

INTRODUCTION

Contributed by: Yoav Harris and John Harris, **Harris & Co. Shipping & Maritime Law**

Harris & Co. Shipping & Maritime Law was established in 1977 and is dedicated to the practice of maritime and admiralty law. The firm has received instructions from the foremost shipping and maritime law departments of international law firms. The firm regularly receives

“top tier” ratings from Chambers and Partners. According to their latest rankings, the firm “has significant litigious capabilities”. In the non-litigation aspect of the practice, the firm attends to matters relating to the chartering sale and purchase of ships.

Contributing Editors



Yoav Harris graduated in 1999 summa cum laude from the Faculty of Law of Haifa University. He specialises in maritime law and commercial litigation and is the head litigator of the firm. In

addition, he has written articles for local transportation and financial monthly magazines, and the shiparrested.com quarterly issues, and has lectured at recent shiparrested.com annual conferences and at the Center for Cyber Law and Policy, the Faculty of Law at Haifa University. Yoav Harris' articles regarding the authority or lack of authority of the Haifa Maritime Court to act as a prize court were cited both by the Maritime Court and the Supreme Court when deciding on the matter of M/V Estelle.



John Harris (1940-2023) was a founding partner of Harris & Co.

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The Maritime Autonomous Surface Ships Code

Developments in autonomous shipping and related sectors were examined at a symposium titled [“Making Headway on the IMO MASS Code”](#). The event, which took place at the headquarters of the International Maritime Organization (IMO) on 30 May 2023 looked at the latest technological developments in Maritime Autonomous Surface Ships (MASS), how autonomous shipping can be commercialised by the industry and how ports will need to adapt as the technology is introduced.

Korean industrial companies (such as Samsung Heavy Industries and HD Hyundai) demonstrated autonomous navigation systems they are trialling, which use a combination of artificial intelligence, satellite technology and cameras. AEGIS consortium introduced their [three-year project](#), which started in June 2020, to develop a waterborne logistics system comprising small, flexible feeder ships, autonomous cranes and terminals and a digitalised process.

Later, on 7 November 2023, an event titled “Navigating the Future of European Waters with Autonomous Innovation” took place in Rotterdam, where projects and visions of AEGIS, AUTOSHIP and MOSES relating to uncrewed inland waterway barges, automated terminals, and autonomous navigation were showcased.

Following the groundwork laid during the 105th session of the Maritime Safety Committee (MSC), the 106th MSC session in November 2022 saw further advancement in developing a goal-based instrument for MASS operations. The 107th MSC session, held from 31 May to 9 June 2023, which followed closely on the heels of the aforementioned “Making Headway” symposium, brought additional progress. During this

session, the MSC noted that a MASS Code will be required to address all training certification and competency requirements of seafarers, with the STCW (Standards of Training, Certification and Watchkeeping) requirements considered as a basis. Further, the MSC approved the updated roadmap for further work on developing the draft of the non-mandatory MASS Code and instructed the International MASS Working Group (MASS ISWG) to continue the development of the Mass Code, taking into account the latest draft prepared by the Correspondence Group. According to IMO’s publications, the Mass Code is due to take effect in 2025.

Military use of MASS

The evolution of autonomous shipping technology is unfolding rapidly, not just in commercial and civil sectors, but also in military applications, as recent events have highlighted. On 1 February 2024, the Russian missile boat *Ivanovets* was sunk in the Black Sea after receiving a direct hit to its hull by Ukrainian naval drones. The latest version of these drones, as seen by CNN journalists in July 2023, weighs up to 1,000 kilograms, with an explosive payload of up to 300 kilograms, a range of 800 kilometers and a speed of 80 km/h.

These autonomous naval drones were also involved in the attacks on the Kerch Bridge in July 2023 and on Crimea’s Sevastopol port in October 2022, damaging the Russian fleet’s flagship, the *Admiral Makarov*, which was docked in the port. This is an example of how autonomous ships can narrow gaps – in this case a military gap between countries with vastly differing naval capabilities, and that autonomous shipping has the potential to develop beyond any expectations. Furthermore, these developments serve as a reminder that while we often view the progress in autonomous vessel technology and regulation

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as offering a glimpse of the future, real-world events like the war that began on 24 February 2022, thrust nations into scenarios reminiscent of past wars.

The War between Hamas and Israel and Houthi Piracy

On 7 October 2023, Hamas initiated hostilities against Israel by murdering 1,200 people, mainly civilians, many of whom were tortured, and kidnapping almost 200 more. In response, Israel deployed its IDF to engage Hamas in the Gaza Strip. On 19 November 2023, the *M/V Galaxy Leader*, a Bahamas-flagged cargo vessel valued at USD65 million and owned by a British corporation, was navigating the Bab-al-Mandeb Strait in the Red Sea, off the coast of Yemen, en route from Turkey to India. During this passage, the vessel was hijacked by armed individuals dropping from a helicopter, resulting in the capture of the vessel and its crew of approximately 25 people of different nationalities.

Following this event, the Yemeni Information Minister in the National Salvation Government, as reported by FARS news agency, declared that all Israeli ships in the Red Sea would be considered legitimate targets by the Yemeni armed forces, a statement accompanied by the release, by the Houthi Media Centre, of photos of the hijacking of the *M/V Galaxy Leader*.

This incident is a clear violation of the rights to innocent passage and navigation as guaranteed under the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS, applicable in both the high seas and the territorial waters of coastal states, as well as in international straits, provides under Article 17 that “ships of all States... enjoy the rights of innocent passage through the territorial sea”, and Article 38 states

that “all ships and aircraft enjoy the rights of transit passage, which will not be interrupted”.

The hijacking of the *M/V Galaxy Leader*, while it was engaged in innocent transit, falls under the UNCLOS definition of piracy (Articles 101 and 102), as an “illegal act of violence or detention... directed against a ship on a place outside the jurisdiction of any state”. Moreover, UNCLOS obligates states to co-operate fully in suppressing piracy (Article 100) and grants them authority to seize pirate ships or aircraft, including the right to search a ship engaged in piracy (and also in the slave trade), seize a ship or aircraft, arrest persons on board and seize property on board (Articles 110, 105).

The Bab-al Mandab Strait, located between the southern end of the Suez Canal and routes leading to the Gulf States or eastwards towards India, is a vital corridor through which approximately 12% of the world’s marine trade flows. The strategic importance of this route is underscored by the fact that vessels opting to bypass the Bab-al Mandab Strait and instead navigate the longer route around Africa face increased risks, higher costs, and extended voyage times, all of which also reduce the revenue of the Suez Canal authority.

The hijacking of the *M/V Galaxy Leader* was followed by attacks by Houthi forces on vessels in the Red Sea and off the coast of Yemen. A notable incident involved the US warship *USS Carney* on 9 November 2023, which intercepted missiles and drones launched from Houthi-controlled areas in Yemen.

In response to these escalating security challenges, the international community established Operation Prosperity Guardian on 18 December 2023. This initiative, under the aegis of the Com-

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bined Maritime Forces (CMF) and commanded by the US Navy, aims to address the security concerns in the southern Red Sea and the Gulf of Aden. Despite these efforts, Houthi attacks on commercial shipping lanes in the Red Sea have continued, with the 26th attack since 19 November being recorded on 9 January 2024. Even more recently, an environmental disaster was caused when the Belize-flagged and UK-owned bulk carrier *M/V Rubymar* was attacked by Houthi missiles on 18 February 2024. This attack resulted in oil leaking from the vessel into the Red Sea, causing an 18-mile oil slick, accompanied by concerns that the ship's cargo of 41,000 tonnes of fertiliser might also seep into the waters, exacerbating the contamination. These attacks, involving sophisticated anti-ship cruise and ballistic missiles launched from Houthi-controlled areas of Yemen have prompted retaliatory strikes by US CENTCOM against Houthi military assets, including unmanned surface vessels.

These ongoing hostilities have significantly impacted the Suez Canal's revenue, an important source of income for Egypt, which amounts to approximately USD10 billion annually. The Canal's revenue has reportedly been halved since the onset of the Houthi attacks.

Limitation on Owner's Liability

In the midst of ongoing wars, armed conflicts, and piracy attacks, the world of commercial shipping and maritime carriage carries on. One enduring point of contention in this realm is the interpretation of the Hague-Visby Rules (the "Rules"). These Rules often become the focus of disputes between ship owners and shippers or cargo receivers, particularly in the context of the Convention on Limitation of Liability for Maritime Claims 1976.

The wording of Article IV, rule 2 (a) of the Rules – "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from: (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship" was the subject of a dispute between a charterer and an owner of the vessel *Afra Oak*, which during the loading of fuel oil cargo was instructed by the charterer to proceed to Singapore EOPL (Singapore Eastern Outside Port Limits) and wait there for further instructions. However, the Master, placed the vessel in Indonesian territorial waters which resulted in his arrest and the detention of the vessel for eight months by the Indonesian authorities.

Distinguishing this case from previous rulings such as *Knutsford v Tillmans* [1908] and *The Hill Harmony* [2001], where the Master did not follow the orders of the relevant clauses of the charterparty without any error in navigation or seamanship, both the arbitration tribunal and the high court found that the Master of the *Afra Oak* was negligent in the navigation of the vessel by anchoring in Indonesian waters. Therefore, they ruled that the owners' exemption from liability under Rule VI article (a) applied.

On 14 July 2012, a tragic incident occurred aboard the *M/V MSC Flaminia* while it was sailing in the Atlantic Ocean from Charleston. The vessel, time-chartered by MSC from Conti as the owner, experienced a massive explosion caused by the auto-polymerisation of divinylbenzene in one or more of the three containers containing 80% divinylbenzene, loaded in New Orleans. This devastating event led to the loss of three crew members and extensive damage to hundreds of containers.

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On 30 July 2021, the arbitration tribunal awarded Conti compensation from MSC in the amount of USD200 million for the damages incurred. However, in a claim dated 21 July 2020, MSC sought to limit its liability to EUR26.5 million under the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 protocol, specifically on the basis of Article 2.1 (a). This article states that claims subject to limitation of liability are: "(a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins, and water way and aids to navigation) occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom". In its judgment dated 1 September 202, the Court of Appeal held that the purpose of the 1976 Convention was to encourage international trade by sea carriage and that this objective would not extend to claims by ship-owners against charterers for losses and damage caused by breach of charterparty terms by the charterer. It was observed that limiting recovery in such instances could result in substantial losses for ship-owners, potentially discouraging maritime trade, despite the availability of insurance.

The Court of Appeal held that a charterer could only limit its liability against an owner's claim if it involved passing liability incurred to a third party onto the charterer. However, in cases where the owner itself suffers losses and damages, the charterer is not entitled to limit its liability.

It is also worth referring to the attempt of the owners of *M/V Moraz* to limit their liability under the Limitation of Liability Convention, Brussels, 1957 (which is the limitation convention adopted by the Israeli legislature) for pollution damage caused as a result of an oil leak from the vessel while being bunkered near Haifa Port – an

attempt that was denied by the Haifa Admiralty Court. It was held that although Israel did not adopt the 1976 Convention, which specifically excludes claims for oil pollution damage from the protection of the convention (Article 3 (b) of the 1976 Convention), this exclusion and the local and international rules against sea pollution led to the conclusion that the damage caused by *M/V Moraz* constituted damage caused to "harbour works, basins and navigable waterways", which is excluded from the protection of the limitation of liability under Israeli law. Further, the owner's failure, through their management, to properly supervise the bunkering operations that led to the oil leak from the vessel was considered to be an "actual fault or privity of the owner", which is also excluded from the protection of the convention.

In a case involving a claim by a financing bank for the mis-delivery of cargo, where the owners delivered the cargo without the presentation of the original bill of lading, and the claim was filed two years after the cargo's delivery, the Court of Appeal examined the implications under Article III, rule 6 of the Hague-Visby Rules, which state: "...the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered". The financing bank argued that the mis-delivery of cargo took place after discharge and therefore the Hague-Visby Rules did not apply, including owners' immunity under the Rules' time bar, which ended when the goods were discharged from the ship.

The Court of Appeal noted that the wording in Article III rule 6 uses "delivery" rather than "discharge". Delivery is a legal concept involving a full transfer of possession in the cargo, while discharge is a physical act of removing the cargo

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from the ship. The Court further noted that the Visby amendments had altered the wording of the article from “all liability in respect of loss or damage” to “all liability whatsoever in respect of the goods”. This broader phrasing was interpreted as extending the one-year time-bar immunity of the owners to now encompass “all liability whatsoever” and “in respect of the goods”, not just liability in respect of loss or damage. The Court held that the revised Article III (rule 6) was to apply even in cases outside the sphere of the application of the Rules, including beyond the carriage and discharge of the cargo.

Conclusion

The cases mentioned above serve as key examples of how courts have recently scrutinised ship-owner liability. I am sure the other chapters and articles in this guide will also shed light on this issue, and many other aspects of maritime law and shipping.

We are pleased to welcome several new jurisdictions to this year’s guide. Each jurisdiction brings its unique legal perspectives, practices, and challenges, contributing to a more comprehensive and diverse view of maritime law.