration of Security
ABS	American Bureau of Shipping	DSC	Dangerous Goods, Solid Cargoes and Containers
AFS	International Convention on the Control of Harmful Anti-fouling Systems for Ships	DSC	Dynamically Supported Craft Code
AIS	Automatic Identification System	DWT	Dead Weight Tonnage
Art	Article	EC	European Commission
Arts	Articles	EEZ	Exclusive Economic Zone
AVPD	Autonomous Vessel Protection Detachment	EMSA	European Maritime Safety Agency
B/L	Bill of Lading	Etc	Et cetera
BOL	Bill of Lading	EU	European Union
Blading	Bill of Lading	FAL	Convention on Facilitation of International Maritime Traffic
BCC	Bulk Chemical Code	FCR	Forwarding Certificate of Receipt
BES-islands	Bonaire, St. Eustatius & Saba	FCT	Forwarding Certificate of Transport
BHC	Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk	FZ	Fishery Zone
BLG	Bulk Liquid and Gases	GC	Gas Carrier Code
BLU	Code of Practice for the Safe Loading and Unloading of Bulk Carriers	GMDSS	Global Maritime Distress and Safety System
BMP	Best Management Practices	GT	Gross Tonnage
CAS	Chemical Abstract Service-number	HSC-code	High Speed Craft Code
CBT	Clean Ballast Tank	HSSC	Harmonized System of Survey and Certification
CCV	Commercial Cruising Vessel	IACS	International Association of Classification Societies
CIN	Craft Identification Number	IBC-code	International Bulk Chemical Code
CLC	Convention on Civil Liability for Oil Pollution Damage	IGC-code	International Gas Carrier Code
COW	Crude Oil Washing	ILO	International Labour Organization
CP	Continental Plat	IMDG-code	International Maritime Dangerous Goods Code
CSO	Company Security Officer	IMO	International Maritime Organization
CSR	Continuous Synopsis Record	IMSBC-code	International Maritime Solid Bulk Cargoes Code
CSS	Code of Safe Practice for Cargo & Securing	INF-code	International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships
CSSC	Cargo Ship Safety Certificate	IPPC	International Oil Pollution Prevention Certificate
CSSRC	Cargo Ship Safety Radio Certificate	ISM	International Safety Management
DMLC	Declaration Maritime Labour Compliance	ISPP	International Sewage Pollution Prevention Certificate
DoC	Document of Compliance	ISPS	International Ship & Port Facility Security Code
		ISSC	International Ship Security Certificate

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LL	International Convention of Load Lines	Ro-Ro	Roll-on Roll-off
MAROF	Maritime Officer	RSO	Recognized Security Organization
MARPOL	International Convention for the Prevention of Pollution from Ships	SAR	International Convention on Maritime Search and Rescue
MOU	Memorandum of Understanding	SMC	Safety Management Certificate
MSDS	Material Safety Data Sheet	SMS	Ship Management System
NB	<i>Nota Bene</i> (attention)	SOLAS	Safety of Life at Sea
NCS	Netherlands Continental Shelf	SPS	Special Purpose Ship
Nr	Number	SSA	Ship Security Assessment
Nrs	Numbers	SSAS	Ship Security Alert System
NVKK	<i>Nederlandse Vereniging van Kapitein ter Koopvaardij</i>	SSO	Ship Security Officer
P&I	Protection & Indemnity	SSP	Ship Security Plan
PFSO	Port Facility Security Officer	STCW	Standards of Training, Certification and Watch-keeping
PFSP	Port Facility Security Plan	SWL	Safe Working Load
PMOU	Paris Memorandum of Understanding on Port State Control	TS	Territorial Sea
PP	Public Prosecutor	TTW	Territorial Waters
PPS	Public Prosecutor Service	TW	Territorial Waters
PSC	Port State Control	UN	United Nations
PSC	Private Security Company	UNCLOS	United Nations Convention on the Law of the Sea
PSO	Port Security Officer	US	United States
PSSC	Passenger Ship Safety Certificate	VPD	Vessel Protection Detachments
RO	Recognised Organization	VTS	Vessel Traffic Services
ROE	Rules of Engagement	VTS	Vessel Traffic System

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Annex 3 List of international maritime agreements

Most national maritime legislations have been made up from the international agreements mentioned below. That is why many national maritime legislations are quite similar. These agreements have been concluded under the authority of the UN, IMO or ILO.

It is obvious that a convention only applies to a member state of that convention, which can be a flag state and/or a coastal state.

This list is not complete, other multilateral or bilateral agreements may exist on a variety of subjects related to shipping.

Significant agreements

1. International Convention for the Prevention of Pollution from Ships (MARPOL), 1973
2. International Convention for the Safety of Life at Sea (SOLAS), 1974
3. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978
4. Maritime Labour Convention (MLC), 2006
5. United Nations Convention on the Law of the Sea (UNCLOS), 1982

Agreements concerning safety and security

6. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988
7. Convention on Facilitation of International Maritime Traffic (FAL), 1965
8. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972
9. International Convention for Safe Containers (CSC), 1972
10. International Convention on Load Lines (LL), 1966
11. International Convention on Maritime Search and Rescue (SAR), 1979
12. Special Trade Passenger Ships Agreement (STP), 1971

Agreements concerning environment

13. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC), 1972
14. International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004
15. International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990
16. International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001
17. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969
18. Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol), 2000
19. The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

Agreements concerning liability and compensation

20. Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992
21. Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974
22. Convention on Limitation of Liability for Maritime Claims (LLMC), 1976
23. Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR), 1971
24. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
25. International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969
26. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

Agreements concerning other subjects

27. International Convention on Tonnage Measurement of Ships (TONNAGE), 1969
28. UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), 2008
29. UN International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules, The Hague-Visby Rules), 1968
30. UN International Convention on the Carriage of Goods by Sea (Hamburg Rules), 1978
31. UN Convention on Contracts for the International Sale of Goods, 1980

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Annex 5 Glossary of maritime legal terms

In this table one can find some useful maritime legal terms not described in the Handbook. These terms can be found at various maritime law glossaries or other sources on the internet.

Accessory	Person who assists in the commission of a crime, before or after the crime.
Acquit	To free from accusation; to clear; to pronounce not guilty.
Actual total loss	Property that is completely destroyed or lost and irretrievable.
Admiralty	Law having to do with, or jurisdiction over, shipping and use of the sea.
Adversary system	System of trial practice in which each of the opposing, or adversary, parties has full opportunity to present and establish opposing contentions before court.
Advocate (n.)	Counsellor in a judicial proceeding; attorney.
Advocate (v.)	To support, defend or plead in favour of another in a judicial proceeding.
Affirm	Make a formal declaration in place of an oath.
Affirmative defence	In criminal law, a defence asserted by a defendant, who has the burden of producing the evidence to support it.
Affreightment	Transportation contract whereby a company or shipowner agrees to carry goods in return for a sum of money.
Agent	One who is authorized to act for another.
Allegation	Assertion made by a party which must be proved or supported with evidence.
Allege	To affirm or declare positively but without proof. To give as reason, excuse or support.
Alleged	Suspected; temporarily presumed; supposed.
Allision	Collision between a moving vessel and a stationary object.
Answer	Pleading filed by a defendant responding to the allegations of a plaintiff's petition/complaint.
Appeal	Proceeding whereby one party seeks to have a judicial decision reconsidered by a higher court.
Appearance	Appearing in court as an attorney, a plaintiff or a defendant in an action.
Appellant	One who appeals a court decision.
Appellate	Having the power to hear appeals and to reverse court decisions; refers to a court of review rather than one with trial jurisdiction.
Appellee	Party against whom an appeal is taken.
Application	Act of making a request for something, such as opening documents in a civil probate matter.
Appointed counsel	Attorney appointed by the court to represent an indigent defendant in a criminal case.
Appraisal	Informed and objective inspection and estimation of a thing's worth.
Appraisement	Inspection and appraisal or valuation of property, especially vessels.
Arbiter	One selected and bound by principles of law to decide on a controversy; referee; arbitrator.
Arbitration	Type of alternative dispute resolution where parties resolve their conflict outside of court.
Arbitration clause	Clause in a transaction or contract that requires parties to resolve any and all disputes in arbitration, rather than in court.
Arraign	To bring one charged with a crime to court to answer the charge made against him or her.
Arrest	Apprehension or detention of a person by a law enforcement officer.
Arrest (maritime law)	Detention of a vessel by order of a court to secure a maritime claim.
Assignment	Transfer of a legal right or interest from one person to another.
At issue	Whenever the parties to a suit come to a point in the pleadings where the disputed issues are defined, they are said to be "at issue" and ready for trial.
Attachment	Legal seizure of a person or property; the writ ordering seizure.
Attestation	Act of witnessing the execution of a written instrument and subscribing or signing it as a witness.

Attorney general	Chief legal officer for the state (USA)
Attorney of record	Attorney whose name appears in the permanent records or files of a case, as representing a party.
Authenticated	Act to give legal authenticity to a record so that the record is legally admissible in evidence.
Bail	Pledge of cash or property to secure the release of a thing or person which would otherwise be held in custody.
Bail bond	A written guarantee that a party will appear in court when ordered, or risk losing the value of the bond.
Bailee	The person who receives property through a contract of bailment, from the bailor, and who may be committed to certain duties of care towards the property while it remains in his or her possession.
Bailiff	A court officer whose duties are to keep order in the courtroom and to have custody of the jury.
Bailment	Transfer of possession of something (by bailor) to another person (bailee) for some temporary purpose (e.g. repair or storage) after which the property is either returned to the bailor or otherwise disposed of in accordance with the contract of bailment.
Barratry	Intentional wrongful act committed by the crew or master of a ship to the prejudice of the owner or the charterer.
Bench trial	Trial held before judge sitting without a jury.
Bench warrant	Process issued by the court, or 'from the bench' for the arrest of a person.
Beneficiary	Person designated to benefit from an appointment, disposition or assignment, or a person who will receive a right or compensation as a result of a legal arrangement or instrument.
Bill of Lading	Document that a transport company possesses acknowledging that it has received goods and serves as title for the purpose of transportation. A legal document acknowledging the receipt of goods by a carrier or by the shipper's agent, and the contract for the transportation of those goods.
Binding instruction	Instruction to the jury that if it finds certain conditions to be true, it must find for the plaintiff, or the defendant, as the case may be.
Blacklisting	Act of putting the name of a person or employee on a list of those who are to be boycotted or punished.
Blockade	Blocking of ingress or egress of any ship with the coast of a targeted state.
Bond	Certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders.
Bond, cash	Clerk deposits based on an order from the judge to put into registry or savings securing money owed or property in a Civil case.
Brief	Written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of a party's position in a case.
Bumbershoot policy	Marine insurance covering liability in excess of one or more different underlying policies.
Burden of Proof	Party's duty to prove a disputed assertion or claim.
Cabotage	Trade transit of a vessel along the coast (coastal trading), from one port to another within the territorial limits of a single nation.
Case	Any action or special proceeding.
Case law	Law whose principles are derived from court decisions.
Casualty at sea	Serious or fatal accident that occurs on navigable waters.
Causation	Producing of an effect. In personal injury lawsuits and under several maritime statutes, a plaintiff is legally required to prove that the defendant's breach of a legal duty caused his or her injury.
Cause	Civil or criminal action, suit or litigation. Often used interchangeably with case.
Certified copy	Copy of a document with a certificate attesting that the copy is a true and correct copy of a document on file.
Charter party	Transportation contract which includes the full and exclusive use of the vessel for the duration of the transportation of either goods or persons.

Choice of law	A legal question of which jurisdiction's law should apply in a given case. A contract may contain a choice of law clause, in which the contracting parties agree to designate a jurisdiction where the law will govern in any disputes that may arise between the parties.
Cif	Transportation contract acronym for "cost, insurance and freight" usually in reference to the sale price being inclusive thereof.
Civil action	Lawsuit based on a private wrong, as distinguished from a crime, or to enforce rights through remedies of a private or non-penal nature.
Claim(s)	In civil cases, the statement of relief desired.
Claimant	Anyone who asserts a right, demand or claim.
Coastal trading	Trade transit of a vessel along the coast, from one port to another within the territorial limits of a single nation.
Code	Collection, compendium or revision of laws systematically arranged into chapters, table of contents and index and promulgated by legislative authority.
Collision	Accidental contact between two or more ships which causes damage.
Common carrier	A carrier who accepts to transport goods or passengers indiscriminately.
Common law	Law which derives its authority from usages and customs of immemorial antiquity, or from the judgments and decrees of courts. Also called case law.
Comparative negligence	The doctrine by which acts of opposing parties are compared in the degrees of negligence, frequently on a percentage basis.
Compensatory damages	Damages awarded the injured party to make up or compensate for only the injury sustained; damages awarded to replace the loss caused by a wrong committed.
Competency	In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony. In probate law, the ability of a person to manage and care for himself and his own affairs.
Complainant	Synonymous with plaintiff.
Complaint	Initial legal document and pleading that initiates an action and the plaintiff's claim for relief.
Compulsory pilotage statute	Requirement, imposed by law in certain states, that vessels approaching or leaving harbour must have a licensed pilot to guide the vessel into or out of the harbour.
Compulsory process	Process to compel the attendance in court of one wanted as a witness. Process includes subpoena plus warrant for arrest if they are needed.
Conclusions of Law	Statement of the rules of law as applied to the facts of a particular case.
Concur	To agree or act together.
Concurrent jurisdiction	Jurisdiction that can be exercised simultaneously by more than one state over the same subject matter and within the same territory
Concurrent sentence	Sentences for more than one crime in which the time of each is to be served together, rather than successively.
Condemn	To pronounce guilty.
Confession	Statement acknowledging guilt which is made by a person charged with crime.
Confiscate	Governmental taking of private property without payment.
Conflict of Laws	A difference between the laws of different states in a case in which a transaction or occurrence central to the case has a connection to two or more jurisdictions.
Consecutive sentence	When one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive.
Consent decree	Agreement by defendant to cease activities asserted by government to be illegal.
Consequential damages	Losses that result indirectly from an injurious act and do not flow directly and immediately from the act.
Consolidate	Joining of two or more separate lawsuits for trial purposes.
Constructive discharge	De facto termination of employment that results from an employer making an employee's working conditions so intolerable that the employee feels compelled to leave employment.

Constructive total loss	Insured property that has been abandoned because its actual total loss appears to be unavoidable, or because it could not be preserved or repaired without an expenditure which would exceed its value.
Contempt	Wilful disregard or disobedience of a public authority.
Continental shelf	Subsoil and seabed beneath the high seas but contiguous to the coast and which extends as a natural prolongation of the land into and under the sea.
Continuance	Postponement granted by the court in a legal proceeding.
Contract	Agreement or writing between two or more parties creating obligations and rights that are enforceable by law.
Contributory negligence	Act or omission by a plaintiff which amounts to a failure to use that degree of care, which is prescribed for those circumstances which, combined with the defendant's negligence, is the proximate cause of the plaintiff's injury.
Convene	To come together or cause to assemble in court.
Conversion	A legal theory and action based on the improper use by a defendant, for his or her own benefit, of personal property belonging to the plaintiff.
Convict	To condemn or find one guilty of a criminal charge; to pronounce an accused person guilty as charged.
Conviction	A judgment of guilty upon a plea of guilty at the end of trial finding the defendant guilty.
Convoy	A group of ships travelling under the escort of warships.
Corpus delicti	Material substance upon which a crime has been committed, e.g., the corpse of a murdered person, the charred remains of a burned house.
Corroborating evidence	Additional evidence so that evidence already given and tending to strengthen or confirm it.
Cost bond	A bond given by a party to an action which acts as an assurance that if the outcome of a case is not favourable such costs as may be awarded against the party will be paid.
Counsel of record	All attorneys involved in a lawsuit who have formally appeared therein.
Count	When a plaintiff claims more than one ground for recovery, each ground is stated separately. Each separate part is known as a count in the petition. In criminal law, when more than one charge is made against the defendant in the same information or indictment, each charge is stated as a separate count.
Counterclaim	Claim by a defendant against a plaintiff in response to a complaint.
Court of Admiralty	Rather archaic term used to denote the court which has the right to hear shipping, ocean and sea legal cases; jurisdiction over maritime law cases.
Criminal cases	Cases tried by the state against an accused in felonious matters.
Criminal insanity	Lack of mental capacity to do or abstain from doing a particular act. The inability to distinguish right from wrong.
Crossclaim	Claim asserted between co-defendants or co-plaintiffs in a case. A crossclaim must relate to the subject matter of the original claim or counterclaim.
Cross-examination	Questioning of a witness in a trial, or in the taking of a deposition, by a party opposed to the party which called the witness.
Cumulative sentence	Any sentence which is to take effect after the expiration of a prior sentence.
Custodia legis	In the custody of the law; the taking, seizing or holding of something by lawful authority.
Custody	The care, guarding and safe keeping of a thing; confinement.
Declaratory judgment	Judgment which declares the rights of the parties or expresses the opinion of the court on the question of law, without ordering anything be done.
Defamation	Offense of injuring a person's reputation. Includes libel and slander.
Default	Default in an action at law occurs when a defendant fails to plead within the time allowed or fails to appear at the trial.
Default judgment	Judgment entered by court against party in default.
Defendant	Person sued in a civil action or proceeding. The party against whom a civil or criminal action is brought.
Demurrage	Term of transportation law which refers to the damages payable to a carrier as compensation for lost time.
Deposition	Sworn testimony of a witness taken outside of court and transcribed by a reporter.

Derelict	Property that has been abandoned; especially in maritime law: a ship that is floundering or in peril and which the crew has been abandoned without hope for recovery or with no intention of saving the ship or of returning thereto.
Direct evidence	Proof of facts by witnesses who saw acts done or heard words spoken; distinguished from circumstantial evidence, which is called indirect.
Directed verdict	Ruling issued by a trial judge where the judge takes the case from the jury because the evidence set forth only permits one reasonable verdict.
Discharge	Any means by which a legal duty is extinguished.
Dismissal with prejudice	Dismissal of a lawsuit or claim which prohibits the party from bringing another action on the same claim or cause.
Dismissal without prejudice	Voluntary dismissal of a lawsuit or claim by a party, preserving the right to bring the claim at a later time if desired.
Disposition	Final settlement or result of a case, whether by dismissal, judgment, etc.
Disrate	Term of maritime law where an officer or other seaman is either demoted in rank or deprived of a promotion.
Dock	Artificial basin or enclosure for the reception of vessels.
Double jeopardy	Common-law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.
Double wages penalty statute	Law that imposes the payment of double wages to a seaman by his employer in certain circumstances.
Dunnage	Materials used by ships to secure and protect cargo.
Duty of Employer	Maritime employer is legally required to provide safe working conditions for its employees and to ensure a vessel is seaworthy or fit for its intended purpose. A breach of this duty may give rise to legal rights for an injured employee.
En banc	On the bench; all judges of a court sitting together.
Enjoin	To require a person, by writ of injunction from a court of equity, to perform or to abstain or desist from some act.
Entrapment	Act of officers or agents of a government in inducing a person to commit a crime not contemplated by him or her, for the purpose of instituting a criminal prosecution against him or her.
Equity	Legal remedy based on a system of fairness natural right or justice, as distinguished from remedies based on the common law.
Error	Mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law.
Escrow	Written agreement between two parties that a third person will hold a deed, money or the like, to be delivered to one of the parties to a transaction when certain conditions or contingencies are met.
Eviction	The act of expelling by legal process. The recovery of property by judicial process.
Evidence	Documents, testimony or objects that tend to prove or disprove the existence of an alleged fact.
Ex parte	By or for one party; done on the application of one party only, usually without notice to the other party.
Examination	Formal interrogation of a witness; inquiry, investigation, questioning of.
Examination, cross	Questioning of an opposing witness during a trial or hearing.
Examination, direct	First questioning in a trial of a witness by the party that called the witness.
Examination, rebuttal	Introduction of new evidence to contradict the evidence and affirmative defenses presented by the opposing party.
Exculpatory clause	Clause in a contract that relieves a party from liability resulting from a negligent or wrongful act. Depending on the clause, courts may void the clause as a violation of public policy.
Execution	Carrying out a court judgment; a writ empowering an officer to enforce a judgment.
Executor	Person named by a testator/testatrix to carry out the provisions of a Will
Exemplified copy	Official and certified copy of a document from public records.
Exhibit	Document or item which is formally introduced in court and which, when accepted is made part of the case file.

Exonerate	To relieve or exculpate someone of a debt.
Exoneration	Removal of a burden, charge, responsibility or duty.
Extradition	Surrender from one state to another of a person the second state wants to criminally prosecute.
F.o.b.	Acronym for 'free on board'; a contract whereby the seller of goods agrees to absorb the costs of delivering the goods to the purchaser's transporter of choice.
Flotilla principle	Method of calculating the ceiling of liability in the event of loss while ships are under tow, using the tonnage of all ships in the flotilla.
Flotsam	Things found floating on the sea, issue from a ship that has been lost.
Freight	Money paid by a person for the transportation of goods.
General average	Principle of maritime law where in the event of emergency, if cargo is jettisoned or expenses incurred, the loss is shared proportionately by all parties with a financial interest in the voyage.
High seas	Term of international and maritime law; the open ocean, not part of the exclusive economic zone, territorial sea or internal waters of any state.
Himalaya clause	Clause in a transportation contract purporting to extend liability limitations which benefit the carrier, to others who act as agents for the carrier such as stevedores or longshoremen.
Impaired	Deterioration of an individual's judgment and decrease in his physical ability. Used primarily in criminal law; driving under the influence of alcohol or disability law in regard to a person's physical or mental impairment.
Inchmaree clause	Standard clause in maritime insurance contracts covering risk of events not directly linked to perils at sea such as, but not necessarily limited to, loading accidents.
Innocent passage	Term of international law referring to a ship or aircraft's right to enter and pass through another's territory so long as it is not prejudicial to the peace, good order or security of the other state.
Jetsam	Things intentionally thrown overboard a ship in order to save the ship, and which things thrown over then sink.
Law of the Flag	Principle of maritime and international law; that the sailors and vessel will be subject to the laws of the state corresponding to the flag flown by the vessel.
Lay day	Term of a maritime law contract: days stipulated for the loading or unloading of cargo from a ship.
Liberty of the globe	Term of marine insurance acknowledging that the insured vessel may go anywhere on the globe.
Lien	Legal right or interest that a creditor has in another's property. The right or interest typically exists until the debt or duty that secured the lien is satisfied.
Ligan Lagan	Things thrown from a ship and attached to a float or buoy to mark their location.
Limitation fund	Guarantee or deposit made by a ship owner to meet any damage claim and calculated on the negligent ship's tonnage.
Limitation of liability	A law that limits the type of damages that may be recovered from a particular person or group or that limits the time in which an individual can file a legal claim against a particular person or group.
Lof 2000	Lloyd's standard form of salvage contract.
Major-minor fault rule	Principle that if the fault of one vessel in a collision is undisputed and sufficient to account for the accident, then the other vessel is presumed not to have been at fault for the accident.
Man of war	A vessel under military (naval or navy) command.
Maritime	Connected with the sea; of or relating to the sea navigation or commerce.
Maritime law	Body of law governing marine commerce, navigation and the carriage of persons and property on navigable waters.
Maritime lien	Lien which attaches to a ship and its cargo.
Maritime peril	Danger or risk arising from navigating or being at sea.
Mediation	Method of nonbinding dispute resolution involving a neutral third party who attempts to help the disputing parties reach a mutually agreeable solution.
Mortgage	Interest given on a vessel, in writing, to guarantee the payment of a debt or the execution of some action.

Negligence	Individual's failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.
Pain and suffering	Noneconomic damages in torts which compensate an individual for physical discomfort or emotional distress.
Passenger ship	In the maritime context, a merchant ship with the primary function of transporting people. Passenger ships include cruise ships and ferries.
Peril of the sea	Damage to property occurring as a result of an accident at sea.
Personal injury	In a negligence action, any harm caused to a person or an invasion of a personal right. In the workers' compensation context, a personal injury includes any harm that arises within the scope of employment.
Petitory suit	Action in maritime law in which a person seeks to obtain a judgment as to title of a vessel independently of possession.
Plaintiff	Party who brings a civil action in a court of law.
Pleading	Formal document filed with the court in which a party in a legal proceeding sets forth or responds to allegations, claims, denials and defences.
Possessory action	Where a party entitled to possession of a vessel seeks to recover that vessel.
Press gang	Small group of men who abducted a man for the purposes of pressing him into some form of service, often aboard a ship.
Primage	Bonus or tip given to the captain of a vessel to supplement his wages and salaries.
Primary duty doctrine	Principle in maritime law that a seaman cannot recover damages if the injury arose from an unseaworthy condition created by the seaman's breach of a duty.
Punitive damages	Financial award designed to inflict punishment.
Red letter clause	Exculpatory clause in a maritime contract. Shipyards often include red-letter clauses in their contracts with vessel owners purporting to relieve the shipyard of any liability for damage to the vessel while the vessel is in its care.
Release	Agreement to liberate a party from an obligation, duty, or demand that could have been enforced by law.
Right of Hot Pursuit	Right of a state to chase and arrest a vessel which has committed an offense within its national waters.
Safe port clause	Clause in a voyage or time charter party obligating the charterer to choose a port where the ship will be safe from damage.
Salvage	Rescue of property in peril or danger. Salvage also refers to the compensation provided by law to a person who helps save a ship or its cargo with no duty to do so.
Settlement	Legal agreement in which the defendant and plaintiff negotiate a particular outcome and agree to release all pending claims between the parties.
Ship	Boat or any vessel used in navigation.
Ship mortgage	Pledging and charge upon title of a ship and its machinery as security for a loan.
Sister ship arrest	In the context of a legal claim against a particular ship, and in certain circumstances, the law allows the arrest of another ship belonging to the same owner, called a sister ship.
Sovereign immunity	Government's immunity from being sued in its own courts without its consent.
Statute of limitations	Law that prohibits claims filed after a certain period of time.
Statute	Law drafted and passed by a legislative body.
Strict liability	Liability that is not tied to fault. Under strict liability, a party is held liable if a violation of statute occurs, regardless of negligence or intent to harm.
Subrogation	Substitution of one party for another whose debt the party pays. The substituted party is entitled to all rights, remedies or securities that would otherwise be available to the original party.
Sue and labour clause	Standard clause in a maritime insurance policy which allows the insured to recover from the insurer any reasonable expenses incurred by the insured in order to minimize or avert a loss to the insured property, for which loss the insurer would have been liable under the policy.
Superseding cause	An intervening act or force that the law considers sufficient to override the cause for which the original tortfeasor was responsible. After a superseding cause, the original tortfeasor cannot be held liable.

Territorial sea	Waters adjacent to a state's coast and subject to its sovereignty.
Tidal waters	Bodies of water within a state's territorial waters and that are subject to the ebb and flow of ordinary tides, whether navigable or not, and usually excluding harbours or lakes.
Tonnage	The carrying capacity of a ship measured in tons.
Tort	Civil wrong for which a remedy can be obtained. Tort occurs when an actor breaches a legal duty imposed by law to persons.
Unseaworthiness	Under general maritime law, a vessel is unseaworthy if the vessel is not reasonably fit for its intended purpose
Venue	Proper place for a lawsuit to be filed and to proceed.
Vessel	Watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. A ship, brig, sloop or other watercraft used or capable of being used to navigate on water.
Voyage	Time of a ship's transit from one place to another.
Wages	Remuneration or payment for labour or services, typically measured by a given period worked or by output of production.
Waiver	Voluntary relinquishment or abandonment of a legal claim or right.
Wreck	Abandoned vessel, or something abandoned off a vessel, which is either afloat, stranded, aground or sunken.

Annex 6 English/Dutch Legislation Translation

In this table one can find the (non-official) English translation of the official Dutch legislation relevant for the maritime and shipping domain in the Netherlands.

Act Foreign Seagoing Vessels	Wet buitenlandse schepen
Act on Allocation of Workers by Intermediaries	Wet allocatie arbeidskrachten door intermediairs
Act on Liability of Oil Tankers	Wet aansprakelijkheid olietankschepen
Act on Protection of the Merchant Navy (proposal)	Wet ter Bescherming Koopvaardij (wetsvoorstel)
Act on the Recognition of Professional Qualifications (EU)	Algemene wet erkenning EG-beroepskwalificaties
Act on Transport of Dangerous Goods	Wet vervoer gevaarlijke stoffen
Certificate of Tonnage Act 1981	Meetbrievenwet 1981
Certificate of Tonnage Decree 1981	Meetbrievenbesluit 1981
Certificates of Registration Act	Zeebrievenwet
Circular Weapons and Ammunition 2018	Circulaire wapens en munitie 2018
Civil Code	Burgerlijk Wetboek
Code of Commerce	Wetboek van Koophandel
Collective Agreements Act	Wet CAO
Collectives Bargaining Agreement	Collectieve Arbeidsovereenkomst
Compulsory Pilotage Decree 1995	Loodsplichtbesluit 1995
Criminal Code	Wetboek van Strafrecht
Criminal Proceedings Act	Wetboek van Strafvordering
Decree Application International Regulations Preventing Collisions at Sea	Besluit toepassing internationale bepalingen ter voorkoming van aanvaringen op zee
Decree Appointing Controllers Ships Act	Besluit aanwijzing ambtenaren Schepenwet
Decree Appointing Persons Enforcing the Act Preventing Pollution by Ships	Besluit aanwijzing personen toezicht naleving Wvvs
Decree Claims of Seafarers, Recruitment and Placement and Temporary Agency Work of Seafarers	Besluit aanspraken zeevarenden, arbeidsbemiddeling en terbeschikkingstelling van arbeidskrachten in de zeevaart
Decree Designating Supervisors Seafarers Act	Besluit aanwijzing toezichhouders Wet zeevarenden
Decree Designation Conventions Port State Control Act	Besluit aanwijzing verdragen Wet havenstaatcontrole
Decree Dutch Safety Board	Besluit Onderzoeksraad voor Veiligheid
Decree Establishment Models of the Ship's Articles ex Art. 6 of the Seamen's Decree	Besluit vaststelling modellen van de monsterrol ex artikel 6 van het Schepelingenbesluit
Decree ex. article 22 Ships Act	Besluit ex. artikel 22 Schepenwet
Decree ex. article 539n Criminal Code	Besluit ex artikel 539n Wetboek van Strafvordering
Decree nationality test seagoing vessels	Besluit nationaliteitstoets zeeschepen
Decree on Authority of Pilots 1995	Bevoegdhedenverordening registerloodsen 1995
Decree on Market Control of Registered Pilots	Besluit markttoezicht registerloodsen
Decree on the Prevention of Pollution by Ships	Besluit voorkoming verontreiniging door schepen
Decree Recognized Organisations Ships Act	Besluit erkende organisaties Schepenwet
Decree Recognized Organisations Ships Act	Besluit erkende organisaties Schepenwet
Decree Registrar 1994	Besluit burgerlijke stand 1994
Decree Seafarers Merchant Shipping and Sailing Ships	Besluit zeevarenden handelsvaart en zeilvaart
Decree Special Documents of the Registrar	Besluit bijzondere akten van de burgerlijke stand
Decree Transport Dangerous Goods	Besluit vervoer gevaarlijke stoffen
Direction Enforcement Working Conditions Act	Aanwijzing handhaving Arbeidsomstandighedenwet
Direction pre-investigation, investigation and prosecution of maritime offences	Aanwijzing pre opsporing, opsporing en vervolging van maritieme strafbare feiten

Disposal of Dead Act	Wet op de lijkbezorging
Disposal of Dead Decree	Besluit op de lijkbezorging
Economic Offences Act	Wet economische delicten
Environmental Management Act	Wet milieubeheer
Exemption Regulation Foreign Masters Sector Merchant Shipping	Vrijstellingsregeling buitenlandse kapiteins voor de sector koopvaardij
Fisheries Act 1963	Visserijwet 1963
General Administrative Law Act	Algemene wet bestuursrecht
Information Statute of the Dutch Safety Board	Informatiestatuut Onderzoeksraad voor Veiligheid
Installations North Sea Act	Wet installaties Noordzee
Instructions for Shipping Inspectorate Officials	Instructie Ambtenaren Scheepvaartinspectie
Kingdom Act concerning Safety Investigation Board	Rijkswet Onderzoeksraad voor Veiligheid
Kingdom Act Emergency Measures Shipping	Rijkswet Noodvoorzieningen Scheepvaart
Kingdom Act implementing Exclusive Economic Zone	Rijkswet instelling exclusieve economische zone
Kingdom Act Implementing Contiguous Zone	Rijkswet instelling aansluitende zone
Kingdom Act Implementing Fishery Zone	Machtigingswet instelling Visserijzone
Kingdom Act Nationality Seagoing Vessels	Rijkswet nationaliteit zeeschepen
Kingdom Decree concerning Safety Investigation Board	Rijksbesluit Onderzoeksraad voor Veiligheid
Loading and Unloading of Seagoing Vessels Act	Wet laden en lossen zeeschepen
Logbook Decree 1970	Besluit dagboeken voor schepen 1970
Marine Equipment Act 2016	Wet scheepsuitrusting 2016
Marine Equipment Regulation 2016	Regeling scheepsuitrusting 2016
Maritime Casualties Control Act	Wet maritieme ongevallen
Maritime Traffic Act	Scheepvaartverkeerswet
Market Control Registered Pilots Act	Wet Markttoezicht registerloodsen
Merchant Shipping Medical Examination Regulations 2012	Keuringsreglement voor de zeevaart 2012
Mining Act	Mijnbouwwet
Nautical Professionals Trainings and Competence Decree	Besluit opleidingen en bevoegdheden nautische beroepsbeoefenaren
Nautical Professionals Trainings and Competence Regulation	Regeling opleidingen en bevoegdheden nautische beroepsbeoefenaren
Netherlands Territorial Sea (demarcation) Act	Wet grenzen Nederlandse territoriale zee
Pilotage Act	Loodsenwet
Policy Guideline Granting Exemption Ship Waste Disposal	Beleidsregel ontheffingsverlening afgifte scheepsafval
Policy on Military Vessel Protection Detachment (VPD) for individual protection of ocean-going transport	Beleidskader Militair Vessel Protection Detachment (VPD) ter bescherming van individueel zeetransport.
Policy Rule Exemption Regulation for a Commercial Cruising Vessel	Beleidsregel ontheffingsregeling voor een Commercial Cruising Vessel
Policy Rule Manning	Beleidsregel zeevaarbemanning
Policy Rule Manning Fine Imposition Working Conditions Legislation Policy Guideline	Beleidsregel boeteoplegging arbeidsomstandighedenwetgeving
Policy Rule Safety Seagoing Vessels	Beleidsregel veiligheid zeeschepen
Port Reception Facilities Decree	Besluit havenontvangstvoorzieningen
Port Reception Facilities Regulation	Regeling havenontvangstvoorzieningen
Port Security Act	Havenbeveiligingswet
Port State Control Act	Wet Havenstaatcontrole
Port State Control Regulation 2011	Regeling havenstaatcontrole 2011
Prevention of Pollution from Ships Act	Wet ter voorkoming van verontreiniging door schepen
Recognition Regulation Maritime Crews Training	Erkenningsregeling opleidingen zeevaarbemanning

Regulation Designating Classification Societies for the Prevention of Pollution of Ships Act	Regeling aanwijzing klassenbureaus Wet voorkoming verontreiniging door schepen
Regulation for Licenced (Maritime) Pilots	Beroepsuitoefeningsverordening registerloodsen
Regulation Inspection of Data and Documents of the Certificates of Registration Act	Regeling inzage gegevens en bescheiden Zeebrievenwet
Regulation Loading and Unloading of Bulk Carriers	Regeling laden en lossen bulkschepen
Regulation Manning Seagoing Sailing Ships	Regeling bemanning zeegaande zeilschepen
Regulation on Market Oversight Pilots Act	Regeling markttoezicht registerloodsen
Regulation Prevention of Pollution by Ships	Regeling voorkoming van vervuiling door schepen
Regulation Recognized Organisations Ships Act	Regeling erkende organisaties Schepenwet
Regulation Safety Seagoing Vessels	Regeling veiligheid zeeschepen
Regulation seafarers	Regeling zeevarenden
Regulation Seafarers' Work Schedule and Work List	Regeling vaststelling model werkrooster en werkljst voor zeevarenden
Regulation Transport of Dangerous Goods by Oceangoing Vessels	Regeling vervoer gevaarlijke stoffen met zeeschepen
Regulation Weapons and Ammunition	Regeling wapens en munitie
Regulations Determining Models of Certificates of Registry	Regeling vaststelling modellen meetbrieven
Regulations Governing the Maritime Disciplinary Court of the Netherlands	Regeling Onderzoeksraad voor Veiligheid
Regulations of the Dutch Safety Board	Bestuursreglement Onderzoeksraad voor Veiligheid
Regulations Registry Provisions	Regeling metingsvoorschriften
Seafarer's Decree or Seamen's Decree	Schepelingenbesluit
Seafarers Act	Wet zeevarenden
Seafarers Order Merchant Shipping and Sailing	Besluit zeevarenden handelsvaart en zeilvaart
Seafarers Regulation	Regeling zeevarenden
Shipping Regulations for Territorial Waters	Scheepvaartreglement territoriale zee
Ships Act	Schepenwet
Ships Decree 1965	Schepenbesluit 1965
Ships Decree 2004	Schepenbesluit 2004
Ships Equipment Act 2016	Wet scheepsuitrusting 2016
Spatial Planning Act	Wet ruimtelijke ordening
Vessels under Bareboat Charter (Nationality)	Wet nationaliteit zeeschepen in rompbevrachting
Water Act	Waterwet
Weapons and Ammunition Act	Wet Wapens en munitie
Working Conditions Act	Arbeidsomstandighedenwet
Working Conditions Decree	Arbeidsomstandighedenbesluit
Working Conditions Policy rules	Arbobeleidsregels
Working Conditions Regulation	Arbeidsomstandighedenregeling
Working Hours Act	Arbeidstijdenwet
Working Hours Decree	Arbeidstijdenbesluit
Working Hours Decree Transport	Arbeidstijdenbesluit vervoer

Legal Handbook Shipmaster

This book is the worldwide international standard Handbook for the shipmaster and all other interested parties whatever the ship's flag state or nationality of the crew may be.

National maritime laws of states are almost comparable because these legislations originate from a variety of international maritime agreements. Maritime law follows, in most nations, a separate code and has jurisdiction independent of national laws. International pillars for national maritime laws are:

- United Nations Convention on the Law of the Sea (UNCLOS)
- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention for the Safety of Life at Sea (SOLAS)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)
- Maritime Labour Convention (MLC)

This Handbook explains the most important legal terms of international and national law for the shipmaster. The influence of EU rules on national maritime legislation of EU member states is also described.

National legislation of the flag state has priority on board unless the vessel is located in the waters of a foreign coastal state. The hierarchy or priority of various jurisdictions and legislations in different maritime zones is therefore extensively explained in the Handbook.

National maritime legislation (NL) is described in detail with many examples from maritime legislations.

This Handbook has not been written in legal language, but in the language of the shipmaster and seafarers. The Legal Handbook Shipmaster will be invaluable to any shipmaster wherever on the globe. The shipmaster is at the heart of this book.

The Legal Handbook Shipmaster is available free of charge from the website of the Netherlands Shipmasters' Association (www.nvkk.nl).

Any financial donation would however be greatly received by the NL Shipmaster's Association. Your financial donation will be used to update the Handbook as treaties, codes, acts and regulations constantly change. Please, submit your financial contribution via:



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