

LEGAL HANDBOOK SHIPMASTER

The legal manual for the Shipmaster, worldwide

Dr. Peter van der Kruit



The Netherlands Shipmasters' Association

January 2026

Legal Handbook Shipmaster

The practical legal manual for the Shipmaster, worldwide

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



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', written in 1609 by the famous Dutch lawyer Hugo de Groot (Grotius) was the first publication about the freedom of navigation on the high seas.

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



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Legal Handbook Shipmaster

by

P (Peter) J.J. van der Kruit
(PhD, LL.M, MPA)

A former merchant navy officer

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Foreword

Dear Reader,



Welcome to the Legal Handbook Shipmaster, an indispensable guide for every Shipmaster, as well as others who are involved in or interested in the many legally complex aspects of the maritime world. Whether you are a seasoned professional or just starting your career, this handbook offers you all the legal knowledge essential for navigating the complex rules and regulations that govern the maritime domain.

As the Netherlands Shipmasters' Association (NVKK), we are committed to promoting safety at sea and on board, safeguarding the Shipmaster's legal position, and representing the interests of the Dutch merchant navy in general. This handbook fully aligns with these priorities. The Shipmaster is responsible not only for the safety of the crew, the ship, and cargo, but also for compliance with numerous laws and regulations. Maritime law is not only dynamic but also sometimes confusing, with international treaties, national legislation, and local regulations.

From liability to marine insurance, from contracts to environmental regulations, this handbook covers all the core aspects of maritime law that every Shipmaster should know. It also offers practical examples, guidelines, and tips, aiming to be a lively resource that is certainly inspired by the realities of shipping, so you not only understand the theory, but you can also act proactively in practice when necessary.

This new digital edition will also be updated frequently and can be downloaded from the website www.NVKK.nl.

We at NVKK wish everyone the best of luck, knowing that you have access to a unique and comprehensive overview of maritime legislation.

Captain Ed Barsingerhorn
President of The Netherlands Shipmasters' Association
January 1, 2026



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The author of this Handbook also served as the principal technical writer for the ICS publication '*The Master's Practical Guide to Maritime Law*' (2023). As a result, certain similarities in the text may occur, though these are unintentional.

While the ICS book was written for an international maritime audience, this Handbook is primarily intended as a legal reference for Shipmasters serving on vessels registered under the flag of the Netherlands. The initial drafts of this Handbook were prepared in 2012.

In this Handbook, any reference to the masculine gender shall be deemed to include the feminine gender, and any reference to the feminine gender shall be deemed to include the masculine gender. Please report any administrative or other discrepancies by email to info@nvkk.nl

Introduction to the 7th updated digital edition

The Shipmaster must comply with international, EU, and national maritime legislations.

This Handbook provides an overview of the most important rules from the Shipmaster's perspective and is intended as a legal reference. Only essential maritime legal topics are covered, while tables, figures, diagrams, and flowcharts enhance the accessibility.

Extensive explanations of maritime law can be found in relevant legislation and professional literature.

For this 2026 edition, the text has been updated and adapted for better digital readability. Suggestions for improvements are welcome.

In this 7th version, the topics and text have been expanded, but the 'Shipmaster Summary', which concludes each chapter has been shortened, refined, and simplified. A very small portion of this was done using AI. We hope this will be helpful to the reader.

In this latest version, direct references to treaties and legal regulations are no longer made at the end of every chapter. Instead, Appendices 4, 5, and 6 contain an overview of all maritime treaties, all relevant EU maritime regulations, and all Dutch maritime laws, which in turn direct to many decrees and regulations.

We hope this Handbook meets a need from the Shipmaster.

Peter van der Kruit, author
Schagen, The Netherlands
January 1st, 2026

PART 1 GENERAL

Chapter 1	Introducing rules
Chapter 2	International Law
Chapter 3	National Law
Chapter 4	Enforcement
Chapter 5	Liable, accountable & responsible
Chapter 6	Risks
Chapter 7	Legal maritime subjects

Part 1 of this Handbook aims to give a background for Parts 2, 3 and 4.

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

Chapter 1 Legal rules

1.1. Introduction

1.1.1. Rules

Many rules, established upon religious, ethics and moral values exist. All persons, including the Shipmaster and other seafarers, base their behaviour upon these values. Therefore, 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.

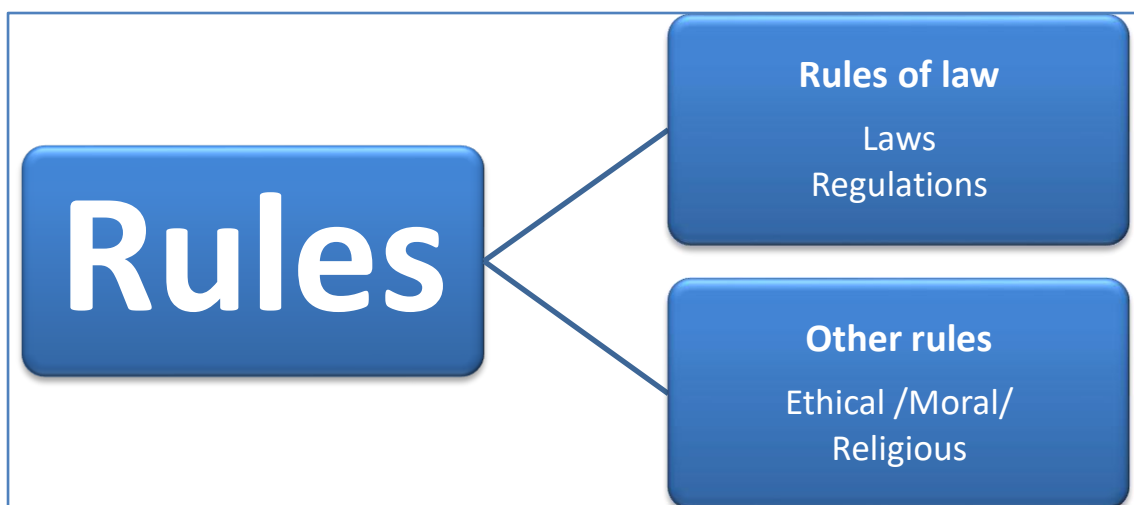


Figure 1. Rules

1.1.2 Legal rules/law

A legal rule, or law, is a rule which has been officially approved by a state's legislative body. Legal rules are interpreted by courts who decide about cases brought before them and may impose sanctions upon those who violate these rules. Legal rules differ from non-legal rules, such as ethical or religious rules. Violation of non-legal rules will still often result in consequences for the party concerned, however these rules cannot be enforced by the judiciary like legal rules. Legal rules either the 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. Law, like merchant shipping, has its own terminology, resources and structure. By way of introducing legal rules, this section offers a framework outlining the most

important legal concepts, including some maritime aspects of the law. The Shipmaster must obey the law, sometimes he must apply and enforce the law on board.

Law is a set of legal rules that are used to regulate society in a country, including its ships. For the Shipmaster these legal rules are usually known as flag state legislation, or the laws and regulations of the coastal state he is in.

In other words: A system of legal rules which a country sees as regulating the behaviour of persons in that country, including its ships. A country may enforce these legal rules by sentences or other legal measures. Legal rules mean regulations connected with the law. Some substitutes for legal rules are requirement, provision, norm, regulation, law, bill, act or order. In this Handbook, the general term 'laws and regulations' will be used, as the IMO and other maritime institutes do.

Law
A set of legal rules used to control behaviour of persons 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 countries;
- your responsibilities as a member of society.

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

Legal terms	
Law	Mandatory legal rules issued by the government of a country
Regulation	Mandatory legal rules issued by an agency, ministry or department of the government of a country
Legal	Connected to law
Legal rule	A rule which has been officially approved by a state's legislative body
Guideline	Non-mandatory instrument or recommended practices
Requirement, provision or clause	Part of a written legal document, such as a law, regulation or contract, including statements indicating that a certain thing must happen or be done.

Table 1. Various legal terms

Governmental organizations like the Police, Customs, Coast Guards, Immigration Officers, and Shipping Inspectorates are responsible for enforcing laws and regulations.

'Laws and regulations' might mean different subjects under various national legal systems. Every nation is free to use its own language in its legal documents.

Law may contain mandatory requirements and non-mandatory directions, while legal terms used in various international or national law systems are not always the same. Often the wording in legislations is mixed-up and/or synonym. Word usage and intended meaning in laws and regulations are not the same in all countries. In this Handbook the following legal terms are used:

- Must: imposing a legal responsibility;
- Should: indicating that the regulation is more of a professional requirement than a legal necessity.
- The terms 'shall' and 'will' are sometimes confusing and ambiguous when used in legal documents, including shipping contracts.

The Shipmaster should ensure the meaning of all those words when used in statutes or contracts. See also Section 1.5 of this Handbook.

Law is the system of legal rules of a country, regulating the behaviour of its residents, onboard its ships as well. That country may enforce these legal rules by fines or otherwise.

Maritime Law

The Shipmaster primarily deals with maritime/marine law, sometimes under international law, such as maritime conventions, and sometimes under the flag or coastal state's national or domestic law.

Maritime law, often known as admiralty law, is a collection of national and international laws and regulations that control mostly maritime transportation. In many nations, there is little distinction between admiralty and maritime law. While the terms are frequently used interchangeably. Marine law may apply to marine matters or conflicts, such as cargo claims or other disagreements between the shipowner and the charterer or shipper. Shipping contracts, marine insurance, and the carriage of goods and passengers by sea are also covered by maritime law. Parties, like shipowners, charterers, or shipping corporations from all over the world, may be allowed to enter into agreements without the government interfering too much.

It is up to these parties to decide which national law would govern contract disputes. These businesses often enter into shipping agreements in accordance with English domestic maritime or admiralty legislation. Then, English Courts or English Arbitration Tribunals may settle disputes. International agreements, such as conventions and regulations, are often processed by the International Maritime Organization (IMO) and the International Labor Organization (ILO). These treaties have legal force between the signatory nations. Member states or member countries are the names of the nations. These international agreements include UNCLOS, SOLAS, MARPOL, MLC, and others. Moreover, refer to this handbook's Annex 4. International agreement's provisions can be enforced by a member countries' National Police, Customs, or Shipping Inspectorate once this country has transformed the agreement into their national law. At sea this will be done by a member nation's Coast Guards, Navies, or Maritime Police as well. These international agreements regulate interactions between the government and companies like shipowners and shipmasters. Member nations may exercise their right to "opt out," which allows them to refuse to take part in specific provisions or requirements of an international agreement.

1.2. Legal systems

Different countries may have different legal systems, according to tradition, the need and requirements of that country. Generally, legal systems or models around the world can be divided into two main systems: common law and civil law. But this division is not as unambiguous as it might seem. In fact, many countries use a mix of features from common and civil law systems. In common law countries (Anglo-America), case law mainly exists in the form of published judicial opinions.

In civil law systems, codified statutes predominate.

1.2.1. Civil law

Civil 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 explain the law. Civil law is a very widespread system of law in the world. Civil law is in force in about 150 countries.

1.2.2. 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 common 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 countries, case law (judicial opinions), is of primary importance, whereas in civil law systems the codified laws, statutes and codes predominate.

1.3. Prevailing law

The Shipmaster should know which law is relevant and prevailing on his ship. In general, the law of the flag state is applicable on board. But when the ship is in port the law of the coastal state has priority over the law of the flag state. However, matters relating solely to the internal affairs of the ship tend in practice to be left to the authorities of the flag state. See for a balance between flag state and coastal state legislation also further on in this Handbook.

Laws applying on board in order of priority	
In a foreign port	On the high seas
1. Coastal state	1. Flag state
2. Flag state	2. Home state of seafarer
3. Home state of seafarer	

Table 2. Laws applying on board, in general.

1.4. Legal terms

Legal systems comprise 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 the social order and discipline. Law can be written or unwritten and applies to all persons and institutions: Shipmaster, government, ship manager and seafarers.

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

1.4.1. Objective law

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

The Shipmaster should be aware that the legal meaning of some legal terms may not always be the same as the plain and ordinary meaning.

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. Such as the right to live or the right to have a family. Objective or positive law is also described as law applying at a certain time (present or past) in a certain country, including on board its ships. Law can be enforced by sanctions or punishment, often through courts.

Example
A Shipmaster leaving port without a valid manning certificate commits a crime and may be prosecuted.

1.4.2. Legal subject

A legal subject has legal rights and duties. Often rights are 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 a state, 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 ship manager 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 concludes a seafarer's employment agreement with his employer.
- A Ship manager may hire an office from a natural person.
- A country buys ICT infrastructure.

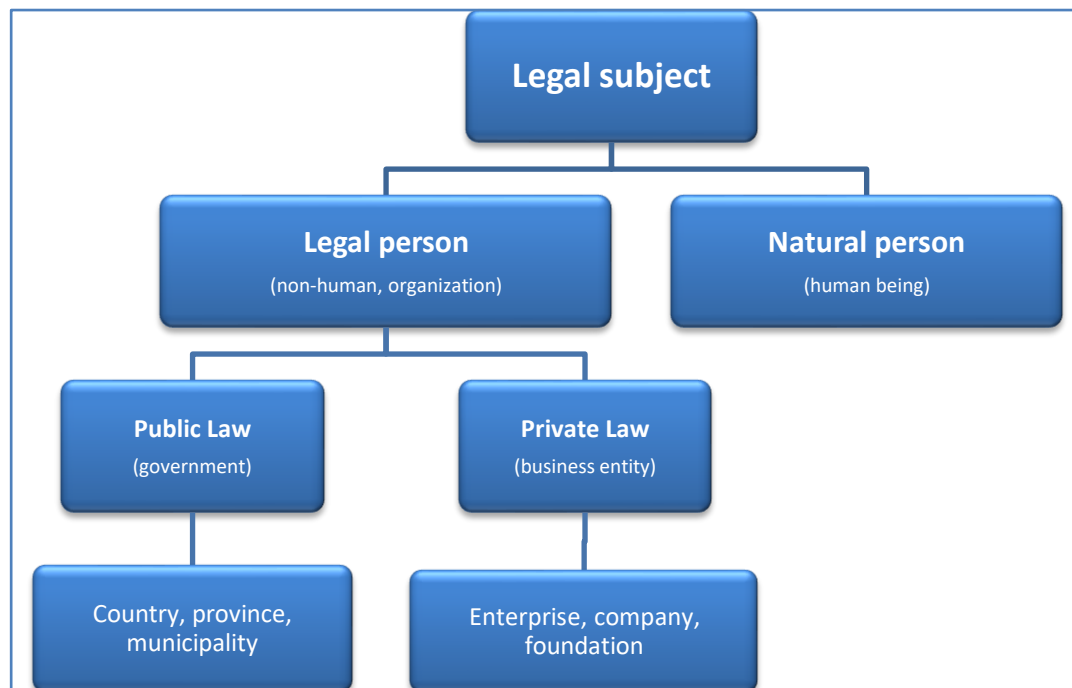


Figure 2. Legal subjects

1.4.3. 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 (law-maker) 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 country, or just to part of it. Through delegation by law, the central government can establish orders in council or in ministry regulations. See Chapter 3 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, where 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 subject 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 clarifying abstract laws and by filling in the gaps in legislation. In general, interpretations laid down in verdicts of Supreme Courts are adopted by other courts and 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 countries or international organizations like the UN, IMO and EU, often laid down in treaties. A treaty only binds those countries that are party to that treaty. International agreements become national law when implemented into national law. See also Chapter 2 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 (MARPOL) has been implemented for the Netherlands by the Prevention of Pollution from Ships Act.

Within the EU, member countries have handed over a part of their legislative, judicial and administrative powers to several supra-national EU-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 countries have to take this European legislation into account.

1.5. 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, Law of the Sea, Admiralty Law or Maritime Law.

1.5.1. 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 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 by 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 country. 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 country 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 Act Manning Seagoing Vessels, Ships Act, and Working Conditions Act.

Article 20 Act Manning Seagoing Vessels (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 penal legislation can be found in the Ships Act and the Act Manning Seagoing Vessels, 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.

1.5.2. 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 fake certificates, he can be punished with 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 the law (law enforcement agencies) but rather clarifies law and applies it to the facts of each case. However, the judiciary does make common law, setting precedent for other courts are to follow. Courts with judicial review power, may annul laws and rules of the country 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 ships 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 ship's 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. 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 Country
- 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.

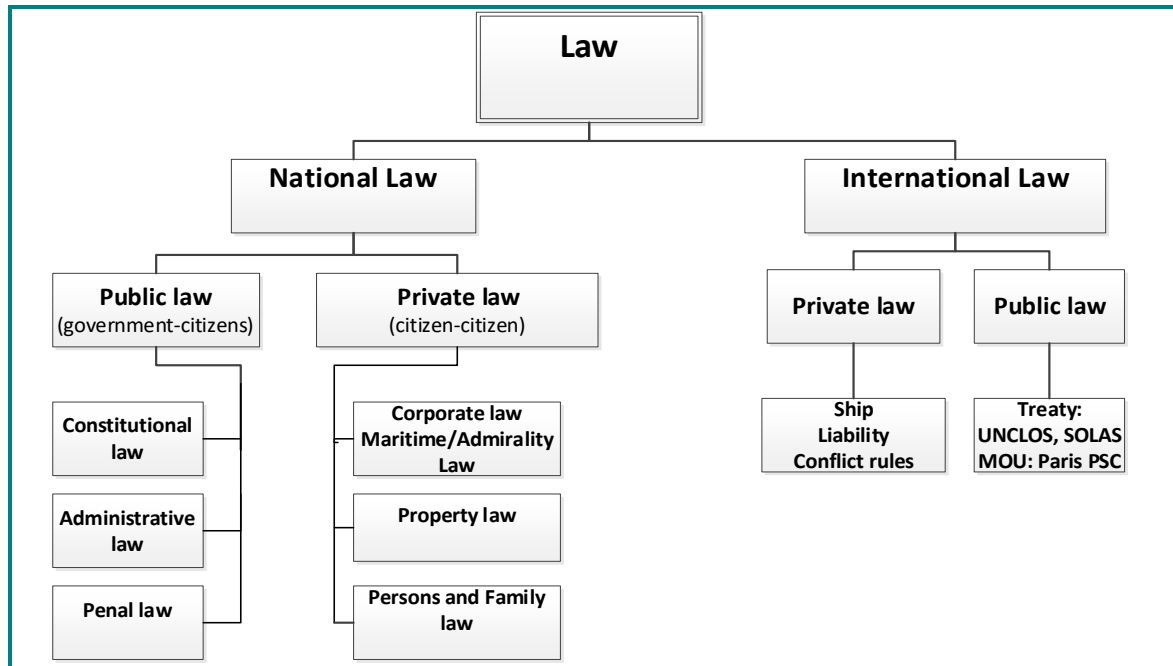


Figure 3. Structure of law

1.5.3. 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 ship manager 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. Substantive and procedural law work in tandem.

Article 539u Code of Criminal Proceedings (NL)

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

1.5.4. Mandatory and permissive law

There is a difference between mandatory and permissive (non-mandatory) laws or rules. Sometimes the difference can be found in the wording of the law. If the word 'must' be used, the Shipmaster must adhere to that provision. 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:

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

Mandatory law

Public authorities have, within their own remit, legislative powers. The laws they enforce are usually binding. Persons 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 persons or society as a whole, are involved. Parties remain bound by the mandatory rules of public law.

Permissive law

In private law, the emphasis is different. This area of law regulates the legal relationships between persons, for instance regarding their property or their mutual responsibility, as far as these involve valid rights and obligations.

In principle, persons 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 law

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

Permissive law

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

1.6. Jurisdiction

Jurisdiction has been defined as the power of a country 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 country to apply laws (prescriptive or legislative jurisdiction) and that country's authority in enforcing its laws (executive or prerogative jurisdiction). Jurisdiction is an aspect of sovereignty and refers to a country's judicial, legislative and administrative capacity. Prescriptive jurisdiction encompasses those steps taken by a country, usually in the form of legislation, whereby the country 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 country.

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 country 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.

1.6.1. Territorial jurisdiction

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

Territorial principle

This principle acknowledges that a country may prescribe conduct in its sovereign territory. Thus, a country may deem an act to be criminal, such as selling or buying counterfeit certificates if that occurs in that country'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 country may prosecute a crime on grounds of territoriality even if only a part of the crime was committed in the prosecuting country's territory. This means that a key element of the crime must have taken place in its territory.

1.6.2. Extraterritorial jurisdiction

Extraterritorial means outside or beyond the territory, including the territorial waters, of a country. A country 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 flagstate 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 country. A ship falls under the flag principle. Under this principle, a country may assert jurisdiction over civil or criminal offences committed on board ships flying the flag of that country. The nationality of a ship is shown by the flag it flies. The flag is the genuine link between ship and country.

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 country whose flag it flies.

Nationality principle

The nationality principle is based on the concept that a country has jurisdiction over objects and persons having the nationality of that country. There is general agreement on the basic premise that a country may prescribe the conduct of its own nationals abroad. The country may apply its laws to its nationals wherever they may be and to all persons, activities, and objects on board ships having that country's nationality. The nationality principle enables countries to exercise jurisdiction over crimes committed abroad if any of the victims have the nationality of that country. 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 countries 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 country 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.

1.7. Summary Shipmaster

The Shipmaster

- is advised to comply with all applicable laws and regulations. If there is any uncertainty, he should consult the shipowner or seek legal advice.
- must pay close attention to definitions, as terminology may vary or be unclear across different legal documents, regulations, guidelines, or instructions.
- must understand which rules and directives are mandatory and which are optional. Typically, maritime laws and regulations are binding, whereas guidelines are not.
- should review all relevant commercial agreements—such as charterparties or Contracts of Carriage of Goods by Sea—to become familiar with the various clauses and provisions they contain.

- must follow the instructions issued by the shipowner, charterer, or insurer, and seek clarification if any terms appear complex or problematic. These documents must also be readily accessible onboard. Laws, rules, contracts, and instructions collectively define the Shipmaster's legal rights and responsibilities.
- should consult the shipowner if any instruction appears to conflict with national laws or official regulations. A clear understanding of all applicable documents is essential to ensure compliance with legal obligations.
- is crucial in making sure that the laws are followed on board. He occasionally must enforce the laws on board.

The Shipmaster must abide all mandatory laws and regulations, and he must have a legitimate cause for not adhering to any non-mandatory rules or directives.

Chapter 2 International law

2.1. Introduction

International law is important because it influences national law and sometimes even supersedes national law. International law is a set of rules generally regarded and accepted as binding in relations between countries. It serves as a framework for achieving stable and organized international relations. International law differs from national legal systems in that it primarily concerns countries rather than private citizens. Treaties such as 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 country 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 country 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 looks 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 countries, others to just a few. EU legislation can be divided into 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 countries must achieve. However, it is up to the individual member country to devise their own laws on how to reach these goals.
- Decision: is binding on those to whom it is addressed and is directly applicable.

- **Recommendation:** A recommendation is not binding; it allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

The national maritime legislations for ships are, to the greater extent, laid down at an international level. In most countries, maritime law follows a separate code and is an independent jurisdiction from national laws. UNCLOS, SOLAS, STCW, MLC and MARPOL, with all the accompanying codes, resolutions and guidelines 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 4 to this Handbook.

2.2. International agreements

2.2.1. Treaty

A treaty is a specific agreement under international law entered into by actors in international law, namely sovereign countries 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 does not 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, such as IMO and ILO. Therefore, national maritime law of countries is, more or less, all equal, because it originates from the same international maritime agreements. The most relevant four international pillars for national maritime laws are:

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

One should note that the UN Convention on the Law of the Seas (UNCLOS) is the Constitution of the Oceans and a fundament for national maritime legislations.

This convention defines the rights and responsibilities of countries 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. Countries decide for themselves whether they become party (member) to a treaty, which is expressed by signing or ratifying that treaty. Only member countries to a treaty are bound by that treaty. Treaties may include public and civil law.

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

Some countries negotiate certain 'opt-outs' from a treaty, meaning that these countries do not have to follow certain requirements of that treaty.



Figure 4. Fundament and structure of maritime 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 ship managers. 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 must be converted and implemented into national law.

Example

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

Self-executing treaties also apply in some countries. This 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 countries.

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 countries as a self-executing provision without the need for any implementing measures at national level.

2.2.2 MOU

A Memorandum of Understanding (MOU) is a document describing a bilateral or multilateral agreement between countries 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, department or the Maritime Authority 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.

A MoU can be seen as a more formal alternative to a gentlemen's agreement: only morally or politically binding, so not legally binding.

Examples of an agreement in a MOU are:

- Port State Control;
- 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.

2.2.3. EU-legislation

EU maritime legislation encompasses a broad range of regulations focused on safety, security, environmental protection, and the sustainable development of the maritime sector.

EU legislation comes in different forms:

- **Regulations**

These are binding in their entirety and directly applicable in all EU member states, meaning they automatically become law in those countries.

- **Directives**

These are binding on member states as to the result to be achieved but leave the choice of form and methods to national authorities.

- **Decisions**

These are binding in their entirety on those to whom they are addressed, whether they are member states, companies, or individuals.

- **Recommendations and opinions**

These are non-binding acts.

EU maritime legislation is developed through various law-making procedures, with the most common being the ordinary legislative procedure involving the European Parliament and the Council. The European Commission plays a key role in proposing legislation. To find specific EU legislation, one can consult the EUR-Lex database, which provides access to all adopted EU legal acts.

2.2.4. Rules for the use of force

Military ROE

Rules of Engagement (ROE) are rules for military units, including military 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 the use of force for the military personnel are laid down in their ROE; therefore, the Shipmaster should be aware of these regulations.

Police/rules for the use of force

Normally, police forces are non-military organizations. Therefore, regulations governing use of force by the police can be found in the national legislation.

So, there may be a difference between the use of force by the police and by the military.

Private Security/RUF's

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 always originate from the national government, it often originates from private contracts between Private Maritime Security Companies and the ship manager. So, these private rules are not always official public law supported and enforced by the flagstate.

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 by the Private Maritime Security.

2.3. 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 UNCLOS is the division of the ocean into various zones with a view to exercising jurisdiction. For jurisdictional purposes, the world's oceans can be divided into three areas. 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. The tendency in jurisdiction is to identify the rules governing jurisdiction in the form of the principles upon which jurisdiction is commonly based.

Examples

Functional jurisdiction

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

Restricted jurisdiction

A country has no enforcing jurisdiction over foreign warships in its waters.

The definition of maritime zones and the allocation of jurisdiction therein are important themes of UNCLOS (See figure 5). In this Chapter the maritime zones are mentioned and briefly described. In Chapter 23 the relations between the Shipmaster, jurisdiction and maritime zones are explained.

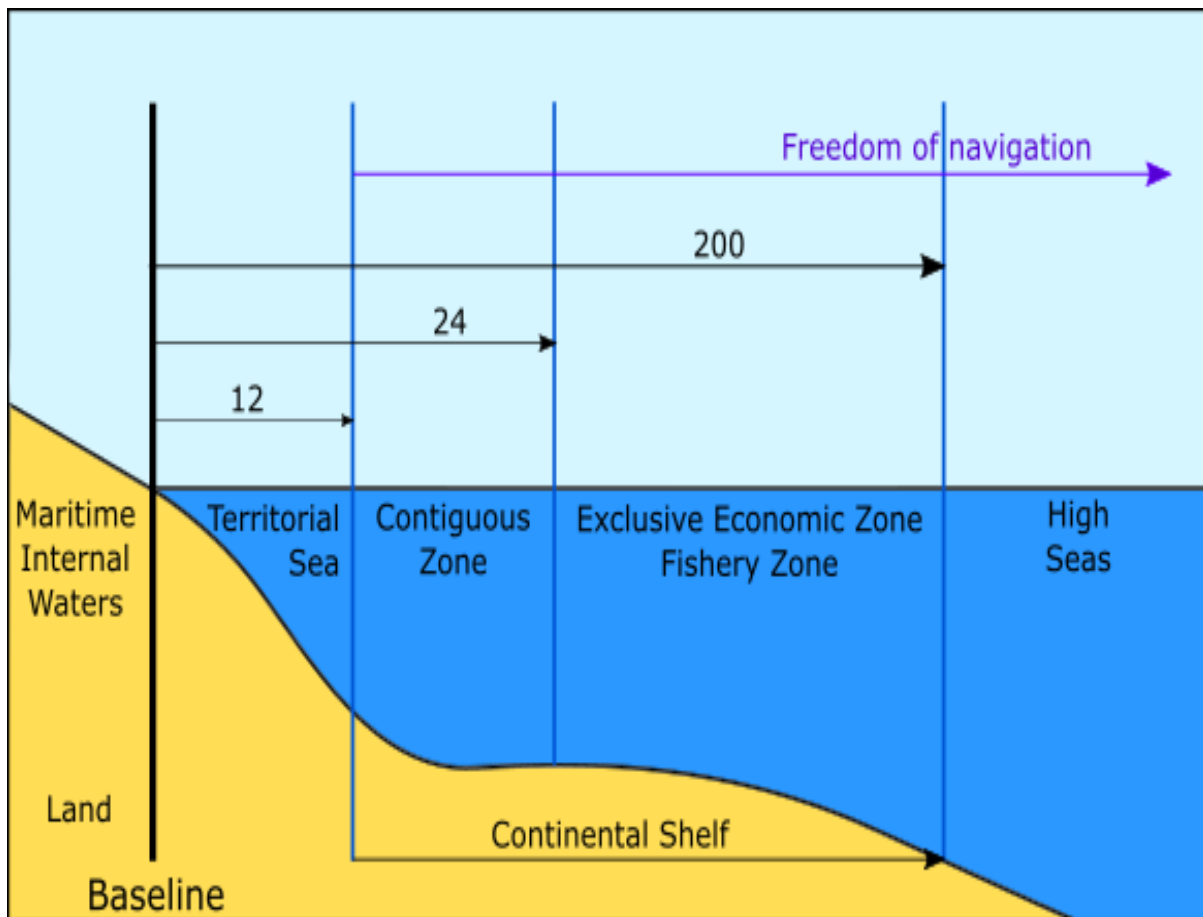


Figure 5. Maritime Zones

2.3.1 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.

2.3.2. Maritime internal waters

Waters on the landward side of the baseline form part of the internal waters of that country.

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.

2.3.3. Territorial Sea

Every country 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 through the territorial sea

UNCLOS deals extensively with the issue of innocent passage through the territorial sea.

It provides that 'ships of all countries, 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 through international straits

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 country bordering the strait, subject to the conditions of entry to that country. 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.

2.3.4. 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 the international waters.

2.3.5. 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 in the EEZ or on the high seas. The freedom of navigation is applicable to the contiguous zone.

2.3.6. 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 countries retain the freedom of navigation in the EEZ.

2.3.7 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.

2.3.8. 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.

2.3.9. 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 country. Ships of all countries 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.

2.3.10. 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 country shall not be hampered by other countries. The exceptions provided in international law are:

- Piracy;
- Slavery;
- Illegal broadcasting;
- Statelessness.

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



Figure 6. Jurisdictions and freedom of navigation

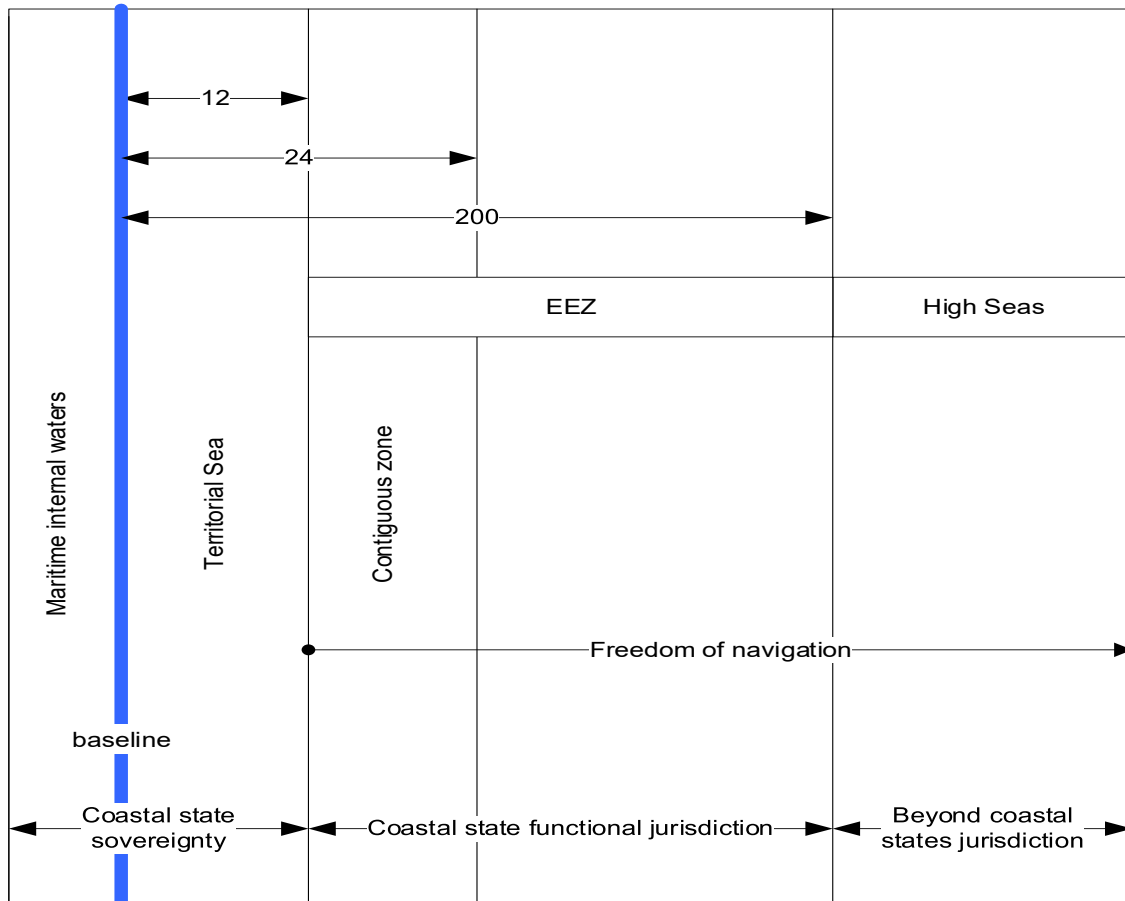


Figure 7. Maritime jurisdictional zones and maritime zones

2.4. Summary Shipmaster

The Shipmaster:

- is responsible for complying with international law, including maritime conventions, laws, regulations, and guidelines.
- should understand which legislation applies in each maritime zone, as legal requirements may vary by jurisdiction.
- has the right to enter all ports unless explicitly denied entry by the coastal state.
- must inform the shipowner in cases where entry to a port is or may be denied. The shipowner will decide on the right course of action.
- has the right of innocent passage through the territorial seas of coastal states, if passage is not prejudicial to the peace, good order, or security of the state.
- while within the territorial waters of a coastal state, he is obligated to comply with that state's laws and regulations.

- should take care that the relevant coastal state legislation is accessible onboard. If it is not available, the Shipmaster should request the necessary information from the shipowner or a local agent.
- enjoys, on the high seas, freedom of navigation and is required to comply only with the laws of the vessel's flag state.
- must respect the rights and duties of other vessels and states while exercising the right of freedom of navigation. This duty of 'due regard' includes full compliance with the International Regulations for Preventing Collisions at Sea (COLREGS).

Chapter 3 National law

3.1. Introduction

National law is a nation's internal legislation that is applicable within that nation, including its airspace above it and its territorial waters, as well as on board any vessels flying that nation's flag. Anybody inside that country, including on board the ships of that country shall obey the legislation of that country. 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 countries find its origin in international agreements, these national maritime legislations are quite similar.

3.2. 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 country.

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 country, but only for a prescribed purpose. An overview of laws and regulations:

- Constitution Government & Parliament
- 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, in a particular country.

Terms used in NL legislation	
Kingdom Act	Act effective in the whole Kingdom of the Netherlands
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

Table 3. Terms used in NL laws and regulations

Examples of laws & regulations	
Kingdom Act	- Kingdom Act approval the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter - Ships Kingdom Act
Act	- Act Manning Seagoing Vessels - Civil Code
Decree	- Working Conditions Decree - Manning Decree
Ministerial Regulation	Shipping Regulations for Territorial Waters
Provincial Directive	Waterway By-Laws of Province South-Holland
Council Directive	Rotterdam Port Management By-Laws 2020
Policy Rule	Policy Rule Manning
Memorandum	Port Waste Handling Plan 2023 Rotterdam

Table 4. Examples of laws and regulations

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

Example	
Law:	Shipping Act
Decree:	Shipping Decree 1965/2004
Ministerial Regulation:	Shipping Regulation
Policy Rules	Policy rule safety seaships

3.2.1. 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.

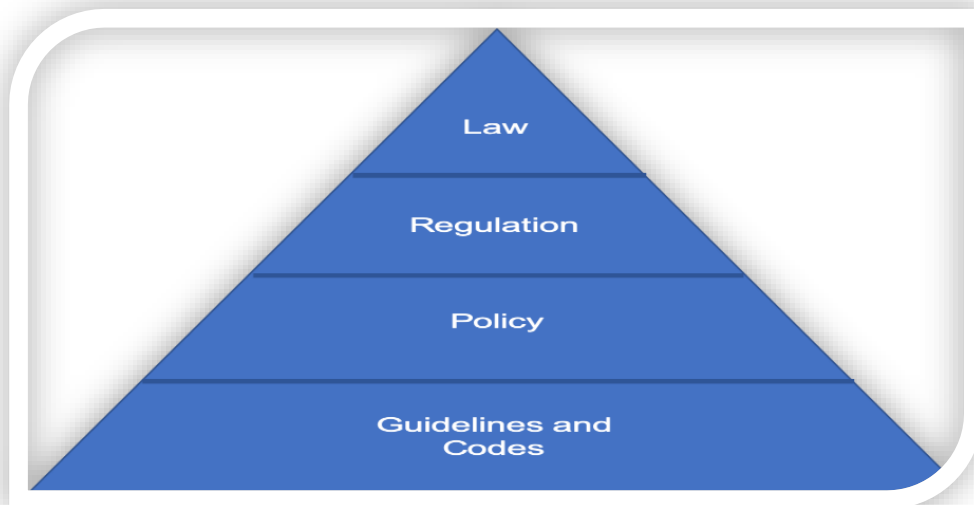


Figure 8. A very general legislative hierarchy

3.2.2. 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. The ship manager, the charterer or the P&I Clubs may submit rules, guidelines, and instructions. Private national law

deals with the relationship between individuals, such as the seafarer employment agreement between the Shipmaster and the ship manager, or the charterparty between the shipowner and the charterer. Private law encompasses Law of Contracts, Law of Torts, Property Law, Employment Law, Civil Code, and the Code of Commerce.

The Shipmaster must comply with those rules. On board a NL ship the Seafarer Employment Agreement exists between the ship manager/ 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 port 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.

Other rules

Besides international and national law the Shipmaster must deal with instructions and regulations of the ship manager, marine classification organisations or insurance companies (P&I Clubs).

Those rules do not come from a government, but from private companies. These can also be shipsmanager' or charterer's circulars or directives.

However, these circulars, instructions, and guidelines from the ship manager or other private companies, may never adverse the laws and regulations of the government.

The Shipmaster needs a good reason not to comply with rules of the ship manager and other private companies. See also Chapter 10 of this Handbook for the overriding authority and discretion of the Shipmaster.

The Shipmaster plays a significant role in ensuring compliance with the legal rules on board. Sometimes, he must enforce the legal rules on board. The Shipmaster should follow international and national regulations, but also the instructions and guidelines from the ship-owner, charterer and insurance companies. When some of these rules are adversary or mutually contradictory, the Shipmaster should contact the shipowner and seek legal advice.

Shipmaster's Rules



Figure 9. An overview of rules the Shipmaster should consider

3.3. Summary Shipmaster

The Shipmaster:

- complies with international regulations as well as the national laws of the flag state and of the coastal states in whose waters he sails.
- can consult the relevant provisions arising from IMO and ILO conventions, as transposed into national law by each country.
- is aware that information on international and national regulations is available from the shipowner or from reliable online sources.
- may use internet if the valid legislation is available there.

Chapter 4 Enforcement

4.1. Introduction

All countries have the right to enforce their own 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 various national legislations.

The national Public Prosecution Service is engaged with criminal investigation.

Ministries or Departments concentrate more on supervision or control. On board supervision and control is mainly executed by the Maritime Authority, the Shipping Inspectorate or the Shipmaster.

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.

4.1.1. Enforcement

Public international law is hardly ever enforced because there is no central international police force. A state's investigating officers are responsible for enforcing their own national laws and regulations. In maritime law there are many agreements between the states because it is almost entirely based on the maritime treaties.

States can, however, submit a difference of opinion to an international tribunal, such as the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, for disputes arising from the UN Convention on the Law of the Sea.

For the enforcement of private international law, such as damage or insurance claims, parties can choose which national court they will submit their dispute to.

International treaties often contain a provision on how to resolve any conflicts. Furthermore, this is not very relevant for the Shipmaster, who must mainly observe the law of his flag state and possibly the coastal state in which he is located.

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. 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.

Often, authorities have general and specific enforcement instruments to make the Shipmaster or ship manager comply with the law, including powers to stop and seize a ship.

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.

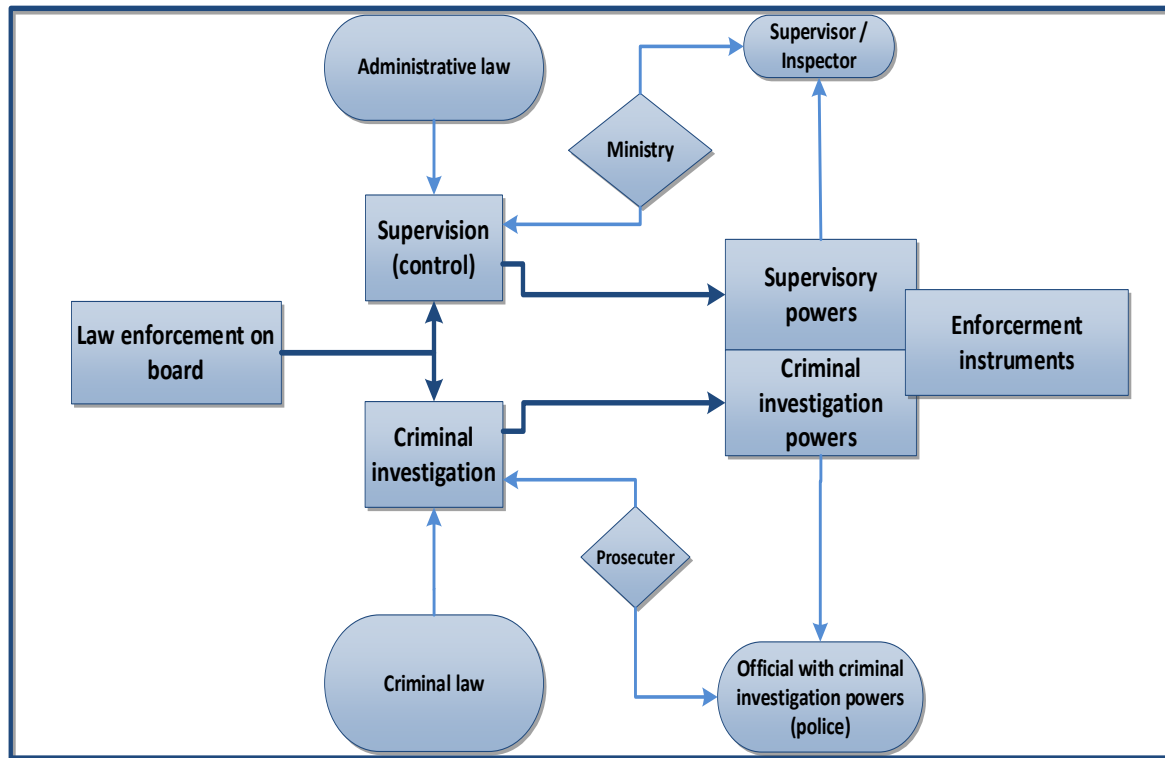


Figure 10. Enforcement structure (supervision/criminal investigation)

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

Table 5. Differences between supervision and criminal investigation

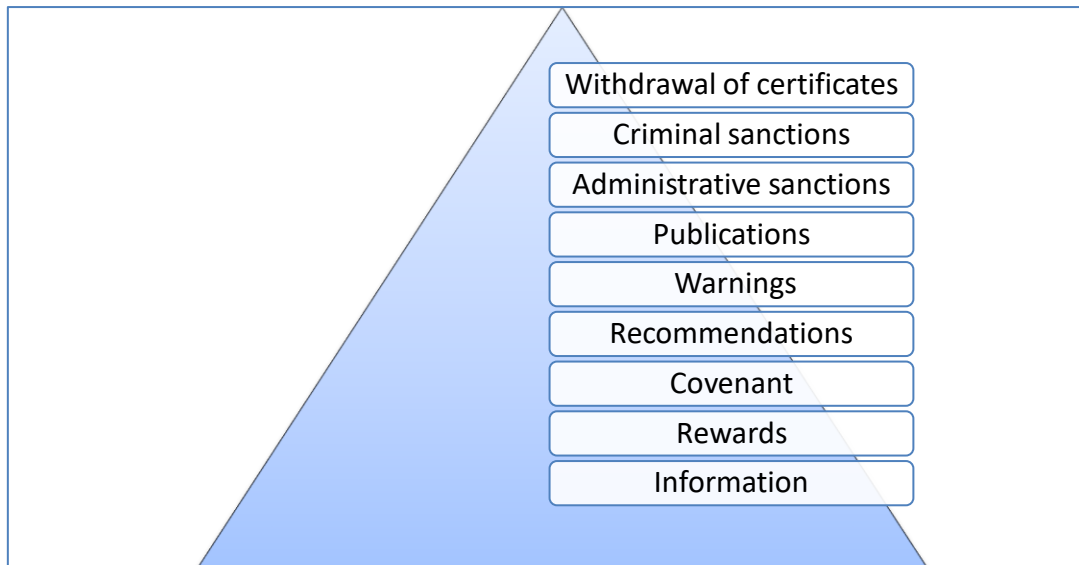


Figure 11. Hierarchy of enforcing/intervening instruments

4.2. Supervision (control)

Supervision (control or inspection) is aimed at influencing the behaviour of supervised Shipmasters or ship managers. 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, Act Manning Seagoing Vessels, 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. Even 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 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 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 ship manager 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 the Shipmaster leaves port without correct certificates, the authorities may stop the ship, in accordance with the local administrative law (based upon international agreements).

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

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 flagstate 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.

4.2.1. 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 contains 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 regulations 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.

4.2.2. 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. 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 must 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. Vessels flying a foreign flag must comply with international rules and regulations such as SOLAS, MARPOL, STCW and MLC.

4.2.3. 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 Act Manning Seagoing Vessels 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.

4.2.4. Shipmaster's protection under administrative law

In the Netherlands, 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 ship manager 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 (ship manager) is laid down in administrative law. In other countries 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 consists 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 ship manager 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, as 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 before.

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

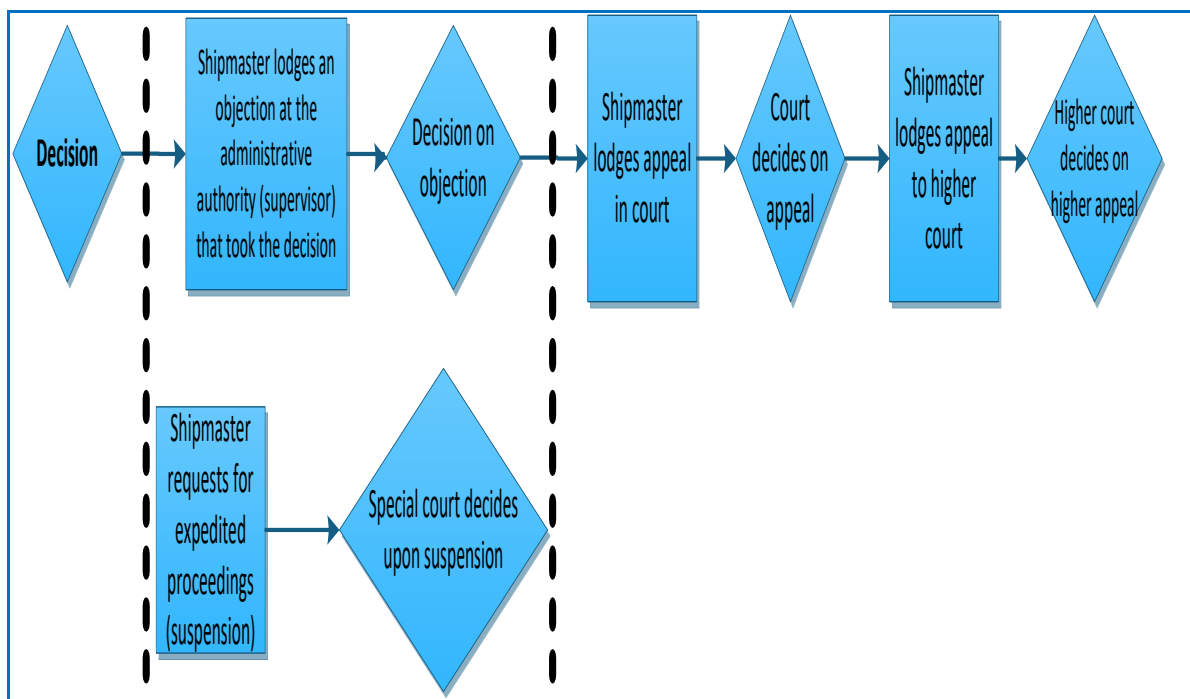


Figure 12. Objection and appeals, including expedited proceedings (NL)

4.3. 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 country is responsible for investigating the case

and presenting it in court. This section describes the main topics of criminal law in general. Chapter 20 of this Handbook describes in detail the criminal investigation on board a vessel from the point of view of the Shipmaster. 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 a criminal offence has been committed.

Criminal investigation versus Supervision

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

4.3.1 Concepts

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 must account for their actions to the 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. See Chapter 20 of this Handbook.

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.

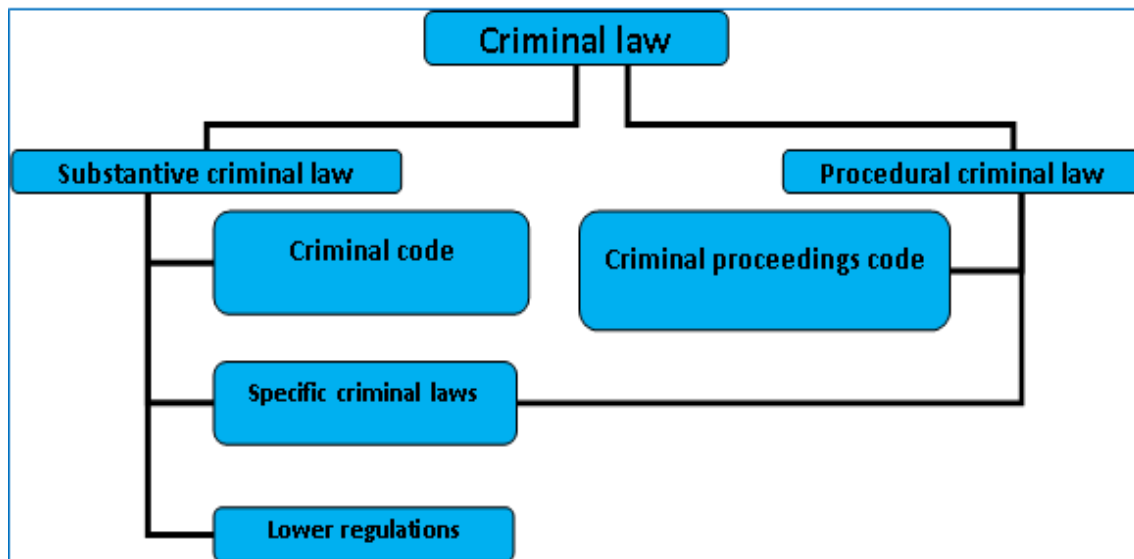


Figure 13. Breakdown of criminal law.

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. National 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.

Criminal 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).

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.

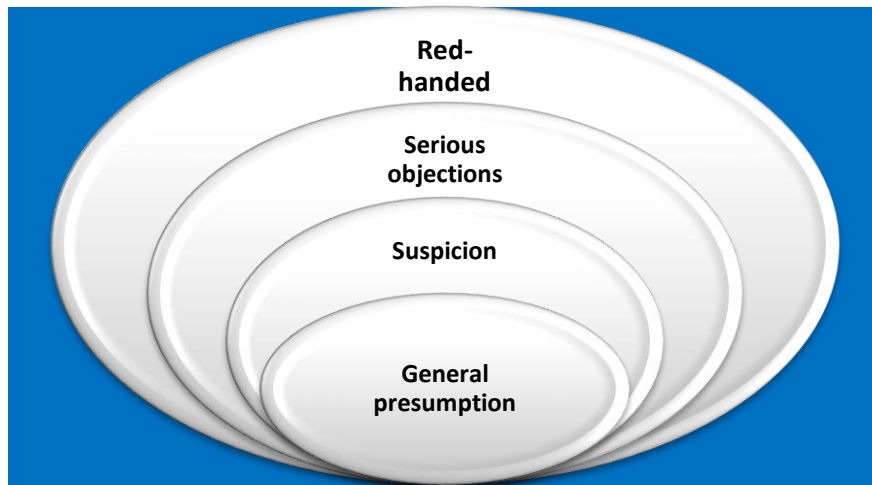


Figure 14. From general presumption to red-handed.

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

Table 6. Information penal law

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 must 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 the jurisdiction of common law countries. 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 must 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 Chapter 20 of this Handbook.

4.3.2 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 a policeman in person.

4.3.3 Prosecution and trial

The Public Prosecution Service and the courts together make up the judiciary. The Public Prosecution Service decides who must 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 port, 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.

4.4. Summary Shipmaster

The Shipmaster:

- must comply with all regulations and legal requirements related to criminal law.
- must in case of any uncertainty consult the ship manager or a maritime lawyer.
- must understand the legal definition of a suspect and to be aware of the rights applicable to the use of coercive measures. If clarification is needed, the shipowner can assist in establishing contact with the national prosecutor.
- is required to adhere to the national laws and regulations of the flag state, as well as those of the coastal state where the vessel is located.
- is often, in the absence of a clear suspect, regarded as the primary person under suspicion on board. This may occur in cases involving the discovery of illicit drugs, human trafficking, or oil pollution when no direct perpetrator can be identified.
- may become a suspect. Then it is strongly advised to seek legal counsel, proceed with caution during questioning, and avoid signing confessions or statements without legal content.
- must prevent that breaches of regulations concerning the control of mandatory certificates may result in criminal proceedings, particularly if the Shipmaster is found to have acted intentionally or negligently.

The Shipmaster must check the criminal law of his flagstate to find out the important requirements, but the law of the coastal state he is in as well.

Chapter 5 Accountable/liable/responsible

5.1. Introduction

Legislation frequently declares that the Shipmaster is accountable, liable, or responsible for his conduct and its results. What exactly does "liable," "accountable," and "responsible" entail in terms of the Shipmaster as an individual? These phrases can be found in both international and domestic law, as well as in contracts and agreements.

Definitions and concise descriptions of accountability, liability, and responsibility are provided here, along with an explanation of how these terms relate to the Shipmaster's daily routine.

It is important for the Shipmaster to know the correct definitions. This Handbook provides clear, concise, and helpful definitions of these terms, although it may not always be legally perfect for every legislation.

5.2. Accountability

Accountability encompasses both internal and external aspects within organizations, institutes, and individuals. For instance, a Shipmaster is internally accountable to the ship manager, and elected politicians are externally accountable to their electorate or voters.

When we say that a Shipmaster is accountable to someone, it means they have a responsibility to provide certain information or actions to that person or entity.

Accountability for a Shipmaster entails several components, including the obligation to record and report their activities, assuming responsibility for their actions, and maintaining transparency in disclosing the outcomes of their decisions.

It also encompasses the Shipmaster's duty towards his crew and the protection of the ship and other entrusted assets.

For example, a Shipmaster is accountable for his conduct and can be asked to provide justification for his professional decisions. The standards against which the Shipmaster's accountability is assessed align with the normative principles of his profession, such as adhering to the principles of good seamanship.

5.3. Liability

Liability mainly originates from private law or contracts and is often based upon financial claims of damages. It is an obligation that legally binds an individual, such as the Shipmaster, or a company, such as the ship manager, to settle a debt.

When the Shipmaster is liable, he is often responsible for settling a debt or making amends for any misconduct.

The main rule about liability is the fact that the person causing the damage will pay.

Liability often has legal and financial aspects:

- 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.

5.3.1. Liability risk

One relevant form of liability is liability risk. This is the risk of being held liable for an action, if the person is at fault, that has resulted in damage or loss.

Liability risk can be free of guilt, which means having done something wrong.

If a risk materialises, the person at fault becomes directly liable and accountable. See for risks the next chapter. Due diligence plays an important role. If the Shipmaster can prove that he took his responsibilities seriously and made adequate attempts to prevent the risk from occurring, he may reduce the risk of liability.

For the Shipmaster, exercising due diligence means ensuring that the ship is seaworthy, properly manned, equipped and supplied, and properly preparing the holds and other parts of the ship for the reception of cargo. Another example of due diligence is when the Shipmaster strictly follows the SMS, to prevent claims.

In short, following laws and regulations and the instructions and guidelines of the shipowner, charterer and P&I Club(s) may reduce the Shipmaster's risk of liability.

5.4. Responsibility

Responsibilities are defined as being responsible, to be liable, to be required to give account for one's actions or behaviour. Also defined as the discharge of a duty or task. Responsibility of the Shipmaster is the obligation to carry out his tasks to a safe and successful voyage, including the authority to direct and take the necessary actions to ensure this achievement.

This Section will describe the responsibilities of the Shipmaster. More specifically, the statutory and commercial responsibilities. Responsibility is the obligation of the Shipmaster to perform adequately or complete his tasks, which has a consequential penalty for failure.

The Shipmaster's responsibility means the duty or task that he is required or expected to fulfil.

A relationship exists between the Shipmaster, who holds a position of responsibility, and the ship manager, to whom he is responsible. Various types of responsibility can be identified within this dynamic, including:

- **Financial Responsibility:** This pertains to decisions related to spending money and managing the financial aspects of the ship's operations. The Shipmaster may have financial responsibilities in terms of budgeting and expenditure.
- **Process Responsibility:** Process responsibility involves the execution of tasks and procedures necessary for the smooth operation of the ship. The Shipmaster is responsible for ensuring that these processes are carried out effectively and efficiently.
- **Policy Responsibility:** This responsibility is concerned with the effectiveness and efficiency of the execution of policies onboard. The Shipmaster plays a role in ensuring that policies are implemented correctly and achieve their intended outcomes.
- **Hierarchy Responsibility:** The Shipmaster occupies a position within the hierarchy of the ship's management structure. He is accountable to the ship manager, who is positioned higher in the organizational hierarchy. This hierarchical responsibility involves reporting, decision-making, and compliance with directives from higher authorities.

Each type of responsibility contributes to the effective and efficient operation of the ship.

A Shipmaster is responsible to the ship manager in various ways.

5.4.1. Statutory/commercial responsibilities

Statutory responsibilities

Statutory refers to something related to or determined by statutes or other legal requirements. The Shipmaster is subject to a number of legal obligations, many of which are connected to the legal obligations he has been given. Statutory duty is the act of adhering to the laws and regulations of the flag state or coastal state the Shipmaster is in as well as domestic laws of that state. The authorities of the flag state or those of the coastal state he is in are those to which the Shipmaster is accountable. It might be crucial for the Shipmaster to understand who is responsible for fulfilling statutory obligations and who is taking the risk of failing to do so.

The Shipmaster's statutory responsibilities are those responsibilities imposed by laws and regulations.

The statutory responsibilities of the Shipmaster cannot be transferred to other persons on board. The Shipmaster stays responsible. Here are some examples of the Shipmaster's statutory responsibilities:

- **Safe and Secure Operations of the Ship:** The Shipmaster is responsible for ensuring that the ship operates safely and securely, which includes navigation, handling, and overall ship management to prevent accidents or incidents.
- **Safety and Wellbeing of Everyone on Board:** The Shipmaster must prioritize the safety and wellbeing of all individuals on board the ship, including crew members, passengers, and any other personnel.
- **Safety of Cargo:** Ensuring the safe stowage, handling, and transportation of cargo is a crucial responsibility. This includes proper documentation, securing cargo, and compliance with regulations related to hazardous materials if applicable.
- **Prevention of Marine Pollution:** The Shipmaster is obligated to take measures to prevent marine pollution, including following environmental regulations, managing waste disposal, and ensuring compliance with anti-pollution measures.
- **Command and Control of the Ship:** The Shipmaster has command and control over the ship, making decisions related to navigation, course adjustments, and emergency responses to maintain the ship's safety and operation.

- **Obeying Laws and Regulations:** It is essential for the Shipmaster to adhere to all applicable laws and regulations, both national and international, governing maritime operations, safety, and environmental protection.
- **Monitoring the Status of Machinery and Equipment:** Regular monitoring and maintenance of the ship's machinery and equipment are vital to ensure they are in proper working condition, minimizing the risk of breakdowns or accidents.

These statutory responsibilities collectively contribute to the safe and lawful operation of the ship, protection of the environment, and the welfare of those on board. The Shipmaster plays a critical role in upholding these obligations.

Commercial responsibilities

The Shipmaster, as the shipowner's or charterer's representative, is responsible for ensuring that the contracts of carriage of goods by sea or the charterparty are followed. However, the standards of international instruments such as the The Hague-Visby Rules or the Hamburg Rules must also be met. In other words, the Shipmaster's commercial responsibilities are derived from agreements and contracts that specify and define their obligations and responsibilities.

5.5. Limits on liability, accountability, responsibility

There are restrictions on liability, accountability, and responsibility that are outlined in contracts, national laws, and international agreements, as well as on the liability of the Shipmaster and shipowner.

An illustration of this is the International Convention on Limitation of Liability for Maritime Claims (LLMC), limiting the shipowner's and the Shipmaster's legal obligations. The concept of liability limitation is a component of maritime law in many nations.

Shipmaster's liabilities are often limited, and he is not always fully responsible and liable for everything on board. Sharing liabilities, and degrees of liability or responsibility, are possible as well.

The Shipmaster is not always responsible for everything, on board. He might delegate 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 only responsible unless this cannot reasonably be expected.

5.5.1. Misbehaviour seafarers

The Shipmaster or shipowner is not always responsible for the misbehaviour of the crew or third parties, especially when this conduct stems from an intent to cause damage or is a result of 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.

If the Shipmaster proves that the pollution damage resulted from an act or omission made with intent or from negligence by a seafarer, the Shipmaster may be legally pardoned from his liability.

In this case, a shared responsibility or being responsible in part is also possible.

The Shipmaster should know his liabilities, accountabilities and responsibilities in the operation of the ship.
He should contact the shipowner or a specialised lawyer if he wants some guidance on a specific case.

5.6. Summary Shipmaster

The Shipmaster:

- must follow and apply all relevant laws, regulations, codes and guidelines.
- is aware that definitions and legal terms may vary by country or by contract.
- contacts the shipowner, shipper or charterer if anything is unclear.
- has important responsibilities in protecting the crew, the ship, the cargo, and the marine environment.
- ensures an efficient and safe voyage.
- serves also the shipowner's interests.
- strictly follows legal procedures when performing his duties.
- ensures proper handling and security of the cargo.
- is aware of his responsibilities, limitations, and liabilities when operating the ship.

Chapter 6 Risks

6.1. Introduction

This chapter deals with risks of the Shipmaster. Legal and commercial aspects are discussed from the perspective of the Shipmaster, who is also the representative of the ship manager or charterer.

Risk is the combination of the likelihood of an accident occurring on board and the consequences such as loss or damage.

When transporting cargo by sea, the Shipmaster takes on many risks. Ships and cargo may be damaged or lost, with serious economic consequences for owners and charterers, but there is also the risk of personal injury to seafarers.

The ocean offers many opportunities to transport goods, but transport also carries many risks. Some of these risks are beyond the Shipmaster's control, such as economic uncertainties. There may be other risks within the Shipmaster's control, such as:

- Severe weather such as hurricanes or typhoons.
- Poor navigation.
- Piracy or terrorism.
- Cybercrime.
- Human or technical failure.
- Pandemic.

The occurring of incidents and the consequences of it may be mitigated or minimised by the Shipmaster.

Hurricanes and piracy may be avoided by sailing another course, while poor navigation can be prevented by additional training for the crew.

Avoiding all risks is not possible, but the Shipmaster should do what is necessary to reduce risks to an acceptable level.

So, the Shipmaster should deal with many risks and the consequences of it. He should manage, assess and analyse all risks and their consequences.

6.2. Risks

Risk is a chance that the outcome differs from what the Shipmaster expected. Risks on board often refers to possible negative impact and consequences of a marine incident or Shipmaster's decision. Risk can be defined as the combination of the frequency a hazard occurs and the severity of the consequences.

Risk = Frequency of Hazard x Severity of Consequences

IMO defines risk as 'the combination of the frequency and the severity of the consequence'. Here the frequency is 'the number of occurrences per unit time (e.g. per year)' and consequence is 'the outcome of an accident'.

Risks should be managed by the Shipmaster.

On board, the Shipmaster is responsible for the decisions and measures to mitigate and reduce risks.

The Shipmaster is concerned with determining hazards and what should be done to prevent occurring of those hazards without too many obstructions or delay for the ship's operations. Risk can be divided in statutory and commercial risks.

6.2.1. Contractual and statutory risks

Statutory risks are risks connected with the law, so legal risks. Those risks may relate to the legal duties the Shipmaster has to fulfil. Legal risks include risks concerning international law, national law, but also the obligations deriving from a shipping contract, such as a charterparty in all its phases, including the legal claims. Legal risks may come from international agreements, such as SOLAS and MARPOL, but also from national legislations. Consequences of non-compliance may include penalties, withdrawal of certificates or even not allowing the ship to leave port. It is the national competent authority which executes its supervision or inspections, such as flag state control or port state control. Legal risks may also come from the The Hague Rules, the The Hague-Visby Rules or the Hamburg Rules. Those rules are not mandatory for the shipowner, charterer of shipper, but they are often used in charterparties. Especially the The Hague Rules because those rules have a lower limitation for claims. The The Hague Rules neither have a third-party limitation.

Legal risks may come from national civil law or contracts as well, such as a breach of the charterparty caused by the Shipmaster or the so-called tort or wrongful act.

A breach of a shipping contract, such as the charterparty, may cause damage or loss to ship or cargo resulting into a financial claim from the shipper to the shipowner.

Tort is a civil wrongful act or behaviour, wilful or negligent and other than the breach of contract mentioned here before. This wrongful act or behaviour may have caused injury, damage or loss of property, reputation or commercial interests. Fault or blame of the wrongdoer is not always necessary, strict liability may suffice. The injured party may be entitled to compensation.

This type of liability may concern harm to stevedores, pilots or visitors caused by the negligence of the Shipmaster or seafarers. Statutory risks may end up into commercial risks, so financial loss.

6.2.2. Commercial risks

Commercial risks are risks based upon financial loss or commercial interests. The Shipmaster may be involved in commercial risks because these risks may be the result of wrong behaviour of the Shipmaster.

The Shipmaster frequently is the representative of the shipowner and charterer. In that way he may be involved in these risks or even in the resulting claims.

Within the Shipmaster's purview are various commercial interests:

- If the Shipmaster is tardy in performing his legal obligations, profits may be in jeopardy.
- Incidents involving third parties are possible, including collisions, accidents involving property damage, and injuries caused by subpar ship operations.
- Marine environment pollution as defined by MARPOL or national laws of flag and coastal states.
- Damage and loss include:
 - Normal or challenging shipping operations could cause harm to seafarers.
 - Due to inefficient shipping practices, ship's cargo and bunkers may be damaged or lost.

6.2.3. Risk of civil liabilities

The Shipmaster can become subject to civil liabilities, when executing his duties and tasks incorrectly, such as:

- Breaching his contractual responsibilities to the shipowner or charterer he may be prosecuted in contract, making him accountable for costs;
- Exceeding his authority or handling without any authority, while causing loss or damage to the ship manager;
- Being legally responsible in tort for multiple civil violations claimed to have been done to third parties;

Shipmaster's dismissal

A significant risk for the Shipmaster may be dismissal by his employer, due to civil liability. This depends however under which national law the Sea-Employment-Agreement has been made up.

The Shipmaster's employer has the common and general rights to terminate the Shipmaster's in his function as commander of a ship. This does not always automatically include the termination of the Sea-Employment-Agreement of the Shipmaster.

The following are possible grounds for dismissal of the Shipmaster, depending on the relevant national laws and regulations:

- Serious wrongdoing or flagrant negligence on the part of the Shipmaster.
- Ruling by a court.
- Shipmaster's competency certificate being suspended.
- Use of certificates fraudulently.
- Committing offenses.
- Drunkenness or immoral behaviour.

6.3. Risk Process

In many countries the terminology about risks is ambiguous and not always the same. For this book the next terminology applies:

- **Risk management** is a process, controlled by the Shipmaster on macro-level, such as identifying, assessing, analysing, prioritizing and producing a policy to mitigate the threats.
- **Risk assessment** is a process on meso-level within the risk management.

The purpose of a risk assessment is to ensure that a ship is safe to work in, and all seafarers are appropriately protected from hazards. The process of a risk assessment involves firstly identifying hazards on board, and then subsequently implementing control measures;

- **Risk analysis** is a process on micro-level where separate risks and the impacts are measured.

This process takes place onboard; the ship manager may have a different system for the rest of the company ashore. The Shipmaster should oversee that all risks are properly assessed and addressed according to the ISM-Code, including safe ship operations and a safe working environment. The Shipmaster should oversee the establishment of appropriate safeguards, and the continuous improvement of safety management skills of personnel aboard his ship.

Risk assessment is considered the whole process where all types of risks are identified.
Risk analysis is a step within risk assessment, where each risk level is defined.
Both are components within the larger whole known as risk management.

Risk management is not always required by law in every country, often it has been made obligatory by insurance companies or the ship manager. Only cyber risk management has been regulated by the IMO. An IMO-Resolution is applicable to all vessels, requiring ships to include cyber risk management in their safety management systems (SMS), in accordance with the International Safety Management Code (ISM-Code). This IMO-Resolution further encourages flag states to ensure that ship owners and managers are properly addressing cyber risks. IMO- Guidelines on maritime cyber risk management are available as well. This Handbook tries to stick with the terminology of the IMO and other big institutes in shipping.

6.4. Risk management

Compliance with risk management for the Shipmaster is the process of identifying, assessing, and mitigating the risks associated with non-compliance with laws, regulations, contracts, sanctions, and standards that apply on board.

These risks stem from a variety of sources, including legal liabilities, human errors, technology issues, accidents and natural disasters.

A successful risk management program helps the Shipmaster to consider the full range of risks he faces. Risk management also examines the relationship between risks and the cascading impact they could have on board.

To minimize the risks on board, the Shipmaster should implement a good risk management and risk assessment per voyage, followed by a risk analyses per danger or cargo. He should do so together with the shipowner.

A definition of risk management is: 'The process whereby choices are made to accept a risk and the implementation of measures to lower the effects of the peril.'

The Shipmaster should:

1. Be aware of any standard risk on board the ship, however the Shipmaster should also identify additional risks that are specific to the voyage or cargo.
2. Analyse and prioritize all risks.
3. Take preventive or mitigating measures. It is the decision of the Shipmaster whether these measures will interfere with his operations.
4. Monitor and evaluate the effects of the mitigating measures.



Figure 15. A risk management breakdown

The following may be helpful for the Shipmaster's risk management:

- Comply with all laws and regulations, including guidelines and instructions;
- Familiarisation of the contents and clauses of the H&M and P&I insurance policies the shipowner has in place and of the associated requirements from the charterparties, bills of lading and manifests.
- Conduct proper actions at accidents;
- Guard the seaworthiness;
- Bill of Lading liability, due to wrong entries;
- Release of cargo to correct consignee;

- Oversee the cargo during the voyage;
- Tallying the cargo;
- Take right measures and notify the correct authorities at an oil spill.

Example

The IMO gives the following risk management framework for cybercrime, which can be used by the Shipmaster in general as well:

- **Identify:** Define personnel roles and responsibilities for risk management and identify the systems, assets, data and capabilities that, when disrupted, pose risks to ship operations.
- **Protect:** Implement risk control processes and measures, and contingency planning to protect against a peril of the sea ensure continuity of shipping operations.
- **Detect:** Develop and implement activities necessary to detect a danger in a timely manner.
- **Respond:** Develop and implement activities and plans to provide resilience and to restore shipping operations or services impaired due to a danger.
- **Recover:** Identify measures to back-up and restore systems necessary for shipping operations impacted by a danger.

The Shipmaster is responsible for the complete process of risk management. He may delegate this to other seafarers, such as his SSO, in the area of safety.

The shipowner should supply the Shipmaster with the necessary instruments, analogue to the SMS and SSP for other issues.



Figure 16. Lay-out of risk management

6.5. Risk assessment

Risk assessment is considered the whole process where all types of risks are identified.

It is a careful examination of what could cause harm to persons on board, so that the Shipmaster can weigh up whether he has taken enough precautions or should do more to prevent harm. The Shipmaster should recognize, evaluate and mitigate all foreseeable risks, also called risk management. The Shipmaster should carry out an assessment into risks threatening his ship, cargo, marine environment and persons on board.



Figure 17. A risk assessment process

Risks can be identified by the Shipmaster and his crew by sitting down and discuss the possible risks related with the upcoming voyage. They also take in consideration the likelihood, severity and consequences of the risks.

**Risk assessment is a procedure to prevent maritime accidents.
It is based on the common sense of the Shipmaster and his crew.**

The ISM Code states that an objective of the shipowner is to asses all identified risks on board. The shipowner may choose the avenues and instruments to do so. The Shipmaster should fulfil the results of a risk assessment on board.

The Shipmaster should oversee the process whereby decisions are made to accept an identified risk, to mitigate the consequences and/or the possibility to happen.

6.6. Risk analysis

Risk analysis is a proven way of identifying and assessing factors that could negatively affect ship operations. It allows the Shipmaster to examine specific risks that his ship and crew face and helps him to decide whether to move forward with a decision or measure.

There are two main risk analysis methods. The easier and more convenient method is qualitative risk analysis. The other method is called the quantitative risk analysis. Both methods will be described.

6.6.1. Quality analysis

Qualitative risk analysis rates or scores risk based on the perception of the severity and likelihood of its consequences. It is a subjective risk analysis technique, as the name implies. The qualitative risk analysis process always preceded the quantitative risk analysis process.

Many ship managers prefer the qualitative risk analysis method because the qualitative approach is easy to follow and useful for subject on board. While the quantitative approach requires mathematical calculation and is resource and time intensive. In the qualitative risk assessment process, potential risks are rated according to how serious and likely they are to impact various stakeholders. This process aims to generate a list of prioritized risks to focus on and increases the understanding of risks. In qualitative risk analysis, the Shipmaster will examine risks for severity and likelihood of occurrence during the project. Afterward, he will find the risk ratings using the risk assessment matrix. The risk rating can be high, serious, medium, and low.

6.6.2. Quantitative analysis

Quantitative risk analysis, on the other hand, calculates risk based on available data. The quantitative risk analysis process is objective because it uses mathematical calculations.

Calculating risk using objective data is known as quantitative risk analysis. During this process, the Shipmaster will use verifiable data to examine the potential impact of risks on your project objectives, such as schedule baseline, cost baseline, scope baseline, etc. After performing a qualitative risk analysis, the quantitative risk analysis process is carried out.

Ship managers utilize this procedure for significant and complicated initiatives since it demands resources and time.

6.7. Mitigation of risks

A stage in the risk management process is risk minimization. Assessing and analysing potential dangers is not enough; the Shipmaster must also take action to address these risks. The Shipmaster may explore a variety of risk mitigation measures, including risk avoidance and risk reduction. The goal of risk avoidance is to remove a specific risk rather than reduce the impact it may have on board. Another method of risk mitigation is risk reduction, which involves lowering the likelihood that a risk will occur. Another approach is to reduce the severity of the risk's repercussions by implementing checks and controls.

6.7.1 Mitigation of statutory risks

Risk reduction is one of the Shipmaster's main responsibilities, if he complies with all applicable laws and rules. This behaviour could reduce or even get rid of the legal risks.

The Shipmaster should not break the law; this will reduce risks and avoid receiving fines or other punishments.

In making decisions about security and marine pollution, the Shipmaster has the final say. See Chapter 10 of this Handbook. The shipowner ought to assist the Shipmaster in adhering to the rules and regulations. The ship manager should not press or compel the Shipmaster for pure profit reasons putting the legal safety and pollution requirements at stake.

By performing good seamanship, the Shipmaster will mitigate several legal risks including its consequences.

6.7.2. Mitigation of commercial risks

The Shipmaster has some control over reducing commercial risks, but as the shipowner or charterer's representative, he may have a big impact. There are numerous strategies for reducing commercial risks, such as:

- Adhere to the guidelines, charterparty, laws and regulations.
- Oversee the seaworthiness of the vessel.
- Oversee proper stowage and lashing of the cargo.
- Prevention through the Shipmaster's professional conduct and prudent seamanship.
- Protection from business risks insurance.
- Salvage is the last resort for minimizing loss or damage.

6.7.3. RI&E

The ship manager, but also the Shipmaster on board, is obliged under the NL Working Conditions Act to ensure that the seafarers can do their work under healthy and safe conditions.

To achieve this, the Working Conditions Act contains a number of rules, including the drawing up of a so-called risk inventory and evaluation (RI&E). There is a Sector RI&E for Dutch ships. This has been officially recognised. This Sector RI&E is intended for so-called general cargo ships and is therefore suitable for the most common ship types. Having a good RI&E is also legal necessity due to the Maritime Labor Convention (MLC). The reason for this is that one of the components of the mandatory certification based on the MLC is “Health and safety and accident prevention”. A recently and adequately performed RI&E can largely cover this part of the MLC obligations. The RI&E is an instrument of the Shipmaster to systematically identify and quantify the hazards, risk factors and risks of work for seafarers. In addition, the RI&E serves as a dynamic tool to manage the risks with mitigating measures.

In particular, the following three aspects are considered:

- safety;
- health;
- psychosocial workload (opposite of well-being).

RI&E step-by-step plan

The RI&E is an instrument for the Shipmaster. He can get started with the following step-by-step plan:

1. Inventory

- What are the risks on board?
- All risks in one list.

2. Evaluation

- How big is the risk?
- Sort risks: the most important at the top.

3. Action Plan

- How will the Shipmaster handle the risks?
- Who does what, and when?

4. Testing the RI&E

- Does the RI&E comply with the guidelines according to the law?

- A Sector RI&E does not require testing

5. Get started

- Plan of Action at hand and updated as soon as actions have been completed.

6.8. Negligence

Negligence might be a relevant part of risk management on board. The Shipmaster should recognize negligence as a potential cause for an incident, including his own negligence. Multiple forms of negligence exist, such as ordinary negligence (further: negligence) and gross negligence. The Shipmaster should be aware that these terms may be differently used in the flag state legislation of his ship. Negligence is a failure to behave at the normal (standard) level of seamanship as the Shipmaster of ordinary prudence would have exercised under the same circumstances. Careless is a synonym, implying inattention to the duty of the Shipmaster. Negligence is the state of being negligent. Negligence or careless is opposed to deliberate or intentional. Negligence is not an intentional act. Negligence is the failure to behave normally, which typically entails actions but can also involve omissions when there is a duty to act.

Negligence can be found in a variety of forms:

- The Shipmaster's obligation.
- Violation of this duty;
- Inflicting harm on a third party.

When performing his duties carelessly, the Shipmaster is responsible. The Shipmaster is not liable for negligence if he manages his ship with reasonable care and keeps track of all rules and specifications from pertinent legislation. It is necessary to prove negligence. Any damage brought on by the Shipmaster's or a sailor's carelessness is his responsibility.

The Shipmaster is responsible for doing or not-doing what a 'reasonable Shipmaster would have done under the same conditions.'

The Shipmaster can prevent negligence by carrying out his duties in a proper and lawful manner, which means no breaking of rules and regulations or causing harm to another party. When performing his duties, the Shipmaster should exercise reasonable caution. Finally, the Shipmaster must persuade the shipowner or even the judge that he has taken all essential

precautions. Gross negligence is a lack of care that demonstrates reckless disregard for the safety or lives on board, which is so great it appears to be a conscious violation of other persons' rights to safety. Gross negligence is a heightened degree of negligence representing an extreme departure from the ordinary standard of seamanship. Gross negligence can also be defined as wilful, wanton or reckless. Gross negligence is more harmful than ordinary negligence.



Figure 18. Negligence in context

6.8.1. Negligence under international law

Some international maritime agreements deal with the subject negligence. This should be transferred into national law. Some examples of negligence in international maritime agreements will be described.

MARPOL

MARPOL makes a difference between deliberate, negligent or accidental oil spill. Intentional and recklessly pollution must be eliminated. Negligent oil spills are not always punishable.

The Hague-Visby Rules

The term negligence appears in international agreements, such as the The Hague-Visby Rules & the The Hague Rules as Amended by the Brussels Protocol 1968.

Article IV section 2 reads:

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

Act, neglect, or default of the Shipmaster, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

International Convention on Salvage

Article 14.5 clearly mentions the negligence of the salvor:

If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

Negligence in charterparty

Some charterparty provisions protect the Shipmaster against charterer claims unless the damage or loss was caused by the Shipmaster's careless act or omission.

A negligence clause in a charterparty may contain the Shipmaster's obligation for loss or damage caused by the Shipmaster's act, default, or neglect in the navigation or manoeuvring of a ship.

6.8.2. Negligence under national law

Negligence can be found in national penal/criminal law and or private/civil law. However, national laws may vary per country on this subject.

Criminal law

Criminal negligence is behaviour where the Shipmaster ignores a clear risk or neglects the safety of other seafarers, ship, cargo and marine environment. This can be seen as a form of recklessness.

The Shipmaster may receive a fine or other penalty from the judge.

A negligent Shipmaster acts significantly different than most Shipmasters would in comparable situations.

Civil/private law

Under civil law the claim to compensate harm is the focus. The Shipmaster who suffers loss caused by the shipowner's negligence may be able to sue the shipowner to compensate for his damage.

This damage may be physical injury, damage to property, psychiatric illness, or economic loss.

Insurance

Negligence is a term used by insurers (H&M or P&I) to describe reckless behaviour (or an extremely illogical action) resulting in damage or injury. In the event of negligence, insurers often conclude that they have not acted in a way that a reasonable person would have done if faced with the same situation.

The result is damage that must be compensated.

The Shipmaster is responsible for his actions or omissions compared to what an average Shipmaster would have done under the same circumstances.

Negligence is not always covered by insurance. Insurers often choose to view and handle these types of cases on a case-by-case basis. Do you want to prevent your claim from being rejected due to carelessness or oversight? Then this must be clearly arranged in advance.

6.9. Summary Shipmaster

The Shipmaster:

- must perform risk management, risk assessment, and risk analysis to control the numerous risks that arise during ship operations.
- may receive the necessary tools from the shipowner. Or the shipowner may provide the outcomes of such a risk assessment.
- should avoid or lessen risks or their effects, which can be done in most cases by abiding by all applicable laws and rules.
- significantly lowers his commercial risks and obligations by abiding by all shipping contracts.
- and the ship manager should both be aware of the whole risk management process on board.

Chapter 7 Legal maritime subjects

7.1. Introduction

The Shipmaster has a vital task and responsibility regarding the safety and security of his ship. The IMO International Safety Management Code (ISM-Code) provides an international standard for the safe management and operation of ships and for pollution prevention. The ISM Code constitutes safety management objectives and requires a safety management system (SMS) to be established by the shipowner. For maritime security, the IMO International Ship and Port Facility Security Code (ISPS-Code) also provide an international set of rules for the security of ships and harbour complexes. In the ISPS-Code, the Shipmaster can find a variety of provisions and instruments to keep his ship secure. In some areas the ISM and the ISPS are intertwined, in other areas safety and security are strictly separated. The Shipmaster should be aware that both come from the safety convention SOLAS. See Chapter 24 and 25 for ISM and ISPS.

This chapter is about some major issues which may influence the safety and security on board. Firstly, the most relevant legal issues that may compromise the security or safety of the ship are explained.

This all from the legal point of view of the Shipmaster. This chapter focuses on some relevant legal maritime subjects, amongst which maritime crimes, are described. These subjects have relevance for the Shipmaster because he must 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 20) the position of the Shipmaster will be explained from the point of view of criminal law, including the rights and obligations of the Shipmaster.

7.2 Migrants, refugees, asylum seekers etc.

First the definitions will be written down, however not every country uses the same terms and definitions.

The Shipmaster must check the national laws and regulations of his flagstate or/and the coastal state he is in.

7.2.1 Migrant

The term migrant is rather general and neutral. A legal definition does not exist. Migrants are often divided into economic migrants and genuine refugees. All those persons have left their countries, often by sea in substandard and dangerous boats. A migrant is a person leaving his country because he wants a better life, work or study. Often, a migrant leaves his country because of poverty, disasters or unrest. A migrant is not always a refugee or asylum-seeker.

Economic migrant

An economic migrant is someone who emigrates from one region to another, including crossing international borders, seeking an improved standard of living, because the conditions or job opportunities in the migrant's own region are insufficient. The term 'migrant worker' is used as well. Although the term economic migrant may be confused with the term refugee, economic migrants leave their regions primarily due to harsh economic conditions, rather than fear of persecution based on race, religion, nationality, political opinion, or membership of a particular social group. Economic migrants are generally not eligible for asylum, unless the economic conditions they face are severe enough to have caused generalised violence, or seriously disturbed the public order.

Undocumented migrant

The term 'undocumented migrant' refers to anyone residing in any given country without legal documentation. It includes people which entered a country without inspection and proper permission from the government, and those who entered with a visa that is no longer valid.

Stranger

Strangers are often migrants or immigrants. They may have correct papers or not.

7.2.2. Refugee

A refugee is a person who has left his own country because of the risks of serious human rights violations or torture. A person is officially and legally a refugee when he fulfils the criteria of the Refugee Convention. A refugee is defined as a person who is unable or unwilling to return to his country of origin owing to a well-founded fear of being tortured for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The Shipmaster may not send back a refugee to the country of origin or another unsafe place.

Boat refugees/migrants

A boat refugee/migrant is a person who has left his country by boat. Often, those persons must be picked up at sea by a commercial vessel due to inhuman and dangerous circumstance onboard the vessel of these persons.

After rescuing persons in distress, the Shipmaster must deal with rescued persons. Other statuses for those persons are not to be decided by the Shipmaster.

The Shipmaster oversees the stay on board and the disembarkation of these rescued persons.

7.2.3. Asylum-seeker

An asylum-seeker is an individual who is seeking international protection and whose claim has not yet been finally decided on by the country in which he has submitted it. An asylum-seeker often claims he is a refugee, but this claim has not yet been recognized. The asylum procedure will verify whether the asylum-seeker's claim of torture etc. falls within the criteria of the Refugee Convention. Not every asylum seeker will be recognized as an official refugee. The term asylum-seeker is used for persons which seek asylum in another country. An asylum-seeker has left his own country and is looking for protection from torture or other serious human rights violations.

The Shipmaster should not start a procedure for asylum-seekers, but he is not allowed to return a refugee or migrants to the place where they are threatened.

7.2.4. Stowaway

According to IMO, a stowaway is a person who is secreted on a ship or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the Shipmaster or any other responsible person. A stowaway is often detected on board the ship after it has departed from a port, and before it has arrived at the next port. Such a person should be reported as a stowaway by the Shipmaster to the appropriate authorities, the shipowner and the ship's P&I Club. An attempted stowaway is a secreted person who is detected on board the ship before it has departed from the port. These definitions come from IMO, which has also issued guidelines on stowaways. See their '*Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases.*' These guidelines are not mandatory but may be very helpful for the Shipmaster.

The Shipmaster, shipowners, country and port authorities should fully co-operate to prevent and to resolve stowaway incidents. The Shipmaster should be aware that a stowaway may claim to be a refugee or an asylum- seeker, and this has ramifications as they may not be returned to their country of origin. In such cases, the Shipmaster should seek guidance from the shipowner and/or ship's P&I Club and the local competent authorities.

On board it is the Shipmaster who is responsible for stowaways.

7.3. Illegal immigration, smuggling migrants & human trafficking

Migrants often travel by sea in substandard and unsafe boats, where the Shipmaster must come to the rescue. Migrants can be or become subject of human trafficking, illegal immigration etc., but also persons in distress which must be rescued by the Shipmaster and his crew. Human trafficking, smuggling migrants and illegal immigration are often intertwined. Smuggling involves country border crossing. The Shipmaster plays a significant role when human trafficking takes place on his vessel, because he is responsible on board. The legal definitions of human trafficking, refugees, persons in distress, etc. are not always simple and understandable for the Shipmaster. Prevention and situational awareness are here important as well.

In many countries, human trafficking and smuggling migrants are criminal offences and could occur on board a ship under the responsibility of the Shipmaster. So, if picking up persons at sea, the Shipmaster should consult the legislation of his flag state, including the definitions.

7.3.1. Illegal immigration

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

Illegal immigration is a violation of the local immigration laws and regulations.

Various forms of illegal immigration are:

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

7.3.2. 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 country of which that person is not a national or resident. This criminal offence includes the crossing of a country border; it also includes bringing undocumented immigrants into a country.

7.3.3. 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 country and abroad. Every coastal state is affected by trafficking, whether as a country of origin, transit or destination for victims. Human trafficking is the acquisition of persons by improper means such as force, fraud or deception, with the aim of exploiting them. Trafficking in persons is also defined as the 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 may include prostitution or other forms of sexual abuse, forced labour, slavery, servitude or the removal of organs.

7.4. Shipmaster rendering assistance

If persons rescued at sea submit a claim for asylum or for the status of refugee, then the key principles as defined in international refugee provisions need to be upheld. However, the Shipmaster is not responsible for determining the status of the persons on board, he needs to be aware of these principles.

The Shipmaster must be aware of the principle of non-refoulement, which guarantees that migrants/refugees should not be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

This principle applies to all migrants, irrespective of migration or refugee status. The Shipmaster must coordinate with the ship manager, national government, and the local authorities in solving the problem, especially the debarkation in a safe place. The Shipmaster has an obligation to render assistance to persons in distress at sea, regardless of nationality, status or the

circumstances in which they are found. This is a longstanding and deep-rooted maritime tradition, being an obligation under international law, called 'brotherhood at sea'. Compliance with this obligation is important for the maritime search and rescue. This is based on UNCLOS and SOLAS, but also on the Search & Rescue Convention (SAR). When the Shipmaster provides assistance at sea to persons in distress, he should provide the nearby Rescue Coordination Centre (RCC) responsible for the search-and-rescue region with the necessary specific information. If the Shipmaster gets involved in a rescue operation, he must:

- Check all equipment and life-saving appliances necessary for the rescue operation;
- Determine whether he needs special or additional equipment;
- Maintain the safety and security of his crew and the vessel;
- Inform the ship manager about any delay.

The IMO/UNHCR has published a booklet about this subject, including the legal framework and the obligations of the Shipmaster, called: *Rescue at Sea, A Guide to Principles and Practice as Applied to Refugees and Migrants*.

Examples of need for assistance are:

- Persons in distress or drowning in the water;
- Lack of seaworthiness;
- Circumstances on board causing immediate danger;
- Malfunctioning steering or propulsion.

The methods for rendering assistance may include the decision of the Shipmaster to supply extra food, water and fuel to a vessel. The Shipmaster decides whether that is safe and wise for that vessel at that moment, taking into consideration the weather and other relevant circumstances. Coastguards or SAR-authorities must be informed by the Shipmaster.

7.4.1. Shipmaster and debarkation

If the Shipmaster has rescued persons in distress by taking them on board, he must disembark those rescued persons in the nearest safe harbour. The International Convention on Maritime Search and Rescue constitutes the duty to provide the rescued persons on board with medical and other needs, and to deliver them to a place of safety.

A safe place will be determined by the flagstate, the ship manager and the local SAR-authorities, not only by the Shipmaster.

The Shipmaster must be aware that rescued persons should not be disembarked or transferred to a place where their life or safety would be at risk.

The Shipmaster who has embarked persons in distress at sea should treat them with humanity, within the capabilities of the ship. If rescued persons appear to indicate that they are asylum-seekers or refugees or that they fear harassment or ill-treatment if disembarked at a particular place, the Shipmaster should inform the rescued persons concerned that he has no authority to hear, consider or determine an asylum request. In short, the Shipmaster:

- should be aware not to commit a crime in the area of human trafficking;
- must render assistance to persons in distress.
- decides whether to take persons in distress on board or help them in another way.
- oversees the stay of rescued persons on board;
- shall not send back refugees to the country they came from;
- does not start an asylum process;
- disembarks all persons in a safe harbour, this in consultation with the ship manager and the competent authorities.

7.5. Maritime terrorism

Counterterrorism is a high priority, including at sea. Maritime terrorism is not an isolated phenomenon but is often closely linked to drug smuggling, arms trafficking, or illegal immigration and human trafficking.

Maritime terrorism is the use of force or the threat of force against seafarers, passengers, and ports. The motivation for terrorism is often political or religious. The transport of terrorists or their equipment is also considered maritime terrorism.

7.6. Maritime cybersecurity

Maritime cybersecurity and cybercrime often involve digital attacks on the ship and its surroundings. Therefore, the communication networks and computer systems onboard ships must be protected against hacking and against malfunctions or failures of ship systems caused by viruses, for example. This includes navigation systems, AIS, and ECDIS, which often still run on old and unsecured Windows

versions. It also includes digital connections with other users on shore and essential ship data stored in the cloud. Hacking hardware and/or software onboard a ship can cause significant delays and costs, as well as significant inconvenience and danger.

Hacking allows cyberpirates to control an entire ship, leaving the Shipmaster on board unable to control course, speed, and other essential matters. This could facilitate the takeover of the ship by actual pirates.

Protection against cyberattacks is the Shipmaster's responsibility. Therefore, they must take measures to protect their ship against them. This starts with simple password discipline, misuse of private devices and software, software updates, and the failure to install certified software and firewalls.

The use of data carriers, such as USB sticks, must be restricted on board.

From 2021, ships must include cyber risks in their safety management system (SMS). See also Chapter 24 of this Handbook. According to the ISPS security plan, unmanned spaces with access to IT systems must be locked. See also Chapter 25 of this Handbook. The Shipmaster plays a key role in managing cybersecurity risks. See Chapter 6 of this Handbook.

The worst scenario is the Shipmaster at sea without any control on the ship systems, vital or not.

7.6.1. ISM and ISPS

In addition to the ISM and ISPS Codes, the IMO has published the '*Guidelines on Maritime Cyber Risk Management*'. These Guidelines are not mandatory but can be of great help to the Shipmaster. See also the joint industry *Guidelines on Cyber Security onboard Ships* and the ICS, BIMCO and Witherbys '*Cyber Security Workbook for On Board Ship Use*'. The shipowner is required to provide the Shipmaster with measures to encounter cyber risks and threats. This must be done in an approved SMS and should consider cyber risk management in accordance with objectives and functional requirements of the ISM Code. The Shipmaster should execute all those measures on board to protect his ship against cyberattacks or other cybercrimes. The threats of cybercrimes should be part of the general Ship Security Assessment (SSA) prescribed by the ISPS-Code. Some parts of cyber risk management, such as physical access to computer areas should be addressed in Ship Security Plan (SSP) under the ISPS Code. These areas, such as the bridge and the engine room should be 'restricted areas', especially when these areas are unmanned. Some countries prescribe or recommend a Cyber Security Assessment (CSA) including a Cyber Security Plan (CSP), to manage cyber security. However, the

vulnerabilities created by accessing, interconnecting or networking these systems can lead to cyber risks which should be addressed.

Vulnerable systems could include, but are not limited to:

1. Bridge systems;
2. Cargo handling and management systems;
3. Propulsion and machinery management and power control systems;
4. Access control systems;
5. Passenger servicing and management systems;
6. Passenger facing public networks;
7. Administrative and crew welfare systems;
8. Communication systems.

7.6.2. Enforcing cybersecurity on board

Cybersecurity must be adapted in the Safety Management System (SMS). This is the document of every ship manager and is based on the ISM Code. See also Chapter 24 of this Handbook. Addressing cybersecurity in the SMS must be done by the ship manager, but also requires additional focus, and interaction with the Shipmaster, who is responsible onboard.

The focus point of the SMS is to achieve protection for the instruments onboard and to prevent cybercrimes of any kind. See also Chapter 6 of this Handbook.

7.7. 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;

7.8. 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 in the Ships Act or Act of Manning Sea Ships.

Article 56.2 Ships Act (NL) reads as follows:
Behaviour contrary to provisions of this Act, regarding seaworthiness or rescue means, are crimes as far as they have been committed intentionally, otherwise minor offences.

7.9. Red Sea area

Chapter 26 of this Handbook applies only and specifically to piracy in the southern Red Sea, the Gulf of Aden and along part of the coast of East Africa, so in the official and legal risk area. See the figure in Chapter 26 for the actual risk area for piracy. However, many more maritime crimes and even acts of war occur in that region. Here too, the Shipmaster has a great responsibility for his ship and crew. These other maritime crimes and acts of war are briefly described in this foreword, including the area where they are contended. Then both areas are compared with each other, and some recommendations will be made for the Shipmaster to address the other maritime crimes and acts of war.

The Anti-Piracy Manual deals only with piracy, while this Section deals with other maritime crimes and acts of war in the extended Red Sea area.

7.9.1. Area



Figure 19. Risk area Red Sea

There are two different risk areas around the southern part of the Red Sea. One area is specifically and only the area within which piracy can officially be countered with armed private maritime security personnel. The specific pirate risk area is depicted in Chapter 26 of this Handbook. In this area, armed private maritime security is permitted to defend the ship against pirates. The other risk area is the area

where other maritime crimes and acts of war may occur, see figure 19. This dangerous passage area where other maritime crimes/acts of war are committed is the area where operations like EUNAVFOR ATALANTA or MSCIO are taking place:

- Gulf of Aden with adjacent coastal states, including Muscat;
- Somalia Basin
- Red Sea
- Gulf of Suez/Aqaba

See for more details about the operation areas the Anti-Piracy Manual Shipmaster.

7.9.2. Problem

If you sail through a dangerous or risk area on a Dutch-flagged ship, a ship owned by a Dutch shipowner or a ship with another clear connection to the Netherlands, the Shipmaster runs the risk that his ship will be attacked, both by air and by water. If there is no friendly warship nearby, the Shipmaster is on his own. He cannot defend himself against drones and missiles, because he does not have air warning radar on board and does not have adequate weapons to shoot rebels' offensive weapons out of the sky. Armed private maritime security is not very useful against missiles and fast drones. According to Dutch law, armed private maritime security may only be deployed against piracy, and then only in the risk area as described in the Decree on the Protection of Merchant Shipping. This is not the same area as the dangerous/risk area around the Red Sea where other maritime crimes and acts of war take place. There is an overlap.

However, the Shipmaster may always defend his ship and crew if he is attacked. This is based on self-defence or self-defence excess. Any firearms must then be officially and legally on board, otherwise the Shipmaster may be sanctioned for illegal possession of weapons.

Here, to illustrate for the Shipmaster, some similarities and differences between possible attacks on his ship are described. But the most important message is that the Shipmaster always has the right to defend his ship and crew. This can also include choosing a different course, not calling at a port or not sailing through the dangerous area, if necessary, against the shipowner's orders. The Shipmaster has a right of veto, because he has the ultimate responsibility on board for safety.

7.9.3. Piracy

Chapter 26 of this Handbook only and specifically concerns piracy. This maritime crime has four characteristics:

- On the high seas;
- Unlawful act of violence, plunder or capture;
- Two ships or aircraft;
- Personal gain (money).

Within the territorial waters of a coastal state, piracy does not exist legally, there it is called an 'armed robbery' and here the coastal state has the right to act. Within the territorial waters

of a coastal state, the Shipmaster must also comply with the laws of this coastal state, such as local criminal law and firearms laws. This is in addition to the laws of its own flag state. Piracy is subject to criminal law.

7.9.4. Terrorism

There is no clear and general definition for terrorism, and therefore also for maritime terrorism. It is usually described as:

- Use of force against ships and seafarers with a terrorist objective. This is seriously instilling fear in the population or part of the population of a country or unlawfully forcing a government or international organisation to do, not do or tolerate something, or seriously disrupting or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.
- The motivation for terrorism is often political or religious, in piracy the motivation is personal gain, such as money.
- Maritime terrorism does not have to be carried out specifically with two ships as in piracy. Shooting a merchant ship with missiles and drones can fall under terrorism.
- Maritime terrorism takes place within all maritime zones and in the air above them.
- Maritime terrorism falls under criminal law.

7.9.5. Hostage-taking

- Hostage-taking (kidnapping) is the unlawful deprivation of someone of their liberty with the intention of forcing another person to do or not to do something;
- Seafarers are often used as hostages to meet certain demands, such as ransom;
- Hostage-taking takes place in all maritime zones and in the air above them;
- Hostage-taking is subject to criminal law.

7.9.6. Act of war

Acts of war are about actions in the context of an armed conflict (war). The Houthi rebels link their actions to the armed international conflict (war) between Israel and Hamas in the Gaza Strip. Several countries, such as the US and the UK, attack bases in Yemen, from which rockets and drones are launched. The Netherlands supports this and participates in it. Iran has a warship in the Red Sea to support the Houthi rebels. Although no country is looking for an escalation to a large-scale international armed conflict (war), the current situation could mean

that an armed international conflict will arise in the dangerous/risk area, in which Dutch merchant naval ships could also become involved. In that case, one could perhaps speak of acts of war that fall under the international humanitarian law or even under the law of naval warfare.

7.10. Action and Decision Tree

The following is a possible action and decision tree for the captain. This provides a quick overview of the steps to follow regarding voyage preparation, safety, assistance, routing, military interactions, and reporting.

7.10.1. General Actions

- Check the maritime safety regulations of the flag state and coastal state.
- Follow instructions from the ship owner, charterer, and P&I Club.
- Remain alert to safety risks and communicate these to the crew.
- Consult relevant publications, such as:
 - ICS, 'Maritime Security: A Complete Guide for Shipowners and Seafarers as well as Administrations';
 - ICS, 'Large Scale Rescue Operations at Sea: Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons';
 - IMO/UNHCR/ICS, 'Rescue at Sea: A Guide to Principles and Practice as Applied to Refugees and Migrants'.
- Comply with national and international regulations regarding migrants and rescued persons.
- Consult the shipowner if you have any questions about disembarkation.

7.10.2. Assistance to Persons in Distress

- Offer assistance to anyone in distress.
- Determine the method of assistance and ensure medical care.
- Treat rescued persons humanely.
- Do not determine the status of rescued persons yourself; do not process requests for this information.
- Ensure safe disembarkation, preferably at the next available port.

- If access to a port is denied:
 - Inform the shipowner;
 - The shipowner contacts the authorities of the flag and coastal states.
 - Cooperate with local authorities (coast guard, immigration, police).
- Be mindful of human trafficking: protect victims and support the apprehension of perpetrators.
- Prevent disembarkation in ports where the lives or freedom of rescued persons are threatened. Consider other maritime crimes and acts of war.

7.10.3. Voyage Preparation

- Discuss with the shipowner whether passage through the Red Sea is necessary.
- Consult current advice, for example, from Dutch authorities: alternative route around the Cape of Good Hope.
- Reconsider decision if new advice is available.
- The Shipmaster makes the final decision based on safety considerations (veto right).
- When making decisions, consider to:
 - Conduct a threat analysis and risk assessment;
 - Obtain current information from the Company Security Officer (CSO);
 - Comply with the captain's duty to inform;
 - Use these sources:
 - kustwacht.nl
 - maritimeglobalsecurity.org
 - ukmto.org
 - eunavfor.eu
 - mscio.eu, imo.org/red-sea
- Consult on the deployment of VPD and/or armed private maritime security personnel;
- Prepare a policy for (de)activating AIS, SSAS, and other sensors;
- Do not depart until voyage preparations are fully completed.

7.10.4. Routing and Navigation

- Decide whether to use the Maritime Security Transit Corridor (MSTC) and local traffic separation systems.

- Continuously evaluate the risk of attacks and navigation problems.

7.10.5. Military Contact and Threat Scenarios

Be alert to Houthi rebels as a high threat to ships with Israeli connections. When approached via VHF by the Yemeni Navy:

- Ignore a course change request if the own plan can be followed safely;
- Call a coalition warship on channel 16 to exchange position, course, speed, and intentions;
- Report the incident to the MSCIO, UKMTO or the US Navy.

7.10.6 Reporting

- Report passage of risk areas, suspicious situations, or attacks to:
 - UKMTO (www.ukmto.org)
 - MSCIO (www.msco.eu)
 - NAVCENT (www.cusnc.navy.mil)
 - EU Naval Force ATALANTA (eunavfor.eu)
 - NATO Shipping Centre/NCAGS (shipping.nato.int/ncs)
 - Netherlands Coast Guard (mik-nl@kustwacht.nl or security@kustwacht.nl)
- Report the use of force to the Public Prosecution Service (OM) and your own CSO.
- Constantly check the accuracy and currency of internet addresses. • Ensure the captain has accurate and up-to-date information in a timely manner.
- Request up-to-date information directly from the Netherlands Coastguard at security@kustwacht.nl.

7.11. Summary Shipmaster

The Shipmaster:

- must always comply with maritime safety rules and regulations, as well as with the instructions of the shipowner and the P&I Clubs.
- must be vigilant for safety risks and share information with the crew in a timely manner.
- may also consult the following guidelines:
 - ICS, 'Maritime security: a complete guide for shipowners and seafarers as well as administrations';

- ICS, 'Large-scale rescue operations at sea: guidance on ensuring the safety and security of seafarers and rescued persons';
 - IMO/UNHCR/ICS, 'Rescue at sea: a guide to principles and practice as applied to refugees and migrants';
- is obliged to comply with national and international laws and regulations regarding migrants and rescued persons.
- may seek advice on dealing with persons on board and disembarkation.
- must help any person in distress and determine how this assistance is provided.
- must treat rescued persons humanely, ensuring (medical) care.
- cannot independently determine the status of rescued persons.
- must not consider requests regarding the status of rescued persons.
- ensures that disembarkation takes place in a safe port, preferably the next port of call.
- if access to a port is denied, request support from the shipowner, who will contact the relevant authorities of the flag state and the coastal state.
- cooperates with authorities involved in disembarkation, such as the coast guard, immigration service, or police.
- when making decisions, considers the need to apprehend human traffickers and rescue victims.
- prevents disembarkation in ports where the life or freedom of rescued persons may be threatened.
- must consider, in addition to piracy, other maritime crimes and acts of war as well.

Chapter 26 of this Handbook deals specifically with piracy, while Chapter 7 deals with other maritime crimes and acts of war, in the extended Red Sea area.

PART 2 Shipmaster & crew

Chapter 8	Shipmaster
Chapter 9	Ship manager
Chapter 10	Overriding authority/discretion
Chapter 11	Crew
Chapter 12	Working conditions
Chapter 13	Living conditions
Chapter 14	Work- and resting hours
Chapter 15	Shipboard health
Chapter 16	Complaints
Chapter 17	Rights and duties seafarers
Chapter 18	Third persons on board
Chapter 19	Registrar/ notary
Chapter 20	Criminal investigation
Chapter 21	Maritime Disciplinary Court

Chapter 8 Shipmaster

8.1. Introduction

Legal compliance	Navigation	Commercial	Administration	Operations
•Treaties •Flagstate •Coastal state •Freight contracts •Crew papers •Cargo papers •Codes •Guidelines •Instructions etc.	•Voyage planning •etc.	•Reports •Schedules •etc.	•Salary •Accounting •Cargo papers •Certificates •etc.	•Cargo planning •Seaworthiness • etc.

Figure 20. Shipmaster is a complex function, full of legal aspects.

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.

This Handbook uses the term 'Shipmaster'.

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 regarding maritime safety and

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

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 Act Manning Sea Ships:

A Shipmaster is the commander of a Dutch sea ship.

A Shipmaster of a fishing vessel has the title of skipper.

8.2. Shipmaster under international law

8.2.1. IMO

The IMO has a dominant legislative role affecting the position of the Shipmaster. The operations of the Shipmaster are regulated mostly by the IMO. The IMO issues a variety of laws and regulations, such as conventions and circulars.

Term	Meaning
Shipmaster	Commander of a vessel
Shipmaster fishing vessel	Skipper
Employer	Ship manager 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
Crew member	Persons 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.

Table 7. Terms used in various legislations

However, these conventions, protocols, amendments, recommendations, codes, guidelines and resolutions of the IMO must be transferred into national maritime legislation of all member countries. 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.

Shipmaster's discretion & overriding authority

Shipmaster'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 Shipmaster of the ship from taking or executing any decision which, in the Shipmaster'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 for an extended description about overriding authority and discretion Chapter 10 of this Handbook. Besides 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 Part A of STCW Code deals with the standards regarding the Shipmaster. Besides the legislative role of the IMO, other international institutes deal with maritime laws.

Shipmaster (STCW Code Annex 2 Chapter I Section B-I/14)
The Shipmaster should take all steps necessary to implement instructions, such as:
identifying all seafarers who are newly employed on board the ship before they are assigned to any duties.
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.
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.

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

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

As a Shipmaster, he needs to oversee the implementation of some parts of MLC on board. MLC complements the nautical, commercial and public functions of the Shipmaster, including responsibilities, with the social functions of the Shipmaster on board.

8.2.3. EU

The EU has some regulations in place about the level of training of seafarers. These regulations endorse and supplement the STCW Convention. Shipmaster checks all prescribed certificates on board his vessel. Penalties or disciplinary measures shall be enforced in cases in which the Shipmaster has engaged a person not holding a certificate as required.

8.3. 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. See Chapter 9 of this Handbook for a more extensive description.

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 ship manager.

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 ship manager, the shipper, charterer and freighter. This means that the Shipmaster is responsible for the cargo for which he takes receipt. He is also responsible for loading the ship and stowing cargo, even when this is carried out by a third party.

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.

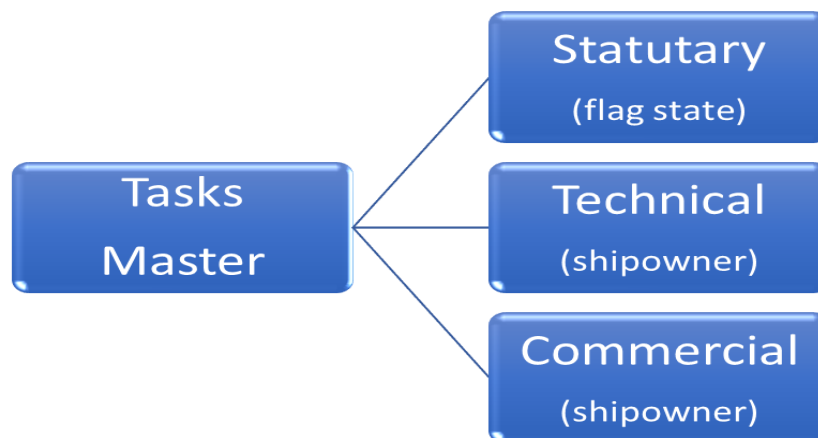


Figure 21. Tasks and responsibilities of the Shipmaster

The tasks of the Shipmaster 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/director
 - Controller
 - Employee
 - Employer
 - Representative ship manager
 - Official public authority
 - Mayor
 - Criminal investigator
 - Registrar of births and deaths
 - Solicitor

8.4. 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 ship manager will act as Shipmaster. Any absence and replacement of the Shipmaster must always be documented in the ship's logbook.

8.5. Shipmaster last man on board?

Many persons, including seafarers, think that the Shipmaster should always stay on board, under whatever conditions. Because it is his task and duty to stay onboard, even in case of an emergency, such as a sinking or burning ship. However, this is not an official legal obligation or role under international law. Maybe some national legislations still contain such a provision. The 'role of last man on board' can be found in ancient moral codes and historical stories. Of course, the Shipmaster has the duty to stay on board during an emergency to save lives of all persons on board. He oversees the ship and all persons on board; he decides if the ship will be abandoned. The Shipmaster has the ultimate authority and responsibility to do so. The question is whether the Shipmaster should stay on board when not all persons can be evacuated.

Article 9, paragraph 5 Manning Act Seagoing Vessels
The Shipmaster shall not abandon the seagoing vessel during navigation or in the event of imminent danger, unless his absence is absolutely necessary or his safety is required.

For example, some persons are locked-up in a confined space or in the engine room, without any possibility to leave that space due to collapsed doors or other damage to the structure of the ship.

The Shipmaster should not always stay aboard until the very end, he makes his own decisions when and how to leave his ship in an emergency.

Of course, he must do everything possible to rescue those locked-up persons, but he should not commit suicide by staying on board.

International law does not support the case that the Shipmaster should always be the last man abandoning the ship.

International law requires the Shipmaster to act under the principles of good seamanship, meaning to rescue all crew and passengers in a proper way.

Another possibility might be that the Shipmaster oversees the rescue operation from a lifeboat. That may well be the case if the lifeboat has good internal and external communications, while the ship has a black-out; no power, communications or whatsoever. These decisions are up to the Shipmaster, who at a later stage should be held accountable to the competent authorities or courts of law.

8.6. 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, ship manager 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 11 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 port.

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 the Shipmaster 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 ship manager may remove a Shipmaster from his function as Shipmaster on board a ship, while the seafarer employment agreement may continue.

8.6.1. 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, persons and property on board. The termination of the seafarer's employment agreement does not terminate then after entering a port.

Should the seafarer's employment agreement, for the Shipmaster, be terminated abroad, he will be entitled to free repatriation to his home country, 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
- Harbour

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 port;
- Orders to depart to a hostile port;
- 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 flagstate;
- 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.

If the seafarer's employment agreement is dissolved at the request of the Shipmaster based on serious grounds, he will only be entitled to the costs of repatriation if the employer is liable for compensation.

8.7. 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 country or more specifically on board of a Dutch ship. Subject to certain conditions, it became possible for ship managers to be exempted from the obligation to appoint Dutch Shipmasters to Dutch ships. The only person 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 country;
- An EER-country (Liechtenstein, Norway or Iceland)
- Another country 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 countries may only be granted when the:

- Shipmaster's certificate is approved;
- 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 further on in 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 ports and at sea when security affairs are concerned.

Article 3.5.12 Regulation Manning Sea Ships (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 ship manager 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.

8.8. Summary Shipmaster

The Shipmaster has many obligations on board.

Failure to comply with these may result in criminal proceedings being brought against him.

Hereafter follows some condensed information on the applicable rights and obligations for the Shipmaster.

The Shipmaster:

- is obliged to ensure seaworthiness and safety of the ship and persons on board.
- will not leave port unless the ship is suitable and appropriately equipped, and sufficiently manned.
- may not abandon ship, unless his absence is absolutely necessary, or if his life is threatened.

- must be able to present the mandatory documentation on board.
- will ensure that a ship's logbook (daily register or journal) is maintained on board, meticulously noting everything that occurs during the voyage.
- may have a report drawn, after arrival in port, by a lawyer about irregularities during the voyage (Sea Protest)
- is authorized to both jettison the ship's appendages and parts of the cargo, as well as to consume them, when necessary for the preservation of the ship or its cargo.
- is authorized in case of an emergency during the voyage, to take food products belonging to persons on board or that are part of the cargo, for the purpose of consuming.
- is obliged to provide all assistance to persons who are in danger without exposing his own ship and persons on board to danger.
- must oversee everything in connection with loading and unloading of the ship.
- 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.
- 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.
- will represent the employer in the execution of the seafarer's employment agreement with the seafarers.
- will keep a record of working hours up to date in a register intended for that purpose.
- being informed that the flagstate 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.
- realizes that if the port the ship is destined for is blocked, then he must sail into the most suitable nearest port.
- may deviate from the course and speed 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, rights and duties of a Shipmaster, so also between his legal rights and obligations.
- The Shipmaster fulfils a role in which legal duties, operational responsibilities, and economic interests can frequently conflict. These tensions can arise from financial considerations, pressure from the shipowner or external parties, or from differing interpretations of safety obligations.

Examples:

A Shipmaster may—and sometimes must—require additional or better qualified crew members for the safety of the ship and crew. This is a legal obligation and may not result in a financial disadvantage for the Shipmaster in their relationship with the shipowner.

When a supervisory authority requests the captain's advice regarding a manning certificate, any resulting higher costs may not be passed on to the captain.

The Shipmaster often finds himself caught between their legal rights and duties on the one hand, and his position as an employee of the shipowner on the other—where financial interests also play a role.

The law protects the Shipmaster against disadvantages, such as transfer, demotion, suspension, or dismissal, when acting within the scope of his legal duties.

In such cases, the Shipmaster can defend himself before the subdistrict court (see Article 17 of the Seagoing Vessels Manning Act).

The Shipmaster is not required to wait for actual damage to occur but may also object to any imminent harm or infringement of his position. However, if the Shipmaster fails to comply with his duty of care, this may jeopardize his legal position.

Article 17 Manning Act Seagoing Vessels (Shipmaster Protection)

The ship manager cannot and may not disadvantage the Shipmaster if the Shipmaster fulfils his statutory duty of care.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 9 Ship manager

9.1. Introduction

In this Handbook, mainly the term ‘ship manager’ is used, meaning the owner of the ship or another organization or person, such as the manager, operator, 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 ship managers in accordance with MLC, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the ship manager.

The shipowner, -manager or -operator is responsible for managing the day-to-day operations of the ship, including crewing, chartering, and cargo handling. They may also be responsible for ensuring that the vessel complies with safety and environmental regulations, and for arranging any necessary repairs or maintenance. They work ashore, while the Shipmaster’s responsibility is restricted to the ship and its operations.

There are duties that the ship manager has to the Shipmaster and duties that the Shipmaster has to his ship manager. Here, responsibility refers to the duties, responsibilities, and tasks that the Shipmaster is expected or obligated to perform. That is, something that he needs to do as required by law or ought to do as needed by the ship manager. The ship manager’s onboard representative may be the Shipmaster. While he might have some authority to act in that position, the shipowner is the true owner of the ship and has all its legal property rights. The fact that the Shipmaster works for the shipowner and represents the employer to the seafarers on board may constitute a conflict.

This Chapter outlines the duties that the Shipmaster has towards the shipowner/manager and vice versa. These duties have been drawn from the Shipmaster's responsibilities, positions, and tasks.

Many these obligations are outlined in national laws and maritime treaties. The requirements or instructions from the shipowner, ship manager, charterer, or P&I Clubs, as well as maritime contracts reached between the shipowner and a shipper, ship manager, or charterer, among others, contain additional responsibilities, tasks, and duties of the Shipmaster.

This chapter concludes with a description of how the duties of the ship manager and Shipmaster are balanced.

See Chapter 5 of this Handbook for a more thorough explanation of duties, accountabilities, responsibilities, and obligations.

9.2. Shipmaster's tasks

The Shipmaster has a unique position among other seafarers.

He is employed by the shipowner, but at the same time he is also the representative of the shipowner as the employer.

The Shipmaster protects the rights, obligations, and interests of the shipowner by taking care of the crew, ship, and cargo.

The Shipmaster is responsible for executing his legal tasks, duties and obligations. One of the Shipmaster's primary tasks is to function as the representative of the shipowner.

The Shipmaster is responsible for many areas on board, such as safety, security and preserving the marine environment. The ship manager is responsible for providing all necessary means to the Shipmaster to undertake the Shipmaster's responsibilities, such as personnel, equipment, certificates.

The Shipmaster's task is to optimize the safety, security and preserving the marine environment, but the shipowner should take care of the financial aspects to do so.

According to law, the Shipmaster must fulfil three tasks: statutory, technical and commercial ones. Sometimes it is said that the Shipmaster has a social task as well, according to MLC. The social task of the Shipmaster is not a requirement by law, but this task has been derived from MLC.

The legal tasks of the Shipmaster will be described in this chapter. These tasks should be regulated on board a ship.

Generally, the control of many legal obligations occurs ashore by the relevant authorities, unless the Shipmaster has a task to do so, such as controlling the ship's log, journals and working hours/conditions of the seafarers during the voyage.



Figure 22. An overview of the Shipmaster's tasks/responsibilities

9.2.1. Tasks Shipmaster

- Statutory:
 - Command;
 - Regulatory compliance;
- Technical:
 - Monitoring seaworthiness ship;
 - Maintenance of hull, engines, machinery and equipment;
- Commercial:
 - Employee;
 - Employer;
 - Representative shipowner/manager;
 - Representative charterer;
 - Cargo handling.

These tasks of the Shipmaster will be described, including the responsibilities.

9.3. Statutory tasks

The statutory or legal tasks of the Shipmaster have to do with public law, which means that the Shipmaster has public authority, including the authority to take necessary measures.

Public authority means that the Shipmaster can act as a representative of the flag state and may perform duties of a civil, public and ministry official, including a judicial role. This means

that the Shipmaster has public authority responsibilities as well. The Shipmaster is in command of the whole ship and of all persons on board, and has overall responsibility for the safety, security and the prevention of marine pollution. On board the law of the flag state applies, and the Shipmaster has a duty to ensure the ship has the appropriate:

- Minimum safe manning levels;
- Suitable qualified and certified officers and crew members;
- Logbooks;
- Certificate of tonnage / certificate of registry etc.;
- Safety:
 - Protecting all persons, ship and cargo;
 - Collision avoidance;
 - Aids to navigation;
 - Security.
- Marine pollution.

The Shipmaster is responsible for almost all certificates of the ship, but he has also a prominent role in checking the relevant certificates of his crew.

Regarding most of the statutory tasks the Shipmaster is responsible to the flag state.

9.3.1. Some special responsibilities of the Shipmaster

The Shipmaster also has some particular responsibilities. Some examples of these special legal responsibilities are described. Many of the Shipmaster's special statutory tasks and related responsibilities can be found in the international maritime agreements, but also in the legislation of the flag state.

Maritime casualties

In case of a maritime incident or casualty, such as a collision, fire, accident or grounding, the Shipmaster must take care of all persons on board his ship. Further on, the required authorities must be informed. The Shipmaster should be prepared for an investigation by the flag state or by other countries. On the high seas, only the country under whose flag the ship sails can hold the Shipmaster accountable for a maritime incident. National law of the flag state

then applies, excluding the law of foreign states. This legally excludes foreign investigations. The Shipmaster can however be asked by another country to be a witness or to make a statement. Only the flag state has the power to withdraw a certificate of competency or another national issued certificate or document.

A foreign Shipmaster, so not a national of the flag state, can also be held accountable to the laws or regulations of his own home state. This home state may withdraw or suspend the Shipmaster's certificates, according to the national laws and regulations of that state.

A country can only withdraw or suspend certificates it has issued.

A ship involved in an incident 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 of call. For the Shipmaster's role at maritime incidents on the high seas and in territorial seas, including the subsequent investigations see Chapter 28 of this Handbook.

Shipmaster and public order/discipline

The public order and the discipline onboard are the domain of the Shipmaster.

Public order can be seen as the absence of disorder. In other words: the quiet and orderly behaviour of seafarers and other persons on board. It involves persons behaving sensibly and rationally, and respecting others. All persons on board must obey the Shipmaster, regarding the public order. Discipline can be seen as a controlled behaviour or self-control.

In other legal capacities, the Shipmaster may function as a registrar of births and deaths, a solicitor, and a criminal investigating officer. This may vary in different countries, of course.

For these statutory or legal tasks, the Shipmaster is responsible to the flag state of his ship, more particular to the competent authority of the flag state.

Bunkering fuel

The Shipmaster has many responsibilities about operations which are not his primary tasks. An example is bunkering fuel for his ship.

Bunkering is a task delegated to the chief-engineer but under the responsibility of the Shipmaster, who has best efforts obligation, but also overriding authority during the bunkering operations.

Bunkering should be considered as a high-risk operation, where mistakes can result in marine pollution, high fines or even imprisonment for the Shipmaster.

A bunkering operation must be part of the shipowner's Safety Management System (SMS) from the ISM-Code.

The Shipmaster has responsibilities during the whole bunkering process, such as:

- General
 - Ordering type (sulphur limit) and amount of the required fuel;
 - Pre-loading briefing and awareness of the role of the chief-engineer;
 - Use of the correct bunkering checklists;
 - Agree upon delivery arrangement such as flow rates, which tanks, pumping rate;
 - Correct sampling and delivery notes.
- Safety
 - Prepare and oversee the necessary safety and anti-pollution measures;
 - Overseeing emergency measures on how to stop bunker operations.

The Shipmaster should not only consult the national laws and regulations of his flag state and of the coastal state he is in, but also, international regulations such as MARPOL and the industry best practice guides such as the ICS *International Safety Guide for Oil Tankers and Terminals* (ISGOTT).

Often the port and the terminal have instructions of their own.

Generally, the port authorities have local regulations (public law), while the Shipmaster or ship manager should conclude a contract (private law) with the terminal or jetty company. See also Chapter 1 of this Handbook.

9.4. Technical tasks

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. The flag state is obliged to apply its laws and to control the technical tasks of the Shipmaster.

Technical tasks may regard to the ship's:

- Structure and maintenance;
- Equipment;
- Seaworthiness.

The Shipmaster should control and ensure technical maintenance of the ship, such as the state of casco, equipment and machinery. But also, the seaworthiness of the ship. The Shipmaster fulfils the technical tasks in close cooperation with the chief engineer, he is the technical manager on board, but he does not have the final and full responsibility for all technical tasks, that falls to the Shipmaster. The chief engineer is, like all other seafarers on board, answerable to the Shipmaster or shipowner, not always to the official authorities.

The Shipmaster is responsible for monitoring the condition of the hull, machinery, equipment etc. He must inform the shipowner when repairs and maintenance are required or completed.

This should be done on a regular basis. This information can encompass:

- Equipment and other technical instruments subject of planned maintenance;
- Standard norms for maintenance;
- Critical items of equipment for maintenance;
- Planned and executing maintenance procedures;
- Responsibility for registration of planned maintenance.

For these technical tasks, the Shipmaster is responsible to the shipowner.

The shipowner has the responsibility to ensure that defects identified by the Shipmaster are corrected and, where so required, to notify the national competent authorities as appropriate. The shipowner should fully acknowledge the implications of commercial decisions in

terms of safety, security and marine pollution prevention. However, the Shipmaster is responsible for a safe and technical good ship. But he has certain restrictions when concluding contracts with third parties, such as a shipyard or repair company.

The shipowner will not always be bound by the acts of the Shipmaster that are not within the limits of the authority of the Shipmaster.

For example, the Shipmaster has no authority to conclude a contract regarding an unscheduled overhaul of his ship, so his shipowner would not be bound by any such agreement.

9.5. Commercial Tasks

The Shipmaster should not forget that the reason he is employed is because the shipowner wants to transport cargo for commercial reasons. On the other hand, the Shipmaster needs to uphold safety, security and needs to prevent pollution, which subjects may cost money.

The ISM-Code and ISPS-Code may influence this balance if implemented and executed effectively. The Shipmaster's commercial tasks mean that he represents the owner of the ship and the cargo. He may also represent the charterer, shipper or freighter, which will be laid down in shipping contracts. This representation can become a task of the Shipmaster. This means that the Shipmaster is responsible for the cargo for which he takes receipt. He is also responsible for loading the ship and stowing and lashing the cargo, even when this is conducted by a third party. The Shipmaster is responsible to the shipowner/manager for the success of the voyage; therefore, the shipowner/manager maintains a direct link with the Shipmaster for business purposes. The Shipmaster should minimise loss and damage and maintain safety standards to meet commercial goals. The Shipmaster is connected to the shipowner and to the charterer by a chain of contracts. The Shipmaster should understand all relevant commercial functions of the transport process, which may include:

- Ship's business, including financial planning and control of operating costs of the ship;
- Effective management of the crew, considering diversity and culture differences, and changing of non-legal standards;
- Management of the commercial ship operations, such as the conversion from a paper contract into a successful safe and commercial voyage.

For the commercial tasks, the Shipmaster is responsible to the shipowner.

9.6. Summary Shipmaster

The Shipmaster must address safety, security and the marine environment firstly. After having done so, the Shipmaster should concentrate on the profit aspects of the voyage.

In various situations there might be a delicate balance between legal rights and obligations of the Shipmaster on one hand and his position of employee in the service of the shipowner on the other. The protection of the legal position of Shipmaster relative to his employer in these situations may have been laid down in national legislation.

Some advice for the Shipmaster is to communicate with the shipowner. Do not surprise the shipowner with a decision including substantial (financial) consequences without prior mentioning it to the shipowner.

Responsibilities Shipmaster

- Statutory tasks to the flag state;
- Technically and commercial tasks to the shipowner.
- Social tasks by MLC to the flag state/shipowner

Responsibilities shipowner

- Supply all means and resources to the Shipmaster to keep a safe and secure ship which does not cause a marine pollution.
- According to the ISM-Code the shipowner must establish:
 - Procedures to identify, describe and respond to potential shipboard emergency situations. This requirement is commonly met by producing shipboard emergency response plans.
 - Programmes for drills and exercises and to prepare for emergency actions. The Safety Management System (SMS) should provide for measures to ensure that the shipowner's organisation can respond at any time to hazards, incidents and emergency situations involving its ships.
 - Openly and explicitly support the Shipmaster when executing the shipowner's safety policy, but also when implementing measures in the field of cargo care, security or pollution of the marine environment.

Relationship Shipmaster and shipowner

The relationship between a Shipmaster and a shipowner can sometimes be delicate, particularly when the Shipmaster feels pressure from the shipowner. It is important to remember that the shipowner is the Shipmaster's employer, while the Shipmaster holds ultimate responsibility for the safety and security of the vessel. Challenges may also arise from "backseat-driving" by shore-based employees of the shipowner.

In most cases, it is not the shipowner's intention to exert pressure on the Shipmaster; however, the Shipmaster may perceive certain communications or requests as such. When this occurs, the best course of action is for the Shipmaster to communicate directly with the shipowner, clearly explaining the situation while emphasizing the legal obligations that must be followed.

If a serious and potentially illegal safety issue leads to an ongoing dispute, the Shipmaster should refrain from leaving port until the matter has been resolved—particularly if laws or regulations explicitly prohibit departure under such circumstances. Early communication with the shipowner is critical; not leaving port should always be considered a measure of last resort.

Additionally, the Shipmaster may notify the relevant maritime authorities—either of the vessel's flag state or the coastal state—about the unsafe or illegal conditions. While this intervention can help resolve safety or security concerns, it is unlikely to improve the personal relationship between the Shipmaster and the shipowner.

Best attitude for the Shipmaster is to keep an open communication with the shipowner, but the Shipmaster should not leave port with an illegal situation onboard.

Although such situations are relatively uncommon, they can place the Shipmaster in a difficult or awkward position. In these cases, it may become necessary to consider the Shipmaster's legal instruments of discretion or overriding authority.

Further guidance on this topic is provided in the next chapter of this Handbook.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 10 Shipmaster & overriding authority/discretion

10.1. Introduction

The Shipmaster is in overall command of all persons and operations aboard the ship. The Shipmaster has control of the ship and persons on board. The Shipmaster has legal rights to fulfil his tasks properly. These rights have been derived from international and national law, but also from the contracts between the shipowner, charterer etc. However, the Shipmaster is not the owner of the ship. Ownership involves having all legal property rights over the ship, excluding the legal rights of the Shipmaster.

The Shipmaster, shipowner/manager or charterer may have legal rights concerning the ship. Sometimes even overlapping legal rights, which is why the question arises who has the final authority on board a ship? The legal overriding authority and discretion of the Shipmaster will be described in this chapter.

The Shipmaster should be aware that not all countries have the same explanation and interpretation of both terms.

10.2. Shipmaster: command and control

10.2.1. Command

Command can be defined as the Shipmaster giving orders to his crew or other persons on board to do something. It is the exercise of authority based upon good seamanship, function, knowledge, experience and training. The Shipmaster has authority over all persons on board, he commands his ship and persons on board.

Command is used during navigating or manoeuvring the ship, but also during emergency situations, such as firefighting or abandoning the ship.

10.2.2 Control

Controlling a ship can be seen as governing, managing or administrating the ship and taking care of persons on board. It is the process of verifying and correcting routine processes, which are done under routine circumstances, so no hurry, no stress or emergency situations. The executing of Standard Operation Procedures (SOP) can be seen as control. The Shipmaster

checking all mandatory certificates or monitoring loading or unloading operations can be seen as control or supervising of the smooth running of the ship.

10.3. Shipmaster: representative of shipowner

The Shipmaster is the representative of the shipowner/-manager and plays a vital role in meeting the obligations of the shipowner. The Shipmaster must look after the seaworthiness of the ship, but also whether the ship is adequately manned and supplied to undertake the voyage. As the representative of the shipowner the Shipmaster:

- Is legally empowered to act on behalf of the shipowner;
- Has (limited) decision-making authority for the shipowner;
- Represents the shipowner to a third-party.

The Shipmaster has received delegated authority from the shipowner, or sometimes from the ship manager or charterer, to act on behalf of him. This delegation however is limited.

The Shipmaster being the shipowner's representative means that the shipowner will not be bound by acts of the Shipmaster that are not within the limits of the authority given to the Shipmaster.

Example

The Shipmaster is not allowed to bind his shipowner by starting big modifications to the ship, without prior permission from the shipowner. But the Shipmaster has implied authority to order pilots, tugboats or supplies, so bringing the shipowner into an agreement.

10.4. Legal authority

Besides the delegated authority given by the shipowner, the Shipmaster has received overriding authority and discretion by international agreements and by the national maritime legislation of the flag state. So, there can be some tension between the Shipmaster and the shipowner when overriding authority or discretion of the Shipmaster comes at stake.

The Shipmaster has the authority and responsibility to take and execute decisions with respect to his crew and operations aboard his ship. However, specific decisions from the Shipmaster about individual seafarers or operations can be disregarded by the shipowner because the Shipmaster has no delegated authority to do so.

The Shipmaster has no authority to enter contracts, such as seafarer's employment agreements or maritime transport agreements.

Though, the Shipmaster has overriding authority to take decisions regarding safety and pollution prevention, also when personnel or ships operations are at stake. The Shipmaster has discretion or the power to make decisions regarding the security on board. Those decisions cannot be affected by the shipowner or other persons. Of course, the Shipmaster may request assistance or advise from anybody, such as the shipowner/manager, charterer, pilot, and stevedore, but it is the decision and responsibility of the Shipmaster. SOLAS speaks about overriding authority of the Shipmaster, but also about the Shipmaster's discretion.

SOLAS describes this subject at three places using different wordings. All relevant terms will be explained in this Chapter.

10.4.1. Shipmaster's discretion for safety and marine environment

IMO/Annex to 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 Shipmaster of the ship from taking or executing any decision which, in the Shipmaster's professional judgement, is necessary for safety of life at sea and protection of the marine environment.

Discretion means the ability or right to decide something.

Shipmaster's discretion means that the Shipmaster had the ability or right to take and execute decisions on board his ship. The Shipmaster should do so if necessary for the safety of life at sea and for the protection of the marine environment. The Shipmaster has complete discretion in these two domains. Prevention, hamper or restrictions of other persons on these decisions by the Shipmaster are not allowed by law. The Shipmaster may request advise from the shipowner or seafarers, but it is his own professional judgement, and his decisions are based upon his good seamanship, training and experience. These provisions about the Shipmaster's discretion for the safety and marine environment can be found in SOLAS. Not in the actual treaty, but in the Chapter V of the Annex to the treaty. This chapter is named 'Safety of Navigation.' It is obvious that a strong relationship exists between the safety of navigation, and the safety of the ship or the protection of the marine environment. It is not sure whether the sequence of 'safety of lives at sea' and the 'protection of the marine environment' implies

a priority for the Shipmaster. In the event of an emergency, the Shipmaster should decide whether external assistance is needed or if the situation can be managed using the ship's own resources. However, it may be not officially, the Shipmaster may prioritise as follows and act accordingly:

- Safety of personnel;
- Safety of the ship;
- Pollution of the marine environment;
- Safety of the cargo.

In the middle of the ocean, the safety of the ship is of the utmost importance. It is the floating shelter for all persons on board; no alternative present and no emergency services at short notice.

Chapter V of the Annex to SOLAS sets forth operational provisions applicable to all ships on all voyages. This contrasts with SOLAS, which applies to certain classes of ships involved in international voyages. However, Chapter V of the Annex to SOLAS deals with safety of navigation, the Shipmaster's discretion includes safety in general and the protection of the marine environment.

Regulation 34 of Chapter V is named 'Safe navigation and avoidance of dangerous situations.' Regulation 34-1 of this Chapter V is named 'Shipmaster's discretion'.

Both regulations can be read in combination, which may imply this discretion is limited to the navigation of the ship and the protection of the marine environment. But the verbatim text extends to discretion about the safety of life at sea and protection of the marine environment.

The Shipmaster makes his own decisions in the scope of safety of life at sea and protection of the marine environment.

Of course, the Shipmaster can be influenced by the shipowner, the pilot, and a lot of other persons, but at the end it is the decision of the Shipmaster.

Nobody should restrict the Shipmaster in making and executing his decisions in the field of safety and marine environment.

10.4.2. Shipmaster's discretion for safety and security

Shipmaster's discretion for ship safety and security (IMO/Annex to SOLAS/Chapter XI-2 Regulation 8)

1. *The Shipmaster shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgement of the Shipmaster, is necessary to maintain the safety and security of the ship. This includes denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.*
2. *If, in the professional judgement of the Shipmaster, a conflict between any safety and security requirements applicable to the ship arises during its operations, the Shipmaster shall give effect to those requirements necessary to maintain the safety of the ship. In such cases, the Shipmaster may implement temporary security measures and shall forthwith inform the Administration and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter. Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level. When such cases are identified, the Administration shall ensure that such conflicts are resolved, and that the possibility of recurrence is minimised.*

This discretion covers safety and security and can be found in Chapter XI-2 of the Annex to SOLAS. This chapter is named 'Special Measures to Enhance Maritime Security'. Regulation 8 constitutes the Shipmaster's discretion for ship's safety and security. The Shipmaster has the authority and responsibility to take and execute decisions which, in his professional judgement, are necessary to maintain the safety and security of his ship. The Shipmaster may, as a last resort, deny access to persons, but not to all official persons of the flag state or during Port State Control (PSC). Whilst this may be the case, before the Shipmaster considers such denial, consideration should be given to potential consequences for the Shipmaster, ship, shipowner or voyage and further consideration should be given as to how to mitigate any such consequences. If, in the professional judgement of the Shipmaster, a conflict between safety and security requirements arises.

The Shipmaster will give effect to those requirements necessary to maintain the safety of the ship. In such cases, the Shipmaster may implement temporary security measures, which may deviate from the legal requirements.

The Shipmaster must inform the Company Security Officer, the flag state and the port state in whose port the ship is operating or intends to enter. Such temporary security measures must comply with the prevailing security level.

Example

The denial to load containers or other sealed cargo is a crucial decision of the Shipmaster because this measure may cause financial loss to the shipowner.

The Shipmaster has the ultimate responsibility for the safety and security of his ship.

Of course, the Shipmaster may seek explanation or modification of instructions issued by the authorities. Certainly, if there are reasons to believe that compliance with an instruction may endanger the safety or security of his ship. Before the Shipmaster finally uses his discretion with substantial consequences, he should discuss this subject with the shipowner and seek advice. At the end of the day, it is however the sole decision and responsibility of the Shipmaster, excluding other persons or entities.

10.4.3. Shipmaster's overriding authority

**Shipmaster's responsibility and authority
(IMO/ ISM-Code/ Part A/ Sec. 5.2)**

The Company should ensure that the SMS operating on board the ship contains a clear statement emphasizing the Shipmaster's authority. The Company should establish in the SMS that the Shipmaster has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company's assistance as may be necessary.

This requirement can be found in the ISM-Code, which is made mandatory by SOLAS (Annex, Chapter IX, Regulation 3).

Overriding authority means cancelling decisions of other persons or regulations.

The phrase 'overriding authority' can be split in two. Firstly, the term 'overriding'. If the Shipmaster uses his overriding authority, he overrides another person's decision or even overrides contracts. This overriding authority is established by the shipowner in the SMS, so not by the legislature. It does not give the Shipmaster the authority to break laws and regulations.

The Shipmaster cancels or overrides other decisions or guidelines and instructions.

He is not allowed to use his overriding authority at random, but only when a pressing safety or pollution matter urge the Shipmaster to do so.

The Shipmaster cannot act illegally by overriding decisions or requirement.

Secondly, the term 'authority.' Authority is the permission granted by the shipowner to the Shipmaster to perform specific actions or conduct.

Overriding authority is not a justification or permit for the Shipmaster to break the law. Besides that, afterwards the Shipmaster is responsible and answerable to the shipowner, but maybe also to a court.

When the Shipmaster executes his tasks by taking decisions in the area of safety, as constituted in SOLAS he just does his duty. The Shipmaster is not always overriding decisions of other persons or entities, mostly he just takes decisions as authorized to do so by law.

Example

The shipowner or charterer may not improperly insist that the Shipmaster, while navigating in a dense fog, should increase the speed in order to reach the ETA for the next port of call. The Shipmaster is in command of his ship, including establishing the safe speed in dense fog.

Example

The Shipmaster informs the shipowner that he needs another lifeboat, because one of the original lifeboats has been damaged seriously. The Shipmaster also informs the shipowner that he cannot leave port before he gets another lifeboat. This Shipmaster did not use his overriding authority; he did his duty as given by the ISM-Code and SMS.

The Shipmaster uses his overriding authority if he overrides clauses of contracts and instructions from the shipowner, charterer or P&I Clubs, or decisions of other persons.

Example

The charterer in combination with the shipowner wants the Shipmaster to berth the ship under heavy wind conditions but without the assistance of tugs. The charterer and the shipowner insist on their decision, they even try to force the decision on the Shipmaster, who uses his overriding authority by not mooring the ship under these conditions and without tugs.

10.5. ISM/SMS

The overriding authority of the Shipmaster comes from the ISM-Code, meaning the IMO's *International Management Code for the Safe Operation of Ships and for Pollution Prevention*. This Code is the basis for establishing the Safety Management System (SMS). Firstly, the ISM-Code states that the shipowner should emphasize the Shipmaster's authority. Secondly, the ISM-Code states that the shipowner should establish overriding authority to make decisions with respect to safety and pollution prevention.

The ISM-Code does not give the Shipmaster overriding authority for security, neither does other codes.

Thus, the Shipmaster has overriding authority over all issues relating to safety and maritime pollution. Aside from it being part of maritime traditions to give the Shipmaster this kind of power, it is also enshrined in international and national law. With the overriding authority automatically comes the responsibility of the Shipmaster. When the Shipmaster uses his overriding authority by overriding provisions or requirements, he might be held accountable and maybe must answer to the shipowner or to a court of law.

10.6. Summary Shipmaster

The Shipmaster:

- has been, for centuries, the person with absolute and ultimate powers on board. Nowadays, this authority has been endorsed by international law, although with some restrictions.
- possesses overriding authority on board, as defined by the shipowner and based upon the ISM-Code/SMS.
- takes decisions which are generally regarded as final and should establish the standard procedures for ensuring compliance with legal and other operational requirements.

Within the domains of safety and marine environment, the Shipmaster has both discretion and overriding authority. However, in the domain of security, the Shipmaster has discretion only, without overriding authority.

- has discretion or overriding authority in certain areas; however, the shipowner retains full legal rights of ownership, as the ship remains the owner's property.

- has overriding authority which is limited to matters of safety and protection of the marine environment and should be exercised only as a last resort — that is, when all other options and alternatives have been considered or exhausted.

Overriding authority: cancelling decisions of other persons.
Discretion: ability or right to decide something.

- has discretion regarding safety, security and marine environment. This may conclude that the Shipmaster has no overriding authority regarding the security on board unless the security becomes part of the overall safety of the ship.

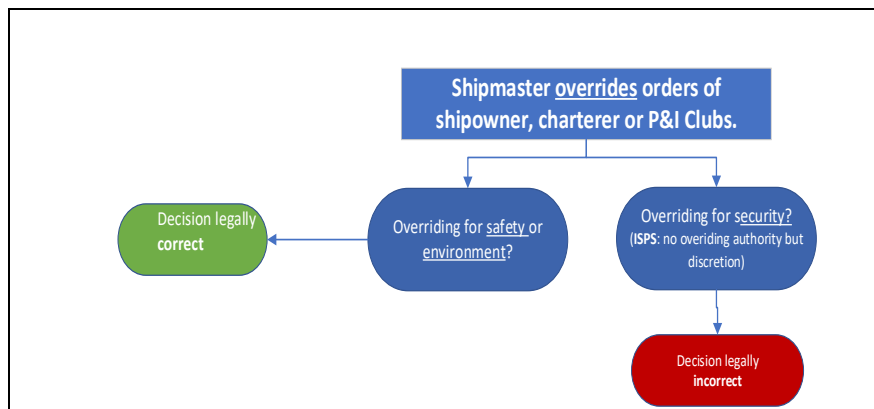


Figure 23. Overview overriding authority.

- may encounter disputes with the shipowner in the (red) overlap (figure 24) of the tasks and responsibilities of the Shipmaster and shipowner.

The best advice for the Shipmaster is to communicate with the shipowner in an early stage, including a reflection about all other possible options.

- is advised to exercise overriding authority only as a last resort, and not for routine decision-making.
- should after exercising overriding authority or discretion, make detailed records of all relevant facts and circumstances. These may be required for reference during any subsequent investigation.
- bears full responsibility associated with the exercise of overriding authority and discretion and holds the authority to implement measures necessary to enforce the decisions made.
- Possesses, in accordance with the ISM Code and Safety Management System (SMS), overriding authority. The shipowner must formally declare and recognize that the Shipmaster

holds the authority and discretion to make decisions concerning safety, security, and protection of the marine environment.

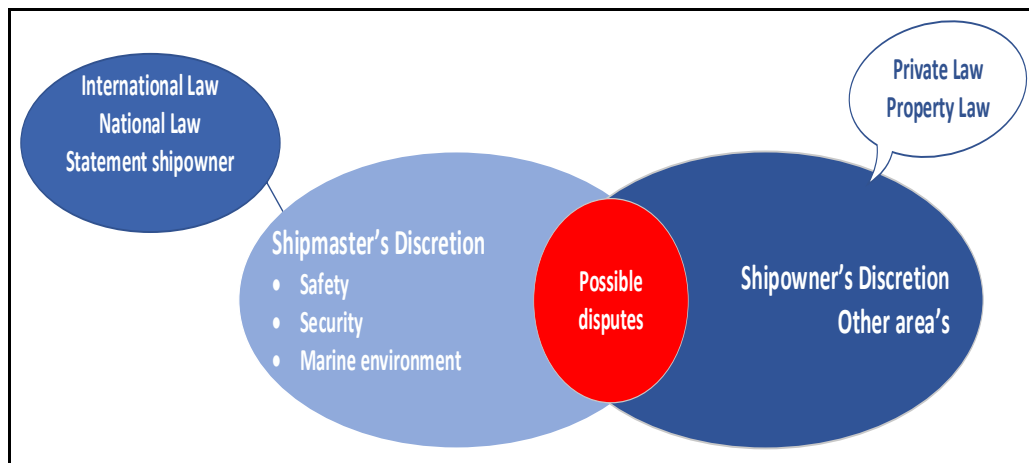


Figure 24. Shipmaster's versus shipowner's discretion

- must check whether the SMS-declaration has been submitted and is well known onboard.

Beyond the area of safety, security, and marine environment protection the Shipmaster should leave the authority and discretion to the shipowner.

- and the shipowner should resolve any disputes that may arise, particularly those concerning the limits of the Shipmaster's authority and the rights of the shipowner. Such disputes should be settled through mutual consultation, understanding, and cooperation.
- should remain aware that overriding authority and discretion apply exclusively to matters related to safety, security, and the protection of the marine environment.

On board of a ship, the safety, security and protection of the marine environment is almost always at stake.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 11 Crew

11.1. Introduction

The Shipmaster is responsible for his crew, which consists out of seafarers. Firstly, for complying with the minimum safe manning requirements, and secondly also for the wellbeing of his crew, including working conditions and working hours. 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, according to national law, 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 last one is mandatory by international law, such as the STCW. 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 national 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 or crewlist.

A seaman discharge book is issued by a country to a seafarer, according to national law of that country. International law does not regulate these books. 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 the same way as on the certificate of competency. The idea is that the ship manager 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 ship manager's representative. During the ship's voyage situations may 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.

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.

The seaman's book or alternative service certificate lists work experience and training, while the certificate of competency is issued when the requirements of training, experience, and physical fitness have been met.

Everyone who signs on must be medically cleared. This also applies to personnel without watchkeeping or safety duties. This medical certificate is also required for applying for a certificate of competency. The Shipmaster is responsible for checking all certificates, as well as the ship's health.

Personal documents according to the Act Manning Seagoing Vessels

- Seaman's book or alternative service certificate: Overview of position and work experience.
- Certificate of competency: Document demonstrating competency for a specific position.
- Certificate of proficiency: Document demonstrating that a seafarer meets certain professional requirements.
- Medical certificate: Every seafarer must have a valid medical certificate demonstrating that they are medically fit for their position.

The Netherlands maintains a Central Register of Crew Data, in which the Ministry records the issued seaman's books, certificates of proficiency, and certificates of competency, as well as any exemptions and waivers granted.

The Shipmaster plays a role in both the certificate of competency, the certificate of proficiency, and the seaman's book and/or alternative service time registration. This is primarily reflected in the Act Manning Seagoing Vessels and all associated regulations.

The Act Manning Seagoing Vessels distinguishes between competencies for general operational duties and those for managerial duties, for which responsibility can only be entrusted after several years of experience. To prevent problems during port state inspections abroad, functions and competencies are indicated on the manning certificate (see below) in the same way as on the certificates of competency.

The basic principle is that the shipowner is primarily responsible for manning their vessels so that they can sail safely and environmentally soundly.

The Shipmaster, in addition to his other roles, is the shipowner's representative. During the ship's voyage, situations may arise that could not have been foreseen. If the actual situation so requires, the Shipmaster will take appropriate or additional crew measures.

This means that, in addition to the regular crew on board, he can sign on additional crew members. The Shipmaster may also decide not to sail until crew conditions have changed. This is for safety reasons.

IMO/SOLAS

- The national government will establish the minimum crew size according to a transparent procedure.
- A minimum crew certificate will then be issued.
- For safety reasons, a working language must be established on board and recorded in the ship's logbook. The shipowner or Shipmaster will determine this working language.

This chapter will focus on the legal position of the Shipmaster regarding his legal relationship with the seafarers on board. Many aspects of crew management are subject to legal rules.

11.2. Crew management on board

Crew management ashore can be defined as recruiting, hiring, employing, supporting and maintaining an organisation of employee positions. Crew management onboard is the planning, organizing, compensation, integration, and maintenance of crewmembers for the purpose of contributing to a safe and healthy ship. The Shipmaster oversees good working teams on board, such as the bridge team and the engine room team. The Shipmaster should clarify the goal and the working procedures. Further on, he should not only show command and control, but also leadership and motivation.

A significant part of the Shipmaster's crew management is being concerned with the occupational health and safety of his crewmembers, including the mental health. But also, with their social interrelationship within the crew and teams onboard, and with their home and family.

Understanding human element related issues and effectively managing those on board with appropriate levels of communication and empathy is key to running an efficient ship. The Shipmaster often has responsibilities under national health laws. Many countries have combined legislation for occupational safety and health. MLC speaks about health protection, medical care welfare and social protection.

11.3. IMO/ILO

11.3.1. IMO

Legal rules for a safe manning can be found in the IMO/SOLAS, which say that the government of the flag state undertakes measures for the purpose of ensuring that all its national ships are sufficiently, effectively and efficiently manned for the voyage. The STCW gives, in detail, the minimum standards required to be maintained by countries to this treaty, to give full and complete effect to the provisions of the STCW Convention. It also gives recommended guidance to assist countries to the STCW Convention. The minimum standards of competence required for seagoing personnel are given in detail in a series of tables, such as for example, the standards regarding the Shipmaster. The STCW also contains recommended guidance which is intended to help countries implement the convention.

11.3.2. ILO

The ILO/MLC provides international social and working standards to ensure worldwide protection for the seafarers sailing on ships flying the flag of countries which have ratified MLC. MLC covers many aspects of the work and life onboard, including minimum requirements, conditions of employment, accommodation, health protection and medical care. MLC is partly mandatory and partly recommended, therefore the Shipmaster should access and consult the national law of the flag state to obtain the precise requirements for his ship and crew. The Shipmaster plays a significant role in complying and enforcing MLC on board. He can find

guidelines on the application of MLC in the Convention, but also in the ICS '*Guidelines on the Application of the ILO Maritime Labour Convention*'.

11.4. Quantity

SOLAS is not clear and precise about the number of seafarers on board. It only gives the flag state guidelines. The government of a flag state should establish for every relevant ship appropriate minimum safe manning following a transparent procedure. The flag state should consider the relevant guidance adopted by the IMO and should issue an appropriate minimum safe manning document or equivalent as evidence of the minimum safe manning considered necessary to comply with the mentioned provisions.

11.4.1. Minimum safe manning

The IMO has issued the book '*Principles of Minimum Safe Manning*'. If the Shipmaster is in doubt whether he has enough seafarers onboard to sail safely, he can consult these IMO principles. But it is the national law of the flag state which apply onboard. The minimum safe manning is a subject of national law of the flag state, inspired by the IMO provisions and principles of minimum safe manning. The minimum safe manning is constituted by the flag state, which has the authority to differ from the IMO guidelines or ask for specific requirements. Unions of seafarers may have their influences as well.

11.4.2. Manning plan

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 countries' flag, observe the principles of safe manning and consider 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 ship. The maximum number of working hours per seafarer should be part of this document. Based on the manning plan the shipowner can show that with this crew composition seafaring operations can take place in a manner that is safe and responsible, in environmental terms and otherwise.

Sometimes the Shipmaster is asked for his advice regarding the minimum number of crewmembers mentioned in the manning plan. This

is the opportunity for the Shipmaster to influence the minimum safe manning for a ship.

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 Chapter 9 of this Handbook. Once the manning plan has been approved by the flag state, a minimum safe manning document will be issued by the flag state: the 'Minimum Safe Manning Certificate'. This defines whether a ship is safely manned when leaving for sea. This document falls under national law, so the format will not always be the same. The original Minimum Safe Manning Certificate must be kept on board.

11.4.3 Minimum Safe Manning Certificate

The Minimum Safe Manning Certificate not only shows the minimum number of personnel required on board but also the qualifications required.

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

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 should inform the shipowner when the complement on board is not conforming to the Minimum Safe Manning Certificate. The Shipmaster must not sail when the requirements of the Minimum Safe Manning Certificate are not met.

It is possible that a Minimum Safe 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 of crew compositions in the ship's journal.

The Shipmaster may not depart or find himself at sea with fewer seafarers than shown on the Minimum Safe Manning Certificate, nor with seafarers who hold incorrect qualifications. During the ship's voyage situations can arise that could not have been foreseen. The Shipmaster should take the appropriate measures in the area of manning, as and when the actual situation in his view requires it. This means that, in particular circumstances, the Shipmaster may need an additional crewmember.

When this is very urgent and a serious safety-issue, the Shipmaster should contact the shipowner in a very early stage to solve the problem.

If the shipowner does not send an extra crewmember, the very last choice of the Shipmaster might be not to go to sea until the circumstances change. Of course, the consequences and responsibilities are for the Shipmaster himself. The Shipmaster has overriding authority in this case but should consider all consequences.

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

Manning Plan

A proposal from the ship's manager regarding the minimum number of crew members and their respective roles on board with which the ship's manager wishes to man the vessel in question.

Manning Certificate

A certificate issued by the Minister specifying the minimum number of crew members and their respective roles on board the seagoing vessel.

Crew List

A standard statement introduced by the FAL Convention containing information relating to the crew composition of a seagoing vessel.

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).

Mandatory Provisions of the Decree Manning Seagoing Vessels

Article 2.1.4.3.

The master shall ensure that one copy of the valid manning certificate is displayed in a clearly visible place on board the vessel.

Article 2.1.3.5.

The ship's manager shall provide the master with a copy of the manning plan, which accompanies the valid manning certificate.

Article 2.1.6. The master shall record in the ship's logbook the crew composition of the vessel, if more than one composition is recorded in the manning certificate, as well as any facts or circumstances that do not correspond to the information in the manning plan.

Prohibitions of the Act Manning Seagoing Vessels

Article 68

It is prohibited to proceed to sea with a vessel without a valid manning certificate on board.

Article 69

It is prohibited to man a ship with fewer crew members than specified in the manning certificate;

Article 70

It is prohibited to fail to compile the crew list.

Article 71

It is prohibited to assign, or to allow crew members not authorized to perform, the duties of keeping lookout, or acting as chief of the watch on the bridge or as chief of the watch in the engine room or engine rooms.

11.5. Quality

The number of seafarers onboard is important for the Shipmaster, but the qualifications and competency of those seafarers are as important. The Shipmaster should check the qualifications of all new joining seafarers to ensure that those seafarers are suitably qualified for the positions on board intended. If the Shipmaster has any concerns regarding joining crew member's qualifications or ability to perform the function they are being employed in, the Shipmaster should contact the shipowner immediately raising concerns and seek clarification.

SOLAS has provisions for the numbers of seafarers, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) has provisions for the qualifications and certificates of the seafarers onboard, such as the certificate of competency and medical certification.

11.5.1. Certificate of Competency

The certificate of competency originates from international law but is issued under domestic law by the administration of a country. A seafarer must be in the possession of a valid certificate of competency, if he should be appointed to a function that demands it.

This is for the Shipmaster to verify. Based upon STCW, but issued by countries to masters, officers, GMDSS radio operators entitling the lawful holder to serve in the capacity and perform the functions involved at the level of responsibility specified in the certificate.

The certificate must be endorsed by the flag state attesting the recognition, otherwise the validity is missing. To become eligible for a certificate of competency, 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 competency (STCW)

Issued by countries to masters, officers, radio operators and ratings forming part of a watch who meet the standards of competency relevant to their particular functions and level of responsibility onboard. The Shipmaster should check whether the certificate has been endorsed for recognition by the flag State or it will not be considered valid.

STCW applies to ships of flagstates that have signed the convention (member countries) but also for ships of non-member-countries to the convention, visiting a port of a member country to the convention. This ensures, amongst other things, that the convention can be enforced worldwide. Ships, regardless of under which flag they sail, may be subject to Port State Control whereby inspections will be carried out on whether they fulfil the criteria laid down in STCW.

The seaman's certificates of competency will be checked as well. The Shipmaster should check also whether the certificate has been endorsed for recognition by the flag State, or it will not be considered valid. This international convention has been implemented into Dutch legislation by the Act Manning Sea Ships.

11.5.2 Certificate of equivalent competency

If a Shipmaster or other seafarer has a Certificate of Competency issued by his home country, and he is going to work on a ship of another country, he sometimes must have a certificate issued by that other country, a so-called Certificate of Equivalent Competency (CEC). So, foreign seafarers that serve on board of a vessel from another country, are sometimes required to hold a valid Certificate of Equivalent Competency (CEC), this depends on the national legislation of that country. These CEC-certificates are issued on a like-for-like basis against a valid Certification of Competency and are issued in line with the international convention on Standards of Training, Certification and Watchkeeping (STCW). 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.

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 international agreements in place with certain countries to regulate this subject originating from STCW.

The Dutch seaman's Certificate of Competency will be issued to foreign seafarers in possession of STCW Certificate of Competency awarded by a country 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 countries and countries 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.

Act Manning Seagoing Vessels (NL)

Article 23

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 27

The minister may recognize certificates of competency issued by a competent authority of another country.

Article 26

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 23

The minister may grant dispensation.

11.5.3 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 STCW have been met. STCW applies not only to ships of flag states that have signed the convention (member countries) but also for ships of non-member-states to this convention, visiting a port of a member state to that convention. This ensures, amongst other things, that the convention can be enforced worldwide.

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 STCW have been met.

Ships, regardless of under which flag they sail, may be subject in harbour to Port State Control, whereby inspections will be conducted on whether they fulfil the criteria laid down in STCW. The seafarer's certificates of competency will be checked as well. Countries are required to apply penalties or disciplinary measures when the Shipmaster breaches STCW requirements, such as, he:

- Has engaged a person not holding a certificate as required by STCW;
- Has allowed a function to be performed by a person not holding the required certificate;
- Or another seafarer has forged documents.

The penalties or disciplinary measures are prescribed and enforced by the flag state or by a coastal state during Port State Control. If the Shipmaster receives a penalty, he may pay this penalty or lodge an appeal. This depends on the legislation of the country issuing the penalty to the Shipmaster. The Shipmaster should contact the shipowner to find legal assistance.

11.5.4. 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 for dispensation are no danger to persons, property or environment. Types of dispensations are:

- Personal dispensation: granted to a crewmember regarding the obligation to have a valid certificate of competency.
- Ship's dispensation: given to the ship regarding manning in accordance with the manning certificate.

No dispensations will be granted to the Shipmaster or chief engineer, except in highly exceptional, unforeseeable circumstances and then only for the shortest possible time.

Dispensations can only be permitted as prescribed by national law.

In the Netherlands, the seafarer's certificates and dispensations can be requested through the KIWA-Register, a governmental qualified organization issuing documents such as certificates and permits.

11.6. Crewlist (NL)

11.6.1. Crewlist

The crew list follows an IMO standardized format to collect information for each crew member in an organized manner. This is based upon the *Convention on Facilitation of International Maritime Traffic* (FAL Convention). See also the *Explanatory Manual* published by the IMO.

The crew list contains information about the crew members aboard a ship, including their names, ranks, nationalities, dates and places of birth, identity document details, and signatures. It provides essential information about the ship itself like its name, IMO number, call sign, flag state, and voyage details to identify the vessel and trip. The crewlist, also a requirement under the NL Act Manning Seagoing Ships is a document that lists the names of the persons on board a seagoing vessel.

- The ship's manager is responsible for compiling and maintaining this list, which must be in accordance with the minimum safe manning certificate.
- The crewlist must be up-to-date and contain certain information, as prescribed by law and any general administrative measures.
- The ship's manager is responsible for compiling and maintaining the crew list.

- The list lists the names of the persons the ship's manager has placed on board, in accordance with the manning certificate.
- The crew list must always be up-to-date.
- The crew list must be retained for a certain period, even after it has been replaced or its validity period has expired.
- The crew list serves for monitoring purposes and as tax evidence.
- In special cases, an exemption from the requirement to maintain a crew list may be granted, provided this does not pose a risk to safety.
- It is possible to replace a crew list completely or partially with an automated file.

11.6.2. Content Crew list

More detailed rules regarding the preparation of the crew list, etc., can be found in the Decree on the Manning of Seagoing Vessels. Articles 2.3.1 et seq. state:

- Before a seagoing vessel departs for sea for the first time and subsequently at intervals of no more than twelve months, a crew list must be drawn up.
- A crew list must be drawn up each time there is a change in the crew composition.
- A copy of the crew list must be kept on board by the master, and a copy of the crew list must be kept at the ship's manager's office in the Netherlands and made available for monitoring by the officials responsible for ensuring compliance.
- The Regulation on the Manning of Seagoing Vessels (see below) stipulates that other information must also be included on the crew list in addition to the information specified in the standard declaration introduced by the FAL Convention.
- The ship's manager must retain a crew list for three years after the replacement date or validity date.

The Seagoing Vessel Manning Regulation provides further details:

- The ship manager may be required to immediately submit the crew lists for a specific period for one or more of its seagoing vessels to the Minister.
- The NL Human Environment and Transport Inspectorate (ILT) may request access to crew lists for a specific period from a ship manager.

11.6.3. Seaman's discharge book

Article 22 of the Seagoing Vessels Manning Act stipulates that possession of a seaman's book is mandatory for certain seafarers, and optional for others. These other seafarers may also use an alternative service certificate. Article 22 further states:

- A seafarer is in possession of a valid seaman's book if they hold a position as Shipmaster, officer, or rating on board a seagoing vessel and hold a certificate of competency or a foreign certificate of competency recognized by Our Minister for that position.
- The first paragraph does not apply to a seafarer with a nationality other than Dutch if the seafarer holds a valid seaman's book that is written in at least English and issued by or on behalf of the competent authority of the country of origin or another country.
- A seafarer, other than a seafarer referred to in the first paragraph, is in possession of a valid seaman's book or an alternative service certificate that is endorsed or issued by the Shipmaster.

The Manning Regulation Seagoing Vessel stipulate that a seaman's book is issued to those who can demonstrate:

- that they have entered into or will enter into a maritime employment contract;
- that they are undergoing training for a position for which a certificate of competency is required.

If it is demonstrated that the seaman's book is necessary for the performance of their duties on board a seagoing vessel, the following persons are also eligible for the issue of a seaman's book:

- nautical/technical surveyor from recognized organizations;
- registered pilot;
- certified North Sea pilot;
- Etc., etc.

Furthermore, the Manning Regulation Seagoing Vessel describe topics such as:

- Evidence for requesting a seaman's book;
- Entries in the seaman's book or alternative service time declaration;

- Loss of the seaman's book;
- Persons other than the Shipmaster authorized to make entries;
- Return of the seaman's book.

The Manning Regulation Seagoing Vessels provide very detailed rules regarding the content, annotation, issue, amendment or validity, storage, and return of the seaman's book and the alternative service time declaration.

Foreign Seaman's Book

A foreign seafarer is eligible for a Dutch seaman's book if they will be sailing on a Dutch ship, or if the foreign seafarer will be sailing for a Dutch shipping company or ship manager.

A foreign seafarer may sail with a foreign seaman's book on a ship flying the Dutch flag, provided that this book is also written in English.

The foreign seaman's book is also an official document in which the seafarer's sailing hours, and work experience are recorded. Not all seafarers are required to possess a seaman's book; an alternative declaration of service is also possible for certain foreign seafarers.

Article 22 of the Act Manning Seagoing Vessels
 1. A seafarer must own a valid seaman's book.
 2. This does not apply to a seafarer of a nationality other than Dutch, if that seafarer owns a valid seaman's book that is written in at least English and issued by or on behalf of the competent authority of the country of origin or another country.

11.7. 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.

11.7.1 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 Act Manning Seagoing Vessels:

A natural person who carries out work of any kind on board a sea 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.

11.7.2. Employer

Officially, the employer is the ship manager, but in the broader sense of the word.

Ship manager

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 ship managers in accordance with MLC, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the ship manager.

Not only the ship manager 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 ship manager 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.

11.7.3. 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 (ship manager) becomes accountable. The ship manager, 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 ship managers or placing seafarers with ship managers.

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 regarding (temporary) work carried out on board a ship when the situation is such that the employment agency is not based in the flagstate.

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.

11.7.4. 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 port;
 - Retirement
 - Bankruptcy ship manager
- 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 seafarer 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 country in armed conflict or a blockaded port;
- Leaving for a hostile port;

- Using the ship in an armed conflict;
- Using the ship to commit a crime;
- Serious threat of assault.

Example

A seven-day notice period applies to terminating a maritime employment contract. Termination is not possible before the ship is moored in port. Also, be sure to obtain permission from the governmental bureau (UWV) if the shipowner terminates the contract.

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.

Summary Dismissal

A summary dismissal is a termination of the seafarer's employment contract with immediate effect. Therefore, no notice period is observed. A summary dismissal must be for urgent reasons. See above. Summary dismissal can be given either orally or in writing. Often, summary dismissal is first given orally, followed by written confirmation. For a summary dismissal, the shipowner does not need to request permission from the Employee Insurance Agency (UWV) or the subdistrict court.

A summary dismissal therefore terminates the seafarer's employment contract with immediate effect, potentially with many unfavourable consequences. Because of these unfavourable consequences for the seafarer, the law stipulates that summary dismissal must meet several strict conditions:

1. There must be an urgent reason.
2. The summary dismissal must be given immediately.
3. The employee must be informed of the urgent reason immediately.
4. In the event of summary dismissal on board, the seafaring contract can only be terminated by the time the ship is in port.

Summary Dismissal

- Urgent reason
- Immediate notification
- Only in port.

In the event of summary dismissal, the Shipmaster also plays a role. It is the ship's manager, as the employer, who dismisses the seafarer summarily. However, the reason and further details will come from the Shipmaster. Therefore, the Shipmaster is the employer's representative. Consultation with the ship's manager (office) is appropriate in this case. However, there should be no loss of time, as this would not be considered summary dismissal. This could also cause problems if it occurs during a long crossing. Consultation with the office is virtually unavoidable in this case. In that case, a relief crew member can be sent immediately. The minimum number of crew members on board remains in place. If a Shipmaster on board dismisses a seafarer summarily, without consulting the employer, this could potentially lead to legal and safety problems.

Overview crew documentation

- Manning plan

Proposal from the ship manager, containing the minimum number of crew members and their functions on board with which the ship manager wishes to man the seagoing vessel in question. Basis of the manning certificate. A copy must be on board.

- Manning certificate

certificate issued by the Minister containing the minimum number of crew members and their functions on board the seagoing vessel concerned;

- Maritime Labour Certificate

Proof that the ship reaches the international standards for accommodation, food etc.

- Seaman's discharge book

Document issued by the Minister or a competent foreign maritime authority to a seafarer containing an overview of his function and period of service on board one or more ships as referred to in the STCW Convention, the MLC Convention or the FAL Convention;

- Certificate of competency

A valid document issued by the Minister evidencing the authority to serve on board a seagoing vessel in one or more positions for which professional requirements are set by or pursuant to the Act; Foreign officers must be in possession of a flagstate Certificate of Competency. For foreign seamen a flagstate 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.

11.8. 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 reasonable and necessary measures. This may be done from the point of view of maintaining public order (discipline) and the safety on board.

The word used is 'measures' which are not legally seen as punishment but can be 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 21 of this Handbook.

- Article 10 Act Manning Seagoing Vessels (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.
 2. 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 Shipmaster.

For example, the Shipmaster can take the necessary measures for the following facts:

- Disembarking without permission;
- Returning on board too late;
- Refusal of work;
- Improper conduct;
- Disturbance;
- Drunkenness;
- Errors during watch.

These violations must be related to public order and/or safety on board. This in the broad sense and at the discretion of the Shipmaster.

Any measures are intended for the individual persons on board, including passengers.

Measures can be:

- Warning (verbal/written; informal/formal);
- Prohibition to go ashore;
- Obligation to be back on board at a certain time;
- Alcohol prohibition (drinking ban);
- Prohibition to interact with passengers;
- Access ban to certain places;
- No/limited internet access;
- Repatriation.

The Shipmaster decides what is 'reasonably necessary'. The Shipmaster also has the last word here. Measures taken must be communicated in writing to the seafarer, but also to the ship manager as employer.

The measures must also be noted in the ship's logbook. Hearing both sides must also be applied here. Witness statements can also play a role. The Shipmaster can also seek help from the *Code of Conduct for the Merchant Navy* (via Internet). This is not Dutch law or regulation, but it can give the Shipmaster ideas and suggestions.

Keeping the employer informed at all times is of great importance, also because it can then be added to the seafarer's personnel file. All this at the discretion of the Shipmaster, who ultimately decides.

11.9. Seafarers' familiarisation

One of the legal tasks of the Shipmaster is to oversee the familiarization of his seafarers. There are various kinds of familiarization, such as for newly arrived seafarers, for seafarers who did not participate in specific drills for a lengthy period of time or if more than 25% of the crew has not participated in specific drills. This has been laid down in SOLAS and in the STCW-Code. National law of the flag state may have additional legislation on familiarization. Here the familiarization of newly arrived seafarers will be described to give the Shipmaster a good guidance. Other deficiencies of seafarers should be identified and solved by the Shipmaster as

quick as possible. Maybe with a specific familiarization program. Seafarers must be familiarized with their specific duties and with all ship arrangements, installations, equipment, procedures and ship characteristics that are relevant to their routine or emergency duties. Therefore, seafarers, such as newly arrived seafarers, must be familiarized on board, unless they have been familiarized in earlier stages.

Seafarers on board specific ships, such as passenger ships must complete additional trainings and familiarization in accordance with their capacity, duties and responsibilities. Seafarers must be familiarised with their specific duties and with all ship arrangements, installations, equipment, procedures and ship characteristics that are relevant to their routine or emergency duties. Therefore seafarers, in particular newly arrived seafarers, must be familiarised on board, unless they have previously undergone familiarisation.

Seafarers on board certain ships, e.g., passenger ships or oil tankers, must complete additional training and familiarisation in line with their capacity, duties and responsibilities. One of the Shipmaster's legal tasks is to cover this familiarisation.

There are various kinds of familiarisation, such as for newly arrived seafarers, or for seafarers who have not taken part in specific drills for a long period of time, or where more than 25% of the crew have not participated in specific drills.

Familiarisation of seafarers is mandatory under SOLAS and the STCW Code. The flagstate may have additional legislation on it, which the Shipmaster should consult for guidance on how it should be done.

The Shipmaster should take all the necessary steps to implement instructions, e.g.:

- Identifying all seafarers who are newly employed on board the ship before they are assigned to any duties;
- Providing the opportunity for all newly arrived seafarers to:
- Visit the spaces in which their primary duties will be performed;
- Get to know 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; and

- Observe and ask questions of crew members who are already familiar with the equipment, procedures and other arrangements;
- Providing for a suitable period of supervision if there is any doubt as to whether a newly employed seafarer is familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties.

In addition to the mandatory STCW provisions, all newly boarded seafarers other than passengers must receive adequate familiarisation and information about safety on board.

The Shipmaster plays an important role in emphasising the importance of safety to everyone on board. A good safety education could include effective communication about safety, including understanding symbols, signs and alarm signals. This could, if necessary, include the upscaling of an incident: who should be warned, and how? Awareness of all specific safety areas, e.g., assembly points, allocation of life jackets or fire extinguishers, and escape routes, and first actions when realising there is a man overboard, discovering fire or smoke or encountering a medical emergency.

11.10. Summary Shipmaster

The Shipmaster:

- is not required to recruit personnel himself; this is arranged by the shipowner ashore.
- represents the shipowner on board, leads the crew, and ensures their well-being and safety.
- motivates the crew, takes corrective action where necessary, and ensures proper staffing in accordance with laws and regulations.
- is responsible for the validity of crew members' documents and certificates and does not employ unqualified personnel.
- informs the shipowner of any irregularities and ensures order and discipline on board.
- ensures sufficient qualified personnel in accordance with the minimum safe manning certificate and regularly checks the accuracy of documents.
- in the event of insufficient crew or qualifications, immediately contacts the shipowner to rectify the situation.

- ensures that only qualified crew members perform their assigned duties and regularly monitors the division of duties and tasks on board.
- ensures that the Minimum Safe Manning Certificate is visibly displayed on board.
- may use a digital management system for efficient document control.
- may, with objective justification, request additional qualified crew members from the shipowner. If this request is refused and the Shipmaster deems the voyage unsafe, he may refuse to depart.
- complies with all relevant laws and regulations and is accountable to the judiciary.
- keeps the crewlist up to date, manages the seaman's records, and guides new crew members through a structured induction and safety process.
- may deviate from procedures in exceptional circumstances when safety requires this, provided this is reported.
- manages the official ship's documents and ensures that their records are up to date.

Documents

The Shipmaster:

- is compliant with the best practices regarding crew management, which also includes the verification and administration of all mandatory documents. The validity period of those documents and certificates may vary per flag state.
- must be aware, that different ships may require different certificates for the seafarer, such as a specific certificate for tankers or for polar voyages. The Shipmaster should verify exactly the necessary documents for his specific type of ship.
- may be addressed with penalties or disciplinary measures. These must be enforced in cases the Shipmaster breaches the national legislations about mandatory certificates. This is national law inspired by the international agreements. The best practice here is to fulfil the requirements of the relevant legislation. When the Shipmaster gets a penalty, he may lodge an appeal. This is not true in all countries.
- manages the crew documentation falling under the control of the Shipmaster.
- this overview is not complete or limited to:

- **Manning Certificate:** Every ship must have a valid manning certificate granted by the national 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:** Many countries have regulations for crew members that must be in possession of a seaman's book;
- **Certificate of competency:** A certificate issued and endorsed for masters, officers and some ratings in accordance with the provisions of STCW. It entitles the lawful holder to serve in the function and at the level of responsibility specified in STCW;
- **Certificate of proficiency:** A certificate, other than a certificate of competency issued to a seafarer, stating that the relevant requirements of training, competencies or sea-going service in STCW have been met;
- **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.
- **Working hours overview:** Sees to it that on board a duty roster of the Shipmaster and his crewmembers has been posted in an accessible place. Working hours for juveniles (16-18 years old) need special attention from the Shipmaster.
- **Crew list:** the basic document required by public authorities of a coastal state containing data relating to the number and composition of the crew on the arrival and departure of a ship.
- **Passenger list:** the basic document required by public authorities of a coastal state containing the data relating to passengers on the arrival and departure of a ship.

Minimum safe manning

The Shipmaster:

- must oversee the qualifications and quantity of the crew, including all mandatory certificates. He should do so by checking all mandatory documents, such as the (Minimum Safe)

Manning Certificate. When deficiencies are found the Shipmaster should contact the shipowner to solve the problem.

- should not task a crewmember with something for which the crew member is not qualified. The Shipmaster should take care of this by checking these items on a regular base.
- is obliged to place the Manning Certificate where it can be easily seen. Many documents should be exposed on board, therefore the use of intranet on board may be an option.
- has the right to ask for supplements on the Minimum Safe Manning Certificate, especially when he cannot meet safety requirements.
- may ask the shipowner for an extra seafarer due to the specific and temporary safety situation.
- should, if necessary, open a discussion with the shipowner on this safety issue.
- if the shipowner refuses to send an extra seafarer, the Shipmaster might refuse to go to sea, but all consequences are for the Shipmaster.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 12 Working conditions

12.1. Introduction

The chapters 11, 12, 13 and 14 have mainly been derived from the Maritime Labour Convention 2006 (MLC).

Seafarer (Definition (MLC))

Any person who is employed or engaged or works in any capacity on board a ship to which MLC applies.

The aim of these chapters is to make complex legal problems simpler for all 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 ship manager, they can find their way in this chapters to solve the problem. From the other point of view the Shipmaster can inform and advise his crew with the help of these chapters.

It must be said again: on ships various legislations may apply, sometimes even at the same time. In foreign ports and territorial waters the legislations of the flagstate and that of the coastal state apply, mostly the latter even with a priority. Also, the legislation of the home country 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 flagstate. MLC sets out the minimum standards that must be implemented by all member countries to MLC. These standards must be reflected in national legislation.

This chapter is quite a long one about working conditions for the seafarers onboard, mainly based upon the MLC.

12.2. ILO/MLC

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 tripartite UN-agency brings together governments, employers, and workers, to set labour standards, develop policies and devise programmes promoting decent work for all people, 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.

12.2.1. Maritime Labour Convention

The Maritime Labour Convention (MLC) applies to commercial seagoing vessels of 500 GT or more, flying the flag of a member country and engaged in international voyages. MLC covers a wide range of safety and employment issues and is organized into multiple sections. These will be described in this Handbook. 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 MLC are to:

- Ensure comprehensive worldwide protection of the rights of seafarers;
- Establish a level playing field for countries and ship managers 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 countries use these possibilities. 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). MLC is an international legal instrument and does not, therefore, apply directly to ship managers, ships, or seafarers. Instead like most international law, it relies on implementation by countries through their national laws or other measures, see also Chapter 2 of this Handbook.

MLC originates from the International Labour Organisation (ILO), but each member country is responsible for ensuring implementation of its obligations under MLC on ships that fly its flag.

Certificate MLC

The Maritime Labour Convention 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 Act Manning Seagoing Vessels

(NL). These specific provisions from this act are based upon 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.

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 follows the applicable laws and regulations. The certificate is subject to periodic validation based on intermediate, renewal or additional inspections as determined by the flagstate. It is initially valid for five years.

Declaration Maritime Labour Compliance

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.

Declaration of Maritime Labour Compliance (DMLC)

Document stating the national requirements implementing MLC for the working and living conditions for seafarers and setting out the measures adopted by the ship manager 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 ship manager. 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 flagstate. 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 ship manager 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.

MLC Certificate

The MLC Certificate affirms that seafarer's working and living conditions aboard a ship meet all the national laws and regulations that govern the implementation of 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 ship manager countries 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, 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.

12.2.2. Enforcement

The MLC is enforced in several ways:

- Flag states inspection.
- Right to complain of any seafarer to the Shipmaster or a competent authority ashore.
- Port states inspection of foreign ships calling in their ports, including ships flying the flag of countries that have not signed the MLC.
- The Shipmaster.
- The International Labour Organisation has its own system for checking compliance with the MLC.

International enforcement

Each member country to MLC shall implement and enforce laws that it has adopted to fulfil its commitments, with respect to ships and seafarers under its jurisdiction. These countries shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of MLC. Each member country shall ensure that ships flying its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by MLC. Any ship to which MLC applies may be inspected by a country other than the flagstate, when the ship is in one of its ports, to determine whether the ship follows the requirements of MLC, so-called Port State Control. Inspections in ports shall confirm that foreign ships comply with MLC as well. These inspections will be carried out by authorized officers in accordance with the provisions of MLC and other applicable international arrangements governing Port State Control inspections.

Inspectors are empowered:

- To board a ship that flies the member country's flag;
- To carry out any examination, test or inquiry which they may consider necessary to satisfy themselves that MLC standards are being strictly observed;
- To require that any deficiency be 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-enforcement

To complement the acquis and to ensure the effective enforcement of these international MLC provisions, EU legislation was introduced regarding flagstate responsibilities and coastal state obligations for the EU member countries. A special directive on flagstate responsibilities for compliance and enforcement of MLC, ensures that the EU member countries concerned effectively discharge their obligations as flagstates with respect to the implementation of the relevant parts of MLC. Another EU directive, on Port State Control, obliges EU member countries to ensure that the treatment of ships and its crew, flying the flag of a country which is not a MLC member country is not more favourable than that of a ship, and its crew, of a ship flying the flag of a MLC member country. These EU directives have provided specific regimes for monitoring, compliance and handling of onboard and onshore complaint procedures, depending on whether the country is acting as a port or as a flagstate.

National enforcement

Each country party to 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 flagstate control. Therefore, all flagstates shall implement and enforce their relevant national laws, regulations or other measures of MLC with respect to ships and seafarers under its jurisdiction. The flagstate shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of MLC, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

All regulations derived from MLC and laid down in Dutch legislation can be enforced by the Netherlands as the flagstate 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.

12.3. EU-legislation

MLC also has relevance to EU -ules. The EU has supported the development of 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 countries have brought into force laws, regulations and administrative provisions necessary to comply with the EU directives concerning MLC, or to ensure that management and labour have introduced the necessary measures by agreement. Accordingly, all EU member countries whether they have ratified MLC or not, had to conform with MLC. Failing to do so, will be in breach of EU law.

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 countries and the EU and a large proportion within the exclusive competence of the member countries. The EU adopted a decision authorising member country to ratify MLC for those parts falling within EU competence and urging those countries to ratify 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 MLC by a flagstate 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 countries to establish enforcement and monitoring mechanisms (including inspec-

tions) for ships flying their flag. EU member countries have transposed this directive into national law (flagstate control). So, provisions of 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 countries and invested the agreement with specific enforcement measures under EU law.

12.4. National legislation (NL)

For the Netherlands, the obligations and provisions of MLC are laid down in national legislation, like the Act Manning Seagoing Vessels. As an explanation to the DMLC Part I, the Dutch government has made an Annex to the DMLC Part I available. There are three different DMLCs Part I and therefore also three 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 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).

12.5. Social tasks Shipmaster

The Maritime Labour Convention applies to all seafarers working on commercial vessels flying the flag of countries having ratified it. The Shipmaster occupies a single position. As a seafarer, he is entitled to MLC, but as a Shipmaster he needs to ensure its implementation and enforcement.

Shipmaster

- Shipmaster of the vessel;
- Seafarer;
- Crewmember;
- Representative of the ship manager;
- Employed by the ship manager.

This social function, transpires from reading the convention, is not expressly stated. It complements the statutory, commercial, and public functions of the Shipmaster, as described in

Chapter 9 of this Handbook. MLC may draw a substantive change in the responsibilities of the Shipmaster. He is not an ordinary seafarer who must provide a service like the other seafarers but there are specific skills linked to position of Shipmaster. There are three conventional skills linked to the role of the ship Shipmaster: nautical, commercial and public skills. MLC completes these skills by allocating a series of social rights and responsibilities to the Shipmaster. The only specific and distinctive right allocated to Shipmasters, as stipulated in MLC, is his own private accommodations. The Shipmaster shall have, in addition to his sleeping room, an adjoining room or equivalent additional space. MLC specifies that this additional space may serve as a sitting room or an office.

The convention also stipulates under its main guidelines to provide separate messrooms to the Shipmaster and officers, when separate messrooms facilities are provided to seafarers. This public space is destined to allow the Shipmaster to fulfil his different responsibilities, in particular the social ones.

The Shipmaster is in charge of MLC certificates and plays a role in the application and enforcement of MLC. The role of the Shipmaster is described in the forthcoming chapters.

12.6. Minimum requirements

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 persons. EU member countries 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 seafarers are medically fit and that they are trained or qualified to carry out their duties on board. These minimum requirements from MLC are briefly described hereafter.

12.6.1. Minimum age

Minimum age

To ensure that no under-age persons work on a ship.

When regulating working and living conditions, all flagstates 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 ship managers 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.

12.6.2. 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 person aboard;

- Valid for 2 years;
- English language.

A certificate that expires during 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 country 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 STCW and MLC. Approved medical doctors are bound to the national legislation of their own country and to the mutual agreements.

12.6.3. Training and qualifications

Training & qualifications

To ensure that seafarers are trained or qualified to carry out their duties on board.

To ensure that seafarers are trained or qualified to carry out their duties on board ships 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 STCW Convention.

12.6.4. 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 flagstate shall conform to the standards set out in MLC and the national legislation;
- Every flagstate shall require, in respect of seafarers who work on ships that fly its flag;
- Ship managers who use seafarer recruitment and placement services that are based in countries in which MLC does not apply, ensure that those services conform to the requirements set out in MLC and national legislation.

Ship managers are not required to use seafarer recruitment and placement services and may directly recruit seafarers to work on their ships. However, where ship managers use a private seafarer recruitment and placement service, they must take steps to ensure that the service is licenced 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 ship managers or placing seafarers with ship managers.

12.7. Conditions of employment

Conditions of employment refer to something that both the seafarer and the ship manager 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.

12.7.1. 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 ship manager. 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 ship manager, or it may be with a manning agent, or it may be with some other agent for the ship manager. All these different arrangements can affect the rights and duties. National legislation about seafarers' employment agreements is to ensure that seafarers have a fair employment agreement.

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.

All flagstates 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 ship manager or a representative of the ship manager, like the Shipmaster, providing them with decent working and living conditions on board the ship as required by 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;

- Ship manager 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 flagstate 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.

12.7.2. 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 and partners have agreed on a minimum monthly basic wage for able seafarers of US\$ 673 as of 1 January 2026 and US\$ 704 as of 1 January 2027.

EU

The latest EU rules will improve a seafarer's protection in the event of neglect, including when the ship manager fails to pay contractual wages for a period of at least two months, or when the ship manager 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 flagstate 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 ship manager, if necessary. The Netherlands requires that ship managers take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

12.7.3. Leave

To ensure that seafarers have adequate leave, each flagstate 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 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 countries 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 number 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.

12.7.4 Repatriation

Repatriation
To ensure that seafarers can return home

Seafarers should be able to return home when necessary. The costs are to be borne by the ship manager:

- At the end of the period;
- Illness or injury;
- Shipwreck;
- Ship is bound for a warzone;
- No fulfilling of the contractual obligations of the ship manager;
- Personnel reductions.

To ensure that seafarers can 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 flagstate 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 ship manager to recover the cost of repatriation under third-party contractual arrangements. If a ship manager fails to decide for or to meet the cost of repatriation of seafarers who are entitled to be repatriated the flagstate shall arrange the repatriation.

12.7.5. 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 flagstate shall make rules ensuring that, in every case of loss or foundering of any ship, the ship manager shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.

12.7.6. 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. See also Chapter 11. Therefore, each flagstate shall require that all ships that fly its flag have enough seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, considering 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 consider 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 enough seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, considering 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.

12.7.7. 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 flagstate 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.

12.8. Summary Shipmaster

The Shipmaster:

- must ensure the application and ongoing monitoring of all laws and regulations related to working conditions on board.
- must be familiar with the local laws and regulations concerning working conditions of the coastal state in which the vessel is operating.
- should regard working conditions as an integral part of safety and a key legal responsibility.
- is responsible for supervising compliance with safety laws and regulations by all seafarers and other persons on board.
- acts as the employer on board within the meaning of the Dutch (NL) Working Conditions Act.
- has the authority to instruct a seafarer not to interrupt his work if doing so would create a danger. This discretion is exercised in the fulfilment of the Shipmaster's statutory duties.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 13 Living conditions

13.1. Introduction

Every seafarer has a right to fair terms of employment and to decent working and living conditions on board ship and are entitled to safe and decent living and recreational facilities on board. Flag states must pass laws and regulations obliging ships flying their flag to comply with a set of standards that must be inspected for compliance. The laws and regulations on accommodation and recreational facilities must also consider the Convention's requirements for health and safety protection and accident prevention.

13.2. Accommodation

Accommodation and recreational facilities
To ensure that seafarers have decent accommodation and recreational facilities on board.

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) for men and women.
- Sleeping rooms (cabins) of adequate size and properly equipped.
- Separate berth for each seafarer shall in all circumstances.
- The minimum dimensions of a berth shall be at least 198 x 80 cm.
- A single berth seafarers' sleeping room 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.

13.3. 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, considering provisions on health and safety protection and accident prevention.

13.4. 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 considers 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.

13.5. Summary Shipmaster

The Shipmaster:

- must conduct regular inspections to ensure that the crew's living conditions continue to comply with applicable laws and regulations.
- must inform the ship manager promptly so that any identified deficiencies can be corrected.
- is responsible for maintaining good living conditions on board.
- must recognize that the national legislation of the flag state takes precedence, although the legislation of the coastal state in which the vessel operates may also apply.
- should comply with the relevant guidelines and requirements of the Maritime Labour Convention (MLC) wherever possible.
- must consider the diverse national, cultural, and religious backgrounds of the seafarers.
- should recognize that proper living conditions are a key factor in ensuring a safe working environment and in reducing the risk of maritime accidents.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 14 Working and resting hours

14.1. Introduction

The before mentioned Minimum Safe Manning Certificate takes in consideration the regulations of the working and resting hours. Both MLC and STCW have requirements for work and rest hours. STCW has amended its working and rest hours provisions to come in line with MLC, but there are still differences. Therefore, the Shipmaster must be compliant with the legislation about work and rest times of the flag state. He is responsible for the working and rest hours of the seafarers, including his own hours. It is up to the flag states to establish and enforce minimum rest periods for seafarers, while work and watch systems should be arranged to prevent fatigue at the seafarer. Fatigue is a hazard that affects safety, health and well-being, and might be related with working hours.

14.1.1. Shipmaster

The Shipmaster may use the specific instruments developed by IMO and ILO to prevent or mitigate fatigue of his crew.

The Shipmaster plays a significant role in the enforcing of the required hours of work and rest. The Shipmaster may find support in the official guidelines from the IMO and ILO. These provide guidance on the development of a table of shipboard working arrangements, guidance for formats of the records of seafarers' hours of work or their hours of rest and related model formats. The Shipmaster can also use the IMO *Guidelines on fatigue to recognise and prevent fatigue at the seafarer*.

14.2. MLC

To ensure that seafarers have regulated hours of work or hours of rest, each flagstate 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 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 flagstate 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 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.

14.2.1. Juveniles and working hours

At sea and in port provisions of 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 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 crew-members (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.

14.3. EU and working hours

The EU has adopted the standards of 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 countries 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.

14.4. 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) and the MLC.

The rules in this Chapter 6 are operative for all seafarers on board, including the Shipmaster, but excluding passengers, pilots and stevedores.

The standards of the NL legislation are more in the seafarer's favour than the standards of MLC.

14.4.1. Working hours

To ensure that seafarers have regulated hours of work and rest, each flag state must ensure that these hours are regulated and must establish the prescribed maximum hours of work or minimum hours of rest.

The text of the (NL) Working Conditions Act and Chapter 6 of the Working Hours Decree Transport should be available on board.

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, such as a meal break.

14.5. Registration

Each flag state must require that records of seafarers' daily hours of work and rest be maintained to allow monitoring of compliance with MLC or national regulations. These records

should be in a standardized format established by the national competent authority. These records should be in the working or English language. The seafarers should receive a copy of the records pertaining to them which must be signed by the Shipmaster, or a person authorized by the Shipmaster, and by the seafarers.

14.6. Working hours during safety operations

A seafarer may be required to work whatever number of hours that the Shipmaster deems necessary for the immediate safety of the ship, its occupants, or its cargo, or in order to help other ships or individuals in need while at sea. As a result, until the regular situation is restored, the Shipmaster may suspend the work or rest schedule and order a seafarer to complete the required work hours. The Shipmaster is responsible for making sure that any seafarers who have worked during a scheduled rest period get enough rest as soon as is reasonably possible once the usual situation has been restored.

The laws and regulations pertaining to labour and rest hours must also be followed by the Shipmaster, who is a seafarer himself.

When the Shipmaster is needed on the bridge for an extended amount of time owing to heavy fog or prolonged pilotage in an area of the sea with a high volume of marine traffic, like the English Channel followed by the North Sea, this may become an interesting issue. Legally speaking, it can be challenging to establish a suitable answer in these circumstances because these are typically not emergencies but rather regular operating routines. It implies that one should adhere to the regular recommended work and resting hours.

14.7. Summary Shipmaster

The Shipmaster:

- ensures that a duty roster for himself and all crewmembers is posted in an accessible location on board.
- ensures that working and rest periods are recorded on a work schedule within one week.
- ensures that each crewmember receives a personal copy of the duty roster.
- submits completed and signed duty rosters to the managing owner no later than eight weeks after they have been drawn up.

- organizes work so that both his own and his crewmembers' rest periods amount to at least 10 hours within any 24-hour period, counted from the beginning of the rest. Rest may be divided into no more than two periods, one of which must be an uninterrupted rest of at least 6 hours. the 24-hour period is counted from the beginning of the longest rest period, and the interval between two rest periods must not exceed 14 hours.
- organizes work so that rest periods total at least 77 hours within each 7-day period.
- is responsible for enforcing and complying with all legal requirements concerning working and resting hours.
- must maintain an accurate and up-to-date record of working and rest hours.
- must verify and certify these records; failure to do so may constitute a criminal offense.
- may temporarily deviate from prescribed working and rest hours in emergencies or other exceptional circumstances.
- has a leading role in managing the working hours of juvenile seafarers in accordance with applicable regulations.
- should, if the workload prevents seafarers from obtaining the required rest, suspend operations and inform the shipowner—noting that such a situation should never come as a surprise to the shipowner.
- should prevent excessive working hours and insufficient rest periods among the crew.
- must ensure that he and his crew take compensatory rest when required to be on call during scheduled rest hours.
- should conduct lifeboat, firefighting, and other mandatory drills in a manner that minimizes disruption to designated rest periods.
- must always comply with the flag state's laws and regulations governing work and rest hours.

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 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

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 15 Shipboard health

15.1. Introduction

Various risk factors play a role in working on board a ship, such as irregular physical and psychological peak loads, changing cold or hot conditions and a considerable load on the musculoskeletal system under restrictive circumstances. Moreover, due to the nature of the work, there is not always the opportunity to eat and rest at regular times. MLC talks about health protection, medical care, welfare and social security. Health can be divided into physical health and mental health; these are fundamentally linked.

Health can be defined as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The physical and mental health will be described from the Shipmaster's legal point of view, to give him guidance in this. On board, health is often combined with safety. Many flag states have legislation on occupational health and safety on board ships. The topic health on board contains the protection of health, medical care, welfare and social security protection and aims to:

- Protecting seafarers and ensuring immediate access to medical care on board ship and ashore;
- Ensure that seafarers are protected against the financial consequences (sickness, accident or death) arising from their work;
- Protection of (mental) health and safety and prevention of accidents;
- Access to shore-side welfare facilities;
- Ensure social security.

15.2. Physical health

MLC speaks about health protection, medical care, welfare and social security. Health can be divided in physical health and mental health; those are fundamentally linked. Health can be defined as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Physical and mental health will be described from the legal point of view of the Shipmaster, to give him guidance in this area. Onboard, physical health is often

combined with safety. Many flag states have legislation about occupational health and safety on board ships.

The Shipmaster has a responsibility to ensure the health of all persons on board, in particular the seafarers.

15.3. Mental health

As said before, the health of the seafarer consists out of physical health and mental health.

Physical health has been described here before, now the mental health will be explained.

Mental health is just like physical health a responsibility of the Shipmaster.

Mental health of the seafarer may have to do with isolation, depression, stress, anxiety, fatigue etc. A lack of mental health may cause crew conflicts or other issues affecting the voyage or safety. Reason for a lack of mental health may be postponed crew changes due to an outbreak of an infectious disease.

The Shipmaster should oversee the wellbeing of his crew, especially during a pandemic. A pandemic should be a special point of interest for the Shipmaster because the official legal requirements are not always very clear in international agreements or national laws and regulations. Not being aware of the seafarers' problems with mental health may interrupt the ships operations and disturb the voyage. Effective attention and efforts of the Shipmaster to understand and fulfil the needs of his crew, may have a positive effect for the whole crew. Of course, the Shipmaster is not an expert in this area, but recognising these problems among his crew can be a first step.

The Shipmaster may find no specific and official laws and regulations in this field, but it is certainly a legal obligation to control the seafarers in the field of mental health, as part of general health. The Shipmaster should not make a difference between physical and mental health; both need to be recognised and taken care of at an early stage.

For the Shipmaster, many guidelines about crew wellbeing management are available, including the buddy-system. This is a system of two seafarers monitoring and helping each other.

15.3.1. Alcohol & drugs

Indications for a lack of mental health might be abuse of alcohol and drugs or a sudden change in the behaviour or mental state of a seafarer.

The combination of poor mental health and the abuse of alcohol and drugs is not new. Persons under the influence of drugs or alcohol pose a serious threat to safety and should not be permitted on board. No specific international convention is known regarding alcohol and drugs. The shipowner and the Shipmaster must follow the flag state laws and regulations, or when in a coastal state the regulations of that state. The shipowner may have a drug and alcohol policy based on national law and on the guidelines provided by the IMO, ICS or other entities of the shipping industry. This policy of the shipowner is a mandatory regulation for the seafarer. See the ICS *Drug Trafficking and Drug Abuse on Board Ship: Guidelines for Owners and Masters on Preparation, Prevention, Protection and Response*. The policy of the shipowner about drugs and alcohol should be strictly enforced by the Shipmaster, therefore this policy should be very clear, explicit and unambiguous, including the disciplinary measures for the seafarer, such as suspension or dismissal.

The testing of the use of alcohol or drugs must comply with the national regulations of the flag state.

The Shipmaster should know that a coastal state may have firm restrictions on the use of alcohol or drugs, including very severe penalties. He should warn his crew and when necessary close all bars onboard, when in waters of a foreign coastal state. If there is any concern that the shipowner's policy on drugs and alcohol is not being adhered to, the Shipmaster should take immediate actions to ensure that the safety of the ship is not compromised.

The Shipmaster may take additional measures to reduce or nullify the use of drugs and alcohol onboard, based upon the well-being of a seafarer or on the general title of safety.

15.4. International rules

15.4.1. SOLAS

SOLAS gives some provisions for this subject, such as medical first aid, including medical first aid relevant to incidents involving dangerous goods in solid form in bulk, and in packaged form. SOLAS describes safe area's providing all persons on board with basic services, such as medical care.

Alternate space for medical care shall conform to a standard acceptable to the flag state legislation.

15.4.2. STCW

The STCW Code describes the standards of medical fitness for seafarers. They should hold a valid medical certificate. The flag state must establish standards of medical fitness and procedures for the issue of a medical certificate. This must be in accordance with the provisions of STCW. As well, the STCW Code describes the mandatory minimum requirements relating to medical first aid and medical care. Seafarers designated to provide medical first aid/medical care on board must meet the standards of competence in medical first aid/medical care specified in STCW Code. Where training in medical first aid or medical care is not included in the qualifications for the certificate to be issued, a certificate of proficiency must be issued indicating that the holder has attended a course of training in medical first aid or in medical care. In principle, all seafarers receive safety familiarization and basic training including medical care. The Shipmaster must oversee these medical requirements of his crew.

See also the ICS *Guidelines on the IMO STCW Convention and Code*

15.4.3. MLC

MLC gives requirements, standards and guidelines for medical care on board ships and ashore. These may be very helpful for the Shipmaster. MLC stipulates that all ships must carry a medicine chest, medical equipment and a medical guide. The *International Medical Guide for Ships* supports a main principle of MLC. Another worthwhile book is the '*Ship Captain's Medical Guide*'. MLC states that ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration must carry a qualified medical doctor, who is responsible for providing medical care. Ships which do not carry a medical doctor must be required to have either at least one seafarer on board who oversees medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid. Persons in charge of medical care on board who are not medical doctors must have satisfactorily completed training in medical care that meets the requirements of STCW. The *International Medical Guide for Ships* is a standard reference for these training courses and is designed for use by all crew members charged with providing medical care on board.

Seafarers should have access to prompt and adequate medical care whilst working on board. Seafarers must be medical fit to perform their duties on board, which can be shown with a medical certificate. See also the requirements of STCW regarding medical certificates.

Exceptions are possible. Every seafarer has a right to health protection, medical care and welfare measures. They have the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable. The protection and care must, in principle, be provided at no cost to the seafarers.

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 flagstate'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.

Ship managers' liability

Ship managers' 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 flagstate shall ensure that relevant measures are in place. The liability of ship managers 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, ship managers 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 ship manager 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.

Health, safety protection & prevention

Health, 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 flagstate 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 flagstate 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 Chapter 24 of this Handbook.

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 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.

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 flagstate shall ensure that all seafarers have access to social security protection in accordance with 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.

15.4.4. World Health Organisation

The non-mandatory *International Medical Guide for Ships* sets out the recommended quantities of medicines required to be held by ships, and it has standardized the quantities per number of crew.

When the ship is carrying dangerous goods, the medical chest should also be in accordance with the International Maritime Dangerous Goods (IMDG).

The flag state legislations may use their own list of medicines, and the kind of medical kit or medical chest.

Ship Sanitation Certificate

Applications for Ship Sanitation Certificate inspections can be submitted to competent medical authority or a Medical Health Service. Inspections are conducted based on requirements laid down by the World Health Organization (WHO) and for the Netherlands as incorporated under Dutch Law into the Public Health Act. Types of certificates

1. **Ship Sanitation Control Exemption Certificate (SSCEC):** A ship has been inspected and everything is in order. The ship is then exempt from further sanitary inspections for a period of six months.
2. **Ship Sanitation Control Certificate (SSCC):** A ship has been inspected and certain shortcomings discovered. The shortcomings are listed on the certificate. These must then be repaired, or otherwise resolved, and resubmitted for inspection.

15.5. EU-rules

The EU has several directives in the field of health on board a ship. As an example, Directive 92/29/EEC applies here. This directive is intended to ensure that minimum safety and health requirements are in place to promote better medical care on board ships. Each EU-Member State must ensure that its ships have medical equipment. The detailed requirements depend on the ship category and the information given in the annexes to the directive. Furthermore, each ship must:

- have a watertight medicine chest on board for all lifeboats;
- of more than 500 gross register tons, with a crew of 15 employees or more, making a voyage of more than three days, have a suitable infirmary where medical care can be provided;
- have a doctor on board with a crew of 100 employees or more, sailing on an international route of more than three days.
- that transports dangerous goods must have the appropriate antidotes on board.

The ship owner is responsible for providing the medical equipment. The Shipmaster is responsible for the management of the medical equipment, which must be kept in good condition and systematically replenished and/or renewed at the expense of the owner. The medical equipment must be accompanied by instructions for use, including information on the use of the required antidotes. Maritime training should include basic training in medical assistance

and life-saving measures to be taken in the event of an accident or serious medical emergency. The Shipmaster and seafarers responsible for medical equipment must receive special training with refresher training at least every five years. In short, the EU also has its own regulations in the field of ship health. These rules must be incorporated into national law.

15.6. National rules

The requirements of SOLAS, STCW and MLC should have been transferred into national legislation. The non-mandatory provisions from different guidelines on the application of those conventions can be very useful for the Shipmaster. The flag state should develop and circulate national guidelines for the management of occupational safety and health on board ships that fly its flag, considering applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations. Those are the legal sources for the Shipmaster. National laws and regulations should as a minimum provide for a medicine chest, medical equipment, and a medical guide. When necessary, a medical doctor must be embarked. Persons in charge of medical care on board who are not medical doctors must have satisfactorily completed training in medical care that meets the requirements of STCW and national rules. Dutch legislation regulates the medical supplies, medical care, including medical first aid.

15.6.1. Radio Medical Service

The national competent authority should 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. The medical service to ships at sea is organized by the NL Radio Medical Service (RMD), part of the Royal Netherlands Sea Rescue Institution. RMD doctors may be called upon 24 hours a day in emergencies via the Netherlands Coast Guard. On request of the Shipmaster, a RMD duty doctor will provide medical advice on the treatment of ill or injured seafarers. With the assistance of the Ship Captain's Medical Guide and a 'numbered' on-board medicine chest, the RMD doctor will be able to explain clearly how to treat the patient. This medical doctor can also indicate how the patient in question may be transferred into the care of a medical specialist safely and quickly. In many cases the crew will render first aid on board. Communication between the Shipmaster and the medical doctor can be established by VHF, E-mail, telephone and INMARSAT. The language can be

Dutch or English. Contact with a medical doctor for a radio medical advice can be organized by the NL-Coast Guard as well (<https://kustwacht.nl/en/assistance-and-service-provision/radio-medical-advice/>).

For more details see the information sheet: Radio Medical Service (procedures) on website: knrm.nl/over-ons/wat-doet-de-knrm/radio-medische-dienst

15.6.2. Shore leave

National laws and regulations should 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 safety and security reasons. Requests for shore leave to access welfare centres should not be unreasonably refused by the Shipmaster. The Shipmaster should oversee the medical care onboard. He is responsible for the safety of the ship, but also for the safety and wellbeing of all persons on board.

The Shipmaster is responsible for compliance with all provisions of international and national regulations in the field of health and safety.

15.7. Quarantine

Quarantine on board ships is to protect coastal states from contagious diseases.

The Shipmaster is responsible for the health of his crew and should avoid the risks of contamination with viruses or bacteria. Therefore, he may refuse to embark persons being a threat for his crew. He should take all provisions necessary to establish and keep a healthy crew.

Of course, the Shipmaster should have a conversation with the shipowner about the policy regarding dangerous viruses etc. on board and about refusing persons to embark. This is legally not fully arranged for. No international convention is known, while the flag states and coastal states have different laws and regulations on this issue. The Shipmaster must follow the flag state legislation or the legislation of the coastal state he is in. The Shipmaster should mitigate the risks of getting contagious viruses onboard, but on the other hand the shipping should continue. It is almost impossible to refuse a pilot when entering a harbour. If a seafarer

or passenger onboard has been tested positive, then the Shipmaster should seek medical assistance, put the seafarer or passenger in isolation on board or disembark the seafarer or passenger for quarantine ashore. Before continuing the voyage, the minimum safe manning must be met. The Shipmaster should consult the latest guidance from the flag state, coastal state, IMO, shipping industry and from his shipowner. The Shipmaster takes his decisions, also bases upon his overriding authority and discretion in the field of safety, and of course in the interest of all seafarers and passengers. The IMO and ICS have published several guidelines and advises to countries, seafarers and the shipping industry, in the domain of COVID-19. Focal points are crew changes and repatriation of seafarers.

15.8. Summary Shipmaster

The Shipmaster:

- is responsible for monitoring both the physical and mental health of all crew members.
- applies appropriate medical knowledge in the event of physical injury or illness, utilizes available onboard resources and external expertise, and administers medication carefully.
- initiates a medical evacuation if necessary and possible.
- monitors the mental state of crew members, as psychological complaints often manifest less clearly and are more difficult to recognize. In such cases, the Shipmaster immediately contacts the shipping company to seek professional advice.
- may rely on international treaties in the performance of his duties but must also consider the national laws and regulations of the flag state, as well as professional guidelines, codes and manuals.
- is responsible for coordinating emergency assistance in the event of serious incidents on board. In doing so, he ensures adequate care for injured crew members and, in the event of psychological problems, calls upon specialized professional assistance due to the complexity of such situations.
- monitors compliance with the shipping company's drug and alcohol policy, which is based on the applicable flag state legislation. He should have, under national law, the authority to conduct checks on the use of alcohol and narcotics on board

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 16 Complaints

16.1. Introduction

Each member country to 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 MLC (including seafarers' rights). These countries shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint. The provisions in 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 countries as well. Netherlands' legislation requires that Netherlands ships have onboard procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of 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.

16.2. 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 ship manager, 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 ship manager and national competent authorities.

16.3. 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 flagstate 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 ship manager and any other person involved in the complaint a proper opportunity to make known their views.

Tasks ship manager

- The ship manager should establish a means for receiving, recording, and handling complaints.
- The ship manager must provide seafarers with a means of formally lodging complaints directly to the Shipmaster, the ship manager and the national authorities. The contact information for these should be provided.
- The ship manager should develop a standardized complaint form. The complainant should be provided with a copy of the complaint and any decisions made.
- The ship manager should assign a seafarer on board as the focal point for complaints. This designated seafarer should be able to advise other seafarers on the ship manager's procedures for complaints. This designated seafarer should attend meetings or hearings on the complaint if requested by the complainant.
- 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 ship manager 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 ship manager's shore staff should be defined.
- The Shipmaster should personally handle all complaints that are not satisfactorily resolved.

16.4. Summary Shipmaster

The Shipmaster:

- Complaints on board:
 - Through the hierarchy
 - Deadlines
 - Act (directly) as safety net
 - Provide complaints procedure
 - Check crew composition
 - Incorrectly given assignment/order
- Complaints ashore:
 - Standardization/publishing
 - Competent officer (ombudsman)
 - First solve the complaints onboard

Shipowner

- Publish complaints procedure
- Share MLC documents onboard
- Impartial ombudsman
- Seafarer's right to be represented
- Prevent victim role
- Inform social partners

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 17 Right and duties seafarer

17.1. 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 ship manager, 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.

17.2. National law of the flagstate

A ship has the nationality of the flag it flies. On board of a ship the law of the flagstate 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 flagstate 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 must 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 certain rights and duties under laws of the Netherlands.

17.3. National law of the coastal state

When a ship enters a port, that coastal state (port or country) 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 flagstate. 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.

17.3.1. 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 country will normally visit other countries 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 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.

17.4. National law of the seafarer's country

Home country law is also applicable to the seafarer. A seafarer will be able to rely on rights contained in his home country law if that law governs his sea employment agreement.

When a seafarer is in trouble when abroad, his home country may provide support and assistance through its consular offices.

17.5. Summary Shipmaster

The Shipmaster

- monitors the laws of the flag state, the coastal state, and the seafarers' home state.
- must be fully aware of which legal framework applies on board, including priority.
- should supervise compliance with, and identify any violations of, laws and regulations by persons on board.
- may consult the shipowner for advice in cases of disagreement or uncertainty regarding the applicability or priority of specific laws.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 18 Third person on board

18.1. Introduction

The Shipmaster is not only responsible for all seafarers on board, but also for all other persons onboard, where two categories of persons can be found: seafarers and non-seafarers. Non-seafarers can be addressed as 'third persons on board' as well, just a matter of definition.

The Shipmaster is responsible for all persons on board, seafarers and non-seafarers, especially for their safety, security and the protection of the marine environment.

18.1.1. (Non)-Seafarer

Any individual who is employed, engaged, or operates in any capacity on board a ship to which MLC applies is considered to be a seafarer, including the Shipmaster. A seafarer's employment agreement consists of articles of agreement and a contract of employment. The pilot, the military defending the ship from pirates, researchers, and specialized technicians are examples of non-seafarers. These people are either classified as passengers or as non-seafarers.

There is also a chance that the non-seafarers employed by the ship are listed as "Supernumeraries" on the crew roster. In addition to the normal crew, supernumeraries work onboard but are not assigned any shipboard duties or obligations. The national competent authority of the flag state should be consulted if the Shipmaster or shipowner is unsure whether a person should be considered a seafarer.

To ascertain the precise definition of a seafarer or not, the Shipmaster ought to refer to and review the flag state's national legislation. This has to do with definitions. Every individual on board a ship who is not the Shipmaster, a member of the crew, or someone else employed or involved in any other capacity on the ship while it is conducting business is considered a passenger, according to SOLAS. Because his name is on the passenger list, a passenger is considered a part of the ship. Because passengers are subject to a number of laws and regulations, including SOLAS and the Athens Convention pertaining to the Carriage of Passengers and their Luggage by Sea (PAL), they are not included in this chapter.

The fact that this book serves as a general legal reference for shipmasters is another factor. This chapter addresses third parties, individuals, or external contractors that are on board, both at sea and at ports. Persons who may inflict harm or injury to the ship or crew, as well

as those who experience damage or injury themselves, might be classified as third persons on board.

When third persons, including stevedores, cleaners, technicians, agents, dockworkers, etc., are on board his ship, they are under the Shipmaster's responsibility.

18.2. Third persons on board

This chapter addresses passengers who are not seafarers nor members of the crew. Third person refers to a general category that includes guests, etc. In marine insurance, the term "third party" is employed.

The term "third party contractor" refers specifically to contractor businesses and individuals that are hired by the shipowner or charterer to work on board, regardless of whether they are self-employed, employed, or subcontracted. This chapter mostly uses the general phrase "third person."

The primary rule is that everyone on board, including crew members, passengers, outsiders, and third contractors, must abide by the directives given by the Shipmaster.

It is possible for someone to get injuries while on board, or for someone else to destroy or damage the ship.

Both situations may end in a claim and involvement of a marine insurance. Overview of involved parties:

1. First-party: the shipowner buying a marine insurance;
2. Second-party: the insurance company selling the marine insurance;
3. Third-party (third person or third-party contractor):
 - a. Person who raises a claim for damage caused on board the ship by the first party being an unsafe situation of the ship, or by misconduct of the Shipmaster and crew.
 - b. Person who causes damage on board and the first-party will raise a claim to the third-party.

The Shipmaster's duties include handling a third-party accident, documenting the incident, acting as an intermediary, and ensuring that all parties communicate effectively.

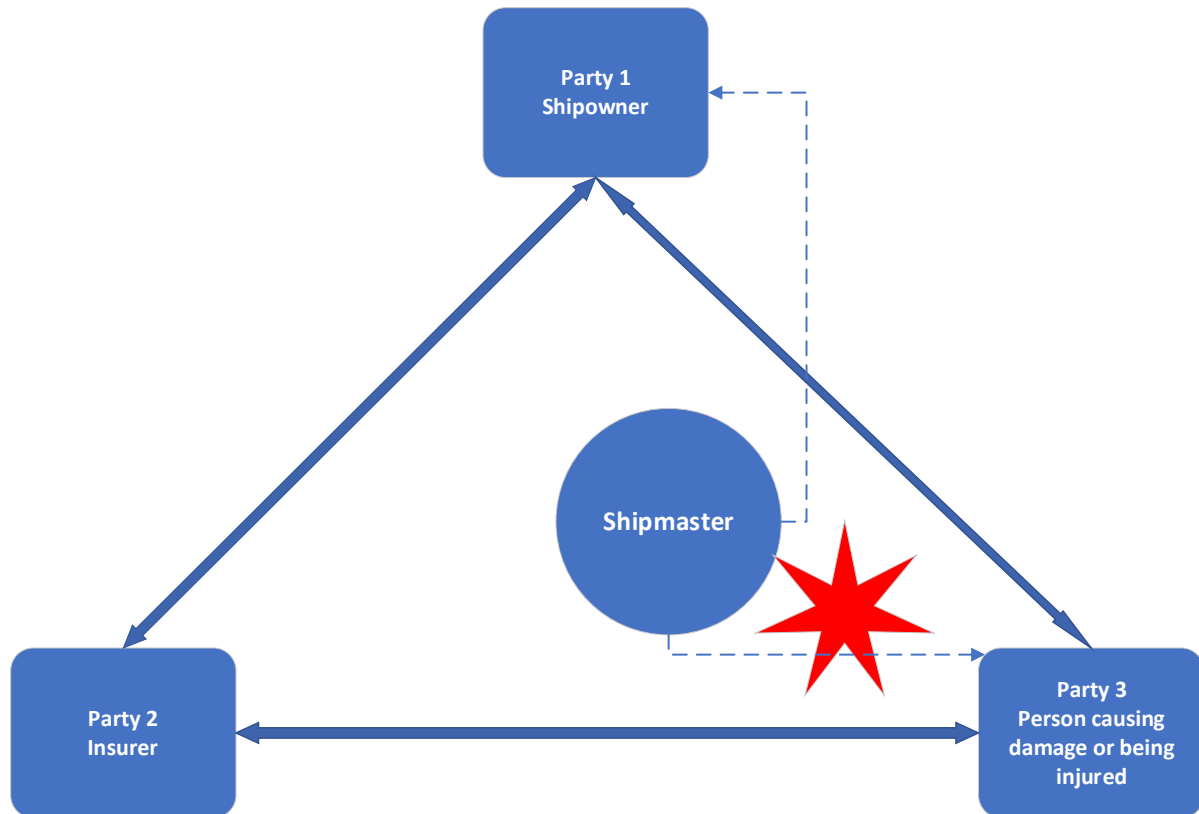


Figure 25. Overview parties

Whether the people on board are seafarers, guests, third parties, independent contractors, or passengers on a cruise ship, the Shipmaster has overall command and responsibility for his ship, its cargo, and everyone on board.

The Shipmaster maintains the same authority and responsibility while the ship is berthed in port, particularly with regard to maritime pollution, safety, and security.

Whether in port or at sea, every ship welcomes outsiders such as vendors, stevedores, pilots, and technicians. The ISPS Code and SSP both specify procedures for guests boarding a ship. Third parties must register before boarding. Access to the ship should be denied to anyone who is not authorized by the Shipmaster to be on board or who is on board without a valid business. The terminal security staff should be given a crew list. In accordance with the Shipmaster, they should only permit access to the jetty or berth to those who can show they have legitimate business on board the ship. The quality of the work performed by third parties working on the ship is not the Shipmaster's responsibility; rather, it is the responsibility of his crew. Those people work for another company ashore; they are not on the shipowner's payroll. Therefore, while the Shipmaster is accountable for the safety, security, and preservation

of the marine environment of third parties working on board, they are not directly responsible for the quality or volume of work completed. It is the responsibility of the Shipmaster to determine if these non-seafarers require any special training or familiarization before or during the voyage.

Whether at sea or in port, the Shipmaster oversees all individuals on board, seafaring or not.

The issues that could occur are if someone injures a third party or causes property damage or loss.

18.3. Third person inflicts harm

A third person who caused damage or loss to the crew or the ship through misconduct is responsible for paying the damages. To resolve the shipowner's claim, this damaging third party may contact his own insurance provider. It is possible that someone else, either on board or nearby, caused damage to the ship.

The superintendent, agents, mechanics, operators, or stevedores may have been involved in this, but shore-based cranes may also endanger the crew or damage the ship while loading cargo. It is important to record any damage or loss that a third party causes to the crew, cargo, or ship in the appropriate logbooks or journals. It is necessary to report a first impression to the shipowner.

In the wake of a third-party incident, the Shipmaster plays a crucial role. He or another appropriate authority should carry out an investigation, depending on the extent of the loss or damage. Refer to this Handbook's Chapter 28.

Photographs and witness statements are examples of potential evidence that the Shipmaster should gather. If necessary and appropriate, the Shipmaster should notify the carrier, the shipowner, the charterer, the owner of the cargo, and/or the local authorities.

In addition to helping the Shipmaster notify the appropriate authorities, the shipowner should contact the marine insurer.

18.4. Third person claims damage

A customer, stevedore, dockworker, technician, supplier, or any other entity that interacts with the ship or crew but is not formally or legally linked with the ship or persons onboard can be considered a third party or third persons onboard. A third-party is the person or entity that can file a claim for harm done by the crew or ship. If a third party is hurt because of the Shipmaster or his crew's negligence, error, or misconduct, the shipowner may be held liable or have a duty to pay compensation. The shipowner might be covered by third-party insurance in this case. If a third party's property is damaged by the ship or crew and that party brings a claim against the Shipmaster or shipowner, the shipowner/Shipmaster may be covered by the third-party liability insurance, which will pay for any potential damages and legal fees. A third-party claim is synonymous with a claim made by a third person. A third-party is the party who may raise a claim for damage caused by the ship or crew. The shipowner may be accountable or have an obligation to compensate a third person injured, when this third person experienced this injury due to negligence, mistake or wrongdoing of the Shipmaster or his crew. For this situation, the shipowner may have a third-party insurance. If the ship or crew cause damage to the property of a third party and this party files a claim against the Shipmaster or shipowner, the third-party liability insurance may protect the shipowner/Shipmaster, covering legal costs and other possible damage.

The shipowner needs a third-party insurance to cover liability in the event of an accident caused by the Shipmaster, crew or ship.

A clause in the third-party insurance may indemnify the shipowner or the Shipmaster if a seafarer causes damage to a third party. The Shipmaster should investigate any accident or incident that occurs on board or that is related to the ship. Evidence should be gathered, statements should be recorded etc., in order to protect the Shipmaster and shipowner, or to mitigate potential claims. Property damage or bodily injury to a third party caused by the crew or ship is covered by third-party insurance. This insurance may cover additional expenses in addition to the injured third party's medical coverage. If a seafarer damages a third party, a third-party insurance clause may indemnify the shipowner or the Shipmaster. One of the Shipmaster's responsibilities is to oversee a proper procedure following a third-party accident. The shipowner was required to notify the P&I Club or the marine insurer after completing all required forms. Whether or not the Shipmaster's responsibilities are in jeopardy depends on

what caused the damage. Any mishap or incident that takes place on board or has anything to do with the ship should be looked into by the Shipmaster. It is necessary to collect evidence, document statements, and take other steps to safeguard the shipowner and Shipmaster or to lessen the likelihood of future claims. For investigations related to marine safety, see Chapter 28 of this Handbook.

18.5. Summary Shipmaster

The Shipmaster:

- must identify and manage all potential risks related to third persons on board. This includes ensuring that all such individuals are properly registered and that their work complies with occupational health and safety regulations.
- must organize the safe and secure embarkation and disembarkation of all third parties, such as contractors, stevedores, and external technicians. the ship's safety rules must be applied by everyone on board and monitored by the crew, including in relation to third persons.
- should distinguish between third persons who remain on board during a voyage and those who only work on board while the vessel is in port.
- may enter third persons staying on board during a voyage on the crew list as “supernumeraries” to obtain clearance for the next port of arrival.
- must organize and/or verify all relevant tasks and responsibilities when third parties are on board—either in port or at sea—including:
 - verification of names and identification details
 - verification of required permits
 - ensuring safe and secure access to the vessel
 - conducting training, introduction, or familiarization sessions
 - verifying insurance provisions
 - managing and supervising their work activities
 - overseeing health, safety, and environmental (hse) conditions
 - ensuring appropriate use of personal protective equipment (ppe)
 - facilitating clear communication on board and with the shipowner and third-party representatives

- conducting necessary drills and exercises
 - implementing alarm and evacuation procedures
 - enforcing compliance with the ship's safety and security regulations
 - ensuring strict adherence to the Safety Management System (MSs) and the International Ship and Port Facility Security (ISPS) Code
- holds ultimate responsibility on board—specifically for safety, security, prevention of marine pollution, and the maintenance of public order and discipline on the vessel.
- must organize assistance when persons are injured or when the ship is in serious danger due to damage. This may include alerting rescue services, fire department, or tugboats.
- should take immediate measures to prevent further damage and to mitigate any existing damage.
- must promptly inform the relevant shore authorities and the shipowner of any damage to the ship or injury to persons on board. the shipowner, in turn, must notify the marine insurer. This report should include at least:
 - date and time of the incident
 - location and weather conditions
 - description of damage, including injuries and any pollution
 - a factual narrative of events
- must verify and, if necessary, restore the seaworthiness of the ship before resuming the voyage.
- should monitor whether an investigation is initiated by competent authorities or insurers and cooperate as required.

Reporting

The Shipmaster:

- is obliged to report all serious incidents or accidents, doing so in consultation with the shipowner to ensure that all relevant parties are informed.
- must record every incident or accident in the official logbook or journal.
- should maintain a complete and accurate record of all events related to the incident.
- is obliged to report any incident involving third persons, ensuring that the information provided is accurate, consistent, factual, and free of opinion.

- should collect and preserve evidence of the damage, to be submitted to the insurer. this evidence should include photographs, video recordings, and all relevant details concerning the circumstances, as well as the identities of the persons involved and any witnesses.
- must verify the contents of his report before distributing it. The report should focus on the essential facts of the incident, be clear, direct, and precise, and provide an accurate and objective account of the event.
- should identify himself as the author of the report, which must be properly signed by him.
- must consult the shipowner for instructions before releasing any information to parties other than the shipowner, charterer, or the P&I Club.
- should be aware that submitting reports containing false or misleading information may constitute a criminal offense, punishable by law, including possible imprisonment.
- must recognize that the handling of any incident involving third persons is subject to the instructions of the insurance company and governed by the national law of the flag state or the coastal state where the vessel is located.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 19 Registrar/notary

19.1. 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 may have regulations of the same kind.

19.2. 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 person concerned and if necessary, it can be translated into other languages.

19.2.1. Provisional birth certificate

On board, the Shipmaster completes a provisional birth certificate. Normally there are readymade 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.

19.3. Marriage

It is quite normal for a governmental 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 the Shipmaster as a governmental-official-extraordinary may perform a marriage. The ship should be appointed as a special wedding venue. So, in theory the Shipmaster may obtain a temporary authorization to perform a marriage as a government-official on board his ship. But some restrictions may always pop-up at the latest moment.

19.4. Passing away

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 log-book 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 persons concerned and when necessary, translated into other languages. Anyone on board knowing of a death is obliged to report this to the Shipmaster.

19.4.1. 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.

19.4.2. 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, considering 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 several 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.

19.4.3. Crime

If there are signs of an unnatural death or if this cannot be ruled out, the corpse will not be moved until an investigation has been initiated by the Shipmaster. Photos and a report are made of this, especially if a crime cannot be ruled out. Contact with the public prosecutor in the Netherlands is certainly appropriate here. Should a possible crime take place in a foreign port, the local authorities must also be informed.

19.5. 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 flagstate. 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. Person 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.

19.5.1. 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).

19.6. Summary Shipmaster

The Shipmaster:

- is obliged to issue provisional birth or death certificates.
- must, in the case of death, follow the deceased's wishes unless doing so would endanger the health of the crew, in which case he may authorize burial at sea.
- has no rights or obligations regarding marriages on board.
- has the right to draw up a last will or make amendments to a last will.
- must send all certificates to The Hague (Netherlands).
- must record all certificates in the ship's official journal.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 20 Criminal investigation

20.1. 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 does not, see Chapter 4 of this Handbook. Criminal investigation is a national interest. International or EU penal codes and criminal proceeding codes are non-existing.

Some specific elements of The Netherlands criminal law system will be described hereafter, particularly from the point of view from the Shipmaster.
Some general procedural elements of criminal law are explained in Chapter 4 of this Handbook.

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 flagstates have a comparable criminal law system. Therefore, a Shipmaster sailing on a ship from one of these flagstates 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 flagstate, in one way or another. A Shipmaster has to check the national criminal law of the flagstate 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.

20.2. 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.

20.2.1. Shipmaster

As has been mentioned previously the term 'Shipmaster' is not used consistently in the law and regulations. 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.

20.2.2. 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 Shipmaster. At the first request of a competent authority, the Shipmaster shall present the register to him for inspection.

20.3. Shipmaster enforcement measures

Beyond the jurisdiction of the Dutch court (at sea/abroad) 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 port, but here the coastal state has jurisdiction as well, so overlapping and concurrent jurisdiction (see Chapter 22 of this Handbook). Within the maritime internal waters of the Netherlands (ports 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 ports. 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 flagstates do have similar legislation constituting investigating and coercive powers to the Shipmaster on board his ship.

20.3.1. 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, without pressure.

20.3.2. 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.

20.3.3. 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).

20.3.4. 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 or taken into custody.

20.3.5. 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 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.

20.3.6. 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.

20.3.7. 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*).

20.3.8. Entry into places and accommodation

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.

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	

Table 8. Enforcement measures Shipmaster at sea (article 539a etc. WvSv)

Enforcement measures

House search

At sea (beyond the Netherlands) and in the case of suspicion, the Shipmaster does not need authorization (warrant) to enter cabins on board. Legitimacy, intent and an official report must be given.

A Shipmaster at sea can only apply the above when appointed by the Public Prosecutor, unless in an urgency. Always inform the Public Prosecutor.

20.4. 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 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 undesirables, but the suspect does have a right to food, drink, decent accommodation etc. The suspect may not be subject to any restrictions other than 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.

20.4.1. 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). This depends on the national law of the flag state. Not reading his rights to the suspect may have consequences during trial.

20.4.2. 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.

20.4.3. 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 number 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.

20.5. Summary Shipmaster

The Shipmaster:

- may be assigned to conduct criminal investigations, in which case specific enforcement powers (coercive measures) are available.
- must report certain serious offences to the Public Prosecutor.
- must treat any suspect on board in accordance with national law.
- must keep a register of major criminal offences.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 21 Maritime Disciplinary Court

21.1. 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 person 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 based on Chapter 5 Act Manning Seagoing Vessels (NL). The Disciplinary Court consists of a chairman, two deputies and 34 (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 based on 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;

- Ship managers;
- 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 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 regarding 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.

21.2. Procedures

21.2.1. 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 of the Disciplinary Court 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.

21.2.2. 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.

21.2.3. 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.

21.2.4. 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 as 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 country when the ruling will be pronounced.

21.2.5. 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.

21.2.6. 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/complaint is declared well-founded;
- Minister of infrastructure and water management;
- By the complainant if his complaint is declared inadmissible or unfounded.

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.

21.2.7. 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.

21.3. Summary Shipmaster

The Shipmaster:

- must cooperate with the Maritime Disciplinary Court.
- is not required to incriminate himself.
- is entitled to defence, reply, and rejoinder.
- is entitled to access all relevant documents.
- must attend the hearing.
- is entitled to summon witnesses and experts.
- may be assisted by legal counsel.
- is entitled to challenge the Maritime Disciplinary Court.
- has the right to appeal.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Part 3 Shipmaster and ship

Chapter 22	Ship
Chapter 23	Foreign coastal state
Chapter 24	Safety
Chapter 25	Security
Chapter 26	Piracy
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Chapter 22 Ship

22.1. 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)

- 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)

- 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, laws and regulations regarding a ship have been adopted by the IMO. The most relevant ones are described hereafter, under the heading of national law as well. This chapter includes certificates such as load line certificate and safety certificates, but also pilotage and shipping rules.

22.2. International

22.2.1. IMO/SOLAS

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 SOLAS some definitions may be found, but national law may define 'ships' as well.

- 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. 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.

22.3. EU

Maritime transport within the EU is subject to complex administrative procedures even when vessels sail 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 countries to be open to ships of any flag. Flag based restrictions on international trades are now confined to some developing countries and to some countries with country-controlled economies.

22.4. 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:

- Merchant vessel

Seagoing ships used in commerce:

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

- 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.

- Pleasure craft

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

22.5. 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 country. To be within the law, a ship must belong to a country. A ship that does not belong to any country is, like a stateless person, beyond the law.

The registration may vary in every flagstate. An 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 those for a ship used for recreation.

22.5.1. Kingdom Act on the Nationality of Seagoing Vessels

The Kingdom Act on the Nationality of Seagoing Vessels (*Rijkswet nationaliteit zeeschepen*, RNZ) is a Dutch law that came into effect on July 1, 2025. It streamlines the registration process for seagoing vessels in the Netherlands, and it replaces the previous fragmented system. The key change is that a Nationality Certificate is no longer required; instead, the Dutch Land Registry (Kadaster) now assesses the vessel's eligibility for the Dutch flag.

This new Kingdom Act aims to create a single, modern process for determining the nationality of seagoing vessels in the Netherlands. Vessels seeking to fly the Dutch flag must be registered in the Netherlands' flag register. The act also covers vessels under bareboat charter, both those registered in the Netherlands and those registered elsewhere. This Kingdom Act replaces outdated regulations with a unified system. Upon successful registration, vessels receive a "Zeebrief" (Certificate of Registry).

This Kingdom Act makes a clear difference between:

- Registering the vessel as property in the public registers with Kadaster.
- Registering the vessel as Dutch-flagged in the Netherlands' flag register with the ministry.

Under this Kingdom Act, the Government of the Netherlands now has its own separate flag register for vessels flying the Dutch flag. A vessel must first be registered as property in the public registers with

NL Kadaster before it can be registered in the Netherlands' flag register. Once it is entered into the Netherlands flag register, the ILT issues the final *zeebrief* (Certificate of Registry) and the vessel officially acquires Dutch nationality.

22.5.2. Registration

Ship registration for seagoing ships has more objectives and more legal aspects, both civil and public. The main legal aspects are private and public law.

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 such as 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 in Aruba, Curaçao 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.

22.5.3. Stateless vessel

Every country 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 country where she is registered. That ship carries the official papers from the flagstate. Every country 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 country whose flag they are entitled to fly. A genuine link between the country and the ship must exist.

A ship not registered has no official papers and no right to fly the flag of any country; it is a stateless ship or one without nationality.

22.6. Nationality 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 country. This country'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 public flag register of 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.

22.7. Bareboat charter registration

The Kingdom Act on the Nationality of Seagoing Vessels provides a legal basis for bareboat-out charters.

By separating registration as property from the granting of nationality, owners are now able to register their vessel as property in the Netherlands while temporarily flying a different flag. In this case, the vessel is considered to be operating bareboat-out.

This provision responds to the needs of the shipping industry.

Conditions are attached to bareboat-out charters to protect the rights of crew members.

22.8. Ship manager

The terms ship manager, ship controller and shipowner are not consistently used in international documents. See also Chapter 9 of this Handbook. Before now, shipowners would undertake all the functions required of ship owning by providing an in-house management department. Although shipowners may carry out the whole function themselves, there is a whole sector of organizations offering their services as ship managers or ship controllers.

Ship management is a business that involves registration with a country or flag, crewing, insuring, maintaining and operating with several laws and regulation to comply with. Companies can decide whether to operate with the services of an independent shipowner or subcontracting only a part of the management function such as crewing or for large sized company, creating a department which will perform all the functions.

Terminology

Shipowner

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

Ship controller/manager

- Natural or legal person in charge of daily running of the ship from a company office in the flagstate, may also be the owner of the ship.

The ship manager usually has offices in the country where the ship is registered.

The ship manager ensures that there is someone with responsibility for that ship, its Shipmaster and the rest of the crew and persons on board.

Should the ship be property of the Shipmaster (Shipmaster/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.

22.9. Ship certificates

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

Many of these certificate's 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 port 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 port. Hereafter, some relevant ship certificates are described in short.

22.9.1. 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 particular port, 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.

22.9.2. 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 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 SOLAS then these changes are automatically implemented into Dutch law because this law refers directly to the articles in SOLAS.

22.9.3. National safety certificate

The NL 2004 Ships Decree covers several 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 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 commercial sailing yachts sailing 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.

22.9.4. Certificate of Registry

A ship that has been granted the nationality of the flagstate 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 flagstate. Should the Shipmaster not have a Certificate of Registry or has one that is invalid then the ship is often not allowed to leave port 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:

1. Name of the seagoing ship and the office where it is registered;
2. Name of the owner or broker to whom the ship belongs;
3. Gross or net tonnage of the seagoing ship according to the safety certificate;
4. 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.

22.9.5. 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 ship manager 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 ports 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*). The International Tonnage Certificate says 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 port 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.

Ships are not only required to carry the above-mentioned certificates, but many more.

These certificates regard seaworthiness, type of ship, competency of seafarers and so on.

These mandatory certificates are provided by the flagstate 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, 2022*.

In general, the Shipmaster is responsible for the mandatory certificates and other documents, especially the validity.

22.9.6. Logbooks

The Shipmaster ensures that there is a ship's logbook or journal maintained on board in which everything 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 crew-member 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, but there are more means of registering certain events.

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.

22.10. 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.

22.10.1. 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 the 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 ports, anchorages or for loading and unloading. These regulations also include rules against sailing under the influence of alcohol, including sanctions. Other laws contain also 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.

22.11. 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 pilotages, while in others it is specifically defined, like port pilot, river pilot or deep-sea pilot. However, it is the case that the nature of pilotage varies between countries 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 countries 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 may 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.

22.11.1. Responsible/liable

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 countries this is laid down in national law, but there are exceptions in national regulations. Should, in these countries, the pilot make a mistake he may be held responsible and liable for any damages. In other countries, often a combined liability with the Shipmaster and pilot exists. See Chapter 5 of this Handbook.

Responsibility and/or 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. Regarding 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.

22.12. Shipmaster/ship during wartime

What happens with the Shipmaster or his ship during wartime? Wartime can be seen as an international armed conflict or hostile actions between states: a state of emergency.

Keep in mind the conflict when Russia annexed the Crimea in 2014 and the Ukrainian war in 2022. Or the conflict in the South Chinese Sea around the Spratly-island.

22.12.1. Dutch maritime emergency law

This kind of law may provide the basis for the above-mentioned emergency situations and measures that can be used by the government to cope with these (impending) crises.

The circumstances in which emergency law can be used are called: 'extraordinary circumstances'. The powers that can be used to deal with extraordinary circumstances are 'extraordinary powers'.

Hence, emergency law is extraordinary law that can only be applied in emergency situations. When the emergency law enters into force, a foreign Shipmaster may be banned from ships flying the Netherlands' flag. A Dutch Shipmaster may take the place of this banned foreign Shipmaster; the Dutch Shipmaster can even be compelled to do so.

The Government of the Netherlands may also require Netherlands' ships to transport persons or cargo for the Government. In case of crises or wartime situations the role of the Shipmaster may increase and become more important. He is the point of communication with the Dutch Government, while the operational role of the ship manager may become less important.

22.12.2. Sailing in warzones

There are several legal grounds on which the Shipmaster can refuse to sail in a warzone. This can be done, for example, in connection with the safety of ship and crew. In that case, the Shipmaster usually cannot be fired. There are several legal arguments on which the Shipmaster can base his decision, these are:

- **SOLAS**

This convention gives the Shipmaster supreme authority over safety on board. The Shipmaster may overrule the ship manager here.

- **Act Manning Seagoing Vessels**

Dutch legislation also ensures that the Shipmaster is protected if he has given his views on safety to the ship manager. Especially if he believes that his crew is not designed to perform work on board in dangerous areas with sea mines, etc. See Article 17 of the Act Manning Seagoing Vessels

- **NL Civil Code**

According to Dutch law, the Shipmaster of a Dutch ship can and may also resign immediately if he is sent with his ship to a port of a country that is involved in an armed conflict or is blockaded. This also applies if the ship is used in an armed conflict. See article 7:727 Dutch Civil Code. The Shipmaster is entitled to repatriation if he has refused to continue sailing and is relieved. See article 7:718 Civil Code.

- **Collective labour agreement**

Furthermore, several associated (private law) regulations apply to the Shipmaster of a Dutch ship that falls under the CAO Merchant Navy, such as:

- War allowance scheme;

- Protocol on Duty in Dangerous Areas;
- Designated area for war payment scheme.

22.13. Summary Shipmaster

The Shipmaster:

- is responsible for maintaining all ship certificates and presenting them to the relevant authorities upon request.
- must verify and make available all required logbooks and journals to the competent authorities.
- may be required to present specific documents to the local authorities. Failure to comply may lead to operational or legal complications. When those are not produced, the vessel may be detained or experience significant delays before being permitted to depart.
- see also the IMO Circular – List of Certificates and Documents Required to be Carried on Board Ships (2017).

Example

List of Mandatory Ship Documents (non-exhaustive)

- Document of Conformity and Safety Management Certificate (SOLAS Chapter IX)
- Maritime Labour Convention (MLC) Certificate
- Certificate of Insurance or Financial Security for Civil Liability for Oil Pollution Damage
- Certificate of Insurance for Shipowners' Liability against Maritime Claims
- Certificates and documentation required under the STCW Convention
- Continuous Synopsis Record (CSR)
- Muster Roll, Firefighting Plan, and (for passenger ships) Damage Control Plan
- Document of Compliance for Ships Carrying Dangerous Goods
- International Oil Pollution Prevention (IOPP) Certificate
- International Load Line Certificate
- International Air Pollution Prevention (IAPP) Certificate
- International Sewage Pollution Prevention Certificate
- International Ship Security Certificate (ISSC)
- Seafarers' Inspection Documents
- Cargo Record Book or Journal
- Tonnage or Measurement Certificate
- Oil Record Book (Parts I and II)
- Waste Management Plan and Waste Record Book

- Reports from Previous Port State Control Inspections
- Register of Seafarers' Working and Rest Hours
- Ship's Log for Tests and Drills
- Logbook for Inspection and Maintenance of Life-Saving and Fire-fighting Equipment
- Shipboard Oil Pollution Emergency Plan (SOPEP)
- Dangerous Goods List or Manifest / Detailed Stowage Plan
- Stability Information Booklet
- Table of Shipboard Work and Rest Arrangements
- Ship Security Certificate
- Minimum Safe Manning Document
- Sea Letter

- is responsible for ensuring that all applicable rules and regulations for the prevention of collisions at sea are strictly observed.
- has the right to consult the crew on serious matters concerning the ship's operation and safety.
- of a Dutch-flagged vessel may, in times of international tension, be required to continue operations under national government directives.
- from abroad serving on a Dutch vessel may be required to disembark in certain circumstances.
- has, for safety reasons, the authority to refuse to navigate in or through a designated war zone (right to veto)

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 23 Foreign coastal states

23.1. Introduction

In Chapter 2 of this Handbook the maritime zones are mentioned and defined. In this Chapter the jurisdiction within the maritime zones is described from the perspective of the Shipmaster. This includes the question about the prioritizing of jurisdictions in a specific maritime zone.

When the Shipmaster enters a foreign port, he is faced with various laws and regulations and governing bodies. International provisions such as those from the UN Convention 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 country which the Shipmaster is in and that of his flagstate 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 country, 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 port are dealt with in this chapter.

23.2. Jurisdiction

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

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

A country 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 country to which the ship is flagged must share jurisdiction with a coastal state. See Chapter 2 and Figure 26 of this Handbook.

The rule of law of the coastal state where the ship is located usually takes precedence over the country under whose flag it sails.

Similarly, the flagstate may not apprehend anyone in another country without that country's permission. This may depend on mutual agreements between countries 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 whether civil law applies, such as confiscation, foreclosure or a lien.

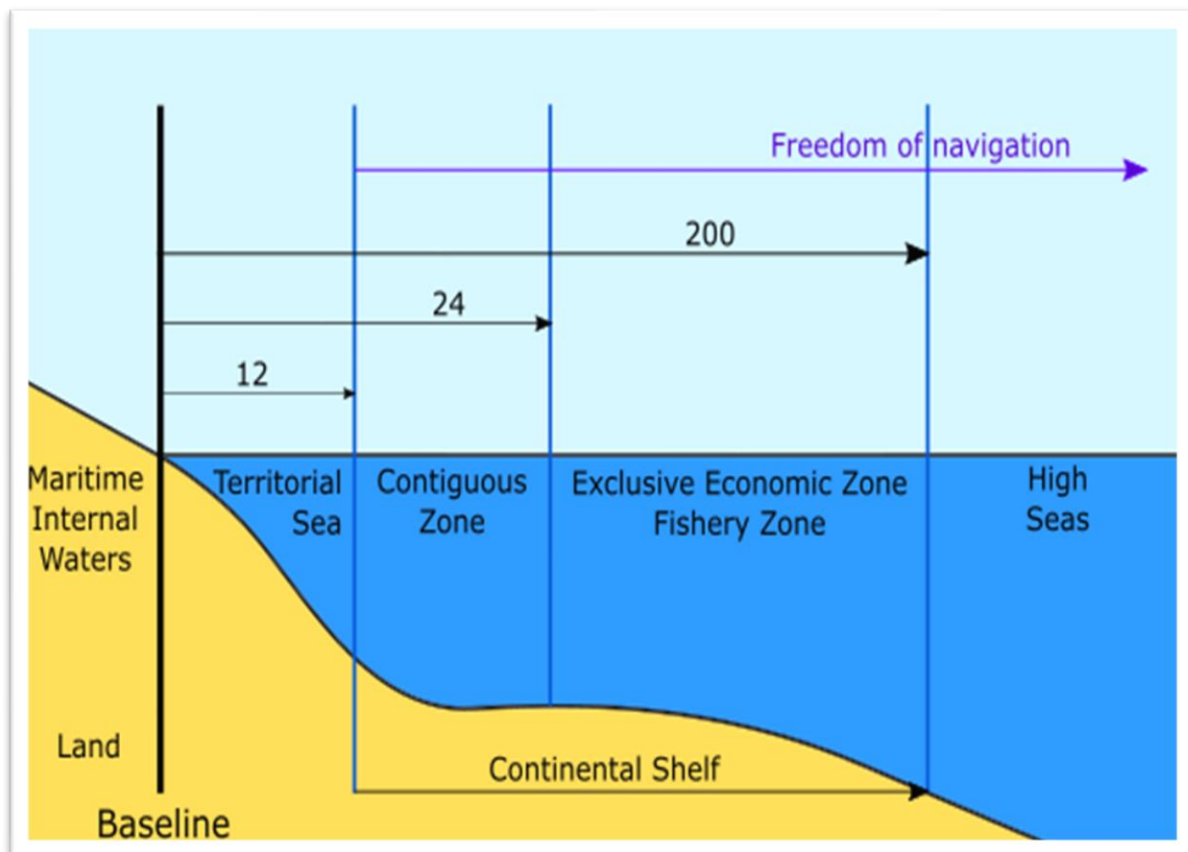


Figure 26. Maritime zones

23.3. Maritime zones

A description follows of how the Shipmaster may enter a port from the high seas. The closer he is to the coast, the more he must adhere to that coastal state's laws. On the high seas the Shipmaster only needs to adhere to the lawfulness of the flagstate, but in a foreign coastal state that country's laws not only apply but take precedence.

It is also possible that the legislation of the home country of foreign crewmembers applies, but this legislation does not take precedence.

23.3.1. High Seas

On the high seas the freedom of navigation exists. On board the law applies of the country under whose flag the ship sails. On the high seas that flagstate 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 country under whose flag the ship sails can hold the Shipmaster accountable. National law then applies, excluding the law of foreign countries. The Dutch Safety Board is an example of this as described in Chapter 30 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 country. The Shipmaster can however be asked by another country to be a witness or to make a statement.

A foreign Shipmaster on a Dutch ship can also be held accountable to the laws or regulations of his home country.

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 country has no authority in this on the high seas. The flagstate has the authority to direct the ship to a particular port for investigation or to the next port on its itinerary.

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

- Piracy
- Slave trade
- Illegal broadcasting
- Statelessness.

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

23.3.2. 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.

23.3.3 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 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 ship.

23.3.4. 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 the right of transit. See also Chapter 2 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 flagstate;
- 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 an international strait as in the Strait of Gibraltar or the Strait of 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 person or goods (drugs).

23.3.5. Maritime internal waters

In maritime internal waters, such as in ports 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 flagstate, 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 applying on board in a foreign port:

1. Coastal state
2. Flagstate
3. Home country of seafarer

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 flagstate; in foreign ports also. These are laws concerning national labour agreements, minimum wages, disciplinary regulations and social security.

The enforcement of laws relating only to the internal system of a ship tend in practice to be enforced by the flagstate. 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 port 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 port, then the Netherlands as flagstate will investigate, not the coastal state.

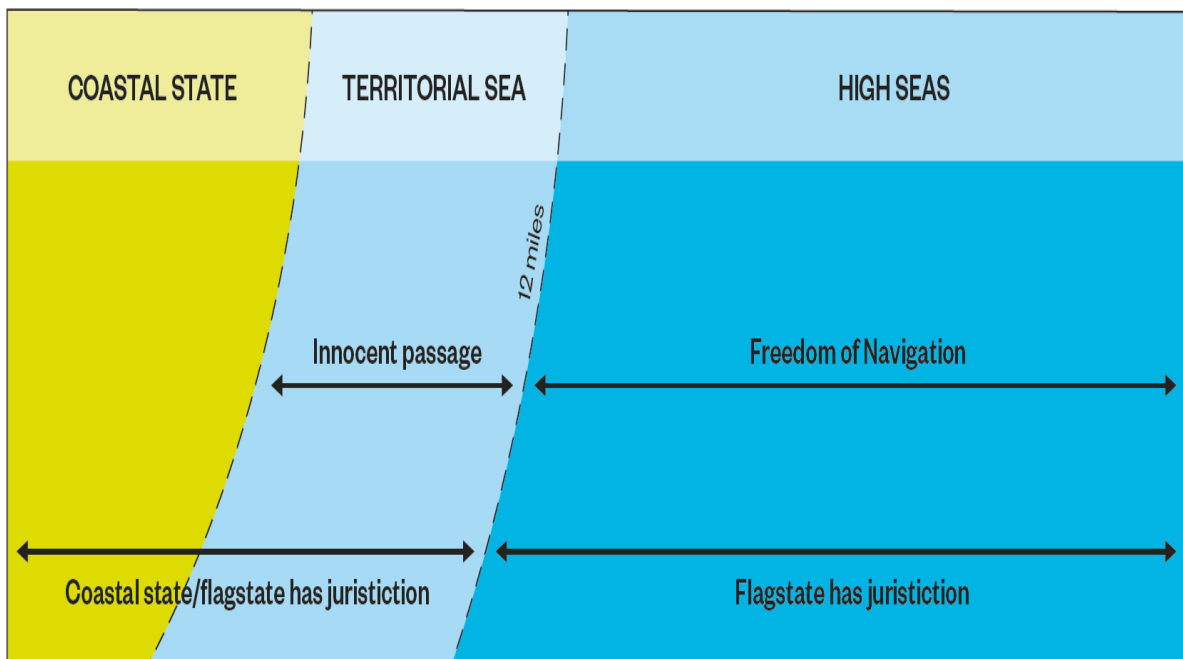


Figure 27. The most relevant maritime zones, including jurisdictions.

23.4. Port State Control

Port State Control (PSC) is the control local authorities have over foreign ships in port. Port State Control is aimed at keeping out ships not meeting the international standards. A ship can be inspected in port by the local authorities as a check 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 port, 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 ports.

23.4.1. Worldwide

Seagoing ships can be inspected in all ports 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 Chapter 2 of this Handbook. There are MOUs for several areas in the world such as the Paris MOU, Mediterranean MOU, Tokyo MOU and US Coastguard. 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

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.

23.4.2. 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 countries which have signed

the PMOU. Port State Control also takes place on ships flying the flag of non-member countries in accordance with treaties and national law of the coastal state. 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 countries. The EU does have legislation about Port State Control of their own.

23.4.3. National, The Netherlands

All foreign seagoing ships visiting Dutch ports 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.

23.5. Summary Shipmaster

The Shipmaster:

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

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 24 Safety

24.1. Introduction

Onboard safety encompasses many aspects, such as navigation, fire safety, lifesaving equipment, and stowing cargo. The Shipmaster plays a key role in maintaining safety onboard his ship. Safety involves protection against unintended hazards, such as human errors, disasters, calamities or accidents. Safety revolves around preventing damage or injury due to errors, accidents, or environmental risks. Consider safety in terms of:

- Fire safety onboard;
- Lifesaving equipment, such as lifeboats and life jackets;
- Emergency procedures, such as man overboard or abandon ship;
- Occupational safety (helmet, safety glasses, etc.);
- Hazardous substances;
- Food safety.

Safety: protection against unintended hazards, such as accidents and human error.

For security, see Chapter 25.

The Shipmaster is responsible for the operational safety of the ship and the personal safety of those on board. To this end, the Shipmaster must check the ship's seaworthiness before the voyage.

During the voyage, the Shipmaster must ensure that any defects in the ship or its equipment are remedied as much as possible. Furthermore, the Shipmaster must take appropriate measures to protect the ship and its passengers from the dangers and perils of the sea and other hazards that may occur on board a ship, such as fire or sinking.

Furthermore, the Shipmaster is responsible for the safety of navigation, both for the safety of his own ship and that of other shipping.

Example

The Shipmaster must ensure that crew and passengers are familiar with the use of lifesaving equipment and that disembarkation and fire safety drills are conducted. In short, safety is a primary responsibility of the Shipmaster.

24.2. IMO/ SOLAS

SOLAS is the most important treaty concerning the safety of merchant naval ships. The main objective of SOLAS is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. 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 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.

24.3. Certification

The safety on board is for the most part organized using certificates issued by the flagstate but based upon IMO or/and EU rules. Flagstates are responsible for ensuring that ships under their flag comply with its requirements, and several certificates are prescribed in SOLAS as proof that this has been done. The flagstate 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 flagstate, often based on surveys carried out by RO that investigate whether a ship complies with the (international) rules.

24.4. Enforcement

The national Maritime Authority or Shipping Inspectorate check that national shipping adheres to the laws and regulations. Controlling provisions also allow coastal states to inspect ships of other countries if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of 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 regulations applying on board his ship in matters of safety.

24.5. 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 countries 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. Part A Implementation is the mandatory part, while Part B Certification and Verification is not mandatory to all countries.

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 the ISM Code on board, the shipowner, 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 ship manager.

24.5.1. Cybersecurity

The ISM Code requires ship managers to assess cyber risks and implement relevant measures across all functions of their safety management system. The purpose of the ISM to do so, is to outline a cybersecurity framework that the ship manager can apply, using their risk management framework, to protect their systems and data from cyberthreats. See for risk management Chapter 6 of this Handbook. See for more information about cyberthreats Chapter 7.6 of this Handbook.

24.5.2. Safety management system

The ISM Code establishes safety-management objectives and requires a safety-management system (SMS) to be established by the ship manager.

Ship manager

The owner or any other organization or person, such as the manager or bareboat 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 ship manager 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 ship manager (internal audit) and then every two or three years by the flagstate, 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 ship manager. 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 ship manager.

A Safety Management System (SMS) 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 flagstate;

- 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.

24.5.3. Shipmaster

The shipowner 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 regarding 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 ship manager's safety and environmental protection policy.

In the area of safety, the ship manager 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 ship manager should ensure that the SMS operating on board the ship contains a clear statement emphasizing the Shipmaster's authority. The ship manager should establish in the SMS that the Shipmaster has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the ship manager's assistance as may be necessary.

24.5.4. DPA

To ensure safe use of every ship and as a communication link between Shipmaster and shipping company every ship manager 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.

24.5.5. 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 ship manager with a Document of Compliance. A document of compliance (DOC) is given to all ship managers who fulfil the stipulations of the ISM Code. This document is given by the flagstate 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 ship manager which complies with the requirements of the ISM Code.

24.5.6. 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 flagstate 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 ship manager and the Shipmaster operate in accordance with the approved SMS.

24.6. EU

Additionally, the EU constitutes maritime legislation, including regulations on safety.

For the EU member countries, the EU has implemented the IMO/ ISM Code as well. These countries must comply with Part A and Part B of the ISM Code. The EU objective is to ensure that shipping companies (ship managers) 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 flagstate and coastal state administrations. EU regulations constitute that member countries 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 country considers it difficult in practice for some ship managers 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 country has to notify the EU accordingly.

If the proposed exemption is not justified, the country has to amend or refrain from adopting these measures.

24.7. National (NL)

Hereafter, the Netherlands national view and interpretation of the international rules on safety are described. This might be the same as other countries 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 must be ratified by the Netherlands and subsequently transferred into Dutch legislation.

24.7.1. 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 several 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 country 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 country 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 port to rectify the shortages as far as this is necessary for the safety of the ship and the person 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 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.

The safety committee never takes over responsibility from the Shipmaster in terms of safety on board.

Tasks of the safety committee are:

- Advising the Shipmaster on measures to be taken to prevent 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 to advise the Shipmaster to prevent a similar accident happening again.
- Informing the commission for preventing labour related accidents for seafarers:
 - 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.

24.7.2 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 the application of that law. In addition, there are the Working Hours Decree Transport, the Working Conditions Decree and Regulations etc. See also Chapter 12, 13 and 14 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 work-list. 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 manager 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.

24.8. Summary Shipmaster

The Shipmaster:

- is obliged to ensure that his ship can begin and end its voyage safely.
- maintains the Safety Management Certificate and all other relevant certificates.
- has the authority to appoint members of the safety committee.
- has the right to discuss issues and seek advice from the safety committee.
- is required to report all work-related accidents.
- organizes and monitors work and rest periods, ensuring proper recordkeeping.

The Shipowner/manager:

- must clearly define the responsibilities of the Shipmaster in relation to safety, particularly regarding:
 - Implementation of the shipowner's safety policy;
 - Motivation of the crew to comply with this policy;
 - Issuing appropriate orders and instructions in clear, simple language;
 - Monitoring compliance with relevant requirements;
 - Reviewing the effectiveness of the Safety Management System (SMS);
 - Reporting any deficiencies or non-conformities to shore management.
- must ensure that the SMS implemented on board includes a clear statement emphasizing the Shipmaster's authority. The SMS must also specify that the ultimate authority and responsibility for all safety-related decisions rest with the Shipmaster.
- must ensure that the Shipmaster:
 - possesses the necessary qualifications to command the vessel;
 - is fully familiar with the company's SMS and receives adequate support to perform duties safely and effectively.
- must ensure that the vessel is manned with qualified, certified, and medically fit seafarers in accordance with national and international regulations.
- must ensure, through the establishment and maintenance of appropriate procedures, that:
 - new employees and personnel assigned new safety or environmental protection duties are properly familiarized with their responsibilities;

- when essential instructions must be provided prior to departure, these are clearly identified, recorded, and delivered.
- must ensure that all personnel involved in the implementation of the company's SMS are sufficiently aware of relevant laws, regulations, codes, and guidelines.
- must establish and maintain procedures to identify training needs that support the SMS and ensure that all relevant personnel receive appropriate training.
- must establish procedures to ensure that the crew receives relevant SMS information in one or more working languages they understand.
- must ensure that all crew members can communicate effectively with one another in the performance of SMS-related tasks.

The shipowner must ensure that the SMS used onboard the vessel contains a clear statement emphasizing the master's authority. The shipowner must also stipulate in the SMS that the master has ultimate authority and responsibility for all safety decisions.

Aspect	Safety	Security
Purpose	Protection against accidents and technical risks.	Protection against malicious human actions.
Threat type	Unintentional	Intentional
Regulations	SOLAS, MARPOL, STCW	ISPS Code
Examples	Fire-prevention, live-saving equipment, drills	Access control, piracy prevention, anti-terrorism
Responsible person onboard	Shipmaster	Shipmaster/Ship Security Officer (SSO)

Table 9. Some differences between 'safety' and 'security'.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 25 Security

25.1. Introduction

The Shipmaster has an important task and responsibility in securing his ship. Security here refers to 'security'; for the other form of safety, see the previous chapter. Security is about protection against deliberate human threats. It revolves around measures taken to prevent malicious human actions, such as theft, hacking, piracy, sabotage or terrorism. Consider security measures such as:

- CCTV;
- Passwords and firewalls;
- Security guards on board;
- Anti-piracy measures;
- Terrorism prevention;
- Alarm systems;
- Compliance with the ISPS Code.

Security: protection against deliberate human threats.

Security of seagoing vessels has become stricter following the terrorist attacks of September 9, 2001 (9/11). The IMO subsequently established the International Ship and Port Facility Security Code (ISPS Code). The ISPS Code is an international regulation that mandates measures for the security of ships and port facilities. The ISPS Code governs the security situation on board ships and at locations where ships and quays meet, for example, when a ship is in port, the so-called ship/port interface. The ISPS Code does not apply to warships or other government vessels. The SOLAS Convention has been amended, as have EU regulations, making the ISPS Code mandatory in the European context as well. In some respects, the European regulation even goes beyond the security regulations of the SOLAS and the ISPS.

Ships registered in the Netherlands must comply with IMO, EU, and Dutch rules and obligations. The IMO and EU obligations are almost entirely laid down in Dutch legislation and regulations. This serves as the Shipmaster's legal source and starting point. For Dutch ships, many of these international regulations are laid down in the Netherlands Ships Decree 2004, with direct references to the ISPS Code and EU regulations.

25.2. 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. See also Chapter 6 of this Handbook. 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 SOLAS.
- Part B: Guidance Regarding the Provisions of the Annex to 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 (SSP). See below.

ISPS Code

This is an amendment to 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.'

25.2.1. Certification

The security of ships uses a system of investigation, control and certification that conforms to the standards laid down in the ISM. For cargo and passenger ships engaged in international voyages an International Ship Security Certificate (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 flagstate administration confirms that the security system has been verified, the ship complies with all requirements and a Ship Security Plan (SSP), approved by the flagstate 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 (ISSC) 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 in this Handbook.

25.2.2. 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 the 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 country on board ships is normal, level 1, but the flagstate 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 country given by the country under whose flag he sails. It can however happen that in a particular region the local authorities identify a higher security country. In this case the Shipmaster must heighten the level of security on his ship – that given by the flagstate – to meet the local level.

A ship that does not heighten its security level in line with that in a port a higher country of alert, may, on grounds of SOLAS, be refused entry into that port.

25.2.3. 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. This Declaration addresses the security requirements that could be shared between a port facility and a ship, or between ships, and countries who have 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.

25.2.4. 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, flagstate 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).

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 applies to ships, not necessarily gangway watch. Other possibilities are a look-out 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.

25.2.5. CSO/SSO

Shipowners are required to appoint a Company Security Officer (CSO) and a Ship Security Officer (SSO) for each of its ships, ensure that each ship undergoes a ship security assessment (SSA), develop a ship security plan (SSP) for each ship, and manage onboard procedures and equipment. This means that when the Shipmaster or a Company Security Officer (CSO) becomes aware that a ship is not compliant or cannot maintain compliance, the shipowner and the competent authorities have to be immediately advised, with details including corrective action, temporary alternative arrangements and current status.

CSO

Company Security Officer (CSO) means the person designated by the shipowner for ensuring that a ship security assessment (SSA) is carried out; and that a ship security plan (SSP) is developed, submitted for approval. Thereafter the SSP is implemented and maintained and used for liaison with port facility security officers (PFSO) and ship security officer (SSO).

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 manager.

Regulation Manning Seagoing Vessels (NL)**Article 3.5.8.**

To gain a certificate as ship security officer (SSO) the applicant:

1. meets the requirements enclosed in STCW Convention;
2. has completed the recognised courses and training in STCW Code.

25.2.6. SSA

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).

25.2.7. CSR

A Continuous Synopsis Record (CSR) is distributed by the flagstate 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.

25.3. EU

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 SOLAS. Ships registered in an EU member country 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. To monitor the application of EU Regulation 2004/725/EC, and to verify the effectiveness of the security measures at member country 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.

25.4. 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 Ship Security Certificate may be carried out by the organizations appointed by the Dutch ministry. These are called Recognized Security Organizations (RSO's).

RSO
The Shipping Inspectorate has authorised several organizations to perform certain inspections. These RSO's conduct inspections and certification. Supervision of these organizations is a responsibility of the Inspectorate.
RSO's operate on behalf of the Dutch government and check whether all Ship Security Plans conform to the regulations. In some countries the requirements are stricter due to local legislation. The CSO and SSO should take this into account when planning the voyage

Abbrevia- tion	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	Scheepsveiligheidssalarmsysteem

SSO	Ship Security Officer	Scheepsveiligheidsbeambte
SSP	Ship Security Plan	Scheepsveiligheidsplan

Table 10. Terminology security English/Dutch

For Dutch ships the current security level is made known by the Coastguard Centre in Den Helder (NL).

25.5 Summary Shipmaster

The Shipmaster:

- ensures compliance with the directives of the International Ship Security Certificate (ISSC) and all other relevant security-related certificates and rules.
- maintains and enforces the Security Management Certificate and the Ship Security Plan (SSP).
- ensures that all logbooks on board are properly maintained in accordance with applicable laws and regulations.
- ensures that security drills and exercises are conducted regularly and effectively.
- ensures effective entry control in accordance with the prevailing security level.
- maintains the Continuous Synopsis Record (CSR).
- has the authority to prioritize the safety of the ship over security concerns, exercising the Shipmaster's professional discretion as necessary.
- is responsible for the implementation of the Ship Security Plan (SSP); however, the development of the SSP is the responsibility of the shipowner. The Shipmaster may delegate the execution of the plan to a qualified crew member.
- holds ultimate responsibility for the vessel's overall security. Each ship must also appoint a Ship Security Officer (SSO) in accordance with the ISPS Code, EU regulations, and national legislation.

The Shipmaster is responsible for:

- Commanding the vessel and ensuring the safety and security of crew, visitors, ship, and cargo in accordance with maritime law.
- Taking necessary actions to prevent or minimize loss or damage from theft, sabotage, espionage, or other criminal acts.
- Promoting security awareness and enforcing compliance with the Security Manual and accepted security standards.

- Supporting the Ship Security Officer (SSO) in developing and updating the Ship Security Plan (SSP) and considering the SSO's recommendations.
- Retaining the authority to adjust security levels and request additional manpower in high-alert areas.
- Ensuring crew members receive adequate training and conducting quarterly security drills.
- Including security readiness in inspection reports and ensuring compliance with port security levels.
- Overseeing security exercises as directed by the Company Security Officer (CSO).
- Exercising final authority over all security-related decisions, while recognizing that safety takes precedence.

Aspect	Safety	Security
Threat type	Unintentional: accidents, risks, human actions	Intentional by humans: crime, piracy and terrorism
Objective	Prevent damage and injuries (risks)	Protect against human actions
Example	Fire extinguisher, collision rules	Password, camera, alarms

Table 11. Overview differences between 'safety' and 'security'.

Ultimate Responsibility

The ultimate responsibility for ship security rests with the Shipmaster. Under regulations, the Shipmaster is also authorized to temporarily suspend security measures if the safety of the ship requires it (Master's discretion). See also Chapter 10 of this Handbook.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 26 Piracy

26.1. Introduction

See also the Anti-Piracy Manual Shipmaster.
This Manual gives a very extended explanation about protective measures and the defence against piracy. Many checklists are to be found, to help the Shipmaster.
This Manual is free of charge available on the website: www.nvkk.nl.

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 person on board arrested. Permission from the flagstate to do so is not required. The country making the arrest may prosecute the suspects. Other countries may do so as well, based upon the principle of universality. See also Chapter 1.6 of this Handbook.

For other serious maritime crimes in and around the Red Sea, such as hostage taking, terrorism and even acts of war, see Chapter 7 of this Handbook.

Chapter 26 of this Handbook deals only with piracy, while Chapter 7 deals mainly with other maritime crimes and even acts of war that the Shipmaster may encounter in the Red Sea area and beyond

26.1.1. Definition

In legal terms piracy only becomes piracy when it takes place on the high seas, which is beyond territorial waters of any country, 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 country, 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. An attack by a warship is not in legal terms piracy; attack on a warship by another ship is.

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

26.1.2. Ship manager

Ship managers are primarily responsible for protecting their seagoing personnel and ships against piracy. The obligation for the ship manager 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 ship manager must have a Ship Security Plan as outlined in the national, EU and IMO regulations for shipping.

The most used attack ship of the pirates in the Gulf of Aden and East-Africa is called a 'skiff'. A ladder on board might be evidence that this boat is used for piracy, because on the oceans fishermen do not use ladders.

Furthermore, ship managers 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 ship managers.

26.1.3. Shipmaster

But it is the Shipmaster on board who is responsible for implementing all these rules and codes. He is in command during the voyage. The Shipmaster controls the SSO and the SSP. The Shipmaster anticipates on the embarking of armed guards to protect the ship against pirates.

26.2. Combating piracy

Combating piracy on the high seas can be broken down into passive and active protective measures. Some of these measures are taken as part of the passage planning (preventative) others can only be applied during an actual attack by pirates. All protective measures must

meet the stipulations of the law and regulations of the flagstate, 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 mandatory by law. Those instructions do also 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.

26.2.1. Preventative protective measures

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 assessment and 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.

26.2.2. Active protective measures

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 person 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.

26.3. 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 if permitted by law or in cases of self-defence. It is obvious that if national law constituted the right to use force (firearms) to protect the vessel, it is used legally.

26.3.1. Self-defence

Self-defence, however, is a bit more complicated. 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.

Conditions

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.

Self-defence excess

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.

26.4. 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 countries. Should military personnel be embarked this is different in legal terms and because it is organized directly by the Ministry of Defence.

26.4.1. Military

If the military is on board to protect the ship against pirates, the firearms are legally on board, including the necessary official documents. This should have been arranged by the Ministry of Defence. The Shipmaster is responsible for the safe storage of the weapons.

In consultation with the military the weapons should be locked up safely. Weapons and ammunitions should be stored separately.

26.4.2. Private armed guards

The Merchant Shipping Protection Act states permission to have and use firearms on board. The Shipmaster is responsible for the storage of the weapons and ammunition, this in consultation with the team leader of the private guards. The corresponding decree and regulation

give all details and responsibilities regarding the storage of the weapons. See also the Anti-Piracy Manual Shipmaster.

26.4.3. Shipmaster and weapon licence

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 must 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 countries. 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 port because that country has its own gun laws and does not automatically recognize those of the Shipmaster's flagstate. 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 or official permission 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) does 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.

26.5. 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, having Privately Contracted Armed Security Personnel (PCASP) on board of Dutch ships is permitted, according to the Merchant Shipping Protecting Act, including decree and regulation.

Many other flagstates allow PCASP, including firearms, on board their vessels as well. In that case, the Shipmaster should apply the national law of the flagstate.

26.5.1. 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 sailors and 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 sailors and marines.

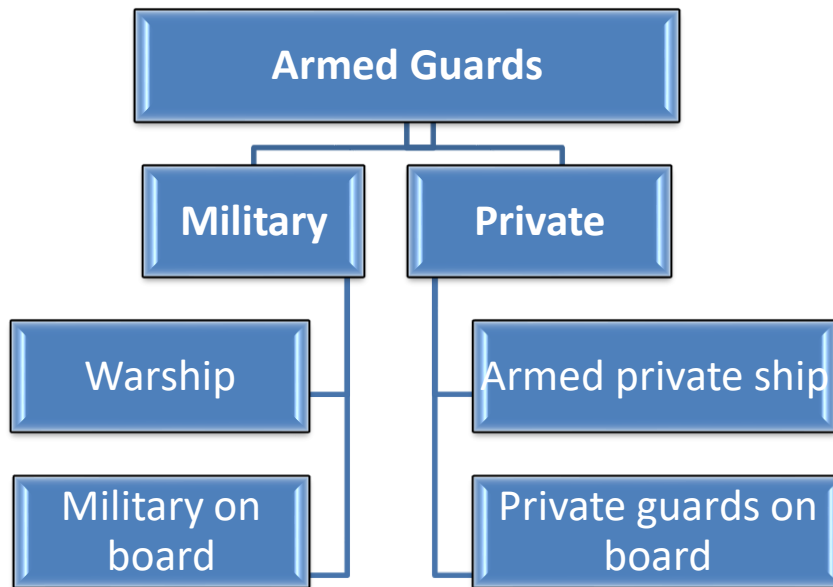


Figure 28. Overview armed guards on board

Between the owner of a ship needing protection and the Ministry of Defence agreements exist. 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 Chapter 2 of this Handbook. These instructions for the use of force are based on national laws and 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 port or not 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.

26.5.2. 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.
- The ship manager needs an official permission from the NL Authorities to hire PCASP from an approved PSC.
- The Shipmaster should check the permission of the ship manager to hire PCASP from an approved PSC.

The PCASP are not military personnel or official representatives of the country in any other way. The ship manager has a contract with an approved Private Security Company, after getting permission of the Dutch authorities. To obtain an official permission, the ship manager must request for it at the Dutch Coast Guard. A PSC can apply for a permit to provide PCASP on board Dutch merchant vessels. See the website of the Dutch Coast Guard and the relevant legislation. The Shipmaster can also hire local armed guards with all the responsibilities this brings, because this is illegal. It is a given that the use of force is primarily the prerogative of government. A legal basis for PCASP on board of Dutch merchant naval vessels can be found in the Merchant Shipping Protection Act. Under this Act ship managers will be allowed under certain conditions to deploy armed private security guards.

So, Dutch merchant ships can protect themselves effectively against piracy in the Gulf of Aden and partly off the coast of East-Africa. Ship managers may apply to the NL Coastguard for permission to deploy armed private security guards on board, under the following conditions:

- The ship qualifies for military protection by a Vessel Protection Detachment (VPD);
- The Ministry of Defence is unable to supply a VPD, or to supply one in good time;
- The ship would have to travel too far to obtain a VPD;
- A VPD team would cost disproportionately far more than a team of armed private security guards;
- The private security guards will be deployed only in the Gulf of Aden off Somalia.

Ship managers will only be allowed to employ armed private security guards from companies granted a permit for this purpose by the NL Human Environment and Transport Inspectorate (ILT)/Shipping Inspectorate. If the NL Shipping Inspectorate (ILT) has granted a permit to a

Private Security Company (PSC), ship managers may apply to the NL Coastguard for permission to deploy private armed security guards on board.

Shipmaster

If the ship manager hires armed private guards without the official permission and those guards are on board with their weapons, then the Shipmaster is responsible. He breaches the national law of the flagstate and possible that of the coastal state he is in.

Only merchant vessels sailing under the Dutch flag that meet the conditions will be granted permission for hiring armed private guards. Ship managers must request permission from the Dutch Coastguard for each shipping route on which they seek to deploy security guards.

The use of force is permitted by law and by self-defence.

In general, private armed guards must adhere to their rules of using force (RUF) and these must be approved by the Shipmaster, according to national law of the flagstate.

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.

26.5.3. Shipmaster and use of force

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, the team leader of the PCASP is responsible for the use of force. See the Anti-Piracy Manual Shipmaster.

See also further on in this Handbook, regarding Merchant Shipping Protection Act.

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?

26.5.4. Weaponed escort ship

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?

26.6. Merchant Shipping Protection Act

In the Netherlands, a legal framework for PCASP is in force, named Merchant Shipping Protection Act, including the Merchant Shipping Protection Decree and the Merchant Navy Protection Regulation. Therefore, the Shipmaster of a Dutch merchant ship can protect his ship against piracy in the Gulf of Aden by armed private security guards. Private Maritime Security Companies will be required to have an official permit to supply armed security guards to ship managers. The NL Shipping Inspectorate will issue these permits. The Merchant Shipping Protection Act makes it possible for PCASP to be deployed on board if the ship qualifies for military protection, but the Ministry of Defence is unable to supply military protection in time, or the cost are disproportionately more than PCASP.

Complete legislation and regulations:

- Merchant Shipping Protection Act (WtBK)
- Merchant Shipping Protection Decree (Bbk)
- Merchant Shipping Protection Regulation (Rbk)

26.6.1. Area of application

The Merchant Shipping Protection Act is only applicable in the official Risk Area (RA) in the Southern Red Sea, Gulf of Aden and partly in East-Africa.

Hereafter some articles from the Merchant Shipping Protection Act will be cited. For more details see the Merchant Shipping Protection Decree and the Merchant Shipping Protection Regulation, both described in the Anti-Piracy Manual Shipmaster (www.NVKK.NL).

The Shipmaster should always consult the valid version of the legislation. This can be found on the internet.

The Merchant Shipping Protection Act only applies in the official risk area in the south of the Red Sea, the Gulf of Aden and along part of the coast of East Africa. See figure here after.



Figure 29. The applicable risk area for private maritime security personnel

26.6.2. Process for achieving private armed guards

1. The ship manager applies for protection of the ship against pirates at the NL Coast Guard.
2. The competent authorities make the choice whether military or private guards. The principle is: Always military unless they are not available.
3. If the ship manager gets official permission to hire private armed guards, he concludes a hire agreement with an approved PSC, so with an official NL permit.
4. The relevant requirements of the agreement between the ship manager and the PSC must be on board.
5. Protective measures such as those specified by law, BMP, etc. remain in force, even if armed private security personnel are on board.
6. The ship manager supplies the Shipmaster with the necessary details regarding names, weapons and ammunition.
7. Those details will be checked by the Shipmaster during embarking, including the local documents.
8. The Shipmaster and the team leader check and verify all relevant details together.
9. If something wrong with names, passports, weapon numbers etc. the Shipmaster should not embark these guards or weapons.
10. If there is something wrong with the papers, the security personnel or the firearms, the Shipmaster must refuse the security personnel or firearms permission to come on board.

11. The Shipmaster must postpone leaving port until everything is in order.
12. When guards and weapons are on board the Shipmaster is responsible.
13. The Shipmaster cope with the weapons on board; he has the keys of the locked weapons.
14. Max. 2 hours before entering the official Risk Area the team leader receives the keys of the weapons.
15. The use of force is only possible after the consultation between the Shipmaster and the team leader.
16. The team leader is responsible for the use of force of the private guards. The Shipmaster is not.
17. The team leader informs the Shipmaster about the use of force etc.
18. The Shipmaster oversees the ship, including course, speed and evading manoeuvres and all other protection measures, except the use of force.
19. The Shipmaster informs the use of force to the NL Prosecutor.
20. After the voyage the Shipmaster and the team leader report separately to the Ministry of Justice & Security by the NL ministry of Infrastructure and Water Management.

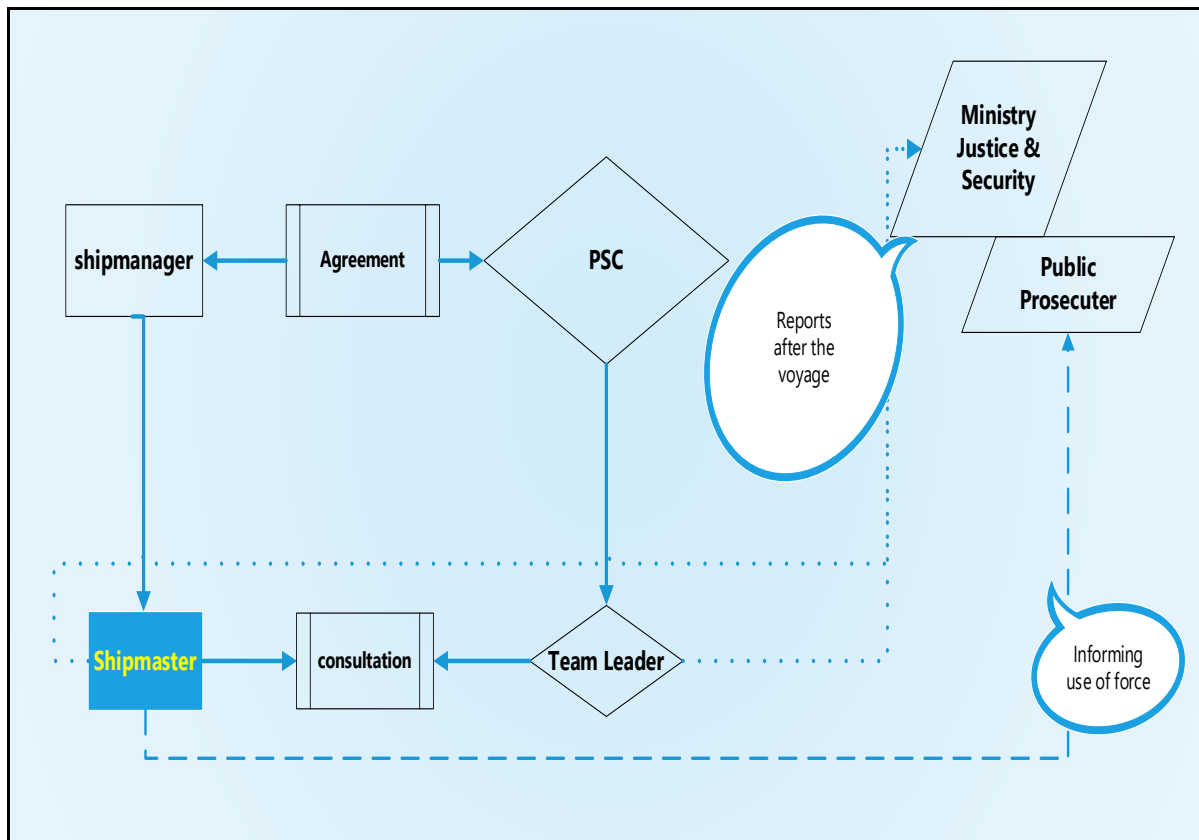


Figure 30. Overview of the process hiring private armed guards

26.6.3. Shipmaster

The Shipmaster:

- Receives all mandatory information from the ship manager;
- Has an active duty to ask for information;
- Oversees all preparations for the voyage, including the protection measures;
- Checks all private guards and weapons before embarkation, based on the information received from the ship manager;
- Consults with the team leader and confirms that both have the same information.
- Postpone the depart until everything is ok;
- Controls the weapons and ammunition on board;
- Max. 2 hours before entering the official Risk Area, he transfers the keys of the weapons to the team leader.
- Reports his nautical details to the appropriate authorities;
- Has a consultation with the team leader before force will be used;
- Informs the Public Prosecutor after the use of force;
- Places the firearms under lock and key after leaving the official Risk Area;
- Checks the private guards and weapons at debarkation, including the local documents;
- Reports after the voyage the competent authorities in the NL.

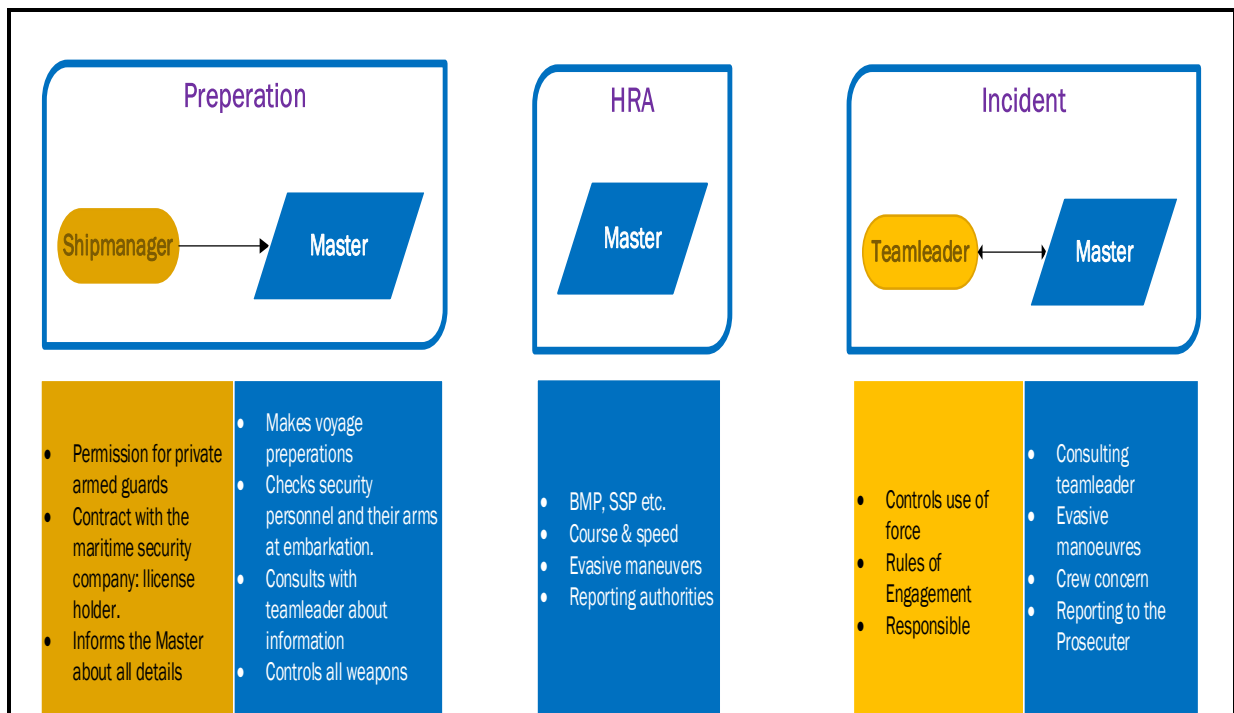


Figure 31. Overview of the private security personnel process

26.7. Definitions and terminology

Below are some of the terms and definitions from the Act, the Decree and the Regulations.

The Act has its own terms and definitions. The Decree and the Regulations use the definitions from this Act and add a few more. Several terms have also been added. In some definitions, the legal jargon has been converted into more understandable language.

Term	Definition
Attempt	Approach of the ship by a vessel with pirates.
Boarding	Pirates on board, the Shipmaster still has control of the ship.
Excessive force in legitimate self-defence	Exceeding of the criteria and conditions of legitimate self-defence as a consequence of vehement emotions such as fear, anger or panic.
Force	Anymore-than-minor compulsive force exercised on persons or property.
Hostage-taking	Pirates have control of the ship and restrain persons on board.
Licence	Legal permission to engage private security personnel to provide services.
Licence holder	Maritime security company that is the holder of a licence as provided for in the law.
Maritime security activities	Monitoring of the safety of persons and goods on board a ship by private maritime security personnel.
Maritime security company	An enterprise that, during the exercise of its profession or business, offers and performs security activities on board a ship and mainly uses the services of persons for this purpose.
Medical certificate	Medical certificate of fitness to perform maritime security activities.
Notification about the use of force	Mandatory notification by the Shipmaster to the Public Prosecution Service that force has been used during an incident with pirates. The Shipmaster can demonstrate in this notification that they have done everything possible to prevent the use of force and that the use of force was within the terms of the legislation.
Permission	Permission to hire private security personnel.
Piracy	Any illegal act of violence or detention or depredation committed for private ends by the crew, or the passengers of a private ship directed against another ship outside the territorial sea of a state, or an attempt thereto (Article 101 UN Convention on the Law of the Sea)
Private maritime security personnel	Staff employed by a maritime security company or staff made available to the maritime security company based on a temporary employment agency contract.
Private maritime security staff member	Member of the security team who will be or has been deployed by the licence holder on board a ship.

Private security team	The private maritime security personnel, including the team leader, deployed or to be deployed on board a ship.
Protective measures	Planning and operational measures to be taken by the ship manager and Shipmaster for protection against piracy.
Report	A report by the Shipmaster after the voyage with private maritime security personnel (end-of-voyage report).
Risk Area	The official maritime area where pirates can be expected. The exact coordinates are given in the Decree.
Rules for the use of force	Rules for the Use of Force (RUF) are rules for private maritime security personnel in which the use of force is defined, including: • To which extent; • Under which conditions; • Who gives authority; • Under which circumstances; • In which manner; • When applicable.
Seafarer	A natural person working on board a ship in any capacity.
Security team	The private maritime security personnel, including the team leader, deployed or to be deployed on board a ship.
Self-defence / legitimate self-defence	Legitimate self-defence is a legal concept. Self-defence as such is a more general term. Self-defence is defending yourself, other persons on board and the ship against pirates or the threat of pirates. Criteria and conditions for self-defence are: • The use of force must be proportionate, so do not use more force than is necessary to fend off the attack. • Immediate threat of danger, such as an aggressive approach by a vessel with visible pointed arms and a ladder. • The ship has not been put at risk due to your own fault, which means preventative measures, as specified in the most recent version of the BMP, are also included.
Ship manager	The ship manager as defined in article 1 Act Manning Seagoing Vessels (shipowner).
Storage place	Place ashore or on a ship used by the licence holder for the storage of firearms and ammunition. This is not the weapons safe on board.
Supervisory officials	Officials of the Human Environment and Transport Inspectorate, responsible for supervising compliance with the provisions from the Act, the Decree and the Regulations.
Team leader	The private maritime security officer who is designated by the maritime security company as supervisor for the other private maritime security personnel and who is operationally in charge of the private maritime security personnel during the transport.
Transport	Movement of a ship between two or more seaports.
Transport case	Storage place for the permitted weapons (firearms), to be sealed with a lock.

Use of force	The use of force and the threat of force, including the drawing of a fire-arm.
Weapons	The equipment and weapons designated under the Act for the use of force on board.
Weapons safe	Storage place on board, to be sealed with a lock, to be used for the transport cases with weapons (firearms).

Table 12. Terms and definitions regarding piracy

26.8. Some legal articles for the Shipmaster

Legislation is the combination of the law and the corresponding decrees and regulations.

Below the most important provisions for the Shipmaster are quoted verbatim (*in italics*) and explained briefly point by point. The most important provisions from the Act are given.

See for the corresponding provisions from the Decree and the Regulations the Anti-Piracy Manual Shipmaster.

The most important subjects from this legislation are described from the point of view of the Shipmaster of a ship sailing under the Dutch flag and for the area with a high piracy risk (RA) in the southern part of the Red Sea, the Gulf of Aden and along a section of the coast of East Africa. All statutory provisions in which the Shipmaster is mentioned will be described. The term 'Shipmaster' is shown in bold in the legislation quoted verbatim.

The legislation uses the term 'master' while this Handbook uses the term 'Shipmaster'. Both terms mean the same: the captain of a ship. See also Chapter 8 of this Handbook.

Only that part of the article in which the Shipmaster is mentioned will be quoted. The article is therefore not always quoted in full. This does not mean that the other provisions are not important for the Shipmaster. For reasons of clarity, only the most important articles and provisions of the Act are discussed in this Handbook. For the full text, please refer to the Anti-Piracy Manual Shipmaster and the current legislation. If you are interested, you can find the explanation (Explanatory Memorandum) of the subjects on the internet, usually on: overheid.nl.

Article 6 Merchant Shipping Protection Act

1. *The Shipmaster and the ship manager shall apply all the reasonably possible protective measures, designated by ministerial regulation (the Merchant Shipping Protection Regulations), prior to and during a transport on which private maritime security personnel are deployed.*
2. *Prior to the deployment of private maritime security personnel, the Shipmaster and the team leader must ensure that the permission referred to in Section 3 (2) has been granted and that the rules laid down by or pursuant to this Act relating to the protective measures, the identity and nationality of the private maritime security personnel, the weapons, cameras and microphones have been complied with.*
3. *The ship manager and the licence holder shall provide the Shipmaster or the team leader with correct and complete information in accordance with their duty to verify. Rules shall be laid down by or pursuant to an order in council regarding the information and the provision of the information.*
4. *Rules shall be laid down by or pursuant to an order in council (the Merchant Shipping Protection Decree) regarding the Shipmaster's responsibility for the safety of the ship and the persons on board in connection with the maritime security activities and compliance with the rules referred to in subsection 2.*

Explanation

- Article 6 (1) states that the Shipmaster must take all reasonably possible protective measures on board. This is at the discretion of the Shipmaster, who is the person responsible for these measures.
- If the ship manager submits the application for private security personnel to the Coastguard, the ship manager will also state all reasonably possible protective measures. The Shipmaster can get this checked.
- The ship manager must ensure that everything is on board for this purpose. The Shipmaster can always ask the ship manager for more or specific protective measures if the Shipmaster thinks this is necessary.
- Article 6 (2) states that the Shipmaster must ensure that permission has been granted by the Minister to take armed private security personnel on board. The ship manager must

provide this information to the Shipmaster. If this has not been done, the Shipmaster must request this information from the ship manager.

- The Shipmaster must also comply with all the rules about protective measures, data on private security personnel, cameras, microphones, firearms, etc. Otherwise, the Shipmaster may be given a fine.
- Article 6 (3) states that the ship manager must provide the correct and complete information to the Shipmaster, which the Shipmaster needs to have in order to check private security personnel and their firearms when boarding the ship.
- This concerns, for example, the names of the security staff members and the numbers of the firearms, including the relevant documents.
- The team leader will get this information from his own company.

The Shipmaster and the teamleader must compare the information they have with each other and check it (verify it). If this information is incorrect, this must be resolved before the ship sails out to sea.

- The Shipmaster must check all the data before the security personnel board the ship with their firearms. The Shipmaster can take photos of the firearms, their numbers or other external characteristics as evidence for this.

The Shipmaster can refuse the security personnel and their weapons permission to board if the data is incorrect. As soon as the security personnel are on board, the Shipmaster is responsible for these people and their firearms.

- Article 6 (4) states that the Decree gives the Shipmaster even more responsibilities. See Article 2.4 Decree and Article 3 Regulations.
- It is of crucial importance that the Shipmaster inspects the data, including any local documents if the security personnel embark in a foreign port.

Inadequate inspection can result in the Shipmaster receiving a high fine.

Article 8 Merchant Shipping Protection Act

Private maritime security personnel shall not use any weapons other than those designated by the Minister by an order in council (the Merchant Shipping Protection Decree) for performing maritime security activities. Rules (the Merchant Shipping Protection Regulations) shall also be laid down by or pursuant to an order in council (the Merchant Shipping Protection Decree) regarding the method of storage of the designated weapons on board the ship.

Explanation

- This Article from the Act concerns the use of specific weapons and how they are stored (firearms and ammunition). The article states that the details of this are set out in the Decree and the Regulations.
- The Shipmaster must ensure that only approved weapons and ammunition come on board. The Shipmaster will get the details from the ship manager for that purpose in advance. If this is not the case, the Shipmaster will actively request them.
- As firearms and ammunition are mainly the Shipmaster's responsibility, the Decree and the Regulations are described in detail below.

Article 9.7 Merchant Shipping Protection Act

The team leader shall not issue an order for the use of force until after he has determined, in consultation with the Shipmaster, that the protection measures referred to in Section 6(1) have not resulted in averting the risk of piracy, unless this consultation or the result thereof cannot reasonably be expected.

Explanation

- This article is about the deployment of private maritime security personnel and the use of force, including the rules for the use of force. These are described in the Decree.
- Article 9 is very important for the Shipmaster, as it determines that the team leader of private security personnel - and therefore not the Shipmaster - is responsible for the use of force. This differs from the national legislation of many other foreign flag states.
- The Shipmaster and the team leader must consult with each other about the possible use of force against pirates in advance unless such consultation is not possible.

- It must be established in this consultation that the protective measures have failed and that the pirates intend to attack the ship. The decision to use force must then be taken. See the Anti-Piracy Manual Shipmaster for the checklist for this consultation between the Shipmaster and the team leader.
- The team leader will give the order to use force. Private security personnel will not use force if they have not been ordered to do so by the team leader, unless there is no time to wait for that order because danger posed by the pirates has increased unexpectedly and suddenly.
- Of course, the Shipmaster does retain the command and authority of the ship, such as course and speed settings or avoidance manoeuvres and sailing away, but the Shipmaster also remains in charge of preventative protective measures, the use of the safe room, watchkeeping, etc.
- Article 9 (8) of the Act states that the Merchant Shipping Protection Decree sets out the instructions for the use of force for private security personnel. These instructions for the use of force can be found in Article 3.4 Decree.

Article 10.3 Merchant Shipping Protection Act

The arrested persons shall be immediately handed over to the Shipmaster by the private maritime security personnel. The provisions of Title VIB of Book 4 of the Dutch Code of Criminal Procedure shall apply mutatis mutandis.

Explanation

- Article 10 (3) of the Act determines that any captured pirates must be handed over to the Shipmaster.
- The Shipmaster is also responsible for the captured persons.
- The Shipmaster will discuss this with the Public Prosecutor in the Netherlands.
- See Chapter 20 of this Handbook.
- See also the provisions in the Code of Criminal Procedure.

Article 11.4 Merchant Shipping Protection Act

The team leader shall provide the Shipmaster with the files containing the video or audio recordings to facilitate the Shipmaster's reporting or notification obligation, as referred to in Article 12.

Explanation

- Private security personnel wear cameras and microphones during a piracy incident.
- The video and sound recordings are saved.
- The team leader gives these recordings to the Shipmaster, who adds them to the notifications and reports. See also under Section 12 of the Act below.

Article 12 Merchant Shipping Protection Act

1. *For each transport on which private maritime security personnel are deployed, a report shall be drawn up, in accordance with rules to be issued by the Minister, in the Dutch or English, separately by the Shipmaster and team leader of the private maritime security personnel.*
2. *These reports shall in all cases state whether and how the powers referred to in Sections 9 and 10 have been exercised. If these powers have been exercised, the files with video or audio recordings as referred to in Section 11(2) or 11(5) shall be attached to the reports. The reports shall be sent to the Minister.*
3. *Any use of force and any use of handcuffs by private maritime security personnel shall be reported immediately by the Shipmaster to the public prosecutor once the risk of piracy has ended. The files with video or audio recordings, as referred to in Section 11(2) or 11(5), shall be attached to this report.*

- Send the end-of-voyage report to the Human Environment and Transport Inspectorate.
- Send notification about the use of force to the Public Prosecution Office in the Netherlands.

Explanation

- Article 12 of the Act is important to the Shipmaster as it deals with the notification about the use of force and the end-of-voyage report.
- Article 12 (1) and (2) state that after each transport (i.e., voyage) where armed private security personnel were on board, a report must be prepared for the Human Environment and Transport Inspectorate. See the website for the correct address.
- Both the Shipmaster and the team leader prepare an end-of-voyage report, so two different reports are prepared.
- This general end-of-voyage report also confirms whether force has been used and whether handcuffs have been used.

- The video and sound recordings of the private security personnel are added to this end-of-voyage report. See Article 11 of the Act for more details.
- For the content of this end-of-voyage report see the Anti-Piracy Manual Shipmaster. The checklists of this Manual can be used as an annex to the official report forms. This simplifies the Shipmaster's task.
- Article 12 (3) states that the Shipmaster must issue a notification about the use of force during a piracy incident separately. The video and sound recordings are also added to this.
- This notification about the use of force is sent to the Public Prosecution Service in the Netherlands immediately after the use of force.
- For the content of this notification about the use of force, see the Manual. This checklist may be used for the notification about the use of force, as an annex to the official form. That makes it easier for the Shipmaster.
- NB: even just picking up a firearm constitutes the use of force and requires sending a notification to the Public Prosecution Service.

Article 17 Merchant Shipping Protection Act

1. *The Minister may impose an administrative fine on the licence holder for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to this Act and the conditions attached to the licence.*
2. *The Minister may:*
 - a. *impose an administrative fine on the ship manager and the Shipmaster for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to Section 6 (1);*
 - b. *impose an administrative fine on the team leader and the Shipmaster for an amount to be determined by ministerial regulation in respect of violation of Section 6 (2);*
 - c. *impose an administrative fine on the ship manager for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to Section 6 (3);*
 - d. *impose an administrative fine on the Shipmaster for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to Section 6 (4);*

- e. *impose an administrative fine on the team leader and the Shipmaster for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to Sections 12 (1) and (2).*
3. *The administrative fine to be determined based on subsections 1 or 2 shall be, at most, the amount determined for the fourth category referred to in Section 23 (4) of the Dutch Criminal Code.*

Explanation

- This Article is about the administrative fines that may be imposed on the Shipmaster if the Shipmaster breaches Article 6 of the Act (see above);
- An administrative fine may be imposed on the Shipmaster if one of the following occurs:
 - A breach of the rules on protective equipment;
 - The permission to use private security personnel has not been properly checked (verified);
 - Failure to check private security personnel properly on embarkation, including all data on the security personnel, firearms, ammunition, cameras, etc. In short, check (verify) with the team leader whether you both have all the correct data;
 - Noncompliance with the rules about the Shipmaster's responsibility for the safety of the ship and those on board in connection with the maritime security activities;
 - Failure to send a notification about the use of force or the end-of-voyage report.
- The administrative fine for the above breaches is € 4,500 maximum.
- The amounts of the other fines are set in the Regulations. (See below.)

For more details see the Merchant Shipping Protection Decree and the Merchant Shipping Protection Regulation, and the explanation in the Anti-Piracy Manual Shipmaster.

26.9. Explanatory notes

These explanatory notes will briefly deal with the following:

- Gathering information;
- Use of force;
- Mandatory notifications and reports;
- Fines imposed on the Shipmaster.

The explanation is given from the Shipmaster's point of view and as a clarification for the Shipmaster. The Shipmaster is and remains the key player when there is an incident with pirates. The Shipmaster is responsible for ship, crew and cargo.

26.9.1. Gathering information

The Shipmaster can use different sources to gather information. Several international and national organisations are often active in areas with a high piracy risk around the Horn of Africa. These organisations try to work together, but they do not always succeed in this. This is due to the presence of foreign naval vessels, which usually only assist the ships sailing under the flag of their own country and in some cases other merchant ships. They do not participate in the international coalition.

The Shipmaster must actively gather all information needed to guide the ship through the area with a high piracy risk as safely as possible. This applies from preparing the voyage to leaving the dangerous area.

For up-to-date information, the websites of these organisations should be consulted. The United Kingdom Maritime Trade Operations (UKMTO), Maritime Security Centre Indian Ocean (MSCIO), NATO Shipping Centre and the Netherlands Coast Guard can also play an important role here, including referrals to other ministries and agencies. Other interesting sources of information include IMO/Maritime Security and Piracy, the International Chamber of Commerce (ICC) and its department Commercial Crime Services, as well as the International Maritime Bureau (IMB) and its Piracy Reporting Centre. All these organisations provide information on their websites. They also often have specific information for the Shipmaster. See also Annex 1 of the Anti-Piracy Manual Shipmaster.

26.9.2. Use of force

Force is any more-than-minor compulsive force exercised on persons or property, using a weapon. Weapons are the equipment and weapons designated under the Act for the use of force. Even just holding and displaying a firearm constitutes the use of force. The use of force is prohibited and punishable, and this also applies on board. An exception is an instance where force is used based on the Dutch Merchant Shipping Protection Act or as legitimate self-defence.

The use of force on board is regulated in the Netherlands in the approved Rules for the Use of Force (RUF). These are generally not national laws or rules originating from the government, but regulations applied within a profession.

RUF applied on board must have been approved by the Dutch government and must be known to the Shipmaster, crew and private security personnel. It is up to the Shipmaster to check whether the latter is the case. The Shipmaster will do so in consultation with the team leader. This can also be recorded, e.g., in the ship's log.

Normally, the use of force against pirates takes place outside the territorial sea of a coastal state, i.e., in international waters. If the use of force took place in the territorial waters of a coastal state, there is a chance that this coastal state also requires a notification or report.

This may be the case because the legislation of that coastal state also applies in its territorial waters. The best thing you can do is to send the notification/report to the coastal state as well, in consultation and in cooperation with the ship manager.

26.9.3. Notifications and reports

For the Shipmaster, there are two forms of reporting that are nationally required by law:

1. Notification about the use of force to the Public Prosecution Office in the Netherlands;
2. Report to the Human Environment and Transport Inspectorate at the end of the voyage with private security personnel.

Notification about the use of force

After using force against pirates, the Shipmaster must send a notification about this to the Public Prosecution Service in the Netherlands immediately. See Checklist E of the Manual.

Even just picking up a firearm and threatening to use it or the use of handcuffs constitutes the use of force.

This notification is prepared by the Shipmaster and should be brief, factual, clear and concise, with the checklist as guideline.

This is a note, not a report



Figure 32. Overview of notifications and reports issued by the Shipmaster.

The checklists in the Anti-Piracy Manual Shipmaster do not aim to be complete. Subjects can and may be added to it at any time, especially if those subjects are relevant to demonstrating that the Shipmaster has done everything possible to act within the applicable legislation. The Shipmaster must send all the relevant video and sound recordings with the notification about the use of force. The team leader must make these recordings available to the Shipmaster for that purpose.

Following the notification about the use of force, the Public Prosecution Service may ask for a more detailed report. The same checklist can then be used again, adding a more detailed description and answers to specific questions from the Public Prosecution Service.

Procedure for notification after use of force on board

1. The Shipmaster sends a notification about the use of force to the Public Prosecution Service, possibly via the ship manager.
2. The ship manager may add their own views to this notification.
3. In principle, the team leader - not the Shipmaster - is responsible for the use of force on board.
4. The Public Prosecution Service may ask the Shipmaster for a further, more detailed report.

5. The Public Prosecution Service will decide whether the use of force was lawful or unlawful.
6. If the use of force was lawful, the Public Prosecution Service will report this to the team leader, the maritime security company and the Shipmaster, possibly via the ship manager.
7. If the use of force was unlawful or if there is any doubt, the Dutch police will start an investigation on the instructions of the Public Prosecution Service.
8. Based on this police investigation, the Public Prosecution Service will decide whether to bring charges against the team leader or private security guard.
9. The Shipmaster can be heard as a witness.
10. If this leads to criminal proceedings, the court will ultimately decide about the lawfulness of the use of force.
11. Following this, an appeal to a higher court or the Supreme Court is possible, if the team leader / security guard disagrees with the court decision about the use of force against the pirates.

End-of-voyage report

After the end of each voyage with private maritime security personnel, Shipmaster and team leader must report to the Human Environment and Transport Inspectorate separately.

The end-of-voyage report can be compiled from all completed check-lists from the Anti-piracy Manual.

The end-of-voyage report of the Shipmaster also states whether any weapons were raised and used. If so, it states how this was done, if an order was given to do so and if the rules for the use of force were observed.

But it also mentions whether any persons were apprehended, whether they tried to escape and whether they were handed over to the Shipmaster. Previous notifications about the use of force sent to the Public Prosecution Service in the Netherlands can also be used for this end-of-voyage report, for example as an annex to the report. The end-of-voyage report is written by the Shipmaster and the team leader separately. The Shipmaster can outsource this to one of the persons on board, such as the Ship Security Officer (SSO), but the Shipmaster signs the report as the person responsible. This report is a brief chronological outline of the facts and circumstances and contains the parts mentioned in the previously completed

checklists. This report is accompanied by all the video and sound recordings made. The team leader will make them available to the Shipmaster.

26.9.4. International reporting

A ship entering the official Risk Area must report to several civil or military organisations.

This is provided for in the Merchant Shipping Protection Regulations and comes under the protective measures the Shipmaster must take. The Shipmaster can also call or email these organisations to request assistance in the event of any incident involving pirates. Keeping the communication with these organisations open, e.g., by reporting on the ship's movements through the official RA and requesting assistance when there is a risk of an attack, is therefore a protective measure. These organisations have different communication channels, such as email, logging in on their websites, telephone, the onboard communication system and Twitter. The two most important international organisations for the official RA in the Gulf of Aden and along part of the coast of East Africa are discussed in brief below.

MSCIO

The Maritime Security Centre Indian Ocean (MSCIO) is part of the EU, or the EU NAVFOR, as a maritime arm of, among other things, the EU anti-pirate mission. The MSCIO monitors maritime merchant flows around the Horn of Africa and is the link between the military mission Atalanta and the merchant navy. A ship manager or Shipmaster can voluntarily register with this body. This can be done with the EU NAVFOR as voluntary registration via the Ship Initial VRA Report Form. The Shipmaster then gives his expected course and speed. This will continue through follow-up reports. For more details see: www.mscio.eu/reporting/vessel-registration.

MSCIO also maintains an interactive website, where the Shipmaster on board can see where there have been incidents or what the latest protective equipment is. MSCIO also shows maps on its website with risk areas and recommended routes, the so-called Maritime Security Transit Corridors or the International Recommended Transit Corridors (IRTS). The Shipmaster must report when he enters or leaves this corridor. For the latest information, always see the website of this organization: www.MSCIO.eu

UKMTO

United Kingdom Marine Trade Operations (UKMTO) forms part of the British Royal Navy. It also keeps track of all the data on shipping in the risky area's. UKMTO's role is to gather and distribute information and to coordinate military assistance in the event of a pirate attack.

It gets a lot of information from local governments and organisations. As the UK is no longer part of the EU, this may lead to a degree of confusion. UKMTO would also like to be informed when a ship passes through the RA, uses corridors and leaves the RA. But it would also like to hear about any suspicious activity or actual pirate attack.

Always visit this organisation's website for the latest information:
www.ukmto.org

26.9.5. Fines imposed on the Shipmaster

The Act, the Decree and the Regulations are enforced by officials of the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management. Any fines imposed are administrative fines. This legislation provides for administrative fines for different people or companies, such as the licence holder, the ship manager, the team leader and the Shipmaster. An administrative fine is a sanction under administrative law that can be imposed by the Human Environment and Transport Inspectorate without intervention of the police, the Public Prosecution Service or a court. An objection or an appeal can be lodged against an administrative fine. For more information, see Chapter 4 of this Handbook. However, the Public Prosecutor can also enforce legislation when criminal law is concerned. This may be the case, for example, when innocent fishermen rather than pirates are shot at. In such case the court will pass its judgement, which can be appealed against at the Court of Appeal or even at the Supreme Court: See the Criminal Code and the Code of Criminal Procedure. These laws are also explained in Legal Handbook Shipmaster.

Protective measures

The ship manager must provide the Shipmaster with sufficient and adequate protective measures. On board the ship, the Shipmaster is responsible for them. Exceptions to the reasonably possible protective measures on board are in the official permission provided by the ship manager to the Shipmaster. If the Shipmaster takes insufficient protective measures, this may incur a fine of € 4,500 maximum.

No permission for private security personnel

If there is no official permission for armed private security personnel but the Shipmaster nevertheless takes them on board, the Shipmaster can be given a considerable fine.

The ship manager will ask the Minister for permission to sail with armed protection. If that permission for armed private security has been granted, the ship manager must notify the Shipmaster and present a copy of the document granting permission.

Before the armed security personnel board the ship, the Shipmaster must check whether the ship manager has been officially granted permission for armed private security personnel by the Minister. If this permission is not in order, the Shipmaster may receive a fine of € 4,500 maximum.

End-of-voyage report

If the Shipmaster fails to submit an end-of-voyage report to the Human Environment and Transport Inspectorate, the Shipmaster may be given a fine of € 4,500 maximum.

Notification about the use of force

If the Shipmaster fails to submit a notification about the use of force to the Public Prosecution Service in the Netherlands, the Shipmaster may be given a fine of € 4,500 maximum.

Summary of fines

The maximum fines imposed on the Shipmaster are often € 4,500.

The total sum of the fines imposed on the Shipmaster may amount to thousands of euros.

The Human Environment and Transport Inspectorate has compiled a summary of fines, stating the concrete amounts of the fines for each infringement. These fines are called administrative fines.

26.10 Summary Shipmaster

Military guards provide security under the authority of a government organization, meaning the use of force is entrusted to trained and authorized professionals—not to the Shipmaster.

When Privately Contracted Armed Security Personnel (PCASP) are employed, this distinction does not always apply. In many countries, the Shipmaster may be held responsible for the use of force by PCASP against pirates.

In the Netherlands, however, the Shipmaster is not responsible for the use of force by private armed guards; this responsibility lies with the official team leader of the security personnel.

The Shipmaster:

- has the right to defend ship and crew against an attack by pirates.
- has the right to detain pirates on board his ship.
- has the right to ask his government for a firearms licence.
- is obliged to prepare his ship for attacks by pirates.
- is responsible for firearms on board and for storing them securely.
- may be responsible for the use of force on board his ship unless this is done by the military or otherwise legally concluded.

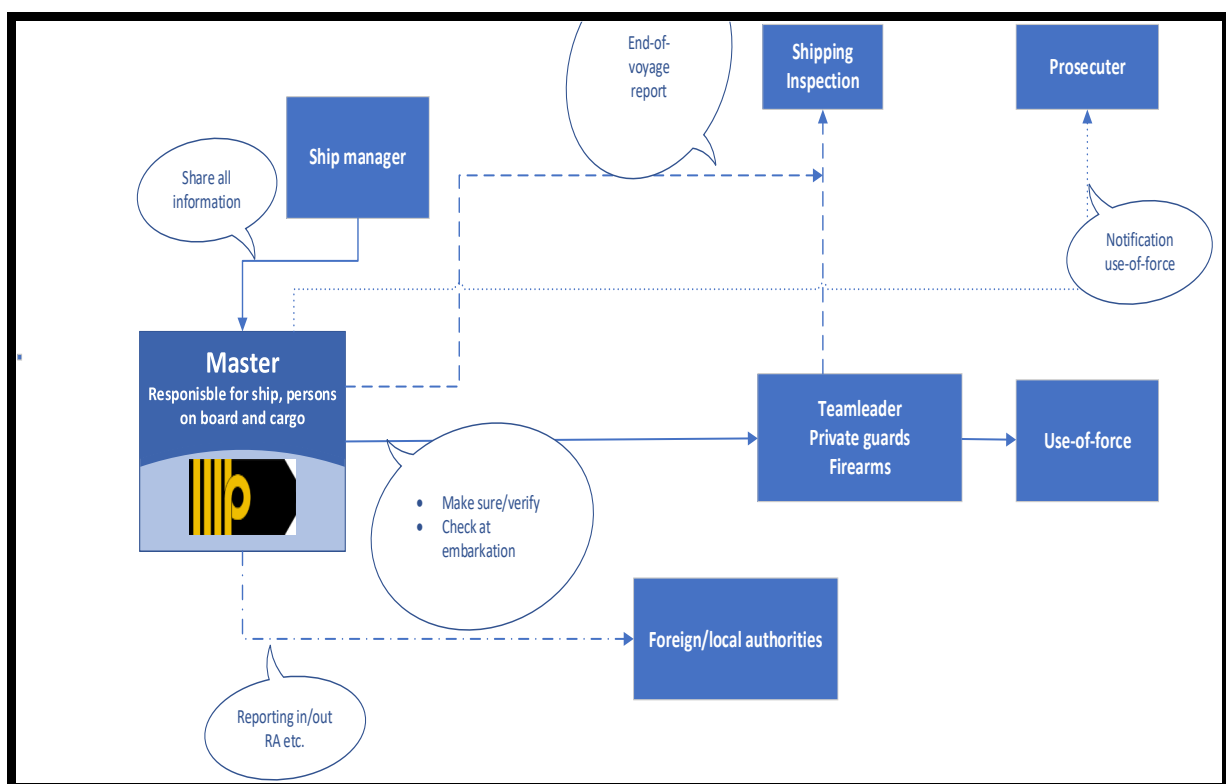


Figure 33. Overview of Shipmaster's network for combating piracy

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 27 Salvage and towing

27.1. Introduction

Salvage and towing can improve the marine environment's quality as well as the safety of people and ship. In an emergency, the Shipmaster must determine whether external help is required or whether the problem can be handled on board his ship. The Shipmaster, who is instrumental in hiring a tugboat or salvage equipment, may in case of emergency, promptly begin towage or salvage operations.

The shipowner should provide the Shipmaster authority to sign contracts as needed. This is not a concern during a shipping emergency, but the shipowner will handle these contracts if the ship is not in immediate danger. Despite not being in immediate danger, the situation can quickly deteriorate. The Shipmaster should then decide, occasionally using his overriding authority.

The establishment of protocols to recognize, describe, and address potential emergency situations on board a ship is the responsibility of the shipowner under SOLAS/ISM/SMS. The common method for fulfilling this requirement is to create shipboard emergency response plans. The shipowner must also set up plans for emergency preparedness, drills, and exercises.

The SMS must have provisions for safeguards that allow the Shipmaster to react quickly to dangers, events, and emergency circumstances. Plans for shipboard emergencies must outline the course of action that will be done in a variety of emergencies.

The information learned from exercises and actual situations should be used to test these plans and make any necessary modifications.

Plans might come with the necessary checklists.

SOLAS/ISM/SMS makes the shipowner responsible for establishing procedures to identify, describe and respond to potential shipboard emergency situations. This requirement is commonly met by producing shipboard emergency response plans. The shipowner must also establish programmes for drills and exercises and to prepare for emergency actions.

The SMS must provide for measures to ensure that the Shipmaster can respond at any time to hazards, incidents and emergency situations. Shipboard emergency response plans must show what action will be taken in specific emergency situations. These plans should be tested

and modified as necessary using knowledge gained from drills and actual incidents. Plans may include appropriate checklists.

Certain ships must have emergency plans, such as the Shipboard Oil Pollution Emergency Plan (SOPEP), according to MARPOL and the International Convention on Oil Pollution Preparedness (OPRC). These precautions and strategies are the responsibility of the Shipmaster, who is also in charge of consistency. Between the Shipmaster, shipowner, and other relevant actors, strong cooperation is required.

From the legal perspective of the Shipmaster, salvage and towing will be discussed and compared in this chapter. See also ICS *'Peril at Sea and Salvage, A Guide for Masters'*.

27.2. Salvage

The definition of salvage has been laid down in the International Convention on Salvage: *'Salvage operation means any act or activity undertaken to assist a ship or any other property in danger in navigable waters or in any other waters whatsoever'*.

Salvage is the phase after rescue operations. Rescue means an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety. An overlap between rescue, emergency towage and salvage may be present.

The Shipmaster should make use of salvage operations when his ship, cargo or the marine environment are at danger or to be damaged. He should assess the dangers to which the ship is exposed and the urgency of external assistance.

Danger can be divided into:

- 1. Danger**

A state of being vulnerable to ship or cargo loss and injury. A possibility of suffering harm or injury.

- 2. Imminent danger**

A threat to the ship should be immediate or imminent, meaning that the Shipmaster believes that death or serious physical harm could occur within a short time when no measures are taken.

- 3. Damage to the environment**

Substantial and tangible damage to human health or to marine life in coastal waters, caused by pollution, contamination, fire, explosion or similar major incidents.

Whether external help is required is determined by the Shipmaster. If so, he needs to take quick action.

27.2.1. Shipmaster's competencies and responsibilities

The IMO *Guidelines on the Control of Ships in an Emergency* provides the Shipmaster with a framework of authority within which he will be expected to operate. The most important stakeholders the Shipmaster has to deal with are the salvage master on the scene, the authorities of the coastal state the ship is in, and of course the shipowner.

Shipmaster & salvage master

When there is communication with the salvage master, or once he is on the scene, the salvage master can be consulted for advice. The authority and responsibility of the Shipmaster are not altered by engaging salvors.

The Shipmaster remains in command of the ship despite the presence of a salvage master, until such time that the Shipmaster cedes command of the ship to the salvage master. Since the salvors are professionals at salvage operations, the Shipmaster should collaborate with them to the fullest. While doing this, the Shipmaster must take all necessary precautions to avoid or minimize damage to the environment, cargo, and ship.

Any advice provided by the salvage master or another individual responsible for delivering or offering advice on salvage operations should be considered by the Shipmaster.

However, the salvors may not be experts in the safety and handling of cargo or be familiar with the ship. When in doubt about the advisability of any action suggested by the salvors, the Shipmaster should not hesitate to challenge the advice given, bearing in mind the Shipmaster's responsibility for the safety of those on board and the ship, pollution prevention and the cargo.

The Shipmaster of the ship in danger must owe a duty to the salvor:

- To work altogether with him during the salvage operations;
- To exercise due care to prevent or minimize damage to the environment;
- When the ship has been brought to a place of safety, accept redelivery when requested by the salvor to do so.

Shipmaster & coastal state

Unless the coastal state officially instructs differently, the Shipmaster's authority and responsibilities remain unaltered in circumstances of official governmental action. This is in accordance with that coastline state's national law. Salvage operations may require protected seas. On the other hand, the coastal state, particularly the marine environment, may be endangered by the ship's condition. Certain states along the coast have laws enabling them to take proactive measures when a ship enters the territorial waters, which are under their authority. The shipowner should get a comprehensive report from the Shipmaster, who must also abide by any directions issued by the relevant authority. If the Shipmaster determines through professional judgment that any of these orders are unsafe or unwise, he should raise concerns with the local authorities and, if necessary, file a protest with the relevant government agency. This in collaboration with the shipowner.

According to UNCLOS, coastal states have the right to intervene beyond their territorial waters and take measures to prevent or reduce pollution damage following a maritime casualty. This right is also regulated by the *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention)*, including the Protocol. The *Intervention Convention* requires the government to consult with other affected governments, including the flag state, and with the shipowner. In order to minimize harm to the marine environment, the coastal state's actions cannot exceed what is reasonably necessary.

Shipmaster & shipowner

The *International Convention on Salvage* establish specific provisions for the Shipmaster as representative of the shipowner. Firstly, the Shipmaster should make sure whether the flag state is party to this convention and secondly whether he has official permission of the shipowner to conclude contracts in non-emergency situations. Of course, if the ship is in imminent danger the Shipmaster should do anything to rescue his ship and persons on board, and to protect the marine environment.

The shipowner, when not limited by time or other circumstances, will conclude the contract; both the shipowner and the Shipmaster are free to request the intervention of other salvors when necessary.

During salvage operations the Shipmaster remains in command and the shipowner owns the ship.

The Shipmaster maintains command during salvage operations, and the shipowner owns the vessel. If the Shipmaster has more time to decide because immediate assistance is not (yet) essential, he may negotiate and conclude a contract based upon normal or standard tariffs, lump sums, or daily rates. In this situation, the shipowner should be consulted as well as the Shipmaster, who may request the intervention of other salvors if necessary.

The shipowner and the Shipmaster retain command/ownership of the ship during salvage operations. If the Shipmaster and his crew abandon the ship and embark on a ship of the salvors, the ship cannot be claimed by the salvors or other persons. The ship remains in the ownership of the shipowner. Cargo and other properties on board remain in the ownership of the respective owners. Services rendered by the salvor notwithstanding the express and reasonable prohibition of the Shipmaster of the ship must not be paid by the shipowner unless a contract says otherwise. When time runs out it is the duty of the Shipmaster to decide in favour of his ship, persons on board and the marine environment.

27.2.2. Contracts

Salvage operations must be rewarded. It is not up to the Shipmaster who should take care of this, but the shipowner. Salvage may be rendered without agreement being reached in advance. However, the salvors are entitled to claim salvage, because the right to salvage exists under international law. The contract between the shipowner/Shipmaster and the salvor must be determined by the law of a country both parties have agreed upon. Mostly, this will be English maritime or admiralty law. Salvage operations are subjects to contracts between the salvor and the shipowner/Shipmaster. Shipmaster should be aware that, by accepting a line from a salvage ship, tug or other ship this may potentially be seen as an acceptance, even if a contract has not been signed or verbally accepted.

Not-imminent danger

Improvements in global communications and the efficiency of ships and shipowners ashore mean that the Shipmaster should make fewer decisions in an emergency than he did a few decades ago. If the vessel is not in an imminent situation and the Shipmaster has time, he should communicate with the shipowner regarding the agreement. He must seek advice from the shipowner before accepting any agreement with the salvor. However, the person who can determine the condition of the ship, weather, etc. is the Shipmaster at location. If the ship

is not in danger, the shipowner can arrange the necessary support to conclude agreements with the salvors.

Imminent danger

If danger arises, the owner must take appropriate (rescue) measures to protect the safety of persons on board, the vessel, the environment and the cargo. All concerns about commercial aspects and protecting the interests of owners are secondary. If the vessel is in danger, the Shipmaster is authorized to immediately request rescue/salvage. If the salvors offer open salvage terms while the vessel is in an emergency situation, the Shipmaster is authorized to accept these open terms.

In case of emergency, the Shipmaster/-owner should not delay the rescuer's or salvor's cooperation by negotiating rules and contracts.

Shipmaster must recognize that it is unfair to enter into a contract based on the adverse effects of danger. These contracts may be cancelled if the fees are excessive for the services provided.

27.2.3. LOF

For salvage two types of contracts exist. Firstly, the contract providing that salvage will be rendered based on payment afterwards, such as a lump sum or a daily rate. Secondly, the often-used contract between the Shipmaster and the salvor is the Lloyd's Open Form (LOF) 2020, also known as the 'Lloyd's Standard Form of Salvage Agreement'.

There are various national forms of salvage contracts available, such as the Japanese Form, Beijing Form, Moscow Form and Turkish Form. However, the LOF remains the internationally preferred contract.

According to Lloyd's, the LOF provides a regime for determining the amount of payment to be awarded to salvors for their services in saving property at sea and minimising or preventing damage to the environment. The LOF is so-called 'open' because it stipulates no amount of money for the salvage operation. The LOF is a 'no cure-no pay' contract, meaning that salvors respond to incidents at their own risk in the expectation of a fair payment if they are successful.

A LOF contract is appropriate when the ship is in imminent and immediate danger.

Additionally, LOF has a feature that allows the parties to indicate if the Special Compensation Clause (SCOPIC Clause). It is advised by the P&I Clubs that every LOF contract include the SCOPIC Clause. Regardless of the situation or whether environmental damage is a hazard, the salvor may use the SCOPIC Clause at any point throughout the salvage operation. SCOPIC bases the amount owed on time and materials plus twenty-five percent. Tariff rates that have been agreed upon for personnel, equipment, and tugs are appended to the SCOPIC Clause.

The shipowner and the insurance companies may send a special representative on board, and the Shipmaster should be informed of this. People with the right to unrestricted access to the ship, where they can observe the salvage process and look over the pertinent ship documentation. The Shipmaster ought to take the salvor's LOF contract if there is impending danger. The Shipmaster makes this decision. One factor that could influence this important decision made by the Shipmaster is the possibility of pollution from cargo or bunker oil.

Before signing any salvage contract, the Shipmaster should get counsel from the shipowner or insurer, if the vessel is not in immediate danger. The shipowner or Shipmaster may then be able to bargain with the salvor.

27.3. Towing

Towing can be divided in towing in inland or coastal waters and towing on the oceans, or in planned towing under normal (commercial) circumstances and emergency towing.

Both planned towing and emergency towing are included in this section.

27.3.1. Planned towage operations

Planned towing is also called 'ocean towage' or 'sea-going operations'. This means that the towed ship is not in danger, and a suitable tugboat tows this ship to the next port of call.

A legal definition of planned towage: An act by which the tug supplies power to draw a ship, called the tow.

In multiple countries the term towage or towing also means a contract whereby a tug is hired to move a ship. The payment is defined by the contract.

Assuming no risks, significant arrangements for towage are not established by international law. According to SOLAS requirements, ships must be outfitted with arrangements, tools, and fixtures needed for towing and mooring activities related to their regular operations.

This is known as planned towage.

It is the Shipmaster's functional responsibility to verify those requirements.

Planned towing is primarily regulated by the terms that have been established between the involved parties and the towage requirements included in national laws.

It is necessary to sign a towage contract. This is a business agreement between two shipowners that is governed by national laws, including any applicable commercial regulations. National laws may request a number of extra documents, including a:

- Fit for towing certificate;
- Statement condition;
- Suited for towing declaration

These documents can be found in the IMO *Guidelines for Safe Ocean Towing*.

This publication speaks also about:

- Manning requirements for both the towing ship and the towed object;
- Voyage planning: weather conditions, wave heights, currents, ports of refuge etc;
- Preparation, including water tightness, stability and navigation lights;
- The tow, including the design and strength of the towline;
- Documentation, including a contingency plan, operation/towing manuals and confirmation of fitness to be towed;
- Emergencies, including communications with the authorities.

When providing towing assistance for non-emergency situations, the Shipmaster of a merchant navy vessel must adhere to all applicable laws and regulations.

Additionally, all machinery and towing equipment must be in excellent working order and suitable for the intended tow operation.

But this kind of towing is an uncommon and impractical setting.

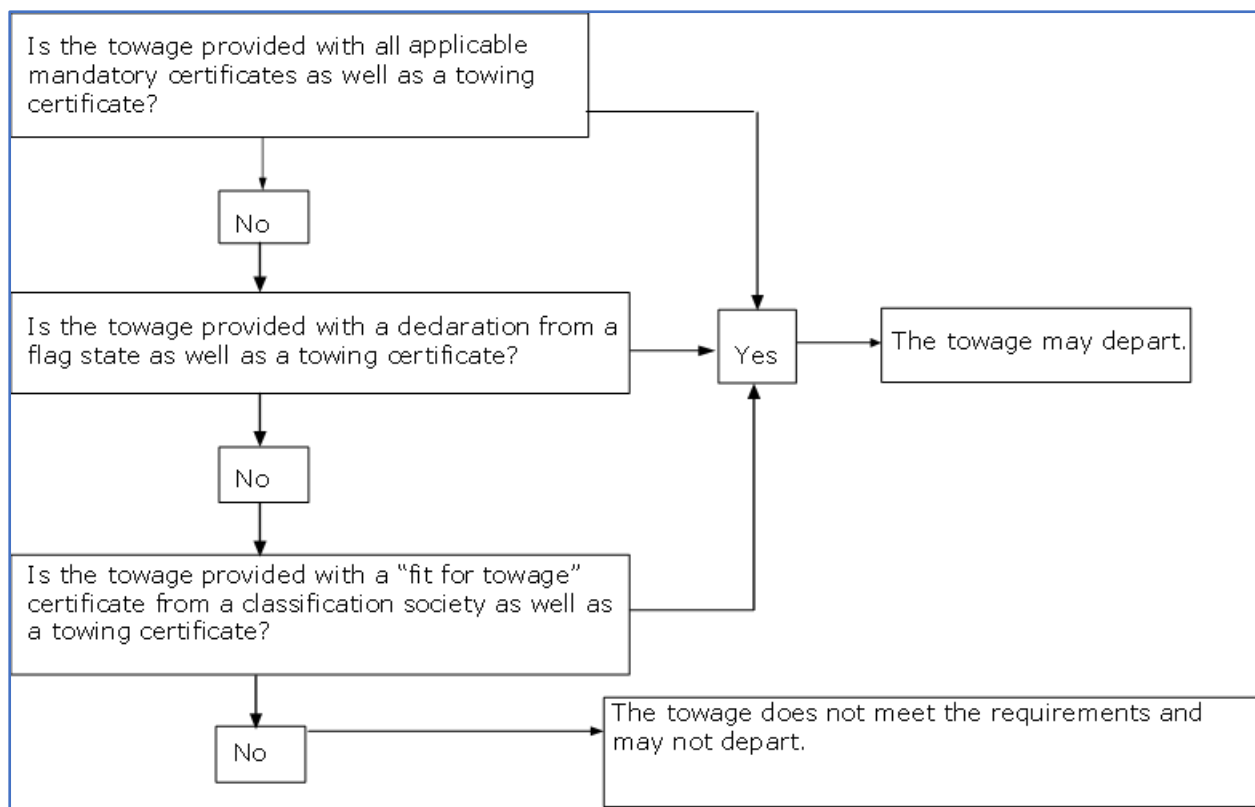


Figure 34. Certificates prescribed for sea-going towing operations (NSI)

27.3.2. Emergency towing

The Shipmaster's main goal when a ship is damaged is to steer it clear of dangers and shallow water. This is known as emergency towing and can be completed by a tugboat. Both passenger and freight ships are subject to the emergency towing procedures, per SOLAS.

An emergency towing protocol designed specifically for these ships must be given. Such a protocol, which should be based on current arrangements and equipment on board, needs to be carried on board the ship for use in emergency scenarios. Tanker emergency towing preparations and procedures are governed by certain laws and norms established by SOLAS.

Every ship has an Emergency Towage Booklet that contains all of the ship's specific information. This pamphlet offers instructions on how to perform safe emergency towing procedures. Given the size of many ships, it is not possible to have another merchant navy ship provide emergency towing. The Shipmaster of a ship that is in peril is entitled to rescue, but the Shipmaster of the ship that is rescuing is in command and has the last say. He has to help however he can, but not at the expense of his own ship or crew. The roles, duties, and authority between the two ships in this unusual circumstance need to have been very clearly defined.

The Shipmaster of the ship that is in danger may be tasked with the following duties:

- Acknowledge that the ship requires towing assistance;
- Notify the towing ship of the ship's status;
- Clear the deck before the towing lines tighten;
- Ensure that survival crafts and rafts are prepared for use;
- Notify the shipowner, nearest port, etc.;
- Clearly define duties and responsibilities;
- Establish communication channels and responsibilities;
- The Shipmaster of the towing ship is in charge of the towing operation;
- Verify the stability of the tow.

Salvage and emergency towing may include overlap.

Danger: The possibility of suffering harm, losing a ship, or encountering marine hazards.

Imminent danger: The threat needs to be present right now. This implies that you have to think that something terrible could happen to you quickly, like before the Shipmaster has a chance to look into the issue.

27.3.3. Towing master's responsibilities

The tugboat's Shipmaster is responsible for supervising all relevant, valid cargo ship certificates based on the vessel's size, as well as documents pertaining to the bollard pull and other specific towing ship equipment. The tugboat's Shipmaster oversees setting up communication, particularly command lines with the object being towed. The tugboat's Shipmaster needs to be extremely clear about his roles and obligations, before beginning a towage, these should be known to all parties involved, including those of the towed object.

A capable towing master should oversee the towing operations. In most cases, if the towed object is being towed by a leading towing ship, that would be the Shipmaster of that ship.

The towing master is responsible for the towing operation. In preparation for the towing operation, the towing master should consider the IMO Guidelines, as appropriate.

The towing master should also consider which laws and regulations are applicable during the towage, as well as ensuring that all relevant safety measures as he finds necessary are implemented.

27.4. Salvage or towing

Salvage is mostly a bigger operation than towing, it is also more expensive than towing.

Salvage can be found in an international agreement, while towing is based upon national law.

Salvage needs marine perils to exist, otherwise it is called 'providing service', such as planned towing or supplying cargo pumps. Salvage consists out of the elements:

- Marine peril;
- Voluntarily rendered;
- Successful.

Towing can be part of salvage operations. This is the overlap between salvage and emergency towing. Emergency towing might be considered as salvage.

Salvage	Towing
Emergency	Standing procedures, routine
Bigger and more expensive operations	Inland or ocean going
Successful	Transport towing
International agreement	National law
Emergency towing is salvage	IMO guidelines
Salvage master /inspectors	Shipmaster tug
Contract or LOF	Commercial (contract)
Perils of the sea	Routine

Table 13. Overview of differences between salvage and towing

27.5. Summary Shipmaster

The Shipmaster:

- must comply with all applicable laws, regulations, and instructions related to towage or salvage operations.
- should, in case of uncertainty, consult the salvage or towing master, as these professionals possess the necessary training and expertise while the Shipmaster may only encounter such an experience once in a career.
- should maintain open and transparent communication with the shipowner or -manager and the P&I Club at all times.
- In addition to abiding by the rules of the flag state, the Shipmaster must also abide by the laws of the coastal state he is in, particularly considering the legal obligations pertaining to marine pollution.

- The shipowner/ P&I Clubs may have rules and directives that the Shipmaster must follow.

Salvage

The Shipmaster:

- should be familiar with the ICS book “Hazard at Sea and Salvage: A Master’s Guide.”
- determines whether the ship is in danger and whether external emergency assistance is required.
- may agree to the salvors’ terms when immediate assistance is essential; until the shipowner can be consulted, the Shipmaster has final authority on this decision.
- ensures that, whenever reasonably possible, the shipowner is informed and may allow the shipowner to sign the salvage contract, depending on circumstances.
- may protest if the salvor’s terms are considered unfair or excessive.
- remains in command of the vessel while on board, although the salvage operation itself falls under the salvor’s direction.
- may lose command of the ship if forced to leave it due to danger or other reasons; this depends on the circumstances and whether the absence is temporary or permanent.
- should make it explicitly clear whether he remains in command when leaving the vessel.
- should consult with the shipowner and the salvage master when making such decisions.
- should note that even if he and crew abandon the vessel, the shipowner retains ownership of the vessel in peril.

Towing

The Shipmaster:

- in accordance with UNCLOS and SOLAS, has a duty to render assistance to vessels in distress, including towing, rescue, or emergency (salvage) operations. While not routine, these actions remain at the Shipmaster’s discretion, based on local conditions and vessel capabilities.
- if unable to provide assistance, must promptly notify the relevant authorities and the ship manager.
- must ensure that all required and valid ship certificates are in order, appropriate to the tug’s size, characteristics, and any special operational requirements.

- the Tow Master is responsible for the conduct and safety of the towing operation.
- the Tow Master must comply with all applicable laws, rules, and regulations governing towage activities.
- should follow instructions and guidance from the shipowner, ship manager, and P&I Club.
- must rely on professional seamanship, judgment, and experience when executing duties.
- the Tow Master must ensure that all necessary safety precautions are properly implemented before and during operations.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 28 Marine casualties

28.1. Introduction

A significant role of the Shipmaster is to prevent casualties and fatal accidents. One of the instruments to do so is to follow all rules in the domain of safe navigation, safety of life at sea, security, working conditions and marine pollution. The Shipmaster should use all aspects of good seamanship to prevent accidents. But unfortunately, accidents and incidents take place. During a marine accident, the role of the Shipmaster is to be the leader. He is the professional with the proper skills, training, judgment and experience to deal with the situation.

The Shipmaster must restrict loss of lives, damage to property and the pollution of the sea. After reporting the accident, the Shipmaster should be prepared for one or more investigations into the accident. Article 94 UNCLOS and other international maritime agreements state that each country must start a marine safety inquiry into any marine casualty or incident onboard of one of its ships. International law states that marine casualties and incidents will be subject of national investigation. This national investigation can be conducted by the flag state or by the coastal state the ship is in, or by both countries together.

IMO issued the *Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)*. Definitions and explanations of this Code will be used in this chapter, further on it deals with the role and tasks of the Shipmaster in a marine casualty or marine incident, more specifically the role of the Shipmaster during the investigations into the marine casualties. Firstly, terms such as marine casualties, marine accidents and marine incidents will be defined and described. Thereafter, the marine safety investigation will be illustrated, followed by the description of the role of the Shipmaster during this investigation.

28.2 Marine casualties

Many maritime accidents or marine casualties occur every year, in all maritime zones, so also in a diversity of jurisdictions. The terms 'marine accident' and 'marine casualty' are used interchangeably in laws and regulations.

In this section the terms and definitions will be mentioned. Many countries use their own terms and definitions.

Due to many marine casualties and the subsequent devastating marine pollutions, some coastal states want to prosecute the persons responsible. The Shipmaster has a chance to be prosecuted, sometimes even as a scapegoat or easy target. This is something the Shipmaster should bear in mind.

A marine accident or casualty does not include a deliberate act or omission with the intention to cause harm to the safety of a ship, an individual or the environment. These cases certainly will appear for criminal court. In the IMO *Casualty Investigation Code*, many relevant definitions can be found, such as:

- Marine casualty;
- Very serious marine casualty;
- Serious marine casualty;
- Marine incident.

Different countries may define maritime accidents or crimes in various ways in their national criminal law. The Shipmaster should access and consult this national criminal law to learn about specific definitions regarding maritime incidents and crimes. The Shipmaster can often be held criminal responsible when he neglects the seaworthiness of his ship or for a lack of good seamanship. On the high seas the flag state must act and in the territorial waters the coastal state must act, recognising the restrictions such as innocent passage. UNCLOS states that the coastal state has jurisdiction of foreign ships which are leaving internal waters at the time of the criminal offence or at the time of the discovery of the criminal offence.

UNCLOS states furthermore that the coastal state is not allowed to exercise its criminal jurisdiction if the crime occurred prior to the ship entering territorial waters at all, or if the ship is merely passing through territorial waters without entering internal waters: innocent passage.

The Shipmaster should realize that his behaviour before, during and after a maritime accident or casualty may result in a prosecution under the national criminal law of the flag state or of the coastal state, he is in.

Firstly, terms such as marine casualties, marine accidents and marine incidents will be defined and described. Thereafter, the marine safety investigation will be illustrated, followed by the description of the role of the Shipmaster during this investigation.

28.3. International law

28.3.1. Conventions

Several conventions deal with maritime incidents, accidents or casualties. Not all conventions use the same definitions. The Shipmaster should be aware of the possibility that the national law of the flag state of his ship may use different definitions or other more specific terms.

The Shipmaster should coop with multiple conventions dealing with different terms and definitions, such as:

- **UNCLOS**
 - Article 94.7 Duties of the flag state
 - Article 221 Avoiding pollution from maritime casualties.
- **SOLAS**
 - Chapter I Regulation 21 Casualties
 - Chapter XI-1 Regulation 6 Additional requirements for the investigation of marine casualties and incidents
- **MARPOL**
 - Article 8 Reports on incidents involving harmful substances.
 - Article 12 Casualties to ships
- **International Convention on Load Lines**
 - Article 23 Casualties

The Shipmaster should be aware that multiple conventions stipulate an investigation after the occurring of a maritime accident or incident. So, an investigation of a maritime accident or incident may be based upon different conventions.

In general, each country must initiate an inquiry into a maritime accident or incident, especially when loss of lives, serious injuries or serious damage to the ship or to the marine environment is at stake.

Flag states, and when appropriate, coastal states may cooperate in the conduct of an investigation.



Figure 35. Maritime incidents are differently described in various conventions.

28.3.2. Definitions

UNCLOS speaks about a 'marine casualty' and an 'incident of navigation', without defining these terms. This convention speaks also about 'maritime casualty', which term has been defined as collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.

SOLAS speaks about a 'casualty' without further definition, but refers to the IMO *Casualty Investigation Code*, including its definitions.

MARPOL speaks about 'casualty' and 'accident', without definition, but the term 'incident' has been defined as an event involving the actual or probable discharge into the sea of a

harmful substance, or effluents containing such a substance. MARPOL also uses the undefined term ‘...an accidental discharge of ...’

The International Convention on Load Lines speaks about ‘casualty’ without definition.

Multiple terms and definitions regarding marine incidents are available. This chapter follows the IMO classification as laid down in the mandatory standards and recommended practices of the *Casualty Investigation Code*:

- Very serious casualty: a marine casualty involving the total loss of the ship or a death or severe damage to the environment;
- Serious casualties: other than very serious casualty;
- Marine casualty: an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:
 - Death of, or serious injury to, a person;
 - Loss of a person from a ship;
 - Loss, presumed loss or abandonment of a ship;
 - Material damage to a ship;
 - Stranding or disabling of a ship, or the involvement of a ship in a collision;
 - Material damage to marine infrastructure;
 - Severe damage to the marine environment.
- Marine incident: an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.
- Serious injury: an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered.
- Severe damage to the environment: damage to the environment which, as evaluated by the country affected, or the flag state, as appropriate, produces a major deleterious effect upon the environment.

A marine casualty or marine incident does not include a deliberate act or omission with the intention to cause harm to the safety of a ship, a person on board or the marine environment.

Deliberately or intentionally causing a marine casualty or incident can be considered as a crime, such as manslaughter or murder if persons are hurt or killed. In that case the Shipmaster should inform the shipowner and the flag state, depending in which maritime zone and jurisdiction the ship is located. Then domestic criminal laws and regulations are applicable. To contact all competent authorities, including the Public Prosecutor, the shipowner should assist the Shipmaster. Sometimes countries have specific regulations and specified formats available. The Shipmaster should anticipate on an investigation of a maritime casualty or incident.

28.4. EU/NL

The EU has laid down its provisions in a directive, which has been transposed into national law. Each accident is classified according to severity. These categories correspond to IMO regulations. In the Netherlands, a shipping accident or an accident at work must be reported to the competent authorities. Breakdowns and accidents during the voyage must be reported as soon as possible by the Shipmaster to the ILT. This also applies to damage, possible damage or defects that may affect ship safety. Also in the Netherlands, the Shipmaster is sometimes confronted with not always the same terminology. The terminology below comes from detailed Dutch laws and regulations. There are several overlaps with IMO and EU terminology. The NL Safety Board (see Chapter 30 of this Handbook) uses the following terminology, which originates from the Dutch Safety Board Decree:

1. **Shipping accident:** an event that resulted in the following:
 - death or serious injury to a person caused by or related to the operation of a ship;
 - the loss of a person from a ship, which is caused by or related to the functioning of the ship;
 - the missing, suspected missing or abandonment of a ship;
 - damage to a ship;
 - stranding or rendering unusable of a ship;
 - the involvement of a ship in a collision;
 - damage caused by or related to the operation of a ship;
 - damage to the environment caused by damage to one or more ships, which is the result of or related to the operation of a ship;

2. **Very serious shipping accident:** an event that has resulted in:
 - the death of a person resulting from or related to the operation of a ship;
 - very serious damage to the environment, caused by damage to one or more ships, which is the result of or related to the operation of a ship; or
 - a ship that is a total loss;
3. **Serious shipping accident:** an event, being a fire, an explosion, a stranding, a collision, severe weather, ice conditions, failure of the structure, or any other cause, which has resulted in:
 - damage to propulsion, or serious damage to accommodation or the structure of a ship, affecting its seaworthiness;
 - the ship becoming unmanoeuvrable, necessitating outside help, or
 - pollution of the marine environment.
4. **Shipping incident:** an event, not being a shipping accident, caused by or related to the operation of a ship and in which the safety of the ship or persons is endangered, or which causes serious damage to the ship, to mining installations or to the marine environment.
5. **Serious injury:** injury sustained by a person in an accident resulting in incapacity for more than 72 hours, commencing within seven days of the date the injury was sustained;

28.5. Marine safety investigation

Marine safety investigation is described in the IMO *Casualty Investigation Code*. This chapter follows this Code. Part I and Part II of this Code are mandatory. Part III of the Code are guidelines and explanatory texts, which may be very helpful to inform the Shipmaster. The IMO *Casualty Investigation Code* states that a marine safety investigation means an investigation or inquiry (whatever referred to by a country), into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary. The IMO *Casualty Investigation Code* requires a marine safety investigation to be conducted into every 'very serious marine casualty'.

This is defined as a marine casualty involving the total loss of the ship or a death or severe damage to the marine environment. The IMO *Casualty Investigation Code* also recommends an investigation into other marine casualties and incidents, by the flag state of a ship involved. A prerequisite here is that it should be deemed that such an investigation would provide material that could be used to prevent future maritime accidents.

On the high seas the flag state will conduct the investigation. In coastal waters the coastal state and the flag state will communicate about which country will start the investigation. Other substantially interested countries will be notified as soon as reasonable be practice.

The investigating countries may conclude an agreement with other all substantially interested countries to investigate a marine casualty or incident. A country may designate a Marine Safety Investigation Authority to conduct the marine investigation. Countries may start a separate investigation on their own. Of course, cooperation should be in place. A marine safety investigation should be unbiased to ensure the free flow of information to it. Therefore, the investigators should be functional independence and free of interference from the involved parties. The Shipmaster should be informed about a marine safety investigation; he can be interviewed by the investigation authorities. The Shipmaster should take in consideration that more than one investigation may take place, followed by more than one investigation report. After the marine safety investigation, a report will be published.

According to the IMO, a marine safety investigation report means a report that contains:

- A summary outlining the basic facts of the marine casualty or marine incident and stating whether any deaths, injuries or pollution occurred as a result;
- The identity of the flag state, owners, operators, the company as identified in the safety management certificate, and the classification society (subject to any national laws concerning privacy);
- Where relevant the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;
- A narrative detailing the circumstances of the marine casualty or marine incident;

- Analysis and comment on the causal factors including any mechanical, human and organizational factors;
- A discussion of the marine safety investigation's findings, including the identification of safety issues, and the marine safety investigation's conclusions;
- Where appropriate, recommendations with a view to preventing future marine casualties and marine incidents.

The flag state supplies the IMO with information resulting from marine safety investigation report. The final safety report should be made available to the public and the shipping industry. Besides the IMO Code, UNCLOS, SOLAS, MARPOL and the Load Lines Convention state that the flag state must conduct investigations into a casualty on board of one of its ships. The prerequisites of these conventions and national law of the flag state are here leading.

28.5.1. National marine safety investigation

All countries must ensure that their national laws give inspectors the ability to conduct maritime safety investigations. Investigators must be impartial and objective. These investigators must be authorized to embark the vessel and interview the Shipmaster or other personnel. These investigators must have access to the evidence on board. These investigators usually have the authority and police powers to carry out the investigation. The Shipmaster must be aware of these coercing power of the investigator. The Shipmaster must be informed not only of the start of the research but also of its progress. If in doubt, the Shipmaster should contact the shipowner for advice and/or assistance in managing the onboard investigation.

28.5.2. Reporting

The Shipmaster must immediately inform the shipowner and the competent authorities of the flag State of any accident or incident at sea. If the Shipmaster sails in the territorial waters of a coastal state, he must inform that country as well. Sometimes the flag state has a digital way available for communication about casualties or incidents. In general, the shipowner is responsible for communicating with the national authorities of the flag state or coastal state. The Shipmaster's report to the shipowner might provide the following information:

- Vessel details;
- Place, date and time;

- Injury or death;
- Damage;
- Type of incident;
- The condition of the vessel, including its seaworthiness;
- Other vessels involved;
- Actions taken en to take;
- If support is needed.

28.5.3. Protection of evidence

The Shipmaster should protect and preserve all data, electronic and written records of the voyage during which the marine casualty or incident occurred. That includes data from a Voyage Data Recorder (VDR) or the from a Simplified Vessel Data Recorder) (SVDR). The logbooks and journals must be filled in accurately and with sufficient details, as this might be evidence for court or insurance company. Evidence may include navigational charts, journals, testimonies of witnesses etc., but also photos and videos. A correct collection of evidence may prevent an unnecessary custody or delay of the ship. The Shipmaster should also take care of any other information or material which might be helpful for the marine safety investigation.

28.6. Summary Shipmaster

The Shipmaster:

- must prioritize the safety of the ship, crew, cargo, and the environment, recognizing the vessel as the primary refuge for all on board.
- is required to render assistance to save lives and property, including aiding other vessels, in accordance with UNCLOS, SOLAS, other international conventions, and national laws.
- must assess and prioritize risks using his sound judgment, keeping in mind that the ship mostly remains the safest refuge for seafarers.
- should promptly notify competent authorities, such as the Coast Guard, Rescue Coordination Centre (RCC), or Maritime Rescue Sub-Centre (MRSC). Notification may also be facilitated by the shipowner.
- should be aware that the flag state or coastal state may initiate an investigation after a maritime accident. Authorities conducting the investigation have the right to board the vessel and collect evidence.

- must ensure that he and the crew are available for interviews with investigating authorities.
- should provide crew members adequate notice prior to interviews and account for this in planning.
- must facilitate interviews, providing guidance and support to the crew while ensuring they are not coached or influenced in their testimony.
- should, according to the IMO *Casualty Investigation Code*, be informed as soon as practicable of:
 - the casualty or incident under investigation;
 - the time and place of the investigation;
 - the name and contact details of the investigating authority;
 - the relevant legal framework;
 - the rights and obligations of involved parties; and
 - the rights and obligations of the investigating state.
- should familiarize himself with this information to ensure crew members are properly informed, with support from the shipowner if needed.
- should receive a standardized document with all relevant information to facilitate electronic communication and timely updates.
- should consider that if the ship is involved in a marine casualty, it may remain in service and should not be delayed longer than necessary.

The Shipmaster's responsibilities	
always ...	never ...
..... report to the shipowner/charterer/P&I Club and seek help, advice or support if necessary.	 allow anyone to contact the crew, only after receiving approval from a competent person and proper identification.
..... check for injuries, damage or pollution, or wait for investigation by the appropriate authorities.	 testify to anyone until you have obtained permission.
..... collect and secure evidence and documents, including photographs and visual reports	 give your opinion, nor do the crew.
..... write a personal statement and ask your flight attendant to do the same.	 accept responsibility, guilt or otherwise
..... just tell the truth by reporting facts.	if in doubt, sign any form or other document.

Table 14. Overview does/don'ts for the Shipmaster.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 29 Environment

29.1. Introduction

Shipping is a growing source of 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 marine 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.

29.1.1. Environment, sustainability and climate

Sustainability, environment and climate are closely related, but each has its own meaning.

Sustainability is a broad concept that refers to the ability to meet current needs without compromising the possibilities of future generations. It encompasses ecological, economic, and social aspects. Shipping is vital for sustainability but can cause significant environmental damage. Environment is broader and refers to the natural environment, including air, water, soil, and all living things. It therefore encompasses the habitat of plants, animals, and humans.

The environment can be seen as a part of sustainability. Climate is specifically the pattern of weather over a longer period, usually 30 years, and relates to factors such as temperature, precipitation, and wind. Climate change is an important component of environmental problems, but not the only one. Because the Shipmaster is not often subject to specific legal provisions regarding sustainability and climate, this chapter examines only the legal context of the environment from the Shipmaster's perspective.

If the Shipmaster complies with all laws and regulations, he does not violate any sustainability or climate standards.

When a Shipmaster adheres to all existing rules and regulations covering these subjects, he helps to achieve the goals for a sustainable shipping as well as the environment and the climate goals.

29.2. Environment

Environment refers to the natural environment, including air, water, soil, and all living things. It therefore concerns the habitat of plants, animals, and humans. Environmental damage occurs through the discharge of household waste and wastewater, air pollution from exhaust fumes, the runoff of anti-fouling paints, the contamination of toxic substances during accidents, and the introduction of marine animals and plants into places where they do not exist.

29.2.1. Shipping and the Marine Environment

The marine environment refers to the sea, including the seabed and subsurface. Shipping has a significant impact on the marine environment, both positive and negative. Positive effects include the relatively low CO₂ emissions per unit transported compared to other transport methods and the opportunities for sustainable shipbuilding. Negative effects include pollution from oil, waste, and litter, greenhouse gas emissions, and the spread of invasive species. Some aspects of the marine environment are:

1. Greenhouse gas emissions;
2. Air pollution;
3. Underwater noise: Ships produce noise that can negatively impact marine species in various ways;
4. Non-native species: Overall, the maritime transport sector has had the largest share in the introduction of non-native species into EU seas. A total of 51 species is classified as high-impact, meaning they can affect ecosystems and native species;
5. Oil pollution: Thanks to improved monitoring and enforcement, and increased awareness, there have been fewer oil pollution incidents, even though the amount of oil transported by sea has steadily increased over the past 30 years.

In short, seagoing vessels must pollute the marine environment less.

Therefore, the government is working with national shipping companies and other countries on international agreements for cleaner shipping.

See also the Green Deal for Maritime Transport for various measures and standards.

29.3. IMO & Environment

The IMO has initiated several environmental treaties. See also Appendix 4 of this Handbook. The most relevant major marine environmental treaties are listed below. The relationships between international environmental treaties and the national Dutch regulations are briefly described.

29.3.1. MARPOL

MARPOL is the International Convention for the Prevention of Pollution from Ships. MARPOL is short for marine pollution. MARPOL was adopted in 1973 at IMO. Various Protocols and Annexes have been added to MARPOL. These documents regulate and prevent the pollution by oil, noxious liquid substances in bulk, harmful substances, sewage, sulphur oxide and nitrogen oxide. 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. 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 countries that are member to MARPOL are subject to its requirements, regardless of where they sail. Member countries are responsible for vessels registered under their respective nationalities. MARPOL comprises a number of protocols and annexes that can be ratified by individual countries. 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.

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.

29.3.2. 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 flagstate of ships above 400 GT and engaged in international voyages.

29.3.3. 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 flagstates, 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 in regard to the BWM Convention, such as:

- Guidelines for Ballast Water Sampling,

- Guidelines for Ballast Water Management
- Guidelines for Ballast Water Exchange.

The Shipmaster has control over the location of ballast water discharge and is responsible for maintaining the ballast waterlog. Violations may be punished.

29.3.4. Waste Convention

See the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. This is the London Convention. The purpose of this Convention is to prevent and control marine pollution by dumping of wastes and other matter.

The 1996 Protocol to the London Convention is a later addition that further updates the Convention and strengthens the protection of the marine environment. See also the Dutch Act on the Prevention of Pollution from Ships.

Important points for the Shipmaster are:

- Prohibition on discharge: Merchant ships and fishing vessels may not discharge wastes and residues of bulk materials, with the exception of harmless wastes, food waste, and cargo residues of solid bulk materials that are not harmful to the environment.
- Waste management plan and waste record book: Ships of 100 GT or more are required to maintain a waste management plan and a waste record book.
- Waste obligation in ports: Ships must always dispose of their waste at the port.
- Sanitary waste: Sanitary waste may not simply be discharged into the sea. Specific rules apply, especially for ships in designated areas.
- Specific duty of care: A specific duty of care applies to wastewater discharges from ships, whereby any adverse effects on surface water must be prevented or limited as much as possible.
- Waste register: Companies involved in the collection and transport of waste, including ship-generated waste, must register in the Waste Register.
- Enforcement: The Human Environment and Transport Inspectorate (ILT) monitors whether ships comply with the regulations.
- Exemption: An exemption for disposing of ship-generated waste in a specific port can be requested from the ILT; this is a Port Waste Exemption (HOI).

29.4. EU & environment

The EU is very 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 countries in the development, implementation and enforcement of international and European legislation. EMSA support a coherent implementation of legal requirements and best practices.

All EU member countries must implement MARPOL and EU legislation into their national legislations.

29.5. National

The Netherlands implemented 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.

29.5.1. 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 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 ports 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 MARPOL and its protocols, whereby the international rules become immediately applicable in the Netherlands. This means that neither the Dutch act nor decree must be changed or amended separately. The decree also applies to the AFS-Convention and the Ballast Water Convention as far as these are applicable to the Netherlands.

29.6. Enforcement

Enforcement of the law consists of governmental supervision and criminal detection, see Chapter 4 of this Handbook. The NL 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.

29.6.1. Supervision

For governmental supervision see Chapter 4 of this Handbook. Supervision is achieved by 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 Chapter 4 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 port Shipmaster.
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 port by a competent authority with this power i.a.w. MARPOL or other governmental measure the Shipmaster is forbidden to leave port.

29.6.2. 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 port or that the ship may not leave the port, 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 as far as the stipulations of that article are aimed at them.

29.7. Summary Shipmaster

The Shipmaster:

- must maintain a journal documenting all activities involving harmful or dangerous substances.
- must allow access to this journal and provide verified copies when requested by officials.
- must report any environmental incidents on board or around the ship (e.g., floating containers, oil slicks) to the nearest coastal state authority.
- must cooperate with authorities to mitigate environmental hazards.
- must inform the port of relevant environmental issues at least 24 hours before arrival.
- must deposit ship-generated waste and other harmful substances at port facilities unless sufficient onboard capacity exists to safely store it until the next port.
- must ensure a valid certificate proving compliance with required environmental standards when leaving port.
- has the right to receive official reports regarding dangerous substances offered for transport and must share this information with the shore operator.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 30 Safety Board

30.1. 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 country 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 country. The same applies to serious damage to ships or installations or the maritime environment of its own or another country. In such cases, the flagstate and the other country shall cooperate in the conducting of any inquiry held by that country 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. See also Chapter 28 of this Handbook. According to SOLAS and MARPOL, every administration undertakes to investigate 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 countries 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.onderzoeksraad.nl/en/.

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 an 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 in particular 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 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.

30.2. 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 based on 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 high-speed-passengers-vessels coming from a NL port;
- On request by another land of the Kingdom of the Netherlands.

The legislation differs between Netherlands's 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 country does not want to cooperate. The ministry can instruct the Board to participate in an investigation started by another country. Any accident with dangerous goods will be subject to investigation. Roll-on-roll-off-ferries and high-speed-passenger-vessels coming from a Dutch port 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 port;
- on the high seas or European waters under Netherlands' jurisdiction.

30.3. Summary Shipmaster

The Shipmaster:

- must cooperate with the Safety Board.
- must cooperate with other authorities investigating an accident.
- is obliged to report relevant accidents and incidents.
- has the right to legal counsel at the investigation.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Part 4 Shipmaster and cargo

Chapter 31	Cargo
Chapter 32	Dangerous goods
Chapter 33	Shipping documents
Chapter 34	Cargo/ ship damage
Chapter 35	Insurances

Chapter 31 Cargo

31.1. 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 holds responsibility for the safe transport of the cargo. Shipping of cargoes is subject to many international regulations. More dangerous cargoes do have their own codes and provisions, see the next chapter for transporting of dangerous goods.

The Shipmaster is responsible during loading, transport and unloading the cargo.

Hereafter, some aspects 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 legal rules about general cargo, will be followed by the rules about dangerous cargoes in the next chapter. Both do need to be escorted by the proper documents, in which the Shipmaster has an important role to play.

31.2. Legal context

31.2.1. 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 must apply all provisions from these UN conventions, when applicable.

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 Chapter 33 of this Handbook.

The convention (Rules) which governs the contract of the carriage is usually stated in the first page of the Bill of Lading.

Rules (The Hague, Visby, Hamburg and Rotterdam)

The frequently used UN conventions and rules which cover the contract of carriage for carrying goods by sea are described below. These Rules are not always mandatory. The The Hague Rules (1924) represented the first attempt by the international community to find a workable and uniform way to address the problem of ship managers regularly excluding themselves from all liability for loss or damage to cargo. The objective of the The Hague Rules was to establish a minimum mandatory liability of carriers. The The Hague Rules were slightly amended to become the The Hague-Visby Rules. In addition, the UN established a fairer and more modern set of rules, the Hamburg Rules (1992).

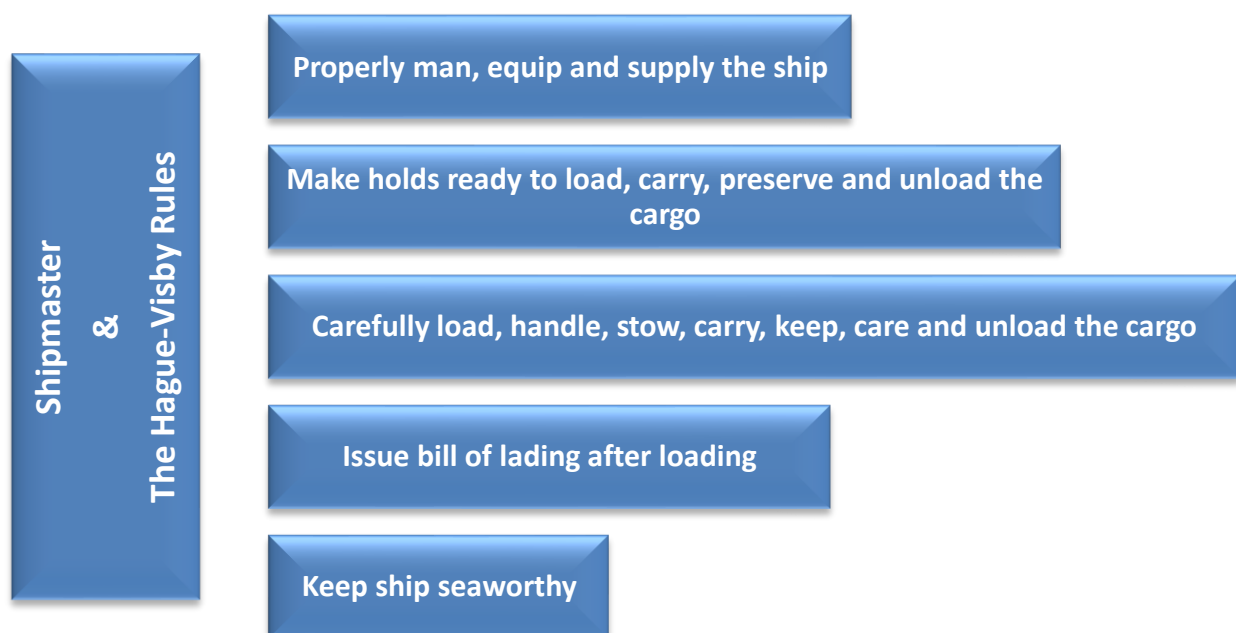


Figure 36. Shipmaster's responsibilities under the Rules

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 The Hague Rules, the The Hague-Visby Rules and the Hamburg Rules. The Rotterdam Rules aims 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 is not (yet) entered into force.

31.2.2. EU-rules

Maritime safety is a very important part of the EU's maritime transport policy. This not only concerns the protection of passengers and crew members, but also the protection of the marine environment and coastal regions. The EU aims to incorporate the international conventions into EU maritime transport policy as soon as possible. In addition, additional measures are being taken at EU level. This concerns guidelines on the equipment of seagoing vessels and the control thereof. Security of ships and ports is also documented.

The European maritime one-stop-shop system is also important. This includes harmonized rules for providing information required for port calls. Rules have been established to define the features of the European Maritime Single Window and to ensure a harmonized reporting environment for users in all Member States. EU regulations on port control ensure a uniform control approach for seagoing vessels.

31.2.3. Netherlands legislation

Dutch legislation regarding cargo on board seagoing vessels is primarily based on the aforementioned international/EU laws and regulations. In the Netherlands, cargo on seagoing vessels must comply with the requirements of SOLAS and MARPOL, etc. Each product must be transported correctly. There are five types of cargo:

- dry bulk
- liquid bulk
- containerized cargo
- roll-on/roll-off (RoRo)
- general cargo

In the Netherlands, the "Law on Loading and Unloading of Seagoing Vessels" applies to bulk carriers. This law applies to:

- Seagoing bulk carriers calling at a terminal for the loading and unloading of solid bulk cargo
- Terminals, whether fixed or floating, where the bulk carriers mentioned in the previous point are loaded/unloaded.

The Human Environment and Transport Inspectorate (ILT/Shipping) is the designated supervisory authority for the Law on Loading and Unloading of Seagoing Vessels. The Seagoing Vessels Loading and Unloading Act implements the European Directive 2001/96/EC Regulations and procedures for the safe loading and unloading of bulk carriers into Dutch law.

The international basis for this European Directive and the Seagoing Vessels Loading and Unloading Act is the IMO BLU Code (Code of Practice for the Safe Loading and Unloading of Bulk Carriers). This BLU Code applies to both bulk carriers and bulk terminals but was only mandatory for ships. With the implementation of European Directive 2001/96/EC, the requirements for the safe loading and unloading of bulk carriers were also made mandatory for bulk terminals. The Seagoing Vessels Loading and Unloading Act identifies a number of shortcomings that frequently occur on bulk carriers, such as:

- Unsafe access for boarding.
- Crew (including Shipmaster/chief officer) has insufficient knowledge of the English language.
- Hold hatches, including the securing devices, are unsafe.
- Hold accesses and ladders are unsafe.
- Damage to the structure and watertightness, such as loose frames, holes in hatches or hull, leaking tank tops, etc.

The terminal representative must immediately notify the inspectorate (Human Environment and Transport Inspectorate) and the Shipmaster of any identified deficiencies that could jeopardize the safety of loading or unloading.

The Shipmaster is responsible for the deficiencies on board and their subsequent handling.

31.3. Stowage & lashing

Before a ship leaves port, the cargo must be properly stowed and secured. IMO has published some documents about this subject. These documents are not mandatory; they are guidelines. *The Code of Safe Practice for Cargo Stowage and Securing* (CSS code) is the IMO/SOLAS standard in the field of ship loading. For bulk loading, including liquids the IMO has issued different codes, such as the International Maritime Solid Bulk Cargoes (IMSBC-Code) and the International Code of the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code). The Shipmaster has a major role in this. The lashing of the cargo is also an important part, called the lashing of containers. For this subject, the mandatory IMO/SOLAS/*Cargo Securing Manual* (CSM) is on board, stating how the cargo must be ensured. The CSM also states:

- How the containers should be fixed:
 - With which lashing materials?
 - What are the maximum lashing forces?
 - How should the lashing materials be secured?
- Up to what weight containers may be stacked:
 - What is the maximum load, including the containers themselves?
 - In what order should the containers be stacked?
 - What is the maximum and minimum allowed stability?
- The requirements for loading and transporting hazardous substances and refrigerated containers;
- How high the containers can be stacked. The lines of sight from the ship's bridge must not be interrupted.

ILT (NL Shipping Inspectorate) can also check whether the cargo is properly lashed and stowed. In the event of shortcomings or defects, the ship may be detained. These are matters that are clearly dangerous to health safety, or that are unclear for the marine environment. In case of violation, the Shipmaster can receive a sanction, such as a fine or a ban on sailing. That sanction is a decision which can stop immediately cargo operations or even leaving port. The Shipmaster can lodge an objection/appeal against this decision. See Chapter 4 of this handbook.

31.4. Verified Gross Mass

SOLAS also has rules about the weight of the containers. Each container must be weight checked by the ship's crew. This is called: Verified Gross Mass (VGM). A difference between the registered weight and the actual weight of containers can have serious consequences for the ship.

The Shipmaster is responsible for enforcing these criteria. See also *IMO Guidelines regarding the verified gross mass of a container carrying cargo*.

31.5. Summary Shipmaster

The Shipmaster:

- ensures the safe loading, transport, and unloading of cargo.
- oversees all loading/unloading operations, unless legally delegated.
- departs only if the vessel is suitable, equipped, and adequately manned.
- maintains accurate cargo records in the logbook.
- ensures proper stowage, lashing, and verification of container weights.
- reports damaged cargo with a provisional declaration within 48 hours and a full declaration within 8 days.
- may jettison cargo or use provisions in emergencies to preserve the ship and crew.
- cannot carry cargo for personal gain without owner's permission.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 32 Dangerous goods

32.1. Introduction

Dangerous goods are substances that, due to their specific properties, even in small quantities, cause danger, damage or serious nuisance to humans, animals and the environment. Dangerous goods can be packaged or transported in bulk by sea. There are rules for transport, loading and unloading, from which exemptions are sometimes possible. The Human Environment and Transport Inspectorate checks whether carriers comply with the rules. Violations found during an inspection are immediately reported back to the Shipmaster.

All violations related to incomplete manifests, missing documentation, deviating labelling and incorrect placement of transport units must be resolved before the vessel departs. If for certain transport units the problems cannot be resolved before departure, the container must be unloaded. In appropriate cases, an official report can be drawn up.

Regulations for the transport of hazardous substances are laid down in international agreements. The starting point is a list drawn up by the United Nations. Dangerous goods have a UN number (United Nations number) and a hazard class.

UN-number

- Substance identification number with which hazardous substances can be easily recognized during transport.
- The UN number is internationally required.
- The UN number is four digits, with each combination representing a hazardous substance.

32.2. IMO/dangerous goods

Dangerous goods are products or materials with hazardous items in them. If they are not properly stored, controlled or transported, they may become a potential hazard to human health and safety, infrastructure and their means of transport.

Dangerous goods (DG)

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

Therefore, dangerous goods require special safety focused handling and transportation, where the Shipmaster has an active role. 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.

Hazardous substances are classified based only on health effects (whether they are immediate or long term), while dangerous goods are classified according to their immediate physical or chemical effects, such as fire, explosion, corrosion and poisoning, affecting property, the environment or people.

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 reference to the segregation of incompatible substances.

IMDG Code
The provisions are applicable to all ships to which 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 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. Before leaving port, the Shipmaster must 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, followed by an official report.

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

32.2.1. 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 MARPOL
- International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code).

32.2.2. Terminologies dangerous goods

A distinction is made between hazardous substances and harmful substances. Different legislations may have different definitions of hazardous substances and harmful substances. The terms are often used interchangeably.

Hazardous substances
IMDG code: substances, materials, and articles to which the IMDG Code applies.

Harmful substances:
MARPOL: substance that, if released into the sea, may endanger human health, harm marine flora and fauna, impair recreational opportunities offered by the sea, or interfere with other legitimate uses of the sea. The term includes any substance subject to supervision under this Convention.

Wvvs: substance falling within the scope of Annex I, II, III, IV, or V of MARPOL

The Human Environment and Transport Inspectorate have a current overview of all codes applicable to the transport of dangerous goods by sea. This agency also monitors compliance with the regulations.

32.2.3. 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 countries 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.

32.3. 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 for the Shipmaster 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.

32.4. 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.

The transport of dangerous goods at sea is governed by international legislation (Codes) and established by the IMO. Articles 55 through 57 of the Ships Decree 2004 implement these international Codes into Dutch law.

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 port. In terms of docking there are various regulations that apply:

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

32.5. Summary Shipmaster

The Shipmaster of a Dutch vessel is responsible for compliance with the provisions of Dutch laws and regulations on hazardous substances, unless otherwise stated.

The Shipmaster:

- may refer to the Material Safety Data Sheet (MSDS) to ensure compliance with transport requirements, including:
 - special instructions
 - packaging requirements for transport
 - emergency guidelines
 - segregation and stowage requirements
 - special characteristics of hazardous substances

- must oversee all transport documents for dangerous goods, ensuring proper classification under the IMDG Code. Tradenames alone are not sufficient; the correct transport description must be provided.
- must ensure that the person responsible for packaging or loading dangerous goods provides a signed container packaging certificate, confirming that the cargo is correctly packed, secured, and compliant with all transport requirements.
- must reject containers if there is reason to believe they do not meet safety criteria or if the container certificate is missing.
- should use a detailed stowage plan showing the category and location of all hazardous substances on board, rather than relying on a special list or manifest.
- should make a copy of these documents available to port authorities when requested.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 33 Shipping documents

33.1. Introduction

This chapter describes several shipping documents concerning the Shipmaster from a legal perspective. In general, documents in the shipping industry, including bills of lading, are paper-based and numerous. These documents are usually delivered by the consignor to the bank, agent, ship owner, Shipmaster and consignee. A rather lengthy and expensive process with the risk of delay. Specifically, the Bill of Lading on paper. Other documents described in this chapter may also be sent in a digital form to the recipient. Blockchain technology will be introduced as it could become a game changer in the shipping industry. It could become a useful tool for digitizing shipping documents, charters and cargo tracking. In shipping documents, the Shipmaster plays different roles as Shipmaster, including as a representative of the ship manager or charterer.

33.2. Paper Bill of Lading

In general, there are two types of bills of lading: the traditional transferable paper Bill of Lading and its electronic or digital equivalent. In this section, the paper version of the Bill of Lading will be described. In the next section, the electronic version of the Bill of Lading will be explained. Before loading, the shipper must ensure that the total weight of the cargo corresponds to what is stated in the ship's documentation. Cargo documents issued by the shipper must show that the goods are properly packed, marked and labelled and that the goods are in a stable condition to be shipped. The prerequisites for the carriage of goods by sea are specified in the Bill of Lading (BOL, Blading, B/L or *cognossement*). The Bill of Lading is an ancient document with multiple uses. It has been described in UN treaties, such as the The Hague-Visby Rules or the Hamburg Rules. Both conventions have been interpreted by national court case law. A Bill of Lading is defined as a document establishing a contract of carriage by sea and the loading of the goods by the carrier, and whereby the carrier undertakes to deliver the goods when the Bill of lading is delivered. The The Hague-Visby Rules apply to any Bill of Lading or similar document relating to the carriage of goods between ports in two different countries if:

- The Bill of Lading is issued in a Contracting State (which is a party to these Rules);

- The carriage takes place from a port of a Contracting State;
- The Bill of Lading provides that the The Hague-Visby Rules govern the contract of carriage of goods by sea.

Many countries include the The Hague-Visby Rules in their national laws. However, if this national law does not apply, the The Hague-Visby rules may still apply to carriage as agreed by both contracting parties and set forth in the charterparty. The Shipmaster should familiarize himself with the charterparty to see if the Paramount clause applies. This is a provision incorporating the freight liability regime from the The Hague-Visby Rules. This provision may be necessary as the Rules are not required for charter parties.

33.2.1. Issuing Bill of Lading

The Shipmaster or a person acting on behalf of the Shipmaster or the shipowner shall issue a Bill of Lading if so, requested by the shipper. The Shipmaster is authorized to issue a Bill of Lading for the cargo that has been received and accepted for carriage by sea.



Figure 37. Parties on the Bill of Lading

The Shipmaster is authorized to issue a Bill of Lading for the cargo that has been received and accepted for carriage.

The Bill of Lading performs three important tasks:

- Proof of goods receipt;
- Proof of transportation agreement;
- Ownership.

Bill of lading

The title of the cargo carried on board, which serves as the cargo receipt and contains the terms of the contract of carriage.

B/L is a document signed by the Shipmaster and has multiple functions, such as:

- It is a cargo receipt signed by the Shipmaster or other authorized person on behalf of the carrier.
- It states the name of the Shipmaster, the port of loading, the name of the consignee at destination, the party to be notified if the Bill of Lading is negotiable, the quantity of the cargo, the type of the cargo, the instructions if any of the goods are not received in good condition, how is the freight payable (prepaid, collected or paid under the charterparty).
- It is issued by the carrier for the delivery and payment of freight, if any, as required by the charterparty.
- It is a deed of title. If it is made to order, it is negotiable. A negotiable or to-order Bill of Lading must be duly endorsed and delivered to the carrier as a condition of delivery unless the consignee is willing to post an indemnity bond. Sometimes transferable bills of lading are paid to the shipper and endorsed blank. This way, control of the goods remains with the shipper (the seller) until payment is made according to the Bill of Lading and other shipping documents.
- It is non-transferable.
- It is proof of the conditions of carriage. However, if the charter party is a charter party, the Bill of Lading does not contain the detailed terms of the contract.
- It is usually issued in three originals, all purchased by the buyer, at checkout. 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 port;
- 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/L distributed (written in full not just in letters);
- Place and date of issue (loading port 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:
 - o has taken receipt of the goods;
 - o will transport them to the location indicated;
 - o where he will hand them over to a particular person.
- Delivery terms and conditions.

Incoterms
Incoterms or international trade terms are a series of predefined trade terms widely used in international commercial transactions.

B/L portability means:

- B/L by name: Only the designated person can receive the goods.
- B/L writer: Whoever holds the B/L can receive the goods.
- B/L to order: B/L can be confirmed to third party.

The lawful and regular carrier of the Bill of Lading has the exclusive right to demand delivery in accordance with the carrier's obligations under the Bill of Lading.

The guarantees given in the B/L:

- Clean B/L: There is no provision indicating damage to the goods.
- Foul: B/L: Clauses indicate shortcomings.
- Warranty: The shipper establishes a guarantee so that all terms do not appear in the B/L and releases the shipper and owner of all responsibility.

Bill of Lading

A Bill of Lading is a legal document used by the shipper of 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.

33.2.2. Clean Bill of Lading for damaged cargo

Clean Bills of Lading are often requested by shippers in order for them to get the letter of credit from the bank to pay for the goods.

If the Bill of Lading is not clean, then it devalues the goods and hence the shipper may not get the letter of credit. This however may present a problem for the Shipmaster.

The Shipmaster must not issue a clean Bill of Lading for damaged cargo. In many countries this is a crime or criminal offence, such as fraud or forgery.

33.2.3. Delivery if no Bill of Lading present

Releasing cargo against an original Bill of Lading is the standard procedure. The Shipmaster is presented with the original Bill of Lading upon which the cargo can be released at the discharge port. The original Bill of Lading is a document of title, meaning a written document that verifies ownership of the cargo. The Shipmaster should not deliver cargo to someone who cannot prove he is the owner. If the original Bill of Lading is not present then the Shipmaster has a problem, because he should not release the cargo. If the original Bill of Lading does not show up the Shipmaster should contact the shipowner of the charterer to discuss a solution. A Letter of Indemnity (LOI) is a possible solution to the problem. The Shipmaster needs to obtain instructions from the shipowner that the LOI has been received, and that the cargo can be released. In general, a LOI is enforceable. See Section 33.5 of this Handbook.

The Shipmaster should be very careful to release cargo without the original Bill of Lading. Only when the shipowner or charterer explicitly allows him to do so.

33.2.4. Remarks on a Bill of Lading

The Shipmaster only should insert accurate remarks on the Bill of Lading. This has been laid down in the The Hague and the The Hague-Visby Rules. If the Shipmaster is not able to check the quality or quantity of cargo, such as containerised cargo or bulk cargo the Shipmaster should insert a remark on the Bill of Lading.

When a shipper offers damaged cargo to be transported, then the Shipmaster is entitled to enter remarks on the Bill of Lading. Damaged cargo is not in the 'apparent order and condition' according to the Bill of Lading.

The Shipmaster should refuse damaged cargo or accept the damaged cargo with remarks on the Bill of Lading.

When in doubt, the Shipmaster should contact the shipowner, or the P&I Club to be certain which remarks he should enter on the Bill of Lading.

Wrong or incomplete remarks on a Bill of Lading may not protect the Shipmaster against a claim.

33.2.5. Pre- or postdating a Bill of Lading

Pre- or post-dating is when the shipper requests the Shipmaster to show the shipped-on-board-date on the Bill of Lading as a date before or after the actual sailing of the ship. Reasons to do so can be not missing a deadline or other time issues. Pre- or post-dating is a crime in some countries, such as fraud or forgery. The Shipmaster should know that an implied obligation exists to exercise due care in the dating of the Bill of Lading and other official documents.

When the Shipmaster is asked to pre- or post-date the Bill of Lading, he might commit a crime.
If the Shipmaster negligently misdates the Bill of Lading, he also might become liable in damages if the shipper has suffered a loss because of the misdating.

33.3. Electronic Bill of Lading

A Bill of Lading may be presented in electronic or digital format as well, even as a part of blockchain technology. That is a form of digital record technology linking transactions together by blocks. It is a secure digital way of handling ships papers and other logistics in the chain of supply. Some carriers and countries are establishing blockchain technology to incorporate the Bill of Lading. This Bill can be digital transferred between parties, including encryption and signing. Other parties, such as customs, terminals, agents and the Shipmaster can become part of this chain as well. The first wobbling steps on the path of an electronic Bills of Lading (eBL) were set at the end of last century. Rules for Electronic Bill of Lading were issued by the '*Comité Maritime International*' (CMI). These rules were issued to replace the traditional negotiable paper Bill of Lading. The new electronic rules are not mandatory but can be part of an agreement about transporting goods by sea. These rules, however, may not interfere with the requirements or clauses of the contract of carriage goods by sea as laid down in the The Hague-Visby Rules or Hamburg Rules. More than one electronic trading system was approved by the P&I Clubs, meaning that liabilities regarding the transport of cargo are covered by marine insurances, the same as the traditional paper Bill of Lading. The E-Bill of Lading may have some advantages, such as:

- No more physical walking around with paper documents;
- Less delay, due to less time-consuming physical deliveries;
- Faster payment (cash against documents);

- No more physical loss of original Bill of Ladings;
- Easy modifying the e-Bill of Lading;
- Founded by the Rotterdam Rules (not yet in force);
- Part of secure blockchain technology.

33.4. Notice of readiness

Declaring that a ship is prepared to begin the charter or to begin loading or unloading cargo is known as a Notice of Readiness (NOR). The Shipmaster tenders it to the parties specified in the charter party. International agreements do not mandate the form or content of a NOR; instead, the charterparty's provisions govern these matters. Certain particular circumstances or meanings mentioned in the NOR may be defined by national law or the jurisprudence of national courts. For information on the specifics of the NOR, the Shipmaster should refer to and review the charterparty and any other pertinent shipping agreements.

33.4.1. Communication

The Shipmaster sends the NOR to notify his ship is ready for loading or unloading cargo, or to let the charterer know that he has reached a harbour mentioned in the charterparty. Being in the harbour does not suffice, the Shipmaster should notify that he is in harbour and that his ship is ready in all respects, such as laying at the berth and ready to load cargo. The Shipmaster states that his ship is an 'arrived ship', meaning he is at the place specified, expressly or impliedly, by the charterparty.

The NOR should be addressed to the parties mentioned in the charterparty, which should accept the NOR from the Shipmaster.

There may be no doubt about the time mentioned in the NOR, because this can be the official start time of a charter as laid down in the charterparty.

So, the NOR is an official communication tool for the Shipmaster to inform the relevant parties that his ship is ready for the next step. Those parties should accept the NOR, otherwise the Shipmaster should try to tender it again, until acknowledged or accepted.

The NOR may be sent in writing by hand or electronically by telex, email or another digital manner of communication, if the relevant parties are able to receive the NOR. The Shipmaster should be aware that the charterparty may specify days or time when the NOR can or cannot

be issued and the Shipmaster needs to ensure the NOR is issued within those days/ times stated in the charterparty.

The Shipmaster should keep the shipowner informed when a NOR is issued in accordance with the charterparty and when it has been accepted.

33.4.2. Contents NOR

The contents of a NOR is not mandatory prescribed in international agreements. The contents should be very specific, so no general wordings. The Shipmaster should notify the relevant parties whether his ship is in berth or not (WIBON) or whether the ship is in port or not (WIPON). The Shipmaster should also notice the time when the ship is expected to arrive at a port or the time his berth is available.

The Shipmaster should be familiar with the charterparty to find out which details he has to tender to the relevant parties.

33.4.3. Information NOR

The Shipmaster should follow the charterparty for the information to be send by the NOR, such as:

- Ship is ready in all respects for loading or unloading cargo, hatches removed and ballast tanks taking care of;
- The NOR is tendered to all persons mentioned in the charterparty and should be in accordance with this document;
- Time of tendering should be in accordance with the charterparty, such as local times or during office hours;
- The Shipmaster should fill in the date and time, and sign the NOR.

The NOR contains several statements of facts, which should be accurate and true. If these statements are inaccurate the NOR may be invalid and could result in a delay to the start of laytime with associated financial costs to the shipowner. If the Shipmaster has any doubt about the validity of the NOR, he should consider sending a further notice.

The NOR is an important document for the Shipmaster. It has a significant role in laytime and time claims.

33.5 Letter of indemnity

In general, a Letter of Indemnity (LOI) is a document to be entered in a contract between the parties to this contract. The LOI is often drafted by a third party, such as a bank or insurer.

These institutions may agree to compensate a party to the contract when the other party does not meet the terms of the contract. Indemnity is built upon assisting one party to prevent damage or losses if the other party does not meet their commitments. The main purpose of the LOI is to ensure that both parties to a contract meet all terms of that contract. In the shipping industry, a LOI is to reassure one party that they will not suffer any damage or loss if the other party cannot fulfil the terms of the shipping contract. The subject of the Letter of Indemnity may be contentious. On the one hand, legally LOIs are often considered illegal in the court of law. This is because LOIs have no legal position under the laws of many maritime nations. On the other hand, in the shipping world LOI's are commonly used in many loading and discharging situations.

Example

LOIs are often used during loading steel cargo and bulk cargoes, when small issues like rust or small damages are found in the cargo. Making remarks on the Bill of Lading will create huge financial impediments in funds transfers where banks are involved in the documentary credit system (DCS).

An LOI in such cases offers a solution to both parties (shipowner and charterer/ shipper/ consignee) if both agree on the precise wordings.

33.5.1. Shipmaster and LOI

The Shipmaster may deal with a LOI when it comes to damaged cargo, and he should sign a dirty or clean Bill of Lading. A clean Bill of Lading has no clauses or sections stating a substandard condition or shortage of the cargo. It states that the cargo has been received '*....in apparent good order and condition...*', or '*.....without further remarks as to their condition....*'.

A dirty Bill of Lading (clausured or foul) is a Bill with remarks such as '*ripped bales and packages*', or '*damaged and leaking container*'. A Letter of Indemnity (back letter) may be submitted by the shipper, promising to compensate the Shipmaster as the representative of the carrier against any loss or liability because of signing a clean Bill of Lading for damaged cargo. When cargo is damaged a foul Bill of Lading must be issued. The shipper asking the Shipmaster to sign a clean Bill of Lading for damaged cargo, incites the Shipmaster to commit forgery. If the Shipmaster accepts such a Letter of Indemnity in return for a clean Bill of Lading, the Shipmaster may commit a crime, because he swindles or frauds.

The Shipmaster runs the risk to be held personal criminal liable for fraud and a heavy financial liability on the shipowner.

Such a Letter of Indemnity has no legal position under international or national law. One cannot go to court if the shipper comes back on his promise of indemnity by denying it.

Hence the Shipmaster should consult the shipowner each time he is offered such a Letter of Indemnity. In such cases, the shipowner will check the text of the LOI with his insurance and claims department, offers changed wordings if required, check the previous record of that charterer/ shipper/ consignee, and then make a fresh decision on a case-to-case basis. Until the shipowner specifically allows the Shipmaster to continue cargo operations with a LOI and a clean/foul Bill of Lading, the Shipmaster should resist all temptations or pressure and not accept the LOI.

So, the Shipmaster should consult the shipowner if in any doubt but should not accept such a Letter of Indemnity.

33.6. Mate's receipt and tally

33.6.1. Mate's receipt

The Mate's receipt is used in the ship transport of cargo, but it is not an official or legal document, it is not conclusive, and it does not bind anybody. This document describes the amount of cargo entering the ship. It is made up by the chief-officer or his representative. The Mate's receipt is the predecessor of the Bill of Lading. Firstly, the Mate's receipt will be filled in. From that information the official Bill of Lading will be made up. A Mate's receipt can be clean, claused, dirty or foul depending on the conditions the cargo has been received on board. This is analogue to the Bill of Lading, issued by the Shipmaster. The unofficial Mate's receipt is transferred into the official Bill of Lading. The format of the Mate's receipt may be the same as the Bill of Lading. This will be convenient when this receipt should be transferred into a Bill of Lading. Mate's receipts are often used during charters.

33.6.2. Tally

To 'tally' is within shipping a common term. It means to check or to record cargo loaded or unloaded. Tallying is done by persons from ashore or by the ship's tallymen. The numbers of packages or boxes are checked and written down on the sheets of the tally clerk. These sheets

become part of the mate's receipt and eventually the numbers end up in the Bills of Lading. The quantity and quality of the cargo packages are checked.

Tallying during loading is to control the quantity and quality of cargo delivered on board.
Tallying during unloading is to control the quantity and quality of cargo in receipt of consignee.

Tallying of containers during loading or unloading from the ship is not common use. Mostly, containers and their contents are tallied in the warehouses of the shipper. Tallying sheets are normally in a paper form, but digital tallying should not be excluded. Paper or digital tallying sheets may become part of the Bill of Lading.

33.7. Note of Protest

The Note of Protest (NoP) is a testimony under oath by the Shipmaster. Some countries use the term 'Sea Protest' or 'Note of Sea Protest'.

The 'Letter of Protest' differs from the 'Note of Protest'.
A Letter of Protest is less official; this will be described hereafter. The Shipmaster should be aware of which instrument he uses, according to the terms in the charterparty or flag state legislation. In doubt he should consult the shipowner or the charterer.

The Note of Protest is an important instrument for the Shipmaster to indemnify himself from certain claims. A Note of Protest covers situations beyond the control of the Shipmaster which may have affected loss or damage to ship or cargo. A Note of Protest is a legitimate statement from the Shipmaster, obtained after the ship enters a harbour after a voyage with incidents possible causing damage. It is an official document. It must be made up before a public notary, magistrate, consular officer or another competent legal authority.

A Note of Protest may be crucial to the proof of a claim and is accepted as evidence in court in numerous nations.

A Note of Protest serves as insurance against liability for loss or damage to the ship or its cargo for the Shipmaster, the charterer, or the shipowner. The risks associated with the sea, including strong winds, fire, or sinking, should have been the reason for these mishaps. Once in the next port of call, a Note of Protest can be completed within a set amount of time. A Note of Protest must be signed by the Shipmaster and sent via mail or by digital means.

33.7.1. Submitting a Note of Protest

When faced with circumstances beyond his control during a voyage, such as high winds and rough seas, damage or loss to the ship or cargo, an inability to carry out routine procedures, cargo that is shipped in poor condition and deteriorates during the voyage, serious charterparty violations by the charterer, like obstructing loading or unloading, the Shipmaster should submit a Note of Protest.

33.8. Letter of Protest

A Letter of Protest (LoP) is a declaration of the Shipmaster expressing his objections or disapprovals of an act or omission of another party, on board his ship. The other party will be held responsible and accountable for any damage or loss. In the merchant shipping there is a common use of submitting Letters of Protest to record issues such as:

- Discrepancies between ship and shore regarding cargo;
- Loading or unloading goes too slow or too fast;
- Insufficient berth provisions;
- Substandard skills or behaviour of dockworkers or stevedores, even after being warned by the ship's duty officer;
- Any delay caused.

In many countries, a Letter of Protest is not an official document because it is not documented with a public notary, consular officer or any other legally competent authority. A Letter of Protest may not be binding; however, it can form part of the chain of evidence in any claim the shipowner may want to make. A Letter of Protest should be issued at the appropriate time to the appropriate person.

33.9 Summary Shipmaster

The Shipmaster:

- must fully familiarize himself with all relevant requirements regarding the official cargo documents.
- must sign the official documents, which entails legal obligations. By signing, the master declares that he has read and understood the document, and that he is legally authorized and mentally competent to sign it.

- must not allow time constraints or commercial pressure to influence the Shipmaster's decision to sign documents at any time.
- If in doubt, do not sign the document but contact the shipowner to discuss any concerns or hesitations.

NOR

The Shipmaster:

- Uses the Notice of Readiness (NOR) to formally notify relevant parties, such as the charterer, that the vessel is ready for loading, unloading, or commencement of laytime/charter.
- Ensures the vessel qualifies as an “arrived vessel” and is fully prepared to load or discharge cargo.
- Resends the NOR if recipients fail to respond correctly or on time.
- Completes the NOR accurately and in detail to ensure its legal and operational validity; it becomes an official shipping document once signed.
- Consults the charter party to verify applicable requirements and conditions for the NOR.
- Sends the NOR via traditional or digital means, as permitted by the contract.

Bill of Lading

The Shipmaster:

- must be fully aware of the content and meaning of this contract, as bills of lading constitute proof of the existence and terms of the contract of carriage between the shipper and the carrier.
- refuses to load goods if the shipper presents damaged cargo. Or the captain issues a dirty (conditional) bill of lading.
- may, if necessary, seek advice from an independent cargo inspector and/or have crew members testify.
- has the right, as the shipowner's representative, to comment on the bill of lading regarding damaged goods or the poor condition of the cargo.
- if in doubt about certain comments that may not provide sufficient protection against third-party claims, must immediately contact the shipowner. The shipowner will then inform the P&I Club of the situation.

- may not sign a clean bill of lading if it is factually inaccurate. This may be considered fraud and have criminal consequences.
- Must be aware that a letter of indemnity (LOI) issued for wrongly signing a clean bill of lading is not legally valid. In such a case, the captain remains personally liable and can be prosecuted.
- Always include the ship's tally on the bill of lading, even if it differs from the quantities declared by the shipper.
- In the event of differing quantities, proceed as follows:
 - If the ship has loaded less cargo than declared by the shipper, the captain will base this on the ship's tally and the mate's receipt.
 - If the shipper refuses to accept the ship's tally, the captain will send a protest letter stating the inconsistency and indicating that the bill of lading will be signed under protest.
 - If the ship has loaded more cargo than declared by the shipper, the ship's tally will be included in the bill of lading. A protest letter is not required in that case.
- signs only a bill of lading written in a language he understands. If not, he must ensure that the document is translated by an independent, certified translator.
- under no circumstances may he:
 - Sign or issue a blank or partially completed bill of lading;
 - Sign a pre- or post-dated bill of lading;
 - Reissue or amend a bill of lading unless the original set has been returned, cancelled, or destroyed in its entirety;
 - Sign a bill of lading with incorrect information, including:
 - An incorrect date;
 - Damaged cargo not declared;
 - Cargo not loaded;
 - Missing cargo information.
 - Release cargo to the consignee or receiver at the port of discharge without presenting an original bill of lading.

Electronic version B/L

The Shipmaster:

- should be aware that digital versions of the Bill of Lading may exist.
- needs different skills than handling a paper Bill of Lading.

Bill of Lading

A bill of lading is a legal document used by the shipper of goods and a carrier. This document is issued by the carrier and completed by the shipper. It describes the type, quantity, and destination of the goods being transported. The bill of lading also serves as proof of delivery when the goods are delivered to the predetermined destination. This document must accompany the shipped goods, regardless of the mode of transport, and must be signed by an authorized representative of the carrier, shipper, and consignee.

The bill of lading is one of the most important documents in the transportation industry and is enforceable in court. The bill of lading will also serve as the reference in the event of claims for damages, compensation, or overcharges. A bill of lading contains at least the following information:

- shipper's name and address
- consignee's name and address
- carrier's name
- description of the items being transported
- gross weight and dimensions of the shipment
- classification of the goods being shipped
- designation and identification of the party paying for the carriage.

The Bill of Lading is also often used by the carrier to accurately invoice the shipment; therefore, it is crucial that the freight is accurately described to prevent underloading or overloading.

The Shipmaster:

- must understand that a letter of indemnity (LOI) is intended to indemnify one party against damage or loss if the other party cannot fulfil the terms of the contract of carriage.
- in the case of damaged cargo, will handle the situation by signing a dirty or clean bill of lading, depending on the circumstances, and, if necessary, using an LOI. This should all be done in consultation with the shipowner.
- must not accept an LOI to justify signing a clean bill of lading if they know the cargo is damaged. In that case, they risk personal criminal liability for fraud, while the shipowner may face financial claims from third parties.
- only signs or accepts an LOI after contacting the shipowner for advice and approval.

Ship's Declaration or Letter of Protest

The Shipmaster:

- issues a ship's declaration, a legal document prepared after the ship has entered port following a voyage during which incidents potentially causing damage to have occurred. The ship's declaration is an official legal document and must be prepared in the presence of a notary, magistrate, consular officer, or other competent judicial authority.
- issues a letter of protest to report certain matters concerning the cargo on board. Unlike the ship's declaration, a letter of protest is not always an official document, as it is usually not documented before a notary, consular officer, or other legally competent authority.
- is always responsible for the safe loading, transportation, and unloading of the cargo.
- supervises all actions related to the loading and unloading of the ship.
- the master is obligated to make an initial report within 48 hours of arrival if damage to the cargo on board has occurred. This initial notification must be followed by a full, detailed report within eight days.

Mate's Receipt and Tally

The Shipmaster:

- The Mate's Receipt documents the amount of cargo entering or leaving the ship, as well as any damage to the cargo or defective packaging.
- This document is prepared by the Chief Officer or their delegate.
- The Mate's Receipt forms the basis for the official Bill of Lading. It is completed first, and this information is then used to compile the Bill of Lading.
- The Shipmaster supervises the preparation of the Bill of Lading, which uses the data from the Mate's Receipt directly.
- The Chief Officer is responsible for cargo tallying, which means that both the quantity and quality of the cargo are carefully monitored during loading and unloading.

Term	Brief explanation
Bill of Lading (paper)	A paper document providing a binding contract of carriage between a shipper and a carrier for the transportation of cargo. It is also a document of title, showing who the owner of the cargo is, and it is a record of the quantity of cargo being transported. The Bill of Lading should be physically handed over by the parties, causing a time consuming and vulnerable process.

Carrier	Shipping company/ shipowner that transports goods by sea and is responsible for any damage or loss during this sea transport.
E-Bill of Lading (electronic)	A digital transferred document signed by the Shipmaster. Has its own legal rules.
Letter of indemnity	A legal contractual document stating that damage caused by the other contract party will be compensated.
Letter of Protest	A declaration of the Shipmaster expressing objections or disapproval of an act or omission of another party. A non-official written statement.
Mate's receipt	The ship's record or document describing the amount of cargo entering the ship and listing any damages prior to or during loading. Mate's receipt is issued when goods are placed on board ship after verification of quantity and condition.
Note of Protest/ Sea Protest	An official written statement of the Shipmaster describing the voyage during which damage could have occurred to ship or cargo. This needs to be made by the Shipmaster to a 'notary public' at the first opportunity at the next port of call.
Notice of Readiness (NOR)	A notification by the Shipmaster that the ship is ready to start the charter or ready to start the loading or unloading of goods or to start the laytime.
Receiver/ Consignee	The final receiver of the shipped cargo.
Shipper, consignor	The supplier of the cargo to the ship.
Tally	A record of quantity and quality during loading or unloading operations.

Table 15. Overview relevant documentation

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 34 Cargo/ship damage

34.1. Introduction

The Shipmaster's ship may carry lots of goods as cargo, such as containers, dry or bulk cargo and wet cargo. Circumstances beyond human control or just incidents and accidents may cause damage to the cargo. Losing containers or other freight during a voyage is cargo damage, which should be compensated by the shipper, carrier or consignee. Damage to goods inside a container is also cargo damage, as is a spontaneous heat generation in a bulk load of grain.

Cargo damage is loss or harm resulting in a worse condition of the cargo than it was when shipped.

This chapter also describes the situation when cargo may damage the ship. When cargo damages the ship, mostly the hull of the ship or adjacent machinery and equipment of the ship will be dented or worse. In general, damage to the ship finds place in the vicinity of the holds or other locations where cargo is stowed. But it is not excluded that cargo damages the ship at other locations, such as inside the holds or super-structure, and at the bridge or accommodation.

Cargo or ship damage may result in marine pollution or in a threat to navigation, anyway in financial consequences for the Shipmaster or shipowner. Damage may comprise physical, wet or contamination damage. The reasons for cargo damage may be inadequate packing, improper stowage or incorrect temperatures or moisture, caused by a lack of ventilation, heating or cooling of the cargo. But also due to bad loading operations by cranes etc.

The Shipmaster is responsible for the cargo on board, including taking all preventive measures necessary. Preventive measures may be good maintenance and careful handling of the cargo during loading, the voyage and unloading, all supervised by the Shipmaster. The Shipmaster can be seen as the custodian or 'warehouseman' of the cargo onboard. The Shipmaster is responsible for taking measures to mitigate cargo damage. Claims from damaged cargo should be countered by the Shipmaster if he argues differently than the claimant. If not, the Shipmaster should activate the marine insurance by informing the shipowner or charterer. At the end of the day an investigation or court decision may give the truth about the correct acting of the Shipmaster.

The cargo itself is not always insured, but the coverage by the insurance company or P&I Clubs insure the shipowner or charterer for their liability to the cargo owners for cargo which have been damaged on board. In this chapter some types of cargo and ship damage will be described and the legal context regarding the Shipmaster will be explained.

34.2. Types of cargo damage

Every year many cargo damage claims are received by the P&I Clubs. Various kinds of cargo damage exist. All cargo's wet or dry, containerized or not can be damaged. The loss of cargo by falling overboard, sinking of the ship or theft may also be considered as damage, anyway as a financial loss. Cargo damage may be divided into:

- **Physical damage:** due to rolling, pitching, heaving, and swaying of the ship. Bad lashing, loading/unloading or stowing is often part of the cause.
- **Wet damage:** caused by water and wet conditions due to moisture, rain, condensation or overcoming seawater or bilgewater.
- **Equipment related damage:** caused by failing of ship's equipment, such as ventilation, cranes, cooling or heating equipment.
- **Contamination damage:** caused by inadequate separation of goods, remains of prior cargoes or dirty cargo spaces.
- **Infestation damage:** caused by insects or rodents in the cargo. Often to be found in agriculture products.

34.2.1. Cargo damage during loading and unloading

The Shipmaster is responsible for the correct sea transport of the cargo; therefore, it is also important for the Shipmaster to know the conditions of the cargo during loading and unloading, because cargo damage may also be caused by substandard loading and unloading operations or other human or technical factors. Based on the information exchanged between ship and shore, a documented cargo handling plan should be prepared, which should be checked and endorsed by the Shipmaster. The responsibility for safe cargo handling should be divided between the Shipmaster and the stevedore company. How this responsibility is shared should be agreed at before loading or unloading operations, so that all aspects of these operations are covered. Cargo damage caused during loading and unloading operations is mostly physical damage. However, loading under bad weather circumstances may cause (water) damage as

well. Cargo damage during loading or unloading operations is often caused by the local stevedores or dockworkers. This cargo damage falls under the Shipmaster because he is responsible for the loading and un-loading process onboard his ship. Cargo damage caused by stevedores should be overseen by the Shipmaster as well, particularly the field of safety and health. However, the Shipmaster is not always liable for the poor acting of stevedores.

After an incident causing damage to the cargo, the Shipmaster or his crew should arrange the paperwork and inform the shipowner, charterer and the marine insurance company. The stevedores may not only cause damage to the cargo, but to the ship as well. For the latter kind of damage see the next sections.

34.2.2. Cargo damage during transit

This section describes the damage during the transit of the ship under command of the Shipmaster. The Shipmaster must be aware of the location and separation of the dangerous goods onboard. Those may need extra attention during the voyage. Cargo may be damaged as well by bad weather condition or other natural causes during the voyage.

Cargo damage caused during the voyage normally falls under the Shipmaster.

But the starting point is that the carrier, shipowner or charterer is responsible for this damage. The Shipmaster can contradict the assumption that he is responsible. The Shipmaster should prove that he has taken all necessary measures to safeguard the cargo during the voyage.

Cargo damage during the voyage may become subject to marine insurances. Here the Shipmaster plays a significant role as well by stating that he had done everything possible to protect the cargo during the voyage. If the Shipmaster can prove that he has followed all relevant laws, regulations, guidelines and instructions, then he has fulfilled all his legal duties.

The Shipmaster must always supervise the stowage and handling of the cargo, at sea as well. If he is not satisfied about the stowage or handling of the cargo, he must have it changed into an appropriate manner. Good seamanship of the Shipmaster includes the good practice to verify the lashings of the cargo after departure.

Then the cargo, including containers, have settled in. But, also before ocean crossings and bad weather warnings.

34.2.3. Ship damage by cargo during loading/unloading

Ship damage by cargo may take various forms, such as dents, holes or deformations and distortions in the superstructure. But the cargo may also cause serious damage to the equipment and machinery of the ship, such as damaged cranes, feeders, hoppers and other fittings, equipment or machinery or disruption of the ship's cargo operation schedule.

The reasons causing damage to the ship may vary, such as a twisty container in a hoist, breaking of a cargo sling, overflowing during liquid cargo loading, but also the devastating working of improperly handled or stowed cargo. Even a piece of cargo on fire may damage the ship in a severe way. Another danger is the collapsing of a heavy hoist in a shore crane onto the ship. Cargo damage to the ship may happen during loading or unloading operations, because of negligence by or faults of the stevedores. So, the cargo can cause damage to the structure of the ship, and the cargo holds or damage the winches or derricks onboard. This damage is often caused by stevedores or dockworkers. Negligence by stevedores or dockworkers is unlawful to the shipper or charterer. If stevedores are responsible for an accident caused by loading and unloading, the Shipmaster should handle this accident with appropriate steps and protect the shipowner against damage costs. If damage to the ship by the stevedores is observed, then evidence is required to protect the shipowner. This evidence should include noting the damage extent, where it occurred, the area of the ship that was damaged and the estimated cost to repair. The taking of photographs by ship's staff can help in supporting the defence of any claim by the Shipmaster or ship.

After an incident causing damage to the vessel, the Shipmaster or his crew should arrange for a so called 'stevedore damage report' or 'stevedore damage form' to be issued and inform the shipowner, charterer, port agent, stevedore company and the marine insurance company. The Shipmaster should endeavour to get the stevedore damage report or form signed by the stevedores prior sailing from the port. Not all countries, shipowners or P&I Clubs use the same formats to report damage. Damage reports may be supplied by the charterer as well.

The Shipmaster should be aware of which format for a damage report he has to use.

34.2.4. Ship damage by cargo during transit

General cargo, if well stowed and lashed, does not cause too much damage to the vessel during the voyage. Dangerous goods, on the other hand, may cause damage to the ship during the voyage. Many cargoes may be a dangerous, such as toxic goods or chemicals. If correctly

packed and stowed separated from other vulnerable cargoes the regulations are fulfilled. The Shipmaster is responsible for compliance with the specific rules during the voyage. See Chapter 32 of this Handbook for dangerous goods. However, cargoes may be in between dangerous and non-dangerous. Some dry bulk cargoes, such as coals, ore or grain may cause damage to the ship by explosive dust or corrosion, due to a lack of ventilation, increase of gas levels or by self-combustion. The Shipmaster should take all measures necessary to prevent this from happening. A complication may be that the word 'dangerous', does not have a legal definition in the context of contracts. The IMO has issued several codes for various kinds of cargoes, such as the International Maritime Dangerous Goods Code (IMDG), which provide a classification of dangerous substances or the International Maritime Solid Bulk Cargoes Code (IMSBC Code), which provide information for certain types of bulk cargoes. These codes are mandatory. The Shipmaster should use these codes to find out whether goods are dangerous and whether correct packaging and separation measures have been complied with. The shipowner or the charterer should bear the damage to the ship, but this depends on who caused the damage and the terms of the applicable charterparty and other (insurance) contracts.

34.3. Legal context

The Shipmaster must take in consideration the applicable Rules (The Hague-Visby Rules or Hamburg Rules), but also the charterparty and other guidelines and instructions. However, good seamanship of the Shipmaster regarding the professional carriage of goods by sea should not be underestimated. Other legal provisions and requirements can be found in IMO conventions or other mandatory instruments, such as:

- SOLAS;
- MARPOL;
- International Convention for Safe Containers (CSC);
- International Maritime Dangerous Goods (IMDG) Code;
- International Maritime Solid Bulk Cargoes (IMSBC) Code;
- International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on board Ships (INF Code);
- International Code for the Safe Carriage of Grain in Bulk (International Grain Code);
- Code of Safe Practice for Ships Carrying Timber Deck Cargoes (1811 TDC Code);

- Safe Transport of Dangerous Cargoes and related Activities in Port Areas;
- Recommendations on the Safe Use of Pesticides in Ships;

The Shipmaster should access and consult the charterparty and other instructions regarding the cargo as well, including the guidelines and instructions of the shipowner, P&I Club and charterer. But also, the recommendations and guidelines relevant to unloading and loading of cargo. Besides the mentioned provisions the Shipmaster should read also relevant national laws and regulations. After loading cargo, the Cargo Securing Manual prescribes how this cargo should be stowed and secured. This Manual is mandatory to have on board. It guides the Shipmaster on how to transport the cargo safely during the transit. See also Annexes 4,5 and 6 of this Handbook.

34.3.1. Shipmaster and cargo damage

Example

A P&I Club once stated after a significant cargo damage:

“This can be a worrying time for the Shipmaster because he cannot be expected to be a legal expert or cargo expert as well as a ship handling expert. In the event of cargo damage, take samples, take photos, call for assistance and let others take some of the pressure!”

There are several ways the Shipmaster can be a potentially subject to civil claims for damage to property and persons during transporting cargo. International treaties, national laws or shipping contracts may impose liability. The Shipmaster should be aware which terms about cargo damage and liability are applicable to his sea transport. This might be the Hague-Visby Rules or the Hamburg Rules and national law. The Shipmaster should also refer to the Bill of Lading or the relevant contracts, such as the charterparty. The provisions of the Hague-Visby Rules apply to every Bill of Lading relating to the carriage of goods between ports in two different countries if:

- The Bill of Lading is issued in a contracting country;
- The carriage is from a port in a contracting country;
- The contract provides that these Rules are to govern the contract.

Cargo or ship damage is something that may happen anytime, anywhere and to any type of cargo or ship. It may occur due to negligence, lack of knowledge or shortcuts to save costs.

When confronted with cargo damage and the possibility of a claim, the Shipmaster should take care of:

- Mitigation of the damage;
- Determination of the damage by photos and other evidence;
- Analysis of damage by answering: “Why, When, What, Who & How”;
- Informing the shipowner and P&I Club;
- Preparing for all kinds of surveyors and claims;
- Notification time of the damage to the relevant parties.
- Registering all relevant details in ship’s log or otherwise.

Based on the applicable Rules and charterparties, the shipowner or the Shipmaster will not always be responsible and accountable for damage or loss of the cargo/ship when caused by neglect or default of the Shipmaster, or by fire or other perils of the sea. A debated provision in the Rules is the non-liability for the neglect or default of the Shipmaster in the navigation or in the management of the ship. This provision is a kind of unfair to the shipper but is in favour of the Shipmaster. Not all Rules do entail this provision. The Shipmaster should take care of keeping records and the reporting of damage. This may be used in court or otherwise.

34.3.2. Shipmaster and ship damage

If damage to the ship has been caused by stevedores or dockworkers during loading or unloading operations, the Shipmaster must take all measures necessary. See also Chapter 28 of this Handbook. The Shipmaster should conduct a local investigation in the presence of a representative of the stevedore's side. The Shipmaster should prepare and submit a claim and a damage report. If possible, the representative of the stevedores should sign as well. Anyway, the Shipmaster should ask witnesses reports, photos and other evidence of the accident. First, the Shipmaster should ask the stevedores or dockworkers to repair the damage or restore it to the original state. This should be done before the scheduled departure of the ship. The Shipmaster should consider a possible time delay. If repairing the damage within the limits of time is not possible the Shipmaster should inform the relevant parties, such as shipowner, charterer, insurance company, stevedores and harbour authorities that repairs prior departure are not possible and a subsequent claim for damages may be forthcoming.

Seaworthiness

If the damage to the ship is more serious or even has failed the seaworthiness of the ship, the Shipmaster must not leave port until appropriate repairs have been carried out. Moreover, inspections by competent authorities and/or Class may be asked for. The Shipmaster is responsible for the seaworthiness of his ship. This is often mentioned in the charterparty as well. The Shipmaster may ask for a certificate of seaworthiness, issued by an official classification surveyor. This certificate allows a ship to carry on after it has encountered an accident that has impacted the seaworthiness. Such a certificate may be issued to enable the ship to continue the voyage after repairs.

Claim handling

The Shipmaster should handover a copy of the signed claim to the stevedores, local agent shipowner and charterer. Then the insurance process can start. When in doubt, the Shipmaster should contact the shipowner to seek advice for the claim handling. The Shipmaster should take into consideration that some charterparties require the charterer to be notified within a certain timeframe. In the charterparty the liabilities are laid down in clauses on stevedore's damage, such as:

- NYPE 46: Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Shipmaster.
- NYPE 93: Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnage, unlash, discharging, and tallying, at their risk and expense, under the supervision of the Shipmaster.
- Gencon 94: The cargo shall be brought into the holds, loaded, stowed and trimmed, tallied, lashed and secured and taken from the holds and discharged by the charterer, free of any risk, liability and expenses whatsoever to the owners.

If the charterparty is silent about the liability regarding stevedore's damage other rules may be applicable. The charterparty clauses might specify a division of responsibility. If the charterer is responsible for the loading and unloading operations, the charterer should negotiate with the stevedores, not with the shipowner or Shipmaster. If the loading and unloading operations are performed carelessly by the stevedores, depending on the terms the cargo is booked under or the relevant charterparty or other contract clauses, the charterer may be in

breach, because the charterer will generally have a contract with the stevedores, not the shipowner or Shipmaster.

Shipmaster is responsible for the loading and unloading operations onboard.

Therefore, he must oversee and control the operations of the stevedores, but it is not always possible for the Shipmaster to prevent all incidents or accidents. Generally, the Shipmaster has a best-efforts obligation and responsibility. In most cases, stevedores are appointed by charterers, shippers or receivers. Those entities prefer to avoid liability by laying down clauses in the charterparty such as:

"...loading and unloading cargo falls under the supervision and the responsibility of the Shipmaster."

The words 'and responsibility' are the key, as such wording in a charterparty means that the charterer is not responsible for any damage caused by stevedores, but the Shipmaster is.

Of course, the Shipmaster should be aware of these requirements in the charterparty. The charterer may not always escape liability because of such a clause. The shipowner rarely has any contractual contact with stevedores and therefore no direct claim against them.

The Shipmaster should read carefully the charterparty, including the clauses regarding stevedore damage. The Shipmaster should be familiar with any agreement between the stevedores and the charterer, especially a possible division of responsibility or authority about loading and unloading operations. The Shipmaster should also make certain that all not-repaired damage is noted and registered. The charterer can be invited to inspect any damage or damage repairs. Minor damage not affecting the seaworthiness may be rescheduled to the next opportunity to repair, however the costs for same should also be allocated in line with the relevant charterparty or contract.

34.4. Summary Shipmaster

The Shipmaster:

- prevents damage to the cargo by taking preventive measures, practicing good seamanship, and strictly adhering to laws and regulations, as well as the guidelines and instructions of experts.

- contacts the shipowner promptly if there are any doubts about a general or specific situation on board, to obtain advice. Important matters are also discussed promptly, especially in cases of doubt or after damage has occurred.
- is responsible for the cargo throughout its entire time on board, from loading to unloading and during transit. He ensures that the cargo arrives at its destination in good and safe condition.
- ensures that all measures taken are carefully recorded in files or logbooks.
- fully informs the crew about their duties during cargo operations and ensures that crew, stevedores, and dockworkers handle the packing, stowing, moving, and documentation of the cargo with care.
- ensures the professional and safe loading and unloading of cargo, in accordance with the approved loading plan, and remains responsible for lashing containers or other cargo, even when physical work is being performed by dockworkers.
- monitors the ship's seaworthiness, ensures a suitable crew and equipment, and ensures that all cargo holds are ready for proper stowage.
- decides on departure from the port, considering weather conditions and possible high swell, ensures safe navigation during the crossing, and takes into account current weather forecasts.
- during the voyage, the captain checks the condition of the cargo and ensures proper ventilation, heating, handling, and securing. Deviation from the agreed route is only permitted if necessary to save lives or property.
- uses the official and legal ship's declaration as a reporting and accountability tool, if necessary.
- is familiar with the reporting procedures following incidents involving damage, hazardous substances, or polluting materials.
- always acts in accordance with good seamanship, even when duties and responsibilities are not fully or detailed laid down in law.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

Chapter 35 Marine insurance

35.1. Introduction

One could think of insurance as defence against potential loss. Marine insurance protects ships, their cargo, and the people on board. A contract of indemnity between the marine insurer and the shipowner or other relevant parties is referred to as marine insurance. Marine insurances are not necessarily directly related to the Shipmaster. Typically, the party that purchases these insurances is the shipowner or charterer.

The Shipmaster is required to abide local laws, flagstate law, shipping contracts, marine insurance policies, and any rules or directives issued by the insurance provider or P&I Clubs.

On this subject, numerous nations have enacted national legislation, such as the Marine Insurance Act or Civil Codes. In the case of an accident that results in damage to or loss of the ship, cargo, marine environment, or people on board, marine insurances are intended to reduce costs.

35.2. Marine insurances

Marine insurance is a very wide subject, with many different marine insurance rules. Between the terms 'marine' insurance and 'maritime' insurance is no principal demarcation. Both terms relate to the sea and are used interchangeable. Marine insurance is an insurance that covers loss or damage caused to or by the ship, cargo or persons onboard. This might be during the process of loading and unloading or during the transport of goods by sea. To avoid insurance claims, the Shipmaster should ensure the following:

- Good stowing, lashing and securing of the cargo to prevent damage during the voyage.
- Oversee the loading and unloading operations to prevent shortages, poor handling leading to damage or theft.

The shipowner may choose from a variety of marine insurance policies for his specific ship or trade. He may insure the ship, the cargo, the freight incomes and the legal liability for negligence of the Shipmaster and his crew.

Multiple marine insurances exist, such as:

- Hull and Machinery Insurances (H&M);

- Protection & Indemnity Insurance (P&I);
- Liability Insurance;
- Freight, Demurrage and Defence Insurance (FD&D);
- Marine Cargo Insurance.

35.2.1. Marine Insurance Policies

A Marine Insurance Policy is a contract between the insurance company and the shipowner or charterer. Some types of Marine Insurance Policies are:

- **Voyage Policy:** marine insurance policy for the cargo and valid for a specific voyage;
- **Time Policy:** marine insurance policy for the cargo and being valid for a given time;
- **Mixed Policy:** marine insurance policy for the cargo, with the benefits of time and voyage policy;
- **Piracy attacks:** in case of a fatal attack by pirates; often per transit in the High-Risk Area;
- **Marine cargo insurance:** covering damage to the cargo by perils of the sea, theft, poor packing or handling.

In this chapter the most important marine insurances will be described for the Shipmaster, followed by some advice for the Shipmaster in the area of marine insurances.

A safe and secure ship will cause less damage.

35.3. H&M

Hull and Machinery Insurances (H&M) are necessary because the safety at sea is not perfect. Ships are subject to the perils of the sea, terrorism, piracy, technical and human errors. A H&M insurance policy protects the shipowner against the damage or loss to the hull, machinery and equipment, but also against subjects and costs connected to it, such as:

- Salvage;
- General average;
- Collision liability;
- Loss of hire;
- Legal costs.

An additional insurance can be loss or damage caused by war, riots, armed conflicts or strikes. The shipowner's loss can be an Actual Total Loss of the ship or a Constructive Total Loss.

Actual Total Loss is an absolute physical loss, while a Constructive Total Loss is when the total expenses of salvage and repair are more than the expenses to be returned by the insurance company. Otherwise, in the case of a partial loss or damage, the shipowner gets the reasonable cost of repair of hull, machinery and equipment.

The shipowner's remaining liabilities may be the non-refundable costs including legal defence costs, costs made to minimise the damage or loss, salvage cost to save the ship and General Average costs. This depends on the insurance policy between the shipowner and insurance company.

35.4. P&I

Protection and Indemnity (P&I) is a marine insurance and principally meant to cover a shipowner's legal responsibility towards third parties. P&I excludes damage and loss of the shipowner's property. The H&M is an insurance for the shipowner's ship. P&I and H&M often are complementary. So, P&I ensures liabilities not covered under H&M. H&M insurances are taken care of by marine insurance companies reporting to the shareholder. P&I insurances are mutual marine insurance taken care by a P&I Club. These are clubs providing marine insurances for its members, which are the shipping industry, such as shipowner, charterer or ship operators. P&I Clubs may constitute their own rules regarding the subject of insurance. The Shipmaster should comply with these rules if these rules are not adversary with legal provisions.

Marine Insurances	
H&M: insurance company with shareholders which covers:	P&I Club: has members from the shipping industry which covers:
Damage to the ships' structure, hull, machinery and equipment	Abandonment, repatriation, illness, injury and loss of life of Shipmaster and crew
Salvage	Damage to fixed and floating objects.
General Average	No collision liability against another ship
Percentage of liability for collision	Marine pollution
Loss of hire	Wreck removal
	Passenger liability, including death and injury
	Shipowner's liability to others, so-called 'third parties'

Table 16. Some differences between H&M and P&I

The core cover of P&I Clubs is that these Clubs respond to liabilities which are not protected by H&M. P&I Clubs cover maritime incidents such as pollution, crew and other injuries, collisions, cargo damage and wreck removal or fines. A shipowner or charterer may choose from many maritime insurance covers, such as:

- Personal injury or loss of life of crew members, stevedores, passengers etc.;
- Loss of personal properties, not being cargo;
- Ship and life salvage;
- Collision and pollution liabilities;
- Towage and wreck liabilities;
- Cargo liabilities;
- General average;
- Fines from official authorities.

Sometimes the shipowner has an insurance covering the legal expenses for the Shipmaster. Then, the Shipmaster has the assistance of a maritime lawyer in the event of a legal conflict.

Due to the increasing juridification and criminalisation of the Shipmaster, insurance of legal expenses for the Shipmaster should become standard for the shipowner.

35.5. Legal context

The IMO has issued some conventions and codes about liability and compensation for damage and pollution caused by ships. These laws and regulations answer the question who is liable after a major casualty or pollution, involving third parties such as other ships, beaches, birdlife and persons ashore. See Annex 4 to this book. These rules establish a system which facilitates liability and ensures financial compensation. Limits on civil liabilities, including caused by oil spill or specific cargo have also been arranged by IMO conventions, so is the establishment of funds to pay compensation for damage or pollution.

If the Shipmaster follows all applicable laws and regulations, he might mitigate the risks an incident or accident will occur.

Although these laws and regulations are not always relevant or important to the Shipmaster, some of the conventions will be mentioned:

- International Convention on Civil Liability for Oil Pollution Damage;

- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material;
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea;
- Convention on Limitation of Liability for Maritime Claims;
- Hazardous and Noxious Substances Convention;
- International Convention on Civil Liability for Bunker Oil Pollution Damage.

Further on, the Shipmaster must comply with the national laws and regulations of the flag state and the coastal state he is in. He also needs to follow the shipowner requirements and procedures as contained within the SMS.

In the area of marine insurances, the insurance companies and the P&I Clubs have regulations, guidelines and instructions of their own. Besides that, those companies may be asked for advice as well.

35.6. Summary Shipmaster

The Shipmaster:

- maintains communication with the shipowner on all matters concerning maritime insurance and the captain's specific duties.
- possesses full knowledge and understanding of all relevant regulations and rules.
- immediately notifies the shipowner and the P&I Club of any maritime incident or accident that may affect maritime insurance.

Risk management

The Shipmaster:

- complies with all applicable laws, regulations, guidelines, codes and instructions.
- is thoroughly familiar with the terms and clauses of the Hull & Machinery (H&M) and Protection & Indemnity (P&I) insurance policies arranged by the shipowner, as well as with the requirements of charterparties, bills of lading, and cargo manifests.
- acts promptly, appropriately, and decisively in the event of any accident or incident.
- ensures that cargo is released correctly and only to the rightful consignee.
- monitors cargo throughout the voyage to ensure adherence to safety regulations.

- carefully inspects and verifies cargo quantities and conditions during loading and unloading operations.

Seaworthiness

The Shipmaster:

- is responsible for ensuring the ship's seaworthiness.
- representing the shipowner, must know and be able to apply the precise meaning of the term "seaworthiness."
- monitors seaworthiness throughout all phases of an international voyage, from departure to arrival.
- A seaworthy ship is:
 - equipped and crewed in accordance with applicable laws and regulations;
 - well maintained, fully operational, both structurally and mechanically;
 - provided with a valid and complete voyage plan;
 - in possession of all required certificates for both ship and crew, valid for the entire duration of the voyage.
- must prepare the ship to receive cargo and to withstand hazards at sea, such as bad weather, attacks of pirates, high waves, or fire;
- must bring and maintain the ship in a seaworthy condition throughout the voyage, to ensure the safety of seafarers, the ship, cargo, and the marine environment, and to maintain maritime insurance coverage;
- must demonstrate that due care was taken to make the vessel seaworthy at the start of the voyage, for example, by conducting an inspection and recording it in the ship's logbook.

If a third party files a claim stating that the vessel was unseaworthy, the burden of proof lies with that party to demonstrate that the vessel did not meet the seaworthiness requirements at the start of the voyage.

Reporting

The Shipmaster:

- must know which insurance company to contact after an incident or accident at sea.

- must immediately inform the shipowner and await their instructions if they suspect that the liability of the shipowner and/or the marine insurer (P&I or H&M) may be at stake.
- in the event of an accident, must inform the shipowner and/or the marine insurers with the following information:
 - name of the vessel;
 - date and time of the accident;
 - type of accident;
 - location of the vessel;
 - initial assessment of the damage;
 - possibilities for an investigation;
 - request information and assistance from the shipowner's local agents.

ISM Code

The Shipmaster:

- must comply with the ISM Code, including from the perspective of maritime insurers. The ISM Code focuses on the safety of the ship, which is also a core interest of maritime insurance.
- must ensure that the ship is operated safely, to prevent damage to the ship, its cargo, and the marine environment. The ISM Code is an essential tool for ensuring safety on board.
- must ensure, among other things:
 - a valid Safety Management Certificate (SMC);
 - a valid Document of Compliance;
 - correct implementation of the Safety Management System (SMS).
- must take all reasonable measures in the event of an incident or accident at sea to avoid or minimize liabilities, costs, and expenses.
- must be fully aware of the Safety Management System (SMS) and all other instructions from the shipowner, the P&I Club, and/or the charterer.
- is obliged to strictly adhere to the SMS.
- must notify the shipowner immediately after the incident and discuss the situation before taking further action.
- must provide the shipowner the complete documentation and description of the maritime accident so that they can disseminate the information to the relevant stakeholders.

International Navigation Conditions

The Shipmaster:

Example

P&I Clubs can issue special instructions, guidelines, or regulations for specific vessels.

The Shipmaster must adhere to these but may deviate from them for safety or marine pollution reasons. Below is an example of such private law restrictions.

- must be aware of certain international navigation restrictions. These are areas where the captain is not permitted to sail or remain. Some areas may only be subject to seasonal restrictions, depending on the time of year.
- must be aware that these areas are primarily located in the Northern Seas, the Baltic Sea, and other regions that may be hazardous due to ice, ice floes, icebergs, and extreme weather conditions.
- must not exceed these navigation limits, as the insurance company will not compensate for any loss, damage, liability, or expenses incurred.
- may, if necessary, obtain an exemption or permission from the insurance company to navigate through these restricted areas.
- must comply with all rules and instructions of the insurance companies, including the private law provisions as set out in the relevant policies and contracts.

These rules come from insurance companies, so instructions under private law laid down in shipping contracts, which should be followed by the Shipmaster.

For a comprehensive list of international maritime treaties, EU maritime regulations and Dutch maritime laws, see Annexes 4, 5 and 6 of this Handbook.

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Annex 1 List of Abbreviations

Abbreviation	Written in full
AFS	International Convention on the Control of Harmful Anti-fouling Systems for Ships
AIS	Automatic Identification System
Art	Article
Arts	Articles
AVPD	Autonomous Vessel Protection Detachment
B/L	Bill of Lading
BOL	Bill of Lading
Blading	Bill of Lading
BCC	Bulk Chemical Code
BES-islands	Bonaire, St. Eustatius & Saba
BHC	Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk
BLG	Bulk Liquid and Gases
BLU	Code of Practice for the Safe Loading and unloading of Bulk Carriers
BMP	Best Management Practices
CBT	Clean Ballast Tank
CCV	Commercial Cruising Vessel
CIN	Craft Identification Number
CLC	Convention on Civil Liability for Oil Pollution Damage
COW	Crude Oil Washing
CSO	Company Security Officer
CSR	Continuous Synopsis Record
CSS	Code of Safe Practice for Cargo & Securing
CSSC	Cargo Ship Safety Certificate
CSSRC	Cargo Ship Safety Radio Certificate
DMLC	Declaration Maritime Labour Compliance
DoC	Document of Compliance
DoS	Declaration of Security
DSC	Dangerous Goods, Solid Cargoes and Containers
DWT	Dead Weight Tonnage
EC	European Commission
EEZ	Exclusive Economic Zone
EMSA	European Maritime Safety Agency
Etc	Et cetera (and so on)
EU	European Union
FAL	Convention on Facilitation of International Maritime Traffic
FZ	Fishery Zone
GC	Gas Carrier Code

GMDSS	Global Maritime Distress and Safety System
GT	Gross Tonnage
HSC-code	High Speed Craft Code
HSSC	Harmonized System of Survey and Certification
IBC-code	International Bulk Chemical Code
IGC-code	International Gas Carrier Code
ILO	International Labour Organization
IMDG-code	International Maritime Dangerous Goods Code
IMO	International Maritime Organization
IMSBC-code	International Maritime Solid Bulk Cargoes Code
INF-code	International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships
IPPC	International Oil Pollution Prevention Certificate
ISM	International Safety Management
ISPP	International Sewage Pollution Prevention Certificate
ISPS	International Ship & Port Facility Security Code
ISSC	International Ship Security Certificate
LL	International Convention of Load Lines
MAROF	Maritime Officer
MARPOL	International Convention for the Prevention of Pollution from Ships
MOU	Memorandum of Understanding
MSDS	Material Safety Data Sheet
NB	<i>Nota Bene</i> (attention)
Nr	Number
Nrs	Numbers
NVKK	<i>Nederlandse Vereniging van Kapitein ter Koopvaardij</i>
P&I	Protection & Indemnity
PFSO	Port Facility Security Officer
PFSP	Port Facility Security Plan
PMOU	Paris Memorandum of Understanding on Port State Control
PP	Public Prosecutor
PPS	Public Prosecutor Service
PSC	Port State Control
PSC	Private Security Company
PSO	Port Security Officer
PSSC	Passenger Ship Safety Certificate
RA	Official Risk Area according to Dutch legislation
RO	Recognised Organization
ROE	Rules of Engagement
Ro-Ro	Roll-on Roll-off
RSO	Recognized Security Organization
SAR	International Convention on Maritime Search and Rescue
SMC	Safety Management Certificate
SMS	Ship Management System
SOLAS	Safety of Life at Sea

SPS	Special Purpose Ship
SSA	Ship Security Assessment
SSAS	Ship Security Alert System
SSO	Ship Security Officer
SSP	Ship Security Plan
STCW	Standards of Training, Certification and Watchkeeping
TS	Territorial Sea
TTW	Territorial Waters
TW	Territorial Waters
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
VPD	Vessel Protection Detachments

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Annex 4 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. Many of these agreements have been concluded under the authority of the UN, IMO or ILO.

It is obvious that a convention only applies to member states of that convention, which can be a flagstate and/or a coastal state.

Related Protocols, Decrees and Regulations are referred to under the main Convention on the specific websites.

This list is not exhaustive, other multilateral and bilateral agreements may exist on a variety of subjects related to shipping. EU-legislation about shipping is in force as well. See Annex 5.

Related publications

IMO, ILO, UN, ICS, BIMC, P&I Clubs, etc. also publish a great deal of relevant literature on specific maritime topics. These are not always statutory regulations, but usually instructions or guidelines, which are not always mandatory. Sometimes these publications or codes are free, sometimes you must pay for such a book. The content is therefore not always mandatory, but some states do make parts of the content mandatory in their national maritime legislation.

A term such as 'IMO Codes' often refers to a series of technical regulations and guidelines developed by the IMO to ensure maritime safety, security, and environmental protection. These codes cover various aspects of shipping, including shipbuilding, equipment, operations, and personnel training.

The Shipmaster must therefore always carefully consider the status of such a code, guideline, or book: official legal provisions or an interesting and informative practical work?

The Shipmaster must also always ask himself: Which law or code applies here and now?

Publications that are not government-issued are not mentioned or described here but can be found on the official publisher's websites.

Below are some websites where this specific literature can be viewed and eventual purchased. The content of several of these publications can also be found elsewhere online. These are often illegal and not-updated copies.

IMO

- Catalogue IMO Publications 2025
<https://indd.adobe.com/view/92aa64cd-a96c-45c5-ad0b-26671c21be13>
- Listing of current IMO publications
<https://www.imo.org/en/publications/pages/currentpublications.aspx>
- IMO Publications digitally
<https://www.imo.org/en/publications/pages/home.aspx>

International Chamber of Shipping (ICS)

- Bookshop
<https://www.ics-shipping.org/publications/>

BIMCO

- Publications;
<https://www.bimco.org/products/publications/>

Overview Maritime Treaties		
Significant		
Treaty		Core
1	International Convention for the Prevention of Pollution from Ships (MARPOL)	The purpose of this Convention is to prevent or minimize pollution of the marine environment by ships, both incidental and structural.

2	International Convention for the Safety of Life at Sea (SOLAS)	The purpose of this Convention is to safeguard life at sea by establishing minimum international standards for: • ship construction; • shipboard equipment; • operations at sea.
3	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)	This convention sets international minimum standards for the training, certification, and watchkeeping of seafarers to: • improve safety at sea; • prevent environmental pollution; • ensure the quality of maritime personnel worldwide.
4	Maritime Labour Convention (MLC)	This convention is also known as the ‘Seafarers’ Rights Convention’.
5	United Nations Convention on the Law of the Sea (UNCLOS)	This is a very large and important treaty that regulates the rights and duties of states at sea.

General

Treaty		Core
6	Convention of Facilitation of International Maritime Traffic (FAL)	This convention aims to reduce administrative formalities, delays, and obstacles in international shipping, particularly in ports. It aims to increase the efficiency of maritime transport by introducing uniform procedures and documentation.
7	Convention on the International Regulations for Preventing Collisions at Sea (COLREGs)	This Convention establishes international rules of navigation for ships at sea, with the aim of preventing collisions.

8	International Convention on Maritime Search and Rescue (SAR)	This Convention aims to establish a plan for search and rescue so that, wherever a person is in distress at sea, the rescue is coordinated by a SAR organization.
9	International Convention on Tonnage Measurement of Ships (Tonnage Convention)	An IMO treaty that sets requirements for ship measurement.
10	Nairobi International Convention on the Removal of Wrecks	Its purpose is to provide a global legal framework for the removal of shipwrecks that pose a danger to navigation or the environment.
11	UN International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules) (The Hague-Visby Rules)	The convention, which establishes rules for bills of lading (bills of lading in maritime transport), aims to harmonize and standardize the rights and obligations of carriers and shippers. This provides a uniform legal basis for international maritime trade.
12	United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules)	This treaty modernizes and standardizes existing treaties on the carriage of goods by sea, considering, among other things, container transport and the possibility of an electronic transport file. (Not yet in force)
13	United Nations Convention on contracts for the international sale of goods	This convention establishes rules for international sales contracts for movable goods. It harmonizes the law on international sales and promotes fair trade between countries with different legal systems.
14	United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules)	This convention was an attempt to form a uniform legal base for the transportation of goods on ocean-going ships. It provides all participants a fair and equal chance of succeeding.

Safety & Security

Treaty		Core
15	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)	The goal is to effectively combat maritime terrorism and other criminal acts against crews and ships. It establishes an international criminal law framework for this purpose.
16	International Convention for Safe Containers (CSC)	This convention aims to ensure the safety of maritime containers during international transport. It establishes requirements for the design, construction, testing, and maintenance of containers to minimize the risk of accidents and damage.
17	International Convention on Load Lines	This convention is an international treaty that sets requirements for freeboard. Its purpose is to ensure the safety of ships by preventing them from lying too deep in the water and thus becoming too vulnerable.
18	International Convention on Salvage	The goal is to create international, uniform rules for the assistance of ships, cargo, and property in distress at sea. It also aims to encourage salvage companies to respond to environmentally hazardous incidents, even if the ship or cargo itself is of little value. Furthermore, it aims to establish fair compensation for salvage companies.
19	International Safety Management Code (ISM-CODE)	The International Safety Management (ISM) Code is an international standard that sets requirements for the safe operation of ships and for preventing pollution. It aims to ensure safety at sea,

		prevent human injury or loss of life, and avoid damage to the environment. The ISM Code is a mandatory part of the SOLAS.
20	Safety Management System (SMS)	The Safety Management System (SMS) is a systematic approach to managing safety on board. It focuses on creating a safe working environment and preventing accidents and incidents.
21	Special Trade Passenger Ships Agreement	It describes the rules for the transport of passengers, especially pilgrims, on passenger ships for special voyages, it mainly concerns the minimum spaces per person a/b

Environment

Treaty		Core
22	Convention on the prevention of marine pollution by dumping of wastes and other matter (London Convention)	The purpose of this convention is to protect the ocean from pollution caused by dumping of waste by regulating and prohibiting the dumping of certain types of waste into the sea.
23	Hong Kong International Convention for the safe and environmentally sound recycling of ships	This convention aims to make ship recycling safer for people and the environment. It imposes obligations on ships, recycling yards, and flag states to ensure that ships are recycled responsibly at the end of their life cycle.
24	International Convention for the control and management of ships' ballast water and sediments (Ballast-Convention)	This convention was established to prevent the spread of harmful aquatic organisms and pathogens through ships' ballast water.

25	International Convention on Oil Pollution preparedness, response and co-operation (OPRC-Convention)	The convention was established to better prepare countries and shipping for oil pollution incidents and to regulate international cooperation in responding to them.
26	International Convention on the control of harmful anti-fouling systems on ships (AFS-Convention)	This convention aims to restrict or prohibit the use of harmful substances in anti-fouling paints on ships. It is intended to protect the marine environment from the harmful effects of these paints.
27	International Convention relating to intervention on the high seas in cases of oil pollution casualties (Intervention Convention)	This treaty authorizes coastal states to intervene in the event of oil spills by ships posing a serious threat to the coast. The treaty was designed to coordinate and facilitate the response to such emergencies.

Liability & compensation

Treaty		Core
28	Athens Convention relating to the Carriage of Passengers and their Luggage by Sea	This is an international convention that governs the liability of carriers in the event of accidents involving damage to passengers or their baggage during sea voyages.
29	Convention on Limitation of Liability for Maritime Claims	This is an international treaty aimed at limiting the liability of shipowners and salvors for maritime claims.
30	Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material	This agreement is enshrined in the Paris Convention on Nuclear Liability at Sea. This convention governs liability for damage caused by nuclear incidents during the carriage of nuclear materials by sea

31	International Convention on Civil Liability for Bunker Oil Pollution Damage	This convention governs international liability for damage caused by oil pollution from bunkers (heavy fuel oil). The convention aims to provide a system of compensation for those who suffer damage from such pollution.
32	International Convention on Civil Liability for Oil Pollution Damage (Liability Convention)	The international convention governing the liability of shipowners for oil pollution. The convention was adopted to ensure that persons suffering damage from oil pollution resulting from maritime accidents receive adequate compensation.
33	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention)	The Convention governs liability and compensation for accidents involving ships carrying dangerous or noxious substances as cargo at sea. The convention aims to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances (HNS).
34	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention)	This convention is intended to provide compensation for damage caused by oil pollution from seagoing vessels. This fund, created by contributions from oil recipient companies, supplements the compensation provided by the Civil Liability Convention (CLC).
35	International Convention relating to the arrest of seagoing ships	The purpose of the Convention is to provide a uniform system for the conservatory attachment of sea-going vessels.

Annex 5 List of EU-maritime rules

Below is a list of the most relevant EU maritime rules. The EU Treaty stipulates that the EU can adopt provisions for shipping, i.e., for maritime transport. EU provisions cover many aspects of shipping. The EU has its own maritime rules, in addition to those of the UN/IMO/ILO. This does not make matters any easier.

The EU has issued rules on various maritime topics, such as working hours, shipowners, the environment, freight and passenger transport, safety, security, etc.

The list below is not exhaustive or complete, but it is representative for the Shipmaster. More EU maritime rules can be found at: <https://eur-lex.europa.eu/summary/chapter/32.html?locale=nl>. See also Section 2.2.3 of this Handbook.

An EU Regulation is a generally binding provision and directly applicable in all Member States.
 An EU Directive is a binding provision for Member States, which must transpose it into national law.
 An EU Decision is binding on those to whom it is addressed and is directly applicable.

EU-Maritime Rules		
General		
	Name	Core
1	Directive 2009/20/EG	This directive establishes rules for the compulsory insurance of ships against maritime claims, such as those arising from pollution, shipwreck, or other maritime incidents. The directive aims to ensure that victims of maritime accidents can receive financial compensation, regardless of the nationality of the ship or the parties involved.
2	Directive 2024/3100/EU	Mandatory flag state surveillance of ships, use of SafeSeaNet, and reporting statistics

3	Regulation 2019/1239/EU	This Regulation introduces a European maritime single window to simplify reporting obligations for ships arriving in, staying in, and departing from EU ports.

Crew

Name		Core
4	Directive 1999/63/EG	Agreement concerning the organization of working time of seafarers
5	Directive 1999/95/EG	Enforcement of the rules on working time of seafarers on board ships calling at EU ports
6	Directive 2010/65/EU	Concerns reporting formalities for ships arriving in and/or departing from EU ports
7	Directive 2013/54/EU	Concerns certain responsibilities of the flag State regarding compliance with and enforcement of the MLC.
8	Directive 2019/1159/EU	Deals with the minimum level of training of seafarers and the mutual recognition of certificates of seafarers' professional competence issued by Member States
9	Directive 2022/993/EU	Minimum level of education for seafarers
10	Regulation 2009/392/EG	Concerns the liability of carriers of passengers by sea in the event of accidents

Safety & security

Name		Core
11	Directive 2002/59/EG	Implementation of a community vessel traffic monitoring and information system
12	Directive 2005/65/EG	Increase port security
13	Directive 2009/15/EG	Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations
14	Directive 2009/16/EG	Port State Control. Updated by Directive 2024/3099/EU

15	Directive 2009/18/EG	Establishment of the fundamental principles for accident investigation in the maritime transport sector
16	Directive 2013/53/EU	This is a European directive that sets minimum standards for the safety, health and environmental aspects of recreational craft and personal watercraft in the EU.
17	Directive 2014/90/EU	Harmonization of safety standards for maritime equipment and corresponding test conditions
18	Directive 2017/2108/EU	Amendment of Directive 2009/45/EC on safety rules and standards for passenger ships
19	Directive 2017/2110/EU	Concerns an inspection system for the safe operation of ro-ro passenger ships and high-speed passenger craft on regular services
20	Directive 2024/3017/EU	Governs the principles of maritime accident investigation and cooperation with EMSA
21	Regulation 2002/1406/EG	Establishment of a European Maritime Safety Agency
22	Regulation 2004/725/EG	Concerns the improvement of the security of ships and port facilities
23	Regulation 2006/336/EG	Implementation of the International Safety Management Code (ISM) in the EU
24	Regulation 2009/391/EG	Regulation on common rules and standards for ship inspection and survey organizations. A recognition system.

Environment

Name		Core
25	Directive 2005/35/EG	Enforcement instruments against ship-source pollution and the introduction of sanctions for infringements
26	Directive 2014/89/EU	Requires Member States to draw up maritime spatial plans
27	Directive 2019/883/EU	Port reception facilities for the discharge of waste from ships
28	Regulation 2013/1257/EU	Regulates safe and environmentally friendly demolition of EU-flagged ships

29	Regulation 2015/757/EU	Concerns the monitoring, reporting and verification of greenhouse gas emissions from maritime transport.

See also:

1. <https://eur-lex.europa.eu/EN/legal-content/summary/eu-maritime-information-and-exchange-system.html?fromSummary=32>
2. <https://eur-lex.europa.eu/homepage.html?locale=en>
3. <https://eur-lex.europa.eu/homepage.html?locale=nl>

Annex 6 List of NL maritime acts (English/Dutch)

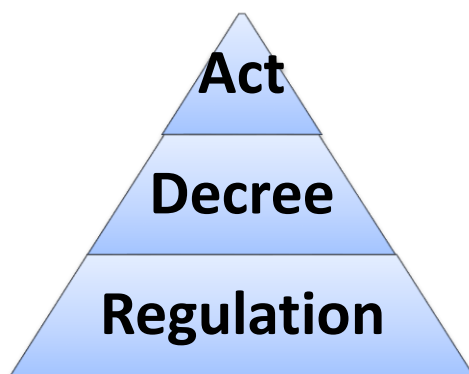
In this table one can find the (non-official) English translation of the official Dutch acts relevant for the maritime and shipping domain in the Netherlands. The full text of this acts and the associated legislation (decrees and regulations) can be found on the website of the Netherlands Shipping Inspectorate: puc.overheid.nl/insi.

So, the table in this Handbook only shows the acts, not the related decrees or regulations.

Dutch maritime legislation is a combination of national laws, international treaties, and European rules that together form the legal framework for shipping, safety, the environment, and liability, etc.

International treaties are often implemented in the Netherlands through the laws listed below. For example, SOLAS is implemented in the NL Ships Act and the Seagoing Vessels Manning Act, while MARPOL is implemented, among others, through the NL Prevention of Pollution from Ships Act. The Athens Convention on Passengers is included in Book 8 of the Dutch Civil Code. Therefore, the Shipmaster can often rely on national legislation.

In the Dutch maritime legislation, as in Dutch law, there are multiple layers of provisions that interconnect: act → decree → regulation. See also section 3.2 of this Handbook and the figure below.



Act: establishes the legal basis and powers.

Decree: supplements this with more concrete standards and procedures.

Regulation: provides the technical details and daily practice requirements.

The advantage of this structure is that the entire law/act does not have to be amended for every technical change. The minister can quickly adjust through a regulation.

The Shipmaster, Human Environment and Transport Inspectorate (ILT), Coast Guard, Police, etc., monitor compliance with the law, the decree, and the regulations. In the event of a violation, criminal or administrative law usually applies first, with fines or closure.

List of NL-maritime acts		
English		Dutch
1	Act Foreign Seagoing Vessels	Wet buitenlandse schepen
2	Act Manning Seagoing Vessels	Wet bemanning zeeschepen
3	Act on Allocation of Workers by Intermediaries	Wet allocatie arbeidskrachten door intermediairs
4	Act on Liability of Oil Tankers	Wet aansprakelijkheid olietankschepen
5	Act on Protection of the Merchant Navy	Wet ter Bescherming Koopvaardij
6	Act on the Recognition of Professional Qualifications (EU)	Algemene wet erkenning EU-beroepskwalificaties
7	Act on Transport of Dangerous Goods	Wet vervoer gevaarlijke stoffen
8	Burial Services Act	Wet op de lijkbezorging
9	Certificate of Tonnage Act 1981	Meetbrievenwet 1981
10	Civil Code, Books 1,4,7 and 8	Burgerlijk Wetboek, Boeken 1,4,7 en 8
11	Coast Guard Act	Kustwachtwet
12	Code of Commerce	Wetboek van Koophandel
13	Collective Bargaining Agreement Act	Wet CAO
14	Compulsory Sailing Act	Vaarplichtwet
15	Coordination Act on Emergency Situations	Coördinatiewet uitzonderingstoestanden
16	Criminal Code	Wetboek van Strafrecht

17	Criminal Proceedings Act	Wetboek van Strafvordering
18	Customs Act	Douanewet
19	Dutch Territorial Sea Boundaries Act	Wet grenzen Nederlandse Territoriale Zee
20	Economic Offences Act	Wet economische delicten
21	Environmental Law	Omgevingswet
22	Environmental Management Act	Wet milieubeheer
23	Foreign Nationals Employment Act	Wet Arbeid Vreemdelingen
24	General act on Recognition EU professionals	Algemene wet EU-beroepskwalificaties
25	General Administrative Law Act	Algemene wet bestuursrecht
26	Heritage Act	Erfgoedwet
27	HNS Convention Implementation Act on Liability for Hazardous and Noxious Substances	Uitvoeringswet HNS-verdrag over aansprakelijkheid gevaarlijke en schadelijke stoffen
28	Installations North Sea Act	Wet installaties Noordzee
29	Kingdom Act concerning Safety Investigation Board	Rijkswet Onderzoeksraad voor Veiligheid
30	Kingdom Act Emergency Measures Shipping	Rijkswet Noodvoorzieningen Scheepvaart
31	Kingdom Act Implementing Contiguous Zone	Rijkswet instelling aansluitende zone
32	Kingdom Act implementing Exclusive Economic Zone	Rijkswet instelling exclusieve economische zone
33	Kingdom Act Implementing Fishery Zone	Machtigingswet instelling Visserijzone
34	Kingdom Act Nationality Seagoing Vessels	Rijkswet nationaliteit zeeschepen
35	Kingdom Act Safety Board	Rijkswet Onderzoeksraad voor Veiligheid

36	Land Registry Act	Kadasterwet
37	Loading and Unloading of Sea-going Vessels Act	Wet laden en lossen zeeschepen
38	Maritime Casualties Control Act	Wet bestrijding maritieme ongevallen
39	Maritime Labour Convention Kingdom Act	Rijkswet Maritiem Arbeidsverdrag
40	Maritime Traffic Act	Scheepvaartverkeerswet
41	Market Control Registered Pilots Act	Wet Markttoezicht registerloodsen
42	Measurement certificates law 1981	Meetbrievenwet 1981
43	Mining Act	Mijnbouwwet
44	Oil Tanker Liability Act	Wet aansprakelijkheid olietankschepen
47	Pilotage Act	Loodsenwet
48	Pleasure Craft Act 2016	Wet pleziervaartuigen 2016
49	Port Emergency Act	Havennoodwet
50	Port Security Act	Havenbeveiligingswet
51	Port State Control Act	Wet Havenstaatcontrole
52	Prevention of Pollution from Ships Act	Wet ter voorkoming van verontreiniging door schepen
53	Regulations of the Shipping Disciplinary Board	Reglement van het Tuchtcollege voor de Scheepvaart
54	Seagoing Vessels Insurance Act	Wet verzekering zeeschepen
55	Seagoing Vessels Manning Act	Wet Bemanning Zeeschepen
56	Ships Act	Schepenwet
57	Ships Equipment Act 2016	Wet scheepsuitrusting 2016
58	Spatial Planning Act	Wet ruimtelijke ordening
59	Water Act	Waterwet
60	Weapons and Ammunition Act	Wet Wapens en munitie
61	Working Conditions Act	Arbeidsomstandighedenwet

62	Working Hours Act	Arbeidstijdenwet
63	Wreck Law	Wrakkenwet

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Annex 8 List of maritime legal terms

In this table one can find some useful maritime legal terms not described or not present in this Handbook. These terms can be found at various maritime law glossaries or other sources on the internet. These terms may vary per country, so they are not generic for all countries. One has always to consult the relevant national law.

TERM	EXPLANATION
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 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 have 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 ship manager 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 is worth.
Appraise-ment	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.
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 country (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 Shipmaster of a ship to the prejudice of the owner or the charterer.
Bench trial	Trial held before judge sitting without a jury.
Bench war-rant	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.
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 country.
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.
Bumber-shoot 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.
Charterparty	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 countries, that vessels approaching or leaving port must have a licensed pilot to guide the vessel into or out of the port.
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 country 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 countries 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 country against an accused in felonious matters.
Crossclaim	Claim asserted between co-defendants or co-plaintiffs in a case. A cross-claim must relate to the subject matter of the original claim or counter-claim.
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 seafarer 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 defences 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 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 country to another of a person the second country 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 country.
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 regarding 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's right to enter and pass through another's territorial sea so long as it is not prejudicial to the peace, good order or security of the other country.
Jetsam	Things intentionally thrown overboard to save the ship, and which things thrown over then sink.
Law of the Flag	Principle of maritime and international law; Sailors and vessel will be subject to the laws of the country 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.
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 person. 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 Shipmaster 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 country 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 country's coast and subject to its sovereignty.
Tidal waters	Bodies of water within a country's territorial waters and that are subject to the ebb and flow of ordinary tides, whether navigable or not, and usually excluding ports 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.

Legal Handbook Shipmaster

This book is the worldwide international standard Handbook for the Shipmaster and all other interested parties whatever the ship's flagstate or nationality of the crew may be.

National maritime laws of countries are almost similar 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 countries is also described. National legislation of the flagstate 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 also explained in the Handbook.

National maritime legislation (NL) is described in detail with many examples from national maritime legislations.

This Handbook has not been written in legal language, but in the language of the Shipmaster and seafarers for whom this book is written. 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 acts and regulations constantly change. Please, submit your financial contribution via the official website: www.nvkk.nl

