The Concept of Shipwreck among National and International Law*

Abstract

This article aims to investigate the juridical concept of "shipwreck".

Italian law does not provide a legal definition of shipwreck ("*relitto*") although the explanatory *memorandum* on Maritime Code states that the wreckage of a vessel implies an "intervened substantial modification of the physical consistence of the *res*"; French law specifies that "*L'état d'épave résulte de la non-flottabilité, de l'absence d'équipage à bord et de l'inexistence de mesures de garde et de manoeuvre*" while, on the contrary, English law classifies wrecks in "jetsam", "floatsam", "lagan" and "derelicts", giving relevance to the abandonment of the vessel *sine spe recuperandi* and *sine animo revertendi*.

The significance and combination of objective criteria (physical stranding, sinking, submersion or destruction of the ship) and subjective criteria (abandonment of the ship without the intention to return and resume the possession) will be examined in order to determine what a shipwreck is from a legal point of view; in particular the analysis will focus on the concept of non-buoyancy and perishing of the ship (derived from the Latin notion of *interitus rei*) and on the notion of "abandonment".

Furthermore the article will consider the definitions of shipwreck given by international conventions on Maritime Law, such as the International Convention on Salvage (1989), the Nairobi International Convention on the Removal of Wrecks (2007) and the Unesco Convention on the Protection of the Underwater Cultural Heritage (2001), comparing the broader classifications of shipwreck included in those treaties with the national definitions.

In light of the aforementioned analysis, the conclusion will consider if it is possible to individuate the lowest common denominator and some basic elements of a truly international (and, possibly, universal) definition of "shipwreck".

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1. *Introduction*

Ships have their own life cycle: they are designed and built by men, they are given a name, a nationality, a classification and a function according to their characteristics and purposes [(1)].

Eventually also vessels are destined to perish and to be demolished at the end of their commercial life.

However, in some cases it may happen that the life of the vessels end accidentally when, due to external and unpredictable circumstances ("perils of the sea"), they are reduced to a state of wreck.

According to the definition given by Ulpian "*navis etenim ad hoc paratur ut navigel*" [(2)]: since the origins, the concept of ship has been strictly connected to its attitude to navigate, as a consequence of its building structure and commercial purpose. *Prima facie*, with a vague and perhaps tautological definition, a shipwreck could be qualified as a structure which has lost its functional attitude and therefore it is not usable anymore for water transport.

At this point, a terminological clarification must be done. In English language the word "shipwreck" indicates both the remains of a wrecked ship [(3)] ("*relitto*" in Italian or "*épave*" in French) and the destruction of a ship at sea by sinking or breaking up ("*naufragio*" in Italian or "*naufrage*" in French) [(4)].

In order to avoid any confusion in this paper the term "shipwreck" will be always used in the first meaning.

Furthermore, the word "shipwreck" will be used *strictu sensu* as referred to the hull of the vessel, be it the compact remains of the ship or the detached parts formerly connected. In fact, "wrecks" in a more general sense, can also be the

(1) In Britain a ship is also traditionally referred to as "she" instead than "it", in accordance to the long-standing maritime tradition of regarding vessels as female.

(2) E. ULPIAN, *Digesta*, *De usufructu*, 7, 1, 12, p. 1.

(3) *Oxford Dictionary of English*, 3rd ed., Oxford, 2010, p. 1644.

(4) In this sense shipwreck is «the breaking or shattering of a ship or vessel, either by driving ashore, or on rocks or shoals in the mid-seas, or by the mere force of the winds and waves in tempests» (A. BURRILL, *A New Law Dictionary and Glossary*, part I, New York, 1850, p. 931). According to the definition given by medieval jurist Accursius (1182-1263) "*Dicitur naufragium quasi navis fractura, a nave et frango*" (ACCURSIUS, *Ad legem*, I, C. II, 5).

appurtenances of the vessel (e.g. armaments of military ships) [5] or the abandoned load of the ship, whose destiny might or might not be linked to the wreckage of the hull of the vessel.

2. *The Italian perspective: an "objective" definition of shipwreck*

Italian Maritime Code defines ship as a "structure directed to water transport" [6] and refers several times to the concept of "*relitto*" (shipwreck) without providing any definition of it [7].

Although the Italian word "*relitto*" derives from the Latin concept of *reliquere navis*, which literally describes the notion of a ship abandoned by its crew and passengers, the connection with the act of abandonment has been progressively lost.

In fact, according to the explanatory *memorandum* on Maritime Code the wreckage of the vessel implies an intervened substantial modification of the physical consistence of the good ("*intervenuta sostanziale modificazione della consistenza fisica del bene*") [8].

Thus the ship is "lost" when it loses the essential elements which identify it as a vessel, in other words when its physical consistence is altered in such way that it can not be destined anymore to transport people or goods by sea [9].

Such definition has been confirmed by Italian Supreme Court, according to which the condition of shipwreck implies the loss of all typical characteristics of a vessel, reduced to a complex of materials [10].

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[5] An appurtenance has been defined as «any specifically identifiable item that is destined for use aboard a specifically identifiable vessel and is essential to the vessel's navigation, operation, or mission» (*Gonzalez v. M/V Destiny Panama*, Southern District of Florida, 102 F. Supp. 2d 1352, at 1354-57 (S.D.Fla.2000).

[6] According to art. 136, the first paragraph of the Italian Maritime Code («Codice della navigazione») «Per nave s'intende qualsiasi costruzione destinata al trasporto per acqua, anche a scopo di rimorchio, di pesca, di diporto, o ad altro scopo».

[7] Italian Maritime Code mentions shipwrecks at art. 73 (removal of submerged wrecks), at art. 191 (duty of the crew to cooperate in recovering shipwrecks), at art. 501, 502, 504, 507, 510 and 589 (discovery, salvage and removal operations) and at art. 1146, 1197 and 1227 (maritime crimes).

[8] In this sense *Relazione al Codice della navigazione*, n. 199.

[9] E. RIGHETTI, entry "*Nave*", in *Digesto delle discipline privatistiche*, *Sezione commerciale*, vol. X, Milano, 1994, p. 186; M. GRIGOLI, entry "Naufragio (dir. nav.)", in *Enciclopedia del diritto*, vol. XXVII, Milano, 1977, pp. 560-561; see also *Relazione al Codice della navigazione*, n. 298.

[10] At this regard see Corte di Cassazione, n. 4096 (31 October 1956), in *Rivista di diritto della navigazione*, 1957, II, p. 248.

The concept of shipwreck is a "physical" one, as it indicates the transformation of the ship as an object. In fact, a wreckage occurs when a ship ceases to be buoyant, in other words when it becomes unable or unfit to navigate or, as Latins used to say, *in eum statum qui providentia humana reparari non potest:* the wreckage implies the *interitus rei*, the physical perishment of the ship.

According to some Authors the vessel becomes non-buoyant when its conditions make navigation impossible or when it has got such severe structural damages that make impracticable (due to excessive deterioration) or economically inconvenient to repair it (as it will require almost as much time end expense as to build a new one) [(11)].

However, it may be not evident which is the exact moment when the physical degradation transforms a vessel in a shipwreck: in fact, the *derelictio* is usually caused by a series of connected events which progressively degrade the structure of the ship, until the loss occurs when the hull gets destroyed.

Therefore, it may be argued that integrity of the hull is the paramount element to distinguish a vessel from a shipwreck.

The physical "dissolution" of a ship may be caused by several reasons, usually by a sinking or breaking up [(12)] ("*naufragium*") due to external causes (e.g. collision, storm, act of god, act of war, sabotage) or internal ones (e.g. fire, explosion, flooding, structural failure).

In most cases the destructive event implies, as a consequence, the sinking or breaking up of the ship although such events are not always able to provoke the wreckage *per se* [(13)].

In order to have a *derelictio* the alteration of the functional and structural elements must be effective, permanent and irreversible. On the contrary there is still a ship and not a wreck when such ship is temporarily unnavigable but its buoyancy can be promptly restored with proper repairing [(14)]. For example, it is

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(11) F. CARNELUTTI, *Appunti in tema di abbandono nell'assicurazione marittima*, in *Rivista di diritto commerciale*, 1913, II, p. 73 ff.; M. IANNUZZI, *La sommersione della nave e la nozione di "interitus rei"*, in *Rivista di diritto della navigazione*, 1955, II, p. 269; L. SCOTTI, *La rimozione di cose sommerse*, Milano, 1965, p. 86 ff.

(12) Art. 191 of Italian Maritime Code obliges the crew to cooperate in recovering shipwrecks in the event of a sinking or breaking up, if requested by the captain. ("In caso di naufragio della nave, coloro che ne componevano l'equipaggio, ove ne siano richiesti immediatamente dopo il sinistro dal comandante ovvero dall'autorità preposta alla navigazione marittima o interna, sono tenuti a prestare la loro opera per il recupero dei relitti").

(13) D. GAETA, entry "*Nave (dir. nav.)*", in *Enciclopedia del diritto*, vol. XXVII, Milano, 1977, p. 631.

(14) E. RIGHETTI, entry "*Naufragio*", in *Digesto delle discipline privatistiche, Sezione commerciale*, vol. X, Milano, 1994, p. 149.

not a case of wreckage when a stranding or temporary submersion or even a sinking occurs and the ship fills with water but is not totally damaged and does not lose its physical characteristics; similarly, an accident occurred in low backdrops where the ship can be easily recovered may be less susceptible of causing a *derelictio*.

Sometimes the sinking is not the consequence but the cause of the wreckage; this happens when the structure of the ship, not yet permanently altered at the moment of the sinking, gets modified irreversibly due to the prolonged underwater permanence.

The cause of the wreckage and the place where the shipwreck is located (sea, ocean floor, shore) does not have any relevance in order to qualify the *res* as a wreck.

As a consequence it is possible to assert that a shipwreck is not anymore a vessel *strictu sensu*, but something different, both physically and legally, as the classification of a structure as a vessel ceases when the ship has become a wreck [(15)].

3. *The connection between the objective and subjective element in the French legal system*

In defining the concept of shipwreck other legal systems, unlike Italian law, require not only an objective element (physical transformation) but also a subjective one.

French law gives a definition of shipwrecks ("*épaves de navires*") at art. L5142-1 of *Code des trasports*, (Title IV "*Navires abandonnés et épaves*"): "*Les dispositions du présent chapitre s'appliquent aux épaves de navires ou autres engins maritimes flottants, aux marchandises et cargaisons et aux épaves d'aéronefs trouvés en mer ou sur le littoral maritime, à l'exclusion des épaves soumises au régime des biens culturels maritimes fixé par les dispositions du chapitre II du titre III du livre V du code du patrimoine. L'état d'épave résulte de la non-flottabilité, de l'absence d'équipage à bord et de l'inexistence de mesures de garde et de manoeuvre, sauf si cet état résulte d'un abandon volontaire en vue de soustraire frauduleusement le navire, l'engin flottant, les marchandises et cargaisons ou l'aéronef à la réglementation douanière*" [(16)].

[(15)] *Contra* F. BERLINGIERI, according to whom "There is no antinomy between «vessel» and «wreck», for this latter term does not define a type of structure or object but rather the condition of a structure or object at a given time" (F. BERLINGIERI, *International Maritime Conventions: Vol. 2. Navigation, Securities, Limitation of Liability and Jurisdiction*, Abingdon, 2015, p. 74).

[(16)] The definition of "*épaves de navires*" given by the *Code des trasports* has replaced the more general definition of "*épaves maritimes*" of *Décret n°61-1547 du 26 décembre 1961 fixant le régime*

In order to have a shipwreck, the combination of two elements is required: firstly, the structure must be non-buoyant, in other words it must have lost its seaworthiness (objective element); secondly, it must have been abandoned by the crew and left without surveillance or maneuvering (subjective element).

In fact, to consider an object as a maritime wreck, the owner must have lost the possession of it. As is well known, the possession is the *de facto* control of a person toward a thing; such condition can terminate when the material possession or the *animus possidendi* is lost. Consequently, there is a shipwreck when the ship can not be recovered (e.g. because located on a deep seabed) or when, despite its location, the owner has not any intention to save it (e.g. because salvage is considered excessively expensive).

As far as the location of the shipwreck is concerned, French law applies to objects which are either found in the sea or on the seabed, excluding wrecks subject to the regime of maritime cultural heritage.

4. *British "derelicts": the triumph of the subjective element*

In *common law* the term "wreck" is a general expression which, in its widest sense, indicates anything "that is afloat upon, sunk in, or cast ashore by the sea" [17].

des épaves maritimes (modifié par Décret n°91-1226 du 5 décembre 1991): "*Sous réserve des conventions internationales en vigueur, constituent des épaves maritimes soumises à l'application du présent décret [*définition*] : 1. Les engins flottants et les navires en état de non-flottabilité et qui sont abandonnés par leur équipage, qui n'en assure plus la garde ou la surveillance, ainsi que leurs approvisionnements et leurs cargaisons. 2. Les aéronefs abandonnés en état d'innavigabilité; 3. Les embarcations, machines, agrès, ancres chaînes, engins de pêche abandonnés et les débris des navires et des aéronefs ; 4. Les marchandises jetées ou tombées à la mer ; 5. Généralement tous objets, à l'exception des biens culturels maritimes, dont le propriétaire a perdu la possession, qui sont soit échoués sur le rivage dépendant du domaine public maritime, soit trouvés flottants ou tirés du fond de la mer dans les eaux territoriales ou trouvés flottants ou tirés du fond en haute mer et ramenés dans les eaux territoriales ou sur le domaine public maritime. Ne sont pas considérés comme épaves au sens du présent décret les navires, engins flottants, aéronefs, marchandises et objets volontairement abandonnés ou jetés en mer ou sur le rivage en vue de les soustraire à l'action de la douane*".

[17] Entry "Wreck", in *The Encyclopædia Britannica*, 14th ed., London, 1929, p. 801. From ancient times a distinction has been made between wreck floating or sunken and wreck cast ashore: what is cast upon the shore by the sea was defined "wreck" in the proper sense of the word ("*wreccum maris*") and belonged to the king *iure coronae*, while floating or sunken wreck ("*adventurae maris*") were subject to *admiralty law*. According to Blackstone «In order to constitute a legal wreck, the goods must come to land. If they continue at sea, the law distinguishes them by the barbarous and uncouth appellations of jetsam, flotsam and ligan. […] These three are therefore accounted so far a distinct thing from the former, that by the king's grant to a man of

According to section 255 of the *Merchant Shipping Act* (1995), the definition of wreck includes "jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water".

In particular, the word "jetsam" describes goods cast overboard to lighten a vessel in danger of sinking, "flotsam" describes goods still floating at sea lost from a ship which has sunk or otherwise perished, "lagan" describes goods cast overboard from a ship which afterwards perishes [(18)].

The word "derelict" describes instead property, whether vessel or cargo, which has been abandoned and deserted at sea by the owner, or the master and crew who represent him without any hope of recovering it (*sine spe recuperandi*) and without the intention to return to it (*sine animo revertendi*) [(19)].

The British legal system considers just the subjective element: a ship can not be considered as a legal derelict when the vessel is left temporarily, without

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wrecks, things jetsam, flotsam and ligan will not pass» (W. BLACKSTONE, *Commentaries on the Laws of England,* Vol. I, London, 1765, par. 292).

[(18)] According to a definition given in the *Sir Henry Constable Case* ((1601) 3 Coke's Rep. Pt. 5, quoted by W. KENNEDY, *A treatise of the law of civil salvage*, London, 1891, p. 54, "'*Floatsam'* is when a ship is sunk or otherwise perished, and the goods float on the sea. *'Jetsam'* is when the ship is in danger of being sunk, and, to lighten the ship, the goods are cast into the sea, and afterwards, notwithstanding, the ship perish. *'Lagan'* (*vel potius 'ligan'*) is when the goods which are so cast into the sea, and afterwards the ship perishes, and such goods cast are so heavy that they sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy or cork, or such other thing, that will not sink, so that they may find them again, and dicitur *lig. a ligando*; and none of these goods which are called jetsam, flotsam, or ligan, are called wreck so lond as they remain in, on or upon the sea; but, if any of them by the sea be put upon the land, then they shall be said wreck".

[(19)] The *High Court - Queen Bench Division* in the case *Pierce v. Bemis*, (1986, *Lloyd's Rep*., 132), quoting a previous decision in the case *The Gas Float Whittion* (1896) (n. 2, p. 42 CA), observed that «A ship is derelict in the legal sense of the term if the master and crew have abandoned her at sea without intention of returning to her and without hope in their part of recovering her». Furthermore in judging the case *The Sarah Bell*, Dr. Lushington observed that "When we speak of the *spes recuperandi*, we mean the hope and expectation entertained by the master and crew of returning to their vessel, not what was the precise state of things, but what was the intention by which they were actuated at the time» (T. THORNTON, *Notes of Cases in the Ecclesiastical & Maritime Courts*, Vol. 4, London, 1846, p. 146). In his judgment in the case *The Aquila*, Sir William Scott stated that «A mere quitting of the ship for the purpose of procuring assistance from shore, or with an intention of returning to her again, is not an abandonment" ((1798) 1 Ch Rob 37 at 40-41).

any intention of a final abandonment, whether from necessity or any other cause, but with the intent to return and resume possession [20] [21].

Therefore, in order to determine the existence of a derelict is not relevant the physical act of abandonment, but the state of mind of the master and crew at the time of quitting the ship. Such concept is ambiguous: it may refer both to abandonment of ownership and to abandonment of possession; however referring it to the first would result in narrowing the concept of derelict, as in many cases the intent to abandon ownership is missing or hard to prove [22] [23].

As further complication, sometimes British case law has given relevance not to the foresight of the consequences of the abandonment (*animus revertendi*), but to the voluntariness of the abandonment itself: as a consequence in every case in which the abandonment took place due to *force majeure* (which, actually, is the rule) and not as a result of a voluntary act, it would not be a case of *derelictio* [24] [25].

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[20] H. FLANDERS, *A treatise on Maritime Law*, Boston, 1852, p. 323.

[21] According to Abbott «Whether property is to be adjudged derelict is determined by ascertaining what was the intention and expectation of those in charge of it when they quitted it. If those in charge left with the intention of returning, or of procuring assistance, the property is not derelict, but if they quitted the property with the intention of finally leaving it, it is derelict, and a change of their intention and an attempt to return will not change its nature» (C. ABBOTT, *A treatise of the law relative to merchant ships and seamen,* 14th ed., London, 1901, p. 994).

[22] G. BRICE, *The Maritime Law of Salvage*, 5th ed., London, 2011, p. 279.

[23] In the case *Bradley v. Newsom*, Lord Finlay observed that the fact that the vessel is derelict «does not involve necessarily the loss of the owner's property in it, but any salvors by whom such a vessel is picked up have the right to possession and control» (*Bradley v. Newsom, Sons & Co* [1919] AC 16 at p. 27).

[24] In the aforementioned case *Bradley v. Newsom*, where the abandonment was caused by a submarine attack, Lord Finlay stated that «The crucial question is this. Was this vessel when she was picked up by salvors a derelict in the legal sense of the term; or, in other words, had the master and crew abandoned her without any intention of returning to her, and without hope of recovery? It appears to me to be quite impossible to answer this question in the affirmative. In quitting the vessel the master and crew simply yielded to force. There was no voluntary act on their part, and the case stands exactly as it would have done if they had been carried off the vessel by physical violence on the part of the crew of the German submarine. It would be extravagant to impute to them the intention of leaving the ship finally and for good. They simply bowed to the pressure of irresistible physical force. If a British destroyer had appeared on the scene, and had driven off or sunk the submarine, they would gladly have returned to their vessel. All they intended was to save their lives by obeying the orders of the German captain ... The physical act of leaving the vessel is only one feature in such a case. Another and essential feature, in order to make it a case of derelict, is the state of mind of the captain and crew when they left. The question quo animo is decisive, and the facts seem to me to show clearly that the quitting of the ship was not under such circumstances as to make it a case of derelict» (*Bradley v. Newsom, Sons & Co* [1919] AC 16 at p. 27).

[25] Interpretation has developed even a concept of "quasi derelict" when a vessel is not abandoned, but the crew are «both physically and mentally incapable of doing anything for their safety» (*The American and English Encyclopædia of Law*, vol. XXI, New York, 1893, p. 683).

Once legally abandoned, the ship may be salvaged by third parties. As a consequence in common law systems providing legal proof of abandonment is essential in order to make applicable *salvage law* and *law of finds*, which confer to the salvor (or to the finder) legal rights on the recovered property [26].

5. *Definitions of shipwreck included in some international conventions*

Also some international conventions on maritime law deal with shipwrecks although, in order to widen their own field of application, terms are generally used in a different (and broader) sense compared to national law.

The International Convention on Salvage [27], concluded in London on 28 April 1989 end entered into force on 14 July 1996 [28], does not provide a definition of shipwreck. However, the treaty defines at art. 1, "vessel" as "any ship or craft, or any structure capable of navigation" (lett. b) [29] and "property" as "any property not permanently and intentionally attached to the shoreline and includes freight at risk" (lett. c).

If it is evident that the aforementioned definition of "ship" does not include "shipwrecks", preparatory works make clear that the concept of "property" includes both sunken vessels and wrecks, although the question of whether

[26] On *salvage* in *common law* see, *ex multis*, G. BRICE, *op. cit.*; W. KENNEDY, F. ROSE, *Law of Salvage*, 8th ed., London, 2013.

[27] Unlike *common law* countries, which have always applied the single term "salvage" to indicate the rescue of a ship or its cargo from a peril, *civil law* jurisdictions, such as Italy and France, traditionally used to distinguish between "*assistenza*" (in French "*assistance*"), the salving of a vessel in danger but still manned by its crew, and "*salvataggio*" (in French "*sauvetage*"), the salving of a wrecked vessel. Consequently the definition of "shipwreck" had a paramount importance in order to apply the one or the other juridical institution. After entered into force the London International Convention on Salvage (1996) such distinction was largely abandoned.

[28] The *International Convention on Salvage* has been currently ratified by 69 States, the combined merchant fleets of which constitute approximately 51,71% of the gross tonnage of the world's merchant fleet.

[29] The definition of vessel adopted in the *CMI Montreal Draft* of the Convention was the following: "'Vessel' means any ship or craft, or any structure capable of navigation, including any vessel which is stranded, left by its crew or sunk". The words "including any vessel which is stranded, left by its crew or sunk" were eventually deleted from the final text because of the objections raised by France and Italy (F. BERLINGIERI, *Berlingieri on Arrest of Ships*, 4th ed., London, 2006, p. 63).

a sunken vessel should be considered *per se* a wreck or not has not been clarified [30].

Being shipwrecks "property" they are subject to the provisions of the Convention, except for the rights of States to make reservations «when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed» (art. 30).

The Nairobi International Convention on the Removal of Wrecks, adopted on 18 May 2007 and entered into force on 14 April 2015 [31], provides the legal basis and uniform rules for States to remove shipwrecks located beyond the territorial sea that may affect adversely the safety of lives, goods and property at sea, as well as the marine environment.

According to art 1, n. 4, of the text for the purpose of Nairobi Convention "«wreck», following upon a maritime casualty, means: *(a)* a sunken or stranded ship; or *(b)* any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or *(c)* any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or *(d)* a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken".

Given its peculiar scope of application, the Nairobi Convention provides a very broad definition of shipwreck: besides considering objects which have formerly never been a ship, it includes not only sunken and stranded ships, without reference to any changing in their physical structure, but also to floating ships which have not yet stranded or sunken (although they are «expected to») and, therefore, can not be considered shipwrecks in the ordinary sense of the term.

The Unesco Convention on the Protection of the Underwater Cultural Heritage, adopted on 2 November 2001 and entered into force on 2 January 2009 with the aim of protecting submerged cultural heritage [32], does not expressly mention shipwrecks; however according to art. 1 ("Definitions") for the

[30] F. BERLINGIERI, *Le convenzioni internazionali di diritto marittimo e il codice della navigazione*, Milano, 2009, p. 474 ff.

[31] The Nairobi Convention has currently 29 State Parties: Albania, Antigua and Barbuda, Bahamas, Bulgaria, Cook Islands, Cyprus, Denmark, France, Germany, India, Iran, Kenya, Liberia, Malaysia, Malta, Marshall Islands, Morocco, Netherlands, Nigeria, Niue, Palau, Panama, Republic of the Congo, Saint Kitts and Nevis, South Africa, Switzerland, Tonga, Tuvalu, United Kingdom; Estonia and Italy signed the treaty but have not ratified it yet.

[32] The *Unesco Convention on the Protection of the Underwater Cultural Heritage* has currently 55 State Parties: Albania, Algeria, Antigua and Barbuda, Argentina, Bahrain, Barbados, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Cambodia, Croatia, Cuba, Democratic Republic of the Congo, Ecuador, France, Gabon, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti,

purposes of this Convention «'Underwater cultural heritage' means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: […] *(ii)* vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context».

Also the Unesco Convention implicitly includes shipwrecks in the definition of ship, as it is obvious that vessels remained underwater for more than 100 years meet the objective requirement (physical transformation) to be considered shipwrecks.

As anticipated, it may be noticed that international conventions widen the concept of shipwreck: if in national law a shipwreck is qualified according to its physical definition (former ship which has lost its buoyancy) or according to the existence of a subjective element (abandonment of the ship by master and crew) or according both of them, in International Law the term "shipwreck" includes also structures which actually are still vessels [(33)].

As a consequence, the concept of "vessel" and shipwreck" and not necessarily antinomic: the creation of a wreck does not always imply the death of the vessel, as a shipwreck paradoxically may still be a vessel.

6. *Conclusions: is a unitary definition of shipwreck practicable?*

Providing a generally applicable definition of shipwreck is arduous: multiple (wider or narrower) definitions are accepted and established both nationally and internationally according to circumstances, purposes and fields of law under consideration (commercial law, insurance law, salvage law, safety of navigation,

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Honduras, Hungary, Iran, Italy, Jamaica, Jordan, Lebanon, Libya, Lithuania, Madagascar, Mexico, Montenegro, Morocco, Namibia, Nigeria, Palestine, Panama, Paraguay, Portugal, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Togo, Trinidad and Tobago, Tunisia and Ukraine.

[(33)] At national level a broad definition of shipwreck is included in the *United States Abandoned Shipwreck Act*, in force since 28 April 1988 and directed to protect historic shipwrecks from treasure hunting, where shipwreck is defined as "A vessel or wreck, its cargo, and other contents" (43 *United States Code*, § 2102 (d)). The *Abandoned Shipwreck Act Guidelines* clarify that "The vessel or wreck may be intact or broken into pieces scattered on or embedded in the submerged lands or in coralline formations. A vessel or wreck includes, but is not limited to, its hull, apparel, armaments, cargo, and other contents. Isolated artifacts and materials not in association with a wrecked vessel, whether intact or broken and scattered or embedded, do not fit the definition of a shipwreck".

preservation of historical heritage and marine environment) as the chosen definition usually has relevant juridical implications in the application of several maritime law institutions.

It has been observed that national law system, as Italy, consider just the objective element (physical transformation of the ship) while others give relevance only to the subjective element (Britain) and others to both of them (France).

The objective criterion has a major advantage: it is easily ascertainable and therefore provides better legal certainty [(34)].

On the contrary, the subjective element (investigation on the *spes revertendi*) introduces elements of uncertainty. Firstly, the *animus* is problematic to demonstrate. Of course circumstances and presumptions may help in recognizing the intent at the moment of abandonment. However, it is not that clear who is actually the subject who should show such *animus*: in fact the "abandonment" is an act of the master and of the crew, while the property of the vessel is related to ownership.

Furthermore, is equally unclear if such *animus* must be related to the loss of possession or to the loss of property. At this regard it must be observed that usually shipwrecks are *res vacuae possessionis* and not *res vacuae dominii*, as the wreckage is the consequence of accidental circumstances, and not of a positive intent to relinquish property by the owner (*animus derelinquendi*).

International law introduces further complexity as the concept of shipwreck included (or assumed) in some treaties does not consider the traditional distinctions theorized by national laws: international definitions seem to be strictly connected to the purpose of that single treaty, without any ambition to provide a universal definition.

From a purely theoretical point of view, a legal definition which refers just to the modification of the physical structure of the hull seems to be the best option in respect to the current florilegium of uncoordinated and contrasting definitions.

That might constitute a hypothetic "lowest common denominator" on which more complex classifications, destined to apply in specific fields or for particular purposes, could find their basis.

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[(34)] G. CAMARDA, *Il soccorso in mare: profili contrattuali ed extracontrattuali*, Milano, 2006, p. 79.

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