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SPECIFICS OF REAL RIGHTS IN THE SPHERE OF MERCHANT SHIPPING

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Abstract

The article studies the specifics of real rights in the sphere of merchant shipping. This paper aims at determining the typical features of real rights to material objects of merchant shipping. The authors of the article use the systemic-structural method to determine the role of ownership and other property rights in the legal regulation of merchant shipping relations. The logical-semantic method is utilized to examine civil laws and international conventions. The article concludes that property rights lay the foundations for the subsequent regulation of obligations and even public relations. However, liability law and public law cannot regulate property relations but can have a certain impact on them. This also applies to limited real rights that arise in connection with the lease of a vessel (in particular, a bareboat charter) or during the marine transportation of commercial and non-commercial cargo.

Keywords

Real rights – Property rights – Merchant shipping – Marine craft – Commercial cargo – Ownership

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Introduction

Merchant shipping and the legal regulation of relations in this sphere are historically characterized by certain features that are determined by the nature and specifics of this activity. From the legal perspective, private and public property relations, as well as inter-organizational relations, are closely connected but cannot be fully realized by one state and require the application of international marine law due to their transboundary nature.

Taking into account the complex legal regulation of property relations in the field of merchant shipping, we should emphasize that their legal regulation is based on civil law since merchant shipping realizes property and civil rights of various entities. This fact does not downplay the significance of public law in merchant shipping and such global tasks as ensuring the safety of navigation, reducing environmental impact, combating terrorism, piracy, illegal drug trafficking, etc. However, these objectives are secondary. A different viewpoint leads to an absurd conclusion that the most effective solution to these issues is a complete legal ban on merchant shipping. State financial goals and objectives are of a secondary nature, including the financial and legal property relations associated with merchant shipping.

The legal regulation of ownership and other property relations that determines the scope and content of obligatory civil relations in the field of merchant shipping, as well as public relations in this area, lies at the core of the civil regulation of merchant shipping relations. This determination should ensure the achievement of the goals of both public and civil regulation of merchant shipping. Therefore, it is necessary to distinguish between the right of ownership and other real rights to material objects used in merchant shipping.

Many modern scholars analyze ownership issues and other real rights to objects used in the field of merchant shipping. In particular, we should consider modern scientific studies on the legal regime of marine craft and real rights to sea vessels. For instance, E. Havice examined the specific legal regime of marine craft and inland navigation vessels. T. Pawlik and S. Neumann investigated the role of sea vessels as objects of real rights. A. Batory and S. Svensson studied the legal status of sea vessels alongside other scholars engaged in this sphere. In most cases, these issues are connected with the study of other international legal relations or obligations in the field of merchant shipping. There are not enough scientific works on the specifics of real rights, which justifies the relevance of this study.

Methods

The problem statement conditioned the use of the dialectical method to study the development of social relations in the field of merchant shipping and their legal regulation. The systemic-structural method aimed at determining the role of ownership and other real rights in the legal regulation of merchant shipping relations. The logical-semantic method was selected to study the provisions of civil law and international conventions. The formal-logical method revealed the content of civil law and international conventions regulating relations in the field of merchant shipping. Using the comparative-legal method, we searched for opportunities to adopt foreign experience into the legal regulation of merchant shipping relations and harmonize legislation of different states to improve the international legal regulation of merchant shipping.

Results

Activities in the field of merchant shipping are connected with the use of specific objects, whose real rights have typical features or are subject to special legal regulation. These objects are presented in Table 1.

1.	Marine craft;
2.	Commercial and non-commercial cargo;
3.	Objects of fishery resulting from the harvesting (capture) of aquatic biological resources;
4.	Objects resulting from mineral development and other sea bed mining;
5.	Seaport infrastructure facilities, including port hydraulic structures, water terminals, etc.;
6.	Land plots in the territory of sea ports;
7.	Seaport waters;
8.	Maritime hydraulics outside seaport infrastructure facilities;
9.	Artificial constructions located in the sea or sea bed;
10.	Internal waters, territorial sea and other natural objects in the territory of some state;
11.	Aquatic biological resources;
12.	Continental shelf and exclusive economic zone.

Table 1
Objects of merchant shipping

Other objects might also have a specific legal regime, for example, property that sunk in the sea. It is also necessary to highlight the material objects that are used in the field of merchant shipping but do not have the civil legal status of property since they are not subject to any sovereign state. First of all, it is the open sea¹.

It is worth mentioning that the current scientific doctrine understands the object of civil relations not only as a material object but also as the behavior of a person who is defined as a legal entity of jural relations. In relation to the right of ownership as the fundamental real right, such an entity is often the passive behavior of obliged persons who should not violate the unequivocal right of the owner. Some civil relations in the field of merchant shipping might be legally binding², for example, the carriage of passengers who act as subjects and objects of these legal relations³. However, such relations are also related to the specifics of property relations in the field of merchant shipping, in particular, real rights to a ship.

If we proceed from causes and their consequences, then economic relations in the field of merchant shipping should be regarded as basic relations that require appropriate

¹ N. Bankes y M. M. Das Neves, "The United Nations convention on the law of the sea and the Arctic ocean", *The Palgrave Handbook of Arctic Policy and Politics* (2019): 375-391.

² L. Lan, "Arbitration Proceedings in the Refusal of One of the Parties to the Dispute to Participate in the Process: International Legal Aspects", *Lecture Notes in Networks and Systems Vol: 129* (2020): 1061-1067.

³ I. Papanicolopulu, *International law and the protection of people at sea* (Oxford: Oxford University Press, 2018).

civil regulation. Since the basic economic relations of merchant shipping stipulate the acquisition and circulation of certain material goods⁴, the right of ownership and other property rights are based on such relations. Their content is determined by these economic relations but actively influences the development of basic relations. Thus, obligations and public relations in the field of merchant shipping⁵ can be considered as a second-level superstructure that arises from property relations and other real rights, as well as actively influences and transforms both property relations and the basic economic relations of merchant shipping.

It is natural to build legal regulation over the knowledge of objective laws and consider the development of social relations. However, we should also pay attention to the subjective aspects of forming law. Objective laws are taken into account when choosing the goals of legal regulation but these goals are selected by a person. At the same time, regulations in the social and legal sphere do not have a rigid effect, which leaves ample room for the influence of subjective factors⁶.

In the field of merchant shipping, legal regulation mostly aims⁷ at ensuring proper legal conditions for the effective development of this economic activity. Both the legal conditions necessary for the effective development of merchant shipping and the legal means creating such conditions are very diverse. The efficient and socially useful development of merchant shipping does not always mean a quantitative increase in the scale of activities. Today, special attention is paid to the safety of merchant shipping⁸, environmental protection⁹, countering terrorism¹⁰, piracy¹¹, drug trafficking¹² and other maritime crimes both in the national and international legal regulation of merchant shipping relations. The civil regulation of ownership and other property relations in the field of merchant shipping cannot be a legal method for solving these issues. They can be solved by means of public law. However, public law relies on property relations in connection with sea vessels and other material objects of merchant shipping to identify the parties involved in such activities and solve other issues. Therefore, public law has a significant impact on the formation, alteration and termination of real rights in the field of commercial navigation, as well as their legal scope.

⁴ X. Liu, "Class structure and income inequality in transitional China", *Journal of Chinese Sociology* Vol: 7 num 1 (2020): 4.

⁵ E. Havice, "Unsettled Sovereignty and the Sea: Mobilities and More-Than-Territorial Configurations of State Power", *Annals of the American Association of Geographers* Vol: 108 num 5 (2018): 1280-1297.

⁶ E. A. Kirillova; A. V. Pavlyuk y A. A. Mikheev, "Online contractual process: Status and technology", *International Journal of Recent Technology and Engineering* Vol: 8 num 1 (2019): 2234-2240.

⁷ J. P. Garske, "Anglophone legal culture and globalization: State, corporation, and technology", *Journal of Globalization Studies* Vol: 10 num 1 (2019): 72-86.

⁸ F. Simangunsong y I. Hutasoit, "A study of the development of Natuna Regency as a key site on Indonesia's outer border with particular regard to national defense and security issues in the South China Sea", *Journal of Marine and Island Cultures* Vol: 7 num 2 (2018) 63-73.

⁹ T. Pawlik y S. Neumann, "Implementation of CSR aspects in human resources management (HRM) strategies of maritime supply chain's main involved parties", *Safety of Marine Transport: Marine Navigation and Safety of Sea Transportation* (2015): 47-52.

¹⁰ C. Bueger y T. Edmunds, "Blue crime: Conceptualizing transnational organized crime at sea", *Marine Policy* (2020): 119-125.

¹¹ A. N. Vylegzhanin y E. S. Anyanova, "International law versus piracy: Issues in legal theory", *International Journal of Psychosocial Rehabilitation* Vol: 24 num 1 (2020): 25-42.

¹² P. Thilly. "The Fujitsuru mystery: Translocal Xiamen, Japanese expansionism, and the Asian cocaine trade, 1900-1937", *Cross-Currents*. Vol: 7 num 1 (2018): 93-117.

The transboundary nature of merchant shipping requires all modern states to conduct the joint and coordinated regulation of merchant shipping relations¹³. Therefore, the unification and harmonization of merchant shipping rules can be defined as independent objectives of legal regulation that should be implemented through the development, adoption and approval of international treaties and the improvement and approximation of national legislations¹⁴. In this case, the potential of civil law is also decisive since it regulates property relations which lay the foundations of merchant shipping.

The main legal feature of merchant shipping is the use of water vessels that are understood as self-propelled or non-self-propelled floating structures involved in merchant shipping¹⁵.

Most laws of the sea treaties actively use the concept of a vessel¹⁶ but provide different approaches to the definition of this term or do not give such a definition at all. The United Nations Convention on the Law of the Sea contains important provisions on the legal regime of vessels and actively uses this term (about 400 references) but does not highlight any distinctive features and does not define the concept of a vessel.

Under Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, a ship is understood as "a vessel of any type whatsoever not permanently attached to the sea bed, including dynamically supported craft, submersibles, or any other floating craft". The concept of a ship does not include warships, state-owned ships used for naval-auxiliary, customs or police purposes, ships removed from service or laid up.

Rule 3 of the Convention on the International Regulations for Preventing Collisions at Sea (1972) utilizes the word "vessel" in relation to all types of floating craft, including non-displacement vessels and seaplanes used or capable of being used as a means of water transportation.

Many conventions adapt the concept of "vessel" to their legal regulation. For example, Clause d of Article 1 of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) mentions this concept in the meaning of any vessel used for the carriage of goods by sea. According to Clause 1 of Article 1 of the International Convention on Civil Liability for Oil Pollution Damage, a ship is any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo. To determine the range of regulated material objects, international legal acts also refer to a simple listing of different types of vessels or use the method of excluding certain types.

¹³ J. Arjona Aroca; J. A. Giménez Maldonado; G. Ferrús Clari; L. Calabria y J. Lara, "Enabling a green just-in-time navigation through stakeholder collaboration", *European Transport Research Review* Vol: 12 num 1 (2020): 22

¹⁴ D. Bogнар-Lahr, "In the Same Boat? A Comparative Analysis of the Approaches of Russia and Canada in the Negotiation of the IMO's Mandatory Polar Code", *Ocean Development and International Law* Vol: 51 num 2 (2020): 143-161.

¹⁵ A. Paturet, "Subject, objet, res et nature: un aperçu historique de l'évolution du concept de chose de l'Antiquité au droit contemporain", *International Journal for the Semiotics of Law* Vol: 32 num 2 (2019): 485-504.

¹⁶ S. Li y K. S. Fung, "Maritime autonomous surface ships (MASS): implementation and legal issues", *Maritime Business Review* Vol: 4 num 4 (2019): 330-339.

In general, when defining the concept of "vessel", highlighting its main features and forming specific listings, legislators clearly do not take into account all the variety of technical means used for sea transportation and other purposes of merchant shipping.

The main approaches to defining the concept of "vessel" are as follows: the targeted approach, i.e. the concept of "vessel" is defined based on the purpose of the object used in merchant shipping; the functional approach that defines this concept based on technical and other objective characteristics; the registration-based approach that establishes documents of title, technical documents and permits (can be called the documentary or normative approach). Various combinations of these approaches are often used.

Some scholars claim it is impossible to form the scientific concept of "ship" or "sea vessel" as a unified category of civil law. Among the relevant scientific definitions, we should emphasize the concept of "sea vessel" as an artificial displacement structure adapted for movement in aquatic environments using the force of wind or energy generated by its power plant. There is another definition of "sea vessel" as a real estate object that denotes a self-propelled or non-self-propelled floating structure used or built for the needs of merchant shipping, intended for permanent floating, under the jurisdiction and control of a certain state and registered as a sea vessel in the relevant ship register¹⁷.

The classification of sea vessels as real estate objects causes many disputes in the scientific community¹⁸. Indeed, a sea-going vessel does not have basic features that distinguish immovable property from other material objects falling under real rights (a strong connection to the land and the impossibility of moving without disproportionate damage). Therefore, this classification can be described as a legal fiction. Although the concept of "legal entity" is also a fiction, social relations cannot be regulated without it. Likewise, the legal regime of real estate should extend to sea-going vessels for the effective regulation of merchant shipping relations. This legal regime can help achieve the basic goals of the legal regulation of maritime relations, including ensuring the safety of navigation and environmental protection, countering terrorism, illegal trafficking of weapons, drugs and other maritime crimes. The foregoing is explained by the fact that it is necessary to identify the responsible entity¹⁹ and its jurisdiction, define a ship and determine its main features to prevent offenses and ensure the application of regulatory public law in the field of merchant shipping. The legal regime of real estate objects allows to establish the owner of a vessel, determine the applicable jurisdiction and ensure compliance with the requirements of both national legislation and international legal norms.

However, the right of ownership is the main but not the only real right. In particular, vessels are often used through various types of lease or trust management²⁰. For example, the state registration of a vessel in a bareboat charter is based on the charterer's

¹⁷ M. A. Sobenina, *Pravovoi rezhim morskikh sudov i sudov vnutrennego plavaniya po grazhdanskomu zakonodatelstvu Rossiiskoi Federatsii*: abstract of a thesis for a Candidate's Degree in Law Sciences (Moscow, 2013), 9-10.

¹⁸ A. S. Sobenina, "Morskije suda i suda vnutrennego vodnogo plavaniya v sisteme obektov grazhdanskikh prav", *Transportnoe delo Rossii* Vol: 6 num 2 (2012): 244-246.

¹⁹ E. Dahl, "Cruise ship's doctors - company employees or independent contractors?", *International maritime health* Vol: 67 num 3 (2016): 153-158.

²⁰ C.-H. A. Hsieh; H.-C. Chou; K. Lin y D. C. Yen, "Trade-off relationship between the hire rates and exercise prices of purchase options in ship charter contracts: An option pricing application", *Journal of Marine Science and Technology (Taiwan)* Vol: 21 num 3 (2013): 268-277.

application. In terms of conditions and legal consequences, this type of registration is close to the registration carried out by the owners of ships. Thus, a limited real right to a ship acquired under a bareboat charter agreement for a certain period gives rise to legal consequences close to the consequences of acquiring ownership of the ship.

The registration of ownership or the right to use a ship as a real estate object is closely connected with such legal consequences as the extension of state jurisdiction to relations arising on board of a ship and the acquisition of extraterritorial features while the ship sails the open sea or stays in foreign ports.

In addition, real rights to a ship determine the possibilities, boundaries and procedures for applying national standards to crew qualifications and skills, technical, environmental and other requirements, conditions for carrying out control measures, obligations to pay taxes and customs duties, registration and other mandatory payments that have a financial, legal or administrative regime.

Discussion

A significant problem experienced on a global scale is the issue of the so-called "flags of convenience"²¹, i.e. a preferential ship registration practice used by several states to decrease mandatory payments and minimize or even avoid control measures in relation to full condition survey and crew qualifications, which poses a real danger. The United Nations Convention on the Law of the Sea and other international legal treaties provide for certain legal measures aimed at combating such simplifications. These measures are presented in Clause 1 of Article 94 of the United Nations Convention on the Law of the Sea – "every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". Consequently, this convention requires a real connection between a particular ship and the state where it is registered.

The United Nations Convention on Conditions for Registration of Ships (1986) states the following criteria for the above-mentioned connection: the participation of state, its natural or legal persons in the ownership of a ship; the work of its citizens or residents as crew members; the location of a ship-owning company in the state of registration and state involvement into the management of such companies; the availability of a register and maritime administration to control the technical state of ships. However, this convention has not entered into force since the required number of states did not accede to it.

Currently, the so-called "flags of convenience" are so widely used that it impedes the achievement of such important goals as ensuring the safety of navigation and avoiding negative environmental effects. International treaties should establish the requirement for ships to periodically enter the state of their registration to undergo technical inspection or enter foreign ports that concluded international agreements with the state of registration to carry out control measures.

When a ship enters the territorial sea or a foreign port, it somehow falls under the control of local authorities. In some cases, it is permissible to carry out control measures in the open sea. If ships belonging to some state constantly violate safety requirements or

²¹ V. N. Koval, "Pravovye osobennosti primeneniya "udobnykh" flagov na torgovykh i kruiznykh sudakh", *Yurist* num 14 (2017): 36-40.

environmental standards, such a state might be included into a separate list that is kept by the International Maritime Organization or any other international organization with due regard to international treaties. The consequence might be additional payments for technical inspection at the foreign ports that this ship enters. At the same time, it is necessary to establish legal mechanisms to prevent the possible use of such measures for political reasons or as one of the means of international competition.

In relation to the objects transported by sea, it is also significant to distinguish between real and liability rights, which is no less crucial for determining the legal regime of vessels.

The division of civil relations into property and liability, absolute and relative is the main provision of global civil law²². Another fundamental division of private and public law goes beyond the framework of civil law. It has been considered for many centuries and has caused numerous discussions in legal science.

The main reason for these discussions is the close interaction of various legal relations in such a sphere of economic activity as merchant shipping. As a result, legal complexes arise that are often difficult to classify according to the above-mentioned criteria. They lay the basis for the dissemination of mixed public-private, absolute-relative or property-liability rights and relations.

The formation of mixed legal concepts harms the systemic nature of legal science and, most importantly, complicates the practice of law enforcement. When considering a specific case, a judicial body should give an unambiguous legal assessment to the legal relationship in question and, depending on their sectoral and generic affiliation, apply general rules, principles and protection mechanisms. The latter differ for property and liability rights, absolute and relative rights, private law and public law. Therefore, there might be interconnected sets of subjective rights or legal relations (like in the field of merchant shipping) but there are no complex subjective rights or legal relations existing on their own.

Material objects differ based on the emergence of ownership (the transfer of ownership under an agreement concluded between the consignor and the consignee, the emergence of ownership during fishing, mining of non-living resources of the sea bed and its subsoil, etc.) and many other characteristics. However, these objects are united by the fact that all of them are property (or cargo) temporarily owned by the carrier using the ship. In exceptional circumstances, the shipowner or shipmaster can be empowered to use or even dispose of this property up to its destruction (accidents, endangering the lives of passengers or crew members, etc.).

As a rule, the civil regulation of shipping goods developed in the direction of increasing circulability in the field of international trade related to the carriage of goods by sea, facilitating the transfer of real rights and finding the best ways to adjust mutual rights and obligations, as well as the property liability of the consignor, consignee and carrier of cargo.

While goods are transported by sea, the owner of this cargo is often the consignee who has never had actual control over the cargo (never truly owned it) despite the transfer

²² F. K. Savigny, *Obyazatelstvennoe pravo* (Moscow: Tip. Kudryavtseva, A.V., 1876), 3-4.
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of ownership. In addition, the owner of the cargo and/or the consignee might repeatedly change, for example, by submitting a bill of lading to bearer. However, the carrier remains the owner of the cargo while it is on board. If the cargo causes damage to third parties or environment upon transportation, the carrier is recognized responsible in case they do not prove the fault of the shipper or consignee (for example, they concealed some dangerous properties of the cargo) even without violating the rules for the carriage of such cargo by sea. Moreover, obligations related to the carriage of cargo by sea include certain rules limiting the liability of the carrier²³. However, these rules exclusively regulate the relations between contractual parties and do not apply to the above-mentioned cases. The option of distributing liability for the damage made to third parties as a result of the possession of goods is debatable both *de lege lata* and *de lege ferenda*.

Many circumstances might arise during the carriage of cargo when the shipmaster acting on behalf of the carrier and protecting other legitimate rights and interests is obliged to go beyond any contractual terms up to the destruction of cargo. The general basis for such actions can only be a limited real right, while specific conditions for its implementation are subject to legal regulation. Finally, the carrier's right of ownership can be opposed to the claims of third parties, including its protection from the owner of the cargo like the lessee has the right to file a negative claim against the lessor.

These issues cannot be resolved by regulations and contractual terms for the carriage of goods regardless of their type since any contract is intended to control relations between its parties and only in certain aspects can affect the relationship of such persons (or a person) with third parties. Thus, it is necessary to establish specific rules governing the right of ownership and other property rights in relation to the goods on board. The new legislation should consider the contractual or non-contractual grounds for the right of ownership but cannot be limited to the regulation of obligations.

The right of ownership arising from certain types of obligations is not a liability right of the lessee, trustee or carrier of cargo who transports it by sea under the relevant contract. It is rather an independent real right based on such contracts. Likewise, the right of ownership arises from contracts of sale, exchange and donation, but this does not mean that it becomes an element of obligations under these contracts.

Conclusion

Ownership and other real rights establish a strong legal link between the subject and the material object and proclaim absolute legal powers of the owner or other titleholder in relation to all third parties.

The owner has absolute obligations, including the obligation not to perform any actions against their own property that are contrary to law and other legal acts and the obligation not to violate the rights and legally protected interests of third parties when using the above-mentioned property. Certain rights based on the owner's powers are realized through obligations and other legal relations, where the owner's rights and obligations correspond to the rights and obligations of specific persons (for instance, the buyer).

²³ V. V. Altunin, *Otvetstvennost morskogo perevozchika za nevypolnenie obyazatelstv po perevozke gruzov v mezhdunarodnom soobshchenii*: abstract of a thesis for a Candidate's Degree in Law Sciences (Saratov, 2005), 28.

Thus, the right of ownership lies the basis for the subsequent regulation of obligations and many public relations. However, liability law and public law cannot regulate property relations but can have a certain impact on them. This also applies to limited real rights that arise in connection with the lease of a vessel (in particular, a bareboat charter) or during the marine transportation of commercial and non-commercial cargo. The right to use some vessel and own cargo are enshrined in a contract. Nevertheless, these rights do not fall into the responsibility of the lessee or the carrier of the cargo but rather have an independent property-related essence that requires specific legal regulation.

Further research on the issues considered in this article should highlight the essential features and legal specifics of the main objects of merchant shipping.

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References

Altunin, V. V. *Otvetstvennost morskogo perevozchika za nevypolnenie obyazatelstv po perevozke gruzov v mezhdunarodnom soobshchenii: abstract of a thesis for a Candidate's Degree in Law Sciences*. Saratov. 2005.

Arjona Aroca, J.; Giménez Maldonado, J. A.; Ferrús Clari, G.; Calabria, L. y Lara, J. "Enabling a green just-in-time navigation through stakeholder collaboration". *European Transport Research Review* Vol: 12 num 1 (2020): 22.

Bankes, N. y Das Neves, M. M. "The United Nations convention on the law of the sea and the Arctic ocean". *The Palgrave Handbook of Arctic Policy and Politics* (2019): 375-391.

Bognar-Lahr, D. "In the Same Boat? A Comparative Analysis of the Approaches of Russia and Canada in the Negotiation of the IMO's Mandatory Polar Code". *Ocean Development and International Law* Vol: 51 num 2 (2020): 143-161.

Bueger, C. y Edmunds, T. "Blue crime: Conceptualizing transnational organized crime at sea". *Marine Policy* (2020): 119-125.

Dahl, E. "Cruise ship's doctors - company employees or independent contractors?". *International maritime health* Vol: 67 num 3 (2016): 153-158.

Garske, J. P. "Anglophone legal culture and globalization: State, corporation, and technology". *Journal of Globalization Studies* Vol: 10 num 1 (2019): 72-86.

Havice, E. "Unsettled Sovereignty and the Sea: Mobilities and More-Than-Territorial Configurations of State Power". *Annals of the American Association of Geographers* Vol: 108 num 5 (2018): 1280-1297.

Hsieh, C.-H. A.; Chou, H.-C.; Lin, K. y Yen, D. C. "Trade-off relationship between the hire rates and exercise prices of purchase options in ship charter contracts: An option pricing application". *Journal of Marine Science and Technology (Taiwan)* Vol: 21 num 3 (2013): 268-277.

Kirillova, E. A.; Pavlyuk, A. V. y Mikheev, A. A. "Online contractual process: Status and technology". *International Journal of Recent Technology and Engineering* Vol: 8 num 1 (2019): 2234-2240.

Koval, V. N. "Pravovye osobennosti primeneniya "udobnykh" flagov na torgovykh i kruiznykh sudakh". *Yurist* num 14 (2017): 36-40.

Lan, L. "Arbitration Proceedings in the Refusal of One of the Parties to the Dispute to Participate in the Process: International Legal Aspects". *Lecture Notes in Networks and Systems* Vol: 129 (2020): 1061-1067.

Li, S. y Fung, K. S. "Maritime autonomous surface ships (MASS): implementation and legal issues". *Maritime Business Review* Vol: 4 num 4 (2019): 330-339.

Liu, X. "Class structure and income inequality in transitional China". *Journal of Chinese Sociology* Vol: 7 num 1 (2020): 4.

Papanicolopulu, I. *International law and the protection of people at sea*. Oxford: Oxford University Press. 2018.

Paturet, A. "Subject, objet, res et nature: un aperçu historique de l'évolution du concept de chose de l'Antiquité au droit contemporain". *International Journal for the Semiotics of Law* Vol: 32 num 2 (2019): 485-504.

Pawlik, T. y Neumann, S. "Implementation of CSR aspects in human resources management (HRM) strategies of maritime supply chain's main involved parties". *Safety of Marine Transport: Marine Navigation and Safety of Sea Transportation* (2015): 47-52.

Savigny, F. K. *Obyazatelstvennoe pravo*. Moscow: Tip. Kudryavtseva, A.V. 1876.

Simangunsong, F. y Hutasoit, I. "A study of the development of Natuna Regency as a key site on Indonesia's outer border with particular regard to national defense and security issues in the South China Sea". *Journal of Marine and Island Cultures* Vol: 7 num 2 (2018) 63-73.

Sobenina, A. S. "Morskie suda i suda vnutrennego vodnogo plavaniya v sisteme obektov grazhdanskikh prav". *Transportnoe delo Rossii* Vol: 6 num 2 (2012): 244-246.

Sobenina, M. A. *Pravovoi rezhim morskikh sudov i sudov vnutrennego plavaniya po grazhdanskomu zakonodatelstvu Rossiiskoi Federatsii: abstract of a thesis for a Candidate's Degree in Law Sciences*. Moscow. 2013.

Thilly, P. "The fujitsuru mystery: Translocal Xiamen, Japanese expansionism, and the Asian cocaine trade, 1900-1937". *Cross-Currents*. Vol: 7 num 1 (2018): 93-117.

Vylegzhanin, A. N. y Anyanova, E. S. "International law versus piracy: Issues in legal theory". International Journal of Psychosocial Rehabilitation Vol: 24 num 1 (2020): 25-42.

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