

## **Examining the Necessary Standards of Shipping based on Customary and Statutory Maritime Law**

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### **Abstract**

The correlation between the sea and the ship with scientific and technological progress and human needs in the field of trade and transportation, and the existence of inspection and observatory control in territories and their safety has caused the attention of organizations and countries to its effectiveness. On the other hand, it caused promoted productivity through the use of skilled manpower on the ship. Undoubtedly, creating universal and acceptable regulations is important so that they can be turned into law. Definitely, in this law, attention should be paid to the evaluation of the prospect of sea events and it can be predicted. Factors such as affreightment, collisions at sea, ship damage, and maritime rescue can be among these rules and clarify the purposes of a safe sea. On the other hand, the International Maritime Organization (IMO) works very actively and effectively in the direction of the compilation of these regulations and laws. It should be noted that with the progress of the shipping industry and the expansion of the sea boundaries, it is better that these laws become updated and more preventive and practical. Therefore, new standards in the maritime transport industry must be pursued by the World Maritime Organization and with a survey of the member countries, more attention should be paid to the security, speed, and services of the ports and sailing of the countries. Although one of the appreciable achievements of the World Maritime Organization has been the transformation of unsafe traditional ports into safe modern ports. But it seems that the diversity of sea transportation with regard to commodity exchanges requires the implementation of a more legal and regulatory strategy. In this article certainly, attention has been paid to the importance and fundamental role of the World Maritime Organization, because the most important basis of maritime transport is the ship. It should be noted that the ship has an independent identity and personality. On the other hand, the diversity in the utilization of ships in the aspects of commerce, public services, military, and the diversity of ship types requires special standardization and proficient implementation.

**Keywords:** Necessary Standards, Shipping, Customary, Statutory, Maritime Law

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## **1. Introduction**

In today's world, the standard in all tendencies of human life is determinant in important social, cultural, economic, commercial, and political indicators. In addition, compliance with customary and legal norms is necessary for the discipline and continuation of human life-linked peace and progress. What has become increasingly significant is the establishment of legal articles on accepted standards in legal societies and also in international societies. To establish integrated laws based on these standards in order to advance the goals of international societies and organizations. The purpose of forming these organizations according to the United Nations organization's laws at first is to create a world with peace and tranquility on a large scale and industrial and economic development and create a comfortable life. The huge volume and diversity of commercial exchanges between countries are, on the one hand, a result of the difference in the economic privilege of countries in aspects of natural resources, workforce, and technical knowledge, and on the other In today's world, the standard in all tendencies of human life is determinant in important social, cultural, economic, commercial, and political indicators. In addition, compliance with customary and legal norms is necessary for the discipline and continuation of human life-linked peace and progress. What has become increasingly significant is the establishment of legal articles on accepted standards in legal societies and also in international societies. To establish integrated laws based on these standards in order to advance the goals of international societies and organizations. The purpose of forming these organizations according to the United Nations organization's laws at first is to create a world with peace and tranquility on a large scale and industrial and economic development and create a comfortable life. The huge volume and diversity of commercial exchanges between countries is, on the one hand, a result of the difference in the economic privilege of countries in aspects of natural resources, workforce, and technical knowledge, and on the other. One hand, it is the result of the special and complex economic system and relations governing the world. Today, several limited countries have become poles and centers of industrial and agricultural production and export their products to other



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countries that are sometimes not part of the growing consumer market. And on the contrary, they import the raw and primary materials required by the industrial factories from all over the world to their countries. This difference in the economic advantages of countries and the difference between the poles of production and consumption in the world and also the huge variety of products needed by human life in the present era has caused an unprecedented development of services and transportation industries, especially, maritime transport, which is more cost-effective than other methods. So today, large centers and institutions of port services and equipment, huge shipbuilding factories, equipped repair centers, experienced and prepared institutions for saving ships, damaged goods and the like have emerged in the field of international competition, and by using knowledge and they are busy with advanced technology. So that today, large centers and institutions of port services and equipment, huge shipbuilding factories, well-equipped repair centers, and institutions with experience of saving ships, damaged goods and the like have emerged in the field of international competition, and they operate using the advanced knowledge and technology of the day.

Considering that marine vehicles and ships devote about 90% of world trade transportation and from the point of view that about three-quarters of the earth is covered by water, and approximately 80 percent of industrialized countries, as well as countries that play an essential and important role in trade and export and import and advance the world's commercial development goals, have nautical coasts and important gulf, and they also have many water borders with their neighboring countries coasts and important bays, and also have many water boundaries with their neighboring countries. Application of laws and compliance with all regulations has improved in the maritime and ports and shipbuilding industry today, due to the increasing importance of this industry in global economic growth, including traffic, registration and citizenship, construction and production, shipping and maritime safety, environmental pollution, etc. Among the important rules and regulations is the existence of necessary standards for sailing. And in all matters of maritime law, it will maintain its position and influence as a fundamental factor in shipping and maritime transport. In this study, we intend to discuss the role of

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International Shipping standards in maritime law and environmental issues. Until now, there have been many discussions in the field of ship standards, but the position and role, and importance of this aspect of the ship have not been explained in a coherent manner. So that the importance of international shipping standards in maritime transport becomes more apparent. Observance of international standards means conformity to technical standards and the use of new technologies and new equipment according to international standards, which have been determined by the international organizations participating in this subject.

Considering the above, the most important question to be answered in this article is the Examining the Necessary Standards of Shipping based on Customary and Statuary Maritime Law.

### **1. Research Methods**

This research has addressed the issue of international shipping standards in maritime law as one of the topics of maritime safety, considering the importance of this issue and the unique role that IMO as a competent organization has in this field. According to what was said, this research is based on the method of studies in books and articles, theses, and related websites. Also, in some cases, it has been by interviews with professors and technical people in the field of shipping and maritime law and expressing their opinions and statements.

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### **2. Maritime law**



Most of the jurists refer to the rules of general international maritime law<sup>1</sup> as the legal rules regulating maritime relations between states in times of war and peace<sup>2</sup>. And another part of maritime rules that govern the health of ships, their seaworthiness, the employment of sailors, and the conditions of commanders, and marine engineers are called maritime administrative law<sup>3</sup>. Maritime trade, especially maritime transport, is a part of commercial law according to paragraphs 2, 9, and 10 of Article 2 of the Iranian Commercial Law, maritime transport, and shipbuilding and buying and selling domestic and foreign ships, as well as marine insurance, are general examples of inherent commercial activities and are categorized under private rights (Alai Fard, 2008). On the other hand, maritime law, especially the international transportation of goods and passengers by sea<sup>4</sup>, has an international nature. Because goods and ships cross international boundaries and enter the jurisdiction of different countries, traders, ship owners, assurers, and transport operators may be citizens of different countries. Of course, today, private international maritime law is a set of rules and regulations that determine the resolution of maritime disputes and the jurisdiction of courts, and the enforcement of foreign judgments. Laws of the seas, including pollution of the seas and the marine environment, duty-free zones, fishing, and the rules related to the territorial sea, rules, and regulations governing the law of the sea directly or indirectly govern the rules of maritime law.

### **3. Standards explanation**

Standard means establishing rules and regulations to determine the quality and desirable characteristics of a product. According to the ISO definition of standard, a standard is a document containing rules and guidelines for general and frequent use, provided by unanimity and approved by a recognized organization and its purpose is to achieve the desired level of order in a specific field (Jabrian, 2014). Today, the growing

<sup>1</sup> sea going –vessel driving (shipping)

<sup>2</sup> maritime public international law

<sup>3</sup> maritime administrative law

<sup>4</sup> maritime administrative law

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trend of industry and trade, as well as scientific and social developments in the world, is such that countries are more dependent on each other than before. Today, the growth of industry and trade, as well as scientific and social developments in the world, has made countries more dependent on each other. To coordinate and communicate, there are certain technical problems that these standards are the result of the agreement of the members of the ISO international standard organization. In this regard, international standards play a very important role in facilitating communication and solving technical problems. For the formation of standards, the standard proposal is sent to the secretariat by one of the active or official receivers. Then, a working group of experts and technical committees is formed and the draft committee is prepared after applying the comments. The international standard draft is voted on. Finally, with the confirmation of the international standard's draft by two-thirds of the active members, the standard is approved and published by the central secretariat (Ebrahim, Motahhareh, 2005). Among the best aspects of the standard, can refer to the principle of commutative law, which reduces waste and eases assembly, and increases production. Applying different standards in relation to features, manufacturing, and testing rules has increased productivity and product quality to a great extent. In addition, standards such as environmental standards can prevent various disasters. The use of standards leads to the exchange of ideas and communication between the beneficiary parties and is a common language at the national, regional, and international levels.

#### **4. Ships and Related Legal Issues**

Due to the fact that a ship is a moveable property but has an independent personality and identity, it organizes the most important subject of maritime law and the fulcrum of maritime law. This is the reason for the practical importance of this device as well as its registration and citizenship. There is no specific definition of the ship in Iranian law. In Article 1 of the Regulation on the Registration and utilization of Vessels 1331, the word "vessel" is used instead of the word "ship". Article 21 of the



Civil Code of Iran considers all types of large and small ships, boats, and other sea vessels as movable property. According to paragraph 5 of article 52 of Iran's maritime law: a ship is applied generally to any device that is used to transport cargo at sea. There are some faults in this definition, such as the passenger is not included in this definition, the artificiality and floating of the ship are not mentioned in this definition and it does not include carrying cargo along the river (Najafi Esfad, 2007). From the legal point of view, a ship is a movable property that is considered an object according to Article 15 of the Civil Code that it is possible to move it from one place to another without causing damage to itself or the place (Jafari Langeroudi, 1989) Different definitions for the ship are proposed in different laws and conventions, such as the 1974 Convention in regard to the transport of Cargo and the traveler by sea: Clause 3 of Article 1 defines a ship as any seagoing vessel, except for a vehicle with an Air Pillow. But the most appropriate definition Regarding the terms of ship registration can be found in the United Nations Convention, But the most appropriate definition about Conditions of ship registration can be observed in the United Nations Convention, Article 2 of this Convention declares a ship as any seafaring vessel guided by its own power that is used for the transportation of commodity and passengers or both in international maritime trade, except for vessels with a registered gross tonnage of less than 500 tons (Polic-Curcic, 1986). The ships with regard to utilization are divided into three categories: commercial, public service, and military. Commercial ships are generally used for transporting commodities and passengers and other commercial matters. Public service ships refer to vessels that can be used for non-profit affairs such as hygiene, dredging, protection of the environment, scientific research, and oceanology and Hydrographic studies. Military ships are vessels appurtenant to the army and military forces of each country that are used in military and public operations and are excluded from maritime law (Alai Fard, 2017). Different technical standards are considered in ships, depending on the type of application and activity. Generally, skill standards are monotonic in all types of ships including the 1974 STCW marine certificate, which was approved by the Iranian government in 1373 many efforts have been made by the International Maritime Organization(IMO) In order to unify

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maritime regulations in technical standards which has led to the ratification of several conventions. International organizations and institutions such as Lloyd's Maritime Shipping Institute in London Germanische Hamburg play a role in inspecting and supervising the technical standards and manufacturing of the ship in all stages and periodic inspection and issuance of various technical certificates (Hooshang, 1966). Abide by basic and important standards of ancillary equipment such as communication and radio devices and geographic orientation system, the strength of devices that are in important parts of the ship, such as the ship's hulls, masts, and pumps to drain excess water, sufficient lifeboats, signs and warning lights for other ships. Automatic systems for announcing defects or errors on the ship are required. Depending on the type of ship, different certificates are issued for the crew and employees depending on the type of ship, different certificates are issued for the crew and employees, who must have received different, adequate, and appropriate training for their type of activity, which is usually more strict for ships such as oil tankers and passenger ships to issue and grant certificates than other ships. Among the conventions that have been approved to standardize the amount and type of training people, The International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) can be mentioned. After the approval of this convention by Iran's government in 1375, the Ports and Maritime Organization of Iran prepared regulations, including the regulations for issuing and awarding certificates to marine officers. Among the certificates granted, can be mentioned the certificate of marine engineers in telecommunication, radar, and radio affairs, the ship's volcano crew and medical first aid, and the ship's captain's certificates, which have a very high degree of credibility.

### **5. Seaworthiness of the Ship**

The ship's seaworthiness includes two parts: physical ability (sea-worthy) and technical ability to carry goods (cargo worthy). And in the general concept, it includes the physics of the ship, its people, and its documents. If the ship does not have suitable and technical navigation staff, it lacks seaworthiness. The criterion of the capability and adequacy of the ship's



manpower is the crew's reasonable and conventional skill. In each case, it should be assumed that if the ship and cargo have an accident, the crew and captains of the ship take action. In maritime customs, this is called reasonable equipment (De & Cavanaugh, 2020). For international shipping, every ship must have documents. These documents include forms of ownership, citizenship documents, classification certificates, technical certificates, crew's health and identity.

Documents, ship quarantine documents, etc. The lack of these documents may lead to preventing the ship from navigation. Therefore, if a ship is not allowed to navigate or to continue sailing due to insufficient documents, this is an example of a ship's unseaworthiness (Alai Fard, 2008). Necessary documents for shipping are documents that have judicial and legal value. Therefore, the lack of seaworthiness is not the lack of documents that do not have legal value. According to Article 3 of the 1924 Brussels Convention and Article 54 of Iran's Maritime Law, the owner is obliged to prepare the ship for sailing before and at the beginning of each voyage, prepare and provide the staff, equipment, and supplies of the ship appropriately, and prepare warehouses, cold storage and all other parts of the ship that are used to transport goods.

The time limit for seaworthiness according to paragraph 1, article 3 of the rules of the bill and article 54 of Iran's maritime law mean that before starting loading and before starting the movement of the ship, the carrier must make efforts to ensure seaworthiness. So that the ship can load and leave the pier and move into the sea. As soon as the ship has been loaded and moved onto the sea, the responsibility of the transport operator is terminated in terms of seaworthiness. As soon as the ship has been loaded and moved onto the sea, the responsibility of the transport incumbent is terminated in terms of seaworthiness. Of course, it should be noted that this time limit is only for the contract for the carriage of goods by way of a bill of lading, and in the ship rental contract or charter party, the responsibility of the ship owner is to provide a ship with absolute and unlimited seaworthiness. This means that the ship owner must provide the ship to the tenant which has the ability to navigate during the entire rental period or the agreed route (Alai Fard, 2008). The carrier has strict liability and it is not limited to before and at the beginning of the voyage, but the ship must

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have the ability to load until the end of the voyage. Article 559 of the German Commercial Law mentions the obligation of the ship owner to provide a ship with the ability to navigate and loading so that it is capable of sea travel, storage, transportation, and unloading of goods. Seaworthiness and loading standards by type of the goods, the sea route, and the travel time are determined (Alai Fard, 2008).

### **6. Conventions and International Organizations**

IMO was established in March 1948 in Geneva, Switzerland. In general, this organization has spent its first period of life establishing a standard for maintaining maritime safety, and the International Maritime Organization is one of the specialized units of the United Nations, which currently has 167 members, and 3 members are affiliated with the established position of this organization in London. Argentina, Bangladesh, Brazil, France, Germany, India, and the Netherlands are the countries that have the most international maritime trade (Balkin, 1999). The most important goals of this organization are to create a system for cooperation between governments in the field of regulation, various technical issues affecting international commercial shipping, maritime safety and preventing and controlling sea pollution by ships, preparing treaties and agreements and other documents, organizing various conferences to approve them and create the highest maritime safety standards. This organization regarding the issue of navigation safety has established various regulations. The conference of 1960 included rules for saving human lives at sea and also paid attention to ship regulations and safety matters. This convention contains two important points; one is that it gives responsibility to flag states to inspect ships whose appearance is not in accordance with the safety certificates provided. Second, for the first time and in a limited way, it gives permission to the port owner governments to decide on foreign ships that want to leave their ports to ensure that they have standards in accordance with the conventions and to prevent the movement of ships that do not have the standards.

Other approved conventions include the International Convention on Load Lines, in 1966, which deals with matters such as the amount of cargo



of ships in the open sea from the point of view of protecting human life, and The International Convention for the Safety of Life at Sea (SOLAS) which has mentioned the standard of shipbuilding and safety of human lives (Hojat zadeh, 2015). The International Labour Organization (ILO)<sup>1</sup> in October 1976, approved Convention 147(C147 - Merchant Shipping (Minimum Standards) Convention, 1976)<sup>2</sup> about minimum principles that should be observed by merchant ships and the improvement of standards in ships. According to this convention, the government's own the ports enjoyed a real power of deterrence. According to Article 14, whenever a government receives a complaint or a reason for ignoring safety regulations on a ship that is in its port, it can take necessary measures to reprimand any situation that clearly endangers the safety and health of ships. According to this convention, all members are obliged to consider the legal rights of navigators and their working and employment conditions, including the minimum age, personal health certificate, training certificate, and, provision of experienced human resources, working and rest hours, leave for the crew, the minimum number of people who should be on, suitable and comfortable living place, recreational facilities, healthy food and compliance with work and fair standards in the employee employment contract. Under the 1982 Convention on the Sea Law, the flag state has a greater responsibility to ensure that ships comply with international standards. Combining this issue with the possibility of applying pressure on the port and coastal states to impose international standards on ships that are sailing in their waters and international waters. In addition to Article 94, Article 218 of this convention allows the port government to take action against ships that ignore international regulations and rules related to marine pollution (Habibi, 2021).

## **7. Economic importance of standardization in maritime transport**

Sea freight is the cheapest form of transportation. This economic prominence becomes more evident over long distances. In addition, sea transportation has a very high advantage over other transportation methods

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<sup>1</sup> International Labour Organization

<sup>2</sup> C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

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for purposes of energy consumption, carrying capacity, social and economic issues, and environmental effects. In the global economy, due to the economic importance of sea transportation in world trade, a ship with international standards brings economic activities through the sea with the least risks. Therefore, trade through the sea would expand and lead to economic prosperity (Dorostkar, 2019).

Reassurance the capitalists and merchants to move their goods by sea and optimal use of the sea can play the most important role in economic growth. And this will not happen except by complying with things such as: standardizing marine transportation with advanced marine equipment, increasing the seaworthiness of ships, improving the skill level of employees and ship crews, as well as developing and mechanizing ports, and creating security in sea routes, which causes reduction of energy consumption, reduction of damage to the ship and cargo, easy movement and carrying more goods and finally gain more trust of merchants. That all reduces the cost of transportation and reduces the amount of transportation and economic growth. In economics, one of the factors in calculating the price of a product is its transportation cost. If it is possible to develop sea transportation compared to other modes of transportation, with solutions such as gaining the trust of goods owners, the safety of sea voyages, and the cheapness of sea transportation due to low energy consumption, we can have a beneficial effect and reduce the price. One of the effective factors in this field is to comply with the technical, construction, and skill standards of the ship and, as a result, reduce the occurrence of obstacles and dangers on sea voyages for the ship. Another benefit of complying with the standards is the reduction of energy consumption, which means that when the vessel has the necessary equipment and standards in the machinery, energy consumption and, naturally, fuel consumption will be reduced, and this will somehow contribute to the preservation of energy resources in the world. Another benefit of reducing fuel consumption is reducing environmental pollution and the release of environmental pollutants in both water and air.

Repairing depreciated engines and replacing depreciated parts as well as old equipment will be cheaper and more economical than the effort and cost of cleaning the marine environment and air pollution. Containerization



of transportation as a standard in sea transportation and in the field of transportation of dry and mixed goods such as home appliances and equipment manufacturing and even containers for transporting food and cold storage can be economically more affordable by optimizing performance (Abbasi, 2017).

With the passage of time, the approach towards large ships has increased significantly and this itself could become a standard for building a ship in the future. As far as it is possible, to give great importance to the size of the ship and thus, in energy consumption, reduction of pollution and reduction of transportation costs can be seen as a significant change which has become an important factor in economic prosperity and increasing exports and imports. Considering that ship speed is an important factor in passenger transportation, perishable goods, and valuable commodities, it should be noted that with the increase in speed, the costs due to fuel consumption also increase but fixed costs such as capital costs, employee costs, etc. decrease with increasing speed, because increasing speed reduces operation time and subsequently increases efficiency. Of course, the speed of the ship can be increased to such an extent that there are no risks such as sudden deviation, and damage to the engine and other equipment.

## **8. Maritime safety and security**

If we divide transportation indicators into four categories: convenient, cheap, fast, and safe, one of the most basic indicators is safety. So, transport customers will seek to meet other indicators, which actually indicate the critical nature of this indicator. And failure to provide it leads to irreparable damage. Safety on the sea and port transportation is the level of guarantee provided by the custodians in protecting the life and property of all the stakeholders of the system (Safar zadeh, 2006).

The standard (ISM code) is one of the safety regulations in maritime transportation, which was designed and developed based on the ISO 9000 quality management system, and is considered a global standard for safe shipping and reducing pollution in different countries. This system, which is related to ships, was formed following a new idea in which the human

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and management factor is considered at the center of a risk prevention and control system with the aim of ensuring and strengthening maritime safety. The safety management system after the addition of the ninth part of the international code became enforceable for the protection of life at sea (SOLES), so the standard (ISM code) is implemented by the shipping company in order to ensure the implementation and application of safety principles and rules. All the requirements in the regulation can be divided into four categories: management, equipment and facilities, manpower, and methods. Safety management in transportation systems is carried out with the aim of guaranteeing, controlling, improving safety, and it is necessary to pay attention to the following issues: when the existing systems are being used, there are always things including infrastructure, equipment, etc. that were not designed or implemented with safety perspective during the design and implementation. Because safety science is newly established even at the level of very advanced countries.

- a) Ensuring and improving the safety of a system has the greatest effect only in the design phase, and sometimes securing a system will be more expensive than replacing it with a safe system.
- b) Designing and securing a system does not guarantee its safety throughout the life of the system. Therefore, continuous and permanent review of the systems is necessary to provide and guarantee its safety.

### **9. Legal effects of international shipping standards**

#### **9.1. Maritime privileges rights**

Maritime privilege is a real right; (Line) and creates the basis of the right of action against the object (Action in Rem). The object is the ship, and the action against it is aimed at realizing the claim that is based on the objective right (Farmanian, 1970). These two rights are necessary and require each other. That is, wherever the existence of real maritime rights is proven, the right to claim against the ship can also be established. For this reason, it is called privilege rights because it must be paid before all other debts. Paying attention to the fact that maritime exploitation and the use of ships and the equipment of ships require huge expenses, guarantee transactions or ship mortgages are the easiest way to strengthen the



financial strength of the ship supplier. Of course, this right is included in Iran's maritime law in the second chapter and articles 29-41, which include: litigation costs and port dues, Claims due to the employment of ship employees, damages caused by collisions claiming port facilities and waterways, salary for maritime rescue and common maritime damages, claims arising from contracts and operations to meet the ship's needs and port organization costs for the movement of sunken ships. If we divide the necessary standards of the ship into two parts, technical and skill standards, we will see that there are cases of privileged maritime rights to meet these standards. For example, the claims arising from the contract and operations that the commander outside the base port according to his legal authority meet the real needs in terms of maintaining the ship or the possibility of continuing the voyage. As we see in this right, to ensure the seaworthiness of the ship to continue the journey and maintain ship standards, the captain has the right to mortgage the ship so that these requirements are met and the ship's work can continue. The wages of the ship's employees, especially the personnel who play an essential role in the management of the ship, are also maritime privileges. Necessarily, these personnel have special skill certificates that have been given to them for the operation of the ship, and in the absence of these personnel, there is a possibility of the trip being dangerous, and the ship's operation will be prevented by the local authorities or the ship's country. Therefore, due to the importance of these people, their financial rights should be included among the privileged maritime rights (Jafari langeroudi, 1989).

## **9.2. Nationality of the ship**

Nationality is a legal relationship between a person and his country. So that his rights and duties come from this relationship (Jafari langroudi, 1989). Of course, some properties and things, due to their application and importance in the economy of a country by granting rights, are inclusive to Nationality law, such as ships, airplanes, etc. Reasons for nationalizing ships according to Article 94 of the High Seas Convention 1982:

- a) International shipping causes traffic in the waters of other countries, and each system has special rights and different laws. In order for the ship to

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be able to navigate and not suffer from problems caused by this diversity, the rules and regulations of the ruling government should be the same.

- b) More than anywhere else, ships travel on the high seas, which does not belong to any government, and in order for the ships not to face anarchy, they should defiantly fly the flag of a country and be subject to citizenship, sovereignty and jurisdiction of the members of that country. In the case of ships, citizenship is provided by registration, which is usually done with information including the ownership of the ship along with all its owners, the exact type of ship, its dimensions and standard specifications, and characteristic marks if they exist.

With the granting of citizenship, the flag of that country is raised on the ship, which shows the nationality of the ship and the laws governing it, the government responsible for the ship for the protection and defense of the rights of the ship. The responsibility of the international community is, for example, in the case of breach of rules, sea pollution, and accidents. According to Article 91 of the 1982 Convention on the Law of the Sea, each state determines the conditions for obtaining citizenship and registration and the right to use its flag for ships. (Davidar, 2001) According to the provisions of the 1986 United Nations Convention on the Registration of Ships:

- a) The subordinate ship (flag bearer) must comply with the laws and regulations of the state granting citizenship regarding the registration of ships, international regulations, and standards, especially the regulations related to the safety of ships and persons on board, preventing pollution of the marine environment.
- b) The subordinate ship must accept the periodic inspection of the inspectors of the competent government, which is carried out in order to ensure compliance with international regulations and standards, and follow the instructions of these inspectors.
- c) The subordinate ship must always preserve the necessary documents that confirm the right to raise the flag, as well as government licenses for trading goods, according to the type of ship and the standards available in the ship and carrying passengers up to a certain capacity, as



well as the skill certificates of the crew and employees and other relevant documents emphasized in the international convention.

Iran's maritime law, according to paragraph 1 of article 1, has made it mandatory to register ships both in fishing and recreational affairs and in commercial affairs. One of the reasons for this is ensuring compliance with standards in all types of ships. The registration of the ship creates the possibility of the sovereignty of the respective government. For this reason, the law deems it necessary that the possessions, transactions, and rights of the ship, including any changes in the passenger or cargo capacity of the ship, major changes in the ship's structure, etc., should be recorded in the ship's document, which is its birth, which increases sensitivity to standards. According to the provisions of the 1982 United Nations Convention on Sea Law, the subordinate ship and the sailors and captain of the subordinate ship in ministerial, technical, and social affairs, depending on the jurisdiction and supervision of the respective government. Subordinate ships in terms of the ship's safety guarantees must take measures that are accepted and followed by the respective governments to improve the condition of the ship, especially in matters such as construction, equipment, seaworthiness of the ship, ship management, and working conditions, life, training of employees according to international regulations, use of signs, maintaining communication, preventing accidents, periodic inspection by competent inspectors.

### **9.3. Marine insurance**

Seaworthiness is also one of the subjects of marine insurance rights. The ship must be able to make the voyage intended by the parties to the marine insurance. This ability is not exclusive to the ship's apparent machinery. In addition to the fact that the body and machinery of the ship must be safe enough and without wear and tear, it must have the right conditions in terms of sufficient fuel, complete equipment, skilled crew, and competent captain, and other aspects that are necessary for a successful voyage (Gürses, 2015). It should be noted that the seaworthiness is not the same for

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all products. Depending on the agreement of the types of goods, in terms of the type or packaging, the seaworthiness of the ship is different.

For example, perishable goods such as meat must be transported by ships that are equipped with proper refrigerators. Thus, two types of shipping capabilities are available:

- a) The ship itself is the subject of insurance, in which case the said capability will be limited to the ship's ability to face the dangers of the sea that threaten the ship itself.
- b) The goods are subject to insurance, in which case the seaworthiness of the ship also includes the ability of the ship to carry goods. As such, the latest ability of the ship is called the ability to carry goods.

Usually, insurance companies insure ships by determining the level of compliance with international standards in the ship and by using documents and certificates issued by international institutions such as Lloyd's of London, which are active in the classification and grading of ships. It should be noted that in the classification of ships, ships of a higher rank should pay less for insurance. This is due to the insurer's relative confidence in the non-occurrence of damage and marine accidents due to wear and tear of the ship and its equipment. But in reality, it is not like that, but naturally, any ship that has more equipment and more and newer standards will have a higher class and grade and a higher price, and thus the insurance of such a ship will have a higher cost. In calculating the particular average, the standards have a special place, which means that if the ship's seaworthiness and loading capacity are low or not at an acceptable level, the insurance companies will refuse to compensate for the damage from part to the whole of it, which of course is different depending on the type of damage, whether it is total or partial (Ramezan zadeh,2018).

### **9.4. General average**

According to York Antwerp Rules<sup>1</sup>, the occurrence of a general average is realized only and only when extraordinary expenses are intentionally and reasonably made for the safety of the ship and the preservation of

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<sup>1</sup> YORK ANTEWERP RULIES



Property from the dangers that occur on a joint voyage (Farmaian, 1970). According to Article 185 of Iran's maritime law, the general average marine has extraordinary expenses and damages caused voluntarily for the health of the ship and its passengers and cargo. Below, we discuss the conditions for the realization of the general average and review of standards:

- a) The danger seriously and truly threatens the property. In this way, when a danger seriously threatens the ship and its cargo, the necessity of preserving the ship takes priority over the preservation of the cargo and the standard and equipment of the ship is necessary as much as possible until the safe completion of the sea voyage. For example, the repair of the ship and the return of the standards is the first priority when the damage to the ship and equipment causes irreparable damage to the ship's cargo, for example, a failure in the cooling system of a food-carrying ship or the presence of holes and leaks in the hull and tanks of special oil-carrying ships (Najafi as fad, 2008).
- b) The payment of extraordinary expenses must be real and intentional. The important thing is that part of the cargo and equipment of the ship that is thrown into the sea must be usable and not out of use, which means that it is part of the ship's standards. Of course, the standards that are necessary to continue this voyage.
- c) The purpose of paying extraordinary expenses is to prevent the risk of sea travel, including the risk of a ship sinking, the loss of important standards such as the failure of telecommunications and navigation devices, the risk of fire, etc.
- d) The ship and the cargo at risk should benefit from extraordinary expenses that are proportional to the danger that threatens the ship and its property and should be in order to protect common interests (Hooshang, June 1966). In this way, the less important standards can be sacrificed to the more important standards and recognizing this is a safety criterion for sea travel, and as a result, both the ship and the cargo reach their destination safely.

## **10. Maritime safety**

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The most important international document in the field of maritime safety was approved by the Islamic Council of Iran on 27/02/1373. This convention includes a main text and an addendum that forms the main body of the convention, including:

- a) General provisions and definitions, types of ship inspections, types of ship certificates, the certificate validity period.
- b) The structure of fire protection, fire detection, and fire extinguishing, including provisions for warning and fire extinguishing systems, the material of the ship's structure to resist fire, etc., depending on the type and length of the ship.
- c) People's rescue equipment and their arrangement, including the number of lifeboats, their construction, other rescue equipment, and the location of their installation on the ship.
- d) Radio communication, including the requirements of equipment and its transportation, emergency announcements by radio, etc.
- e) Maritime safety, including navigation regulations, the use of marine information services to prevent accidents, etc.
- f) Transporting goods includes regulations and special methods for loading, characteristics of different loads and requirements for carrying loads, how to restrain different loads in warehouses, and transporting cereal grains.
- g) Carrying dangerous goods includes regulations on classification, notation, and necessary precautions.
- h) Safety and Regulations for cargo and passenger ships
- i) Regulations related to the management of ship safety operations
- j) Safety criteria for the safety of high-speed craft
- k) Additional inspection related to safety and especially inspection and control of ships by the government that owns the port.

The International Convention on Maritime Search and Rescue was approved in Imo in 1979 and became enforceable in 1985. This convention anticipated the organization of search and rescue centers and coordination procedures on the coast, as well as methods of cooperation between several neighboring countries to conduct search and rescue operations in a common area. Also, there are regulations regarding previous preparation measures, creation of maps and determination of operational area, the



establishment of main and subsidiary searches and rescue centers, and in case of an accident, effective operational methods are fully foreseen. The full implementation of this convention requires taking three main steps:

- a) Equipping the search and rescue centers with the necessary communication devices to establish contact between the ship in distress and the shore
- b) Equipping search and rescue centers with lifeboats, helicopters, airplanes, and medical equipment
- c) Coordination and cooperation with countries in the region and at the international level to exchange information and necessary cooperation to establish telecommunication centers

Regarding the characteristics of maritime danger and rescue operations and the role of standards in what logically justifies the conduct of rescue operations and gives them a legal nature, the following characteristics should be considered:

- a) Relative or non-absolute risk: What can be disputed in a marine accident is not proof of the existence of the risk, but the degree and extent of the real risk (Najfi asfad, 2017). The severity of the danger effectively and directly depends on the position of the vessel that has an accident, as well as the capable commander, the facilities, and the equipment deployed in it. Generally, it is directly related to the technical and construction standards of the ship and the skill standards of the crew and Captain. The decision taken according to these considerations in accepting the sea rescue operation can represent the reality of the danger.
- b) Lack of actual necessity or immediacy of danger: One of the examples of objective considerations is that the commander makes a realistic assessment of the urgency of the danger and the probability of serious and immediate threat to the property and commercial cargo loaded on the ship by using his personal experience and knowledge and using the opinions of expert advisors
- c) Proof of the existence of danger: Usually, a dispute arises when the rescuer claims the rescue operation and demands payment for these services. For this reason, it is the rescuer's responsibility to provide sufficient reason to prove that the danger is real. Of course, the maritime

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court will not be independent of the opinions and technical statements of experts in the field of rescue and maritime assistance that comment according to the level of technical standards, construction, facilities, and equipment available on the ship.

## **11. Conclusion**

The issue of standards has direct links with health and safety, technology from different perspectives, including scientific, industrial development and political, social, economic and cultural growth. The Discussion of the ship's standards that prove the ship's existence puts us on this path to pay more attention to the observance of these standards in the ship and to take steps to update these standards and coordinate with international laws and regulations in this field. And to encourage the owners of shipping and shipbuilding industries by providing special facilities and useful and constructive guidance in the direction of the growth of standardization in the field of marine transportation and to reduce common costs to the minimum possible. Of course, the realization of this matter will depend on the approval and implementation of international conventions and regular and serious inspection and supervision by the relevant organizations, as well as the strict follow-up of the authorities and their compassion for the promotion of the position of shipbuilding and maritime industries in the international and national arena in countries that have special beaches and Ports. Although the developed countries in this field realized the importance of this issue much earlier and in advancing their goals and national economic growth, they surpassed the undeveloped countries. In this study, the increasing importance and the position of international ship standards in maritime law issues were discussed, and issues such as ship and the validity of the ship lease contract, marine insurance for ships and ship, and the principles of ship registration and citizenship, as well as the issue of standards in the discussion common maritime damages and the special position of standards in maritime prerogative rights, it was discussed. This means that giving rights to people and issues that are involved in complying with standards and maintaining standards and maintaining the safety of the ship are prioritized. Proving the role of



standards and maintaining standards and equipping ships with necessary tools and Equipment for maritime safety and saving the lives of employees is emphasized by international forums. What gives the ship its existence are the standards (equipment, devices, and tools, professional and experienced staff). And something that challenges all issues of maritime law and points out the need to review the laws and regulations of maritime law in different fields. And these are the standards that determine the most important indicators of maritime law, i.e. maritime safety and environmental pollution. And also, due to the important role of this device in business, it places the ship in the position of an independent legal entity and makes the ship have its own rights and duties. Therefore, it proves the strong and complete dependence of the ship on standards.

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