

**INTERNATIONAL  
MARITIME LAW FROM  
THE RUSSIAN PERSPECTIVE**



# **INTERNATIONAL MARITIME LAW FROM THE RUSSIAN PERSPECTIVE**

**A Comprehensive Guide for  
Lawyers, Shipmasters and Cadets**

Vasiliy Gutsulyak



Universal Publishers  
Irvine • Boca Raton

*International Maritime Law from the Russian Perspective: A Comprehensive  
Guide for Lawyers, Shipmasters and Cadets*

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## PREFACE

The book “International maritime law — public and private” (in Russian), which I prepared back in the early 2000s, has been republished several times, with the last edition in 2006. Each edition was sold quickly, which indicated the readers’ interest in it. In this connection, I am deeply grateful to them all for such supportive evaluation of my work and positive comments.

At the same time, I did not want to content myself with a mere re-edition. The goal was to prepare a new book, in which both Russian and international maritime laws could be reflected, with account of the most recent Russian legislation in this field and the provisions of international legal acts adopted in the last years.

In the meantime, during the ten years which have passed since the last edition of this book, both the Russian and international maritime laws changed significantly. Along with substantial amendments to the current Russian legislation in this area (namely, the amendments to the Merchant Shipping Code, Civil Code, Criminal Code, Code of Administrative Offenses of the Russian Federation, and to the Federal Laws “On the continental shelf of the RF”, “On internal sea waters, the territorial sea and the contiguous zone of the RF”, “On the exclusive economic zone of the RF”, and many others) new maritime laws and subordinate acts have been adopted, among which there are: Federal Law “On the seaports in the RF”, 2007, Federal Law “On the regulation of activities of Russian citizens and Russian legal entities in the Antarctic”, 2012, Federal law “On

the introduction of amendments to certain legislative acts of the Russian Federation with regard to the definition of small-size vessel”, 2012, “Regulations on sea pilots of the RF”, 2008, “General rules for navigation and stay of vessels in the seaports of the RF and approaches to them”, 2009, “Regulations on the procedure for attesting by CCI of the RF of the customs of seaports in the RF”, 2009, “Regulations on the procedure for naming sea vessels”, 2009, “Regulation on the certification of crew members of sea-going vessels”, 2012, “Rules for navigation in the waters of the Northern Sea Route”, 2013, “Regulations on the investigation of accidents or incidents at sea”, 2013, “Regulations on seaport Harbor Masters”, 2014, “Regulations on seaport administration”, 2014, “Requirements for fishing on the high seas with respect to legal entities and individual entrepreneurs engaged in fishing on the high seas using ships that fly the State Flag of the Russian Federation”, 2016, and others.

International maritime law has evolved, too.

Several conventions, pivotal in international maritime traffic, have been considerably modernized, such as SOLAS (in which new chapters were added), MARPOL (several amendments were made), STCW (Manila Amendments of 2010 were adopted, which, in fact, became a new version of the Convention).

In 2008, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (aka Bunker Convention) and the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001, entered into force. The Nairobi International Convention on the Removal of Wrecks, 2007, entered into force in 2015, and the International Code for Ships Operating in Polar Waters (Polar Code) — on 1 January 2017.

Some changes have also occurred in the field of private maritime law. In 2008, for example, the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) was adopted, and in 2010 — new Incoterms. In 2011, the Council of Lloyd’s approved a new proforma of the rescue contract LOF 2011. And in 2016 were adopted the amended York-Antwerp Rules concerning general average.

These and other attendant changes required not merely a mechanical correction, but a full revision of the book, understanding new realities and challenges, identifying trends in the development of modern maritime law.

At the same time, the foundation for this book, brought now to the reader’s attention, was laid long time ago. Its basis was the lectures delivered

by the author during several years, first, at the State Maritime Academy of Novorossiysk (at present — Admiral Ushakov Maritime State University), and then at the All-Russia Academy of Foreign Trade, Moscow Institute of International Business, Moscow State Law Academy (currently — Kutafin Moscow State Law University), and other universities.

Approach to some or other issues of maritime law is based on my personal experience on the ships engaged on international voyages in Russian and foreign shipping companies, in the offices of the sea fleet system — a pilot organization, a vessel traffic service, crewing and agency companies, the Maritime Academy, and also in the Institute of State and Law of the Russian Academy of Sciences and the Center of Maritime Law (Moscow).

I am very grateful to the ConsultantPlus company for its long-term support in using its electronic resources, which substantially facilitated the work with big sets of legal data.

I am thankful to deep-sea master B.V. Poltavskiy for his advising in preparation of chapter “Maritime insurance”.

I express my special gratitude to my reviewers professor G.G. Shinkaretskaya and professor G.G. Ivanov for their valuable recommendations.

Vasiliy Gutsulyak,  
Doctor of Law Sciences, Professor  
Moscow, June 2017



## INTRODUCTION

**V**ery broadly, in the terms of the classic statutory definitions of one or another branch of law, the international law of the sea constitutes a system of interconnected legal norms and customs regulating the relations arising from seafaring and other kinds of use of the world's oceans and seas.

The oceans and seas can be used:

- 1) as the most important medium to carry out sea transportation of cargo and passengers;
- 2) for fishery and harvesting of other bioresources;
- 3) for exploration and extraction of oil, gas, and other mineral products;
- 4) for scientific research;
- 5) for military purposes not prohibited by international law;
- 6) for recreation and sports;
- 7) for other purposes related to the listed kinds of activity, including the protection of marine environment.

Note that this list is not exhaustive and can include other kinds of marine activity.

The international law of the sea, as one of the most important branches of international law, includes both the norms of public international law, regulating intergovernmental relations, and of private international law,

embracing the relations between private entities — organizations and individuals.

In this sense, we can speak about existence of public international maritime law and private international maritime law. Such division, though vague, seems to be rational from the practical point of view.

Accordingly, the architectonics of the presented book implies its division into three relatively independent sections — Russian maritime law, public international maritime law, and private international maritime law. In its turn, both public and private international maritime laws include General and Special parts.

In the General part are considered conceptual framework, principles, sources, and other most general issues.

In the Special part are highlighted special legal subbranches and institutes which stand apart within the public and private international maritime laws.



**SECTION I**

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**RUSSIAN MARITIME LAW**



## CHAPTER ONE

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# CONCEPT OF THE RUSSIAN MARITIME LAW AND ITS SOURCES

### 1. Concept of the Russian maritime law<sup>1</sup>

In the most general terms, Russian maritime law should be understood as an integrated branch of Russian Law, which is essentially a detached body of legal norms regulating the relationship connected with the use of sea transport and maritime spaces.

In contrast to the main (basic, primary) branches, which comprise constitutional, civil, criminal, and administrative laws, each of them having its inherent specific method of legal regulation, the integrated (secondary) branches use a peculiar symbiosis of different methods of legal regulation. Besides, while the main branches are “untainted” by the norms of other branches of law, the integrated branches consist mostly of those norms that drawn from the other branches. Hence the name “integrated”, that is, composed of different interrelated parts.

Russian maritime law not only has its subject and method of legal regulation, but also meets other additional criteria of “self-dependence”.

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<sup>1</sup>See also **in Russian**: G.G. Ivanov. The commentary to the merchant shipping Code. Moscow, 2005; G.G. Ivanov. Legal regulation of Shipping in Russian Federation. Moscow, 2001; G.G. Ivanov. The legal regime of the sea ports. Moscow, 2005; F.S. Boytsov, G.G. Ivanov, A.L. Makovskiy. Maritime Law. Moscow, 1976; I.I. Barinova, B.S. Kheyfets, M.A. Gitsu. Contemporary maritime Law and practice. Moscow, 1985; Soviet maritime Law. Edit. V.F. Meshera. Moscow, 1985.

## 4 International Maritime Law from the Russian Perspective

First, Russian maritime law is represented by a single codification act in the form of the Merchant Shipping Code of the Russian Federation, 1999 (RF MSC).

Second, the Russian maritime law has its specific principles (general and branch-wise) — fundamental norms which have supreme legal force. They include, for example, principle of freedom of the high seas, principle of peaceful passage through the territorial sea, principle of peaceful use of the World Ocean, principle of protection of the marine environment, and others.

Third, the range of social relations regulated by the Russian maritime law is characterized by great social importance, having in mind its role and significance for both the State's economics and its security.

Fourth, quantitatively, there is not another integrated branch which would include so extensive volume of regulatory material. Perhaps, it is one of the biggest branches of the system of Russian Law.

### 2. Sources of the Russian maritime law

The term “source” has two meanings. On the one hand — this is a source in the common meaning, as origin, root, or certain field of human activity to “replenish” one or another branch of law. On the other hand — a source of law in juridical science means official documentary forms of expressing legal norms, so to say, “containers” or “reservoirs” of norms.

The dominating source of the Russian maritime law is regulatory legal acts adopted by competent bodies in the form of laws and secondary legislation.

The main regulatory legal act, the backbone of Russian maritime law, as in any other branch of Russian Law, is the Constitution of the RF,<sup>2</sup> adopted by nation-wide voting on 12 December 1993, which defined the principles of the polity of Russia and established fundamental rights and freedoms of the citizens.

Fundamentally important for Russian maritime law is Article 15, part 4, of the Constitution of the RF, providing for that, first, the generally

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<sup>2</sup>In Russian: “The Constitution of the Russian Federation” (adopted by popular vote 12.12.1993) (as amended, amended Laws of the Russian Federation on amendments to the Constitution of the Russian Federation from 30.12.2008 N 6-FKZ, from 30.12.2008 N 7-FCL from 05.02.2014 No. 2-FKZ, from 21.07.2014 No. 11-FCL).

recognized principles and norms of international law and international treaties of the RF are an integral part of its legal system, and, second, if an international treaty of the RF established the rules different from those legally provided, the rules of the international treaty are applied.

Article 67 of the Constitution of the RF actually defines the limits of the territorial sovereignty of the State in respect of maritime spaces, including, along with the territories of its subjects, the internal waters and territorial sea, and also airspace above them, into the Russian territory.

Besides, part 2 of the above-mentioned article establishes that RF has its sovereign rights and exercises its jurisdiction on the continental shelf and in the exclusive economic zone of the RF in the manner defined by a federal law and norms of international law.

With regard to the differentiation of powers between the federal center and the subjects of the RF, the Constitution provides for that the status determination and protection of the state border, territorial sea, air space, exclusive economic zone, and continental shelf is under the authority of the RF.

The civil legislation of RF, consisting of the Civil Code of the RF<sup>3</sup> and federal laws adopted in accordance with it, is a corner-stone of the Russian maritime law, because it, in particular, defines the legal status of the participants of civil turnover, the grounds and procedure for exercising the right of property and other proprietary rights, and regulates contractual and other obligations.

For example, chapter 40 of the Civil Code of the RF, devoted to carriage of cargoes, contains such basic provisions as contract of carriage of goods and passengers, contract of affreightment, liability for breach of obligations on carriage, the carrier's liability for loss, shortage or damage (or deterioration) of cargo or baggage, procedure for claims and suits for carriage, and others, which are widely used in the carriage of cargoes and passengers by sea.

Several provisions of the Civil Code of the RF directly touches maritime activity.

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<sup>3</sup>**In Russian:** "Civil code of the Russian Federation (part one)" from 30.11.1994 N 51-FZ (as amended on 28.03.2017); "Civil code of the Russian Federation (part two)" dated 26.01.1996 N 14-FZ (as amended on 28.03.2017); "Civil code of the Russian Federation (part three)" from 26.11.2001 N 146-FZ (as amended on 28.03.2017); "Civil code of the Russian Federation (part four)" from 18.12.2006 N 230-FZ (as amended on 03.07.2016, Rev. from 13.12.2016) (Rev. and EXT, joined, effective from 01.01.2017).

## 6 International Maritime Law from the Russian Perspective

For example, Article 130 of the Civil Code of the RF refers the sea vessels which are subject to state registration to real estate. Let us pay attention to some semantic discrepancy in this article. The point is that the vessel in her technical characteristics is a “movable” object and is built in the first place for moving her on water, nevertheless, from the standpoint of the Civil Code of the RF, she is reckoned as real thing.

Article 970 of the Civil Code of the RF establishes the application of the general rules on insurance stipulated by Chapter 48 of the Civil Code of the RF, among others, to the relations in the marine insurance.

Article 1207 of the Civil Code of the RF defines the right applicable to proprietary rights, in particular, to sea vessels. According to its provisions, the ownership and other proprietary rights to the sea vessels subject to state registration, are defined under the law of the state where these vessels and objects are registered.

For establishing and development of one or another branch of law, the presence of a corresponding codification act is important. In the Russian maritime law, such act is the Merchant Shipping Code of the Russian Federation,<sup>4</sup> adopted in 1999.

In the sense of Article 2 of the Code, the merchant shipping is defined not only as an activity connected with the use of the vessels for trade, namely, carriage of cargoes, passengers and their baggage, including on sea lanes, but also as other kinds of activity, such as:

- fishery;
- exploration and development of mineral and other non-living resources of the seabed and its subsoil;
- pilotage, ice pilotage, and icebreaker assistance;
- search, rescue and towing operations;
- lifting of the property sunk in the sea;
- hydrotechnic, underwater technical and other similar works;
- sanitary, quarantine and other control;
- protection and preservation of the marine environment;
- conduction of marine scientific research;
- training, sporting, and cultural activity.

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<sup>4</sup>**In Russian:** “Merchant shipping code of the Russian Federation” dated 30.04.1999 N 81-FZ (as amended on 07.02.2017).

At that, this list is not exhaustive, as, according to the Code, it can include other kinds of activity.

It should be noted that the developers of the RF Merchant Shipping Code drew attention to the conditional character of the term “merchant shipping”, but they saw fit to keep it, pointing out that it became traditional and commonly used for designation of the volume of relationship to which the codified legal instructions are devoted.

The RF Merchant Shipping Code, adopted in 1999, replaced the Merchant Shipping Code of the USSR, 1968. The RF Merchant Shipping Code, from the one hand, took into account fundamental changes in the state and economic life of the country, and from the other hand — absorbed the provisions of the latest Russian legislation. Besides, the requirements of the international conventions ratified by Russia have been reflected in the RF Merchant Shipping Code, among which there are: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules), 1924, and the Protocol to them, 1968 (Hague–Visby Rules), Convention on Limitation of Liability for Maritime Claims, 1976, and the Protocol to it, 1996, International Convention on Salvage, 1989, International Convention on Maritime Liens and Mortgages, 1993, and others.

The RF Merchant Shipping Code<sup>5</sup> consists of 27 chapters and 430 articles, covering practically all aspects of the sea vessel’s activity, such as: fundamentals of public administration and supervision of maritime transport; vessels registration procedure; status of the vessel’s crew and her Master; state port control; pilotage; sunken property; contracts of carriage of goods by sea, affreightment, towing, ship’s agency service, brokerage, and insurance; general average; collision of ships; responsibility for damage from pollution of the marine environment; salvage; limitation of liability for maritime claims; a maritime lien on ship and mortgage; arrest of ships; sea protests; claims, lawsuits and applicable law.

In general, the norms of civil law regulating the procedure of conclusion and execution of different contracts related to the sea transport prevail in the RF Merchant Shipping Code.

The criminal legislation of the RF, consisting of the Russian Criminal Code<sup>6</sup> and other Federal laws, stipulates that the crimes committed within

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<sup>5</sup>**In Russian:** Ivanov G.G. the Development of legislation in the field of merchant shipping (the 10th anniversary of MSC.)/journal of Maritime fleet, No. 1, 2009, pp.31–35.

<sup>6</sup>**In Russian:** “Criminal code of the Russian Federation” dated 13.06.1996 N 63-FZ (as amended on 17.04.2017).

the territorial sea of the RF are recognized as committed on the Russian territory (Article 11 of the RF Criminal Code). Besides, the criminal jurisdiction of the RF extends also to the crimes committed on the continental shelf and in the exclusive economic zone of the RF.

As regards the persons who committed a crime on board a Russian sea vessel on the high seas, they are criminally liable under the Russian Law. This follows from the key principle of the international law of the sea — the jurisdiction of ship's flag state on the high seas.

If a person committed a crime on board a Russian warship, he/she is criminally liable irrespective of location of the ship. This provision is also consistent with the universally recognized custom under which the principle of extraterritoriality applies to the warships.

According to Article 12 of the RF Criminal Code, which provides that the criminal law can be applied to the persons who have committed a crime outside the RF while working on board the vessels flying foreign flag. Under its provisions, the citizens of the RF and the persons without citizenship permanently resident in the RF who committed outside Russia a crime against the interests protected by the Russian Criminal Code, are criminally liable under the Russian Criminal Code if there is no judgement of a court of foreign state on this crime with respect to these persons.

As to the navy men, if the warship is within the territory of a foreign state, they bear, in the sense of the mentioned article, criminal responsibility for the crimes committed under the Criminal Code of the RF unless otherwise provided for in an international agreement of the RF.

It should be noted that the provisions of the RF Criminal Code stipulating criminal responsibility for sale of narcotic drugs, psychotropic substances or their analogs largely strengthen penalties for these crimes if they are committed, in particular, on board a sea vessel.

For example, Article 228.1 of the RF Criminal Code establishes a punishment for the above-mentioned crimes in the form of imprisonment for up to eight years; however, if they are committed on the objects of sea transport, the maximum punishment is increased to twelve years of imprisonment.

The RF Criminal Code also contains the norms that define responsibility for ecological offences concerning among others the marine environment. The Russian Federation, being a party to the International Convention for the Prevention of Pollution from Ships (MARPOL-73/78), assumed in this connection a very important obligation providing that the measures



of the punishments established under its legislation shall be strict enough so to suppress violations of the Convention, and equally strict irrespective of the place of commission (Art. 4, p.4, of the Convention).

Article 252 of the RF Criminal Code “Pollution of the marine environment” establishes the maximum punishment in the form of correctional labor for a period of up to two years, or arrest for up to four months for marine pollution from sources on dry land, or as a result of infringement of the rules of burial or discharge from vehicles or artificial islands erected in the sea, installations and structures, of substances and materials harmful to human health and aquatic biological resources, or preventing lawful use of the marine environment.

If a substantial damage is caused to human health, water biological resources, environment, recreation areas, or other interests protected by law, the maximum punishment provides for forced labor for up to two years, or imprisonment for the same period.

Acts provided for by the above-mentioned article, and entailed, by negligence, the death of a person are punishable by forced labor for a period of up to five years or by imprisonment for the same period.

As an example of modern legal precedents, a judicial decision of the Leninskiy District Court of Novorossiysk city, Krasnodar Region, of 18 April 2010 can be given.<sup>7</sup>

During loading of oil products at the berth of the Novorossiysk commercial seaport, through the fault of a pumpman, about 800 kg of fuel oil were spilt overboard. The damage caused to marine environment was over 2 million rubles (around USD 35,000). The case was examined in the way of special proceedings. The court found the pumpman guilty and ordered him to be fined in the amount of 70,000 rubles with a payment by installments of the fine for a period of two years.

On 19 May 2005, the Rules for Preventing Air Pollution from Ships (MARPOL 73/78 Annex VI), prescribing limitations of emissions of sulfur oxides and emissions of nitric oxide in the exhaust gases of vessels, prohibition of deliberate emissions of ozone-depleting substances and other measures, entered into force. In 2011, a chapter on mandatory technical and operational measures on vessels on energy efficiency aimed at reducing greenhouse gas emissions, was included in the Rules.

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<sup>7</sup>In Russian: [http://pfo.infocourt.ru/car\\_novorossisk-leninsky-krd\\_krasnodar\\_yufo/ug/4701094/prigovor-po-ch-1-st-252.html](http://pfo.infocourt.ru/car_novorossisk-leninsky-krd_krasnodar_yufo/ug/4701094/prigovor-po-ch-1-st-252.html).