Provisions of Maritime Collision in Algerian Law

أحكام التصادم البحري في القانون الجزائري

HAMI HAYAT
Faculty of Law, University of Algiers 1

h.hami@univ-alger.dz

hamihayat617@gmail.com

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Abstract:

Maritime collision is one of the most significant maritime accidents due to the special attention it has received, both in terms of international treaties and comparative national legislations, this has led the Algerian legislator to make the content of maritime law in relation to maritime collision provisions; what was stated on The Brussels Convention of 1910 for the Unification of certain rules of law with respect to collision between vessels. The cruise is usually exposed to serious risks that may be caused by bad weather or faults, therefore, it is necessary to identify the liable person and the competent judicial authority to adjudicate the dispute and assess the damages.

Keywords : Maritime accidents, Maritime Collisions, Brussels Convention, Maritime Risk.

ملخص:

يعد التصادم البحري من أهم الحوادث البحرية لما حظي به من اهتمام خاص سواء من حيث المعاهدات الدولية والتشريعات الوطنية المقارنة على حد سواء، وهذا ما حدا بالمشرع الجزائري أن يجعل مضمون القانون البحري فيما يتعلق بأحكام التصادم البحري، ما ورد في اتفاقية بروكسل لسنة 1910 والمتعلقة بتوحيد الأحكام المتعلقة بالتصادم البحري، فالرحلة البحرية معرضة عادة لأخطار جمة قد يكون سببها رداءة المناخ أو الأخطاء، ومن ثم فإن تحديد المسؤول والجهة القضائية المختصة للفصل في النزاع، وتقدير التعويضات المستحقة أمر لازم.

الكلمات المفتاحية: الحوادث البحرية، التصادم البحري، معاهدة بروكسل، الخطر البحري.

Auteur correspondant: HAMI HAYAT

Introduction:

Maritime transport is one of the significant means of transporting goods and persons in the international sphere because of its advantages over other means of transport, whether by land or air, this has made it particularly important at both the national and international levels, in legal, economic, and technical terms, in order for maritime transport to take place safely, the ship must be

be seaworthy and equipped with highly qualified equipment and crew.

However, this cannot always be achieved, as the means of maritime transport are still exposed to great dangers during their cruise, represented in maritime accidents, among the most important of all is the maritime collision due to its prevalence and seriousness, not only on the high seas but even on the level of narrow navigational areas, which leads to raising severe legal issues, especially in terms of conflict of laws if there is a foreign party. Maritime transport requires that ships of different nationalities roam the sea, which may lead to a maritime collision between two foreign ships, this necessarily requires the determination of the applicable law and the liable person or the person who committed the fault, to assess compensation whether the damage is related to the ship, cargo or passengers.

Accordingly, the international efforts concluded international conventions that work to unify the rules in the field of maritime collision; represented in The Brussels Conventions,the convention of 1910 for the Unification of Certain Rules of law with respect to collision between vessels, and the convention of 1952 on certain rules concerning Civil Jurisdiction in matters of collision; their provisions have been reflected in comparative national legislations, including Algeria; this requires determining the Algerian legislator's position on these conventions by addressing a problematic represented in: To what extent did international conventions on maritime collision provisions affect the provisions of the Algerian maritime law ?

To deal with this problematic, we considered using the analytical approach by addressing the contents of the above-mentioned conventions; and dropping them on the Algerian maritime law to identify the areas that the legislator got affected, through two sections

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To deal with this problematic, we considered using the analytical approach by addressing the contents of the above-mentioned conventions; and dropping them on the Algerian maritime law to identify the areas that the legislator got affected, through two sections:

Section one: Concept of Maritime Collision

Section Two: **Provisions For The Effects Of Maritime Collisions Types**

Section I: Concept of Maritime Collision

Maritime accidents are multiple, but the description of a maritime collision is only valid for the accident specified by the legislator with a particular definition, thus, excluding certain accidents from the case of maritime collision.

1- Concept of Maritime Collision between Provisions of Brussels Convention and Maritime Law

The Algerian legislator has defined the maritime collision and has not neglected the Brussels Convention's definition, despite Algeria's failure to sign.

1-1- Definition of Maritime Collision

According to Article 273 of the Maritime law " Collision at sea, is any physical impact or collision between ships at sea or between ships and inland navigation vessels without taking into account the waters in which the collision occurred ". It is concluded that the Algerian legislator has defined the collision as a physical impact or collision between ships. This definition was adopted from the Brussels convention on Maritime Collision of 23/09/1910, a maritime collision that occurs between two maritime ships or between a maritime ship and an inland navigation vessel, regardless of the waters in which the collision occurs[1].

However, under article 274/1 of the Maritime law, the legislator has broadened the concept of collision, « according to the concept of this chapter, sea ships collision is similar to any collision between a ship and a fixed facility or a fixed object at a particular point located in the maritime public property » According to the text, any collision between a ship and a fixed facility or a fixed object within the public property is considered to be a collision.

Furthermore, in his definition of maritime collision, the Algerian legislator did not stop at the text of Articles 273 and 274/2 but added under Article 274/3 "it is also likened to a sea ship collision, every loss caused by a ship to either another ship or to objects or persons on board, as a result of carrying out or neglecting a maneuver in navigation or non-observance of the rules without the occurrence of a direct collision. According to the text, it is considered to be a collision all losses caused by a ship as a result of executing or neglecting a maneuver, even if no collision occurred directly.

Thus, the concept of collision in accordance with the provisions of the aforementioned texts is limited to:

a) Every Physical impact between ships at sea or between ships and inland navigation vessels.

b) Every collision or impact occurs between a ship and a fixed facility or a fixed object that falls within the public property.

c) Every loss caused by a ship, either to another ship or objects or people on board, as a result of executing or neglecting a maneuver in navigation or non-observance of the rules established in maritime navigation, even if no collision occurred directly.

However, it should be noted that, according to article 273 of the Maritime law, the legislator required the occurrence of a maritime collision at sea " Any physical impact or collision between ships at sea ", but he did not settle on this condition or restriction, for collisions between ships and inland navigation vessels, he did not require to take place at sea; he did not take into account the waters in which the collision occurred.

Moreover, by referring to the text in French language, the definition of collision did not require its occurrence at sea "**est considéré comme abordage tout heurt matériel ou collision entre les navires de mer et bateaux de navigation intérieure sans qu'il yait a tenir compte des eaux ou l'abordage s'est produit »**

In the Arabic text, the term used is "between ships at sea", and in the French text, the term used is" les navires de mer" , thus, the translation was wrong, and the correct one is what was mentioned in the French text, which is sea ships, from this we conclude that the Algerian legislator did not require in his definition of collision the place of its occurrence[2].

1-2-Conditions of Maritime Collision

According to most national legislations and the Brusselsconventions, it is not possible to apply the rules of collision unless specific conditions are met:

a- Maritime collision must be caused by a floating maritime ship

This requirement is drawn from the text of Article 1 of the Brussels Convention on Collision and the national laws that ratified it. According to this provision, it is not possible to speak of a maritime collision in the legal.

sense unless such a collision occurs between two maritime ships or a maritime ship and an inland navigation vessel, as adopted by the Algerian legislation in the text of article 273 of the Maritime law.

According to article 273 of the Maritime law, the Algerian legislator defines Collision as a physical impact between ships at sea (the correct is maritime ships) and inland navigation vessels, then, in accordance with article 174/1, he expands the concept of mechanisms applicable to article 273 of the Maritime law; they are either sea ships or inland navigation vessels[3].

The concept of floating facilities in the Algerian law is not limited to ships and inland navigation vessels, but rather includes, according to article 174/1, all floating mechanisms, which take, depending on the circumstances, either the description of the ship or the description of the inland navigation vessel.

Based on the concept of article 271/1, which states that " all floating mechanisms are likened, depending on the case, to either inland navigation vessels, in order to apply the previous article". Floating mechanisms include floating cranes, relief boats, and sailing boats, and they are also regarded as a floating mechanism and subject to maritime collision rules; a collision between a ship

and a seaplane; provided that this collision occurs while the latter floats on water because it is regarded in such a case as a floating facility. In return, there is no room for applying the maritime collision rules when the collision occurs with a flying seaplane because there is no description of the floating facility in this case[4].

However, the question that arises about the extent to which both the ship under construction and the shipwreck are subject to the provisions of maritime collision.

For the ship under construction and not fully built, it can be subject to the provisions of collision in accordance with article 274/1, although it did not acquire the description of a ship in the legal sense[5].

As for the shipwreck, the majority of jurists do not consider it as a floating facility or mechanism, however, these provisions are applied only if it is clear that the ship has already become a wreck; it was abandoned by its crew and can no longer be floated, But if a ship sank; its crew did not leave it and was able to move again, it is not considered here as a wreck, and therefore the collision that occurs between it and another ship is subject to the rules of collision[6]

B- **Impact between ship and fixed facility or fixed object:**

Originally, in order for the collision to be subject to the provisions of maritime collision, the impact must occur between a ship and a floating facility. Under the terms of article 274/2, the Algerian legislator stipulates to liken an impact between a ship and a fixed facility or a fixed object to a collision of ships at sea; provided that such impact occurs with a fixed facility or object at a particular point and located in the maritime public property.

According to article 7 of the Maritime law, Maritime public property includes natural maritime public property and artificial maritime public property. The text of this article did not define what falls under both natural maritime public property and artificial maritime public property, but rather clarified the content of these properties in general and determined them in the territorial waters and below; and inland waters located by the line from which the territorial waters were established.

C- Physical impact (physical act):

The concept of impact requires physical friction between the two floating facilities; this is what the Algerian legislator stated in article 274/2 of the Maritime Law. However, he expanded the concept of collision, it is no longer limited to physical friction, but according to article 274/3, it is likened to collision, every loss caused by a ship either to another ship or to objects or persons on board, as a result of executing or neglecting a maneuver in navigation or non-observance of the rules with no direct collision or impact, this is in accordance with the Brussels Treaty[7].

2- Excluding Certain Maritime Accidents from Provisions of Maritime Collision:

Maritime law has excluded certain maritime accidents from the provisions of maritime collisions relating to specific ships, which are as follows:

2-1-Excluding Warships and Ships Designated by the State for Public Interest:

The Brussels convention adopts this exception in accordance with article 11 of the Convention "The provisions of the present Convention shall not apply to warships and government ships wholly designated for a public service "[8].

However, by reference to Article 298/2 of the Maritime Law, we do not touch clarity on whether or not warships and ships designated by the State for public interest are subject to the rules of collision, in which Article 298/2 states that "**The provisions of this chapter shall also apply to national maritime ships, coast guard ships, and ships designated for a public interest"**.

From the apparent meaning of the text, it can be concluded that the legislator provides that warships and ships designated for public interest are subject to the provisions of the collision. What is meant by the chapter here is the one entitled " Maritime Accidents", it includes four sections; the first is entitled ' maritime collision' and the second is 'maritime losses', the third and fourth are ' maritime ambulance' and 'shipwreck rescue'. This indicates that warships and ships designated for public benefit are not subject to the provisions of the four above-mentioned maritime accidents.

However, by reference to Article 307 of the Maritime law, which explicitly states that "The provisions related to common losses shall not apply to national maritime ships, coast guard ships, ships designated for a public interest as well as cruise ships."

Yet, this is quite different with regard to the maritime ambulance, where article 335 of the Maritime law stipulates that " The provisions of this chapter shall also apply to national maritime ships, coast guard ships, and ships designated for the public interest. But, by referring to the text in French, it states that the provisions of this chapter **«Les dispositions de la présente section…….. », meaning that** this section shall apply to warships and not to the chapter.

This is why we refer to the text of article 298/2 in Arabic and French, the Arabic text states that "the provisions of this chapter shall apply to ", and the text in French states that " the provisions of this paragraph" **« Les dispositions du présent paragraphe ….. »**

The Arabic text provides for a chapter, which is the fourth chapter entitled "Maritime accidents", the text in French provides for a paragraph, and the paragraph meant here is the fourth paragraph related to penal jurisdiction, and this is according to the text of article 298 in the French language, and it is more likely that this is the original sense of excluding the subjection of these ships from the provisions of maritime collision.

If we conclude that warships and ships designated for public interest are excluded from the provisions of maritime collision, the question remains about the collision involving one of the warships designated for the public interest, is it subject to the provisions of the collision established in maritime law or general rules?

Article 286 of the Maritime law stipulates that" **National maritime ships and coast guard ships are liable to other ships for the damages that occur due to a collision during military services or exercises within the marine waters declared to be dangerous to maritime navigation.**

From the concept of violation, such ships would be liable for the damages caused by the collision when the collision occurs out of waters declared to be dangerous to navigation.

The same analysis can be taken by analysing the text of article 292 of the Maritime law, which states that "No action shall be brought for compensation for damages resulting from a collision at sea, against National Maritime ships, coast guard ships, ships working in the public interest, unless before the Algerian courts".Accordingly, filing a claim for damages resulting from the collision of these ships can be only before the Algerian courts, thus, it can be concluded that such ships can be found liable within the provisions of maritime collision.

2-2- Case Of Collision Between Sister Ships :

A collision may occur between two ships owned by the same ship's husband; this is known as a collision between sister ships. Is this collision subject to the rules of collision in accordance with the provisions of maritime law?

French jurists are divided into two opinions; the first opinion is to apply the maritime collision provisions to the collision of two ships owned by the same ship's husband; because the ship is not a subject of law; thus, no one can be liable against himself [9].

For the second opinion, the provisions of collision should be applied even if a collision occurs between two ships owned by the same ship's husband; justifying that both ships are independent maritime wealth and insured by different insurers[10], but the Algerian legislator did not address this situation.

2-3- State of Collision between the Towing Ship and the Towed Ship:

Towing is a contract whereby a ship's husband commits to drag another ship in return for a fee, this is what the Algerian legislator adopted in the text of article 860 of the Maritime law "**The ship's husband is obligated under the towing contract and in return for a reward for the services of towing by ship**." Towing is a service under the towing contract, thus, any collision between the towing ship and the towed ship falls outside the provisions of maritime collision provisions, to be subject to the provisions of the contract, and this was stated in the Brussels Convention in article 10; the non-applicability of convention provisions to obligations arising from a contract of carriage or any other contract[11].

Thus, every collision that occurs during the execution of towing contract is outside the provisions of the maritime collision, and it is subject to the provisions of collision in accordance with the provisions of contractual liability under the towing contract.

The towing contract enters into force in accordance with the provisions of maritime law, once the towing ship is close enough to the towed ship, so that it is under the direct influence of the latter's movements; which can immediately carry out the necessary towing operations, and this is in accordance with article 862 of the Maritime law "The towing contract begins as soon as the towing ship is close enough to the towed ship, to immediately carry out the necessary towing operations, and it is under the direct influence of the movements of the ship to be towed.

The towing contract expires at the end of the last necessary towing operations and the towing ship is far enough away from the ship on which the towing took place, and no longer remains under the direct influence of the latter's movements [12].

The Algerian legislator distinguishes between two types of liability, the liability of one ship towards another ship and the liability towards others. For the first type, such as a collision between two ships, it appears that there is a link between the issue of managing towing operations and the liability for damages caused during these operations, and this is what article 866 of the Maritime law stipulates " The towing operations are conducted under the management of the captain of the towed ship, and accordingly, the captain of the towing ship adheres to the navigational orders of the latter, and every damage of any kind during the towing operations, will be on the shoulders of the towed ship's husband unless the fault of the towing ship is proven".

Thus, the captain of the towing ship is subordinate to the captain of the towed ship, which makes the latter liable for all the damage that occurs during the towing operations. However, the towing ship can be held liable whenever there is an explicit and written agreement to assign the captain of the towing ship to manage the towing operations. In this case, the damage caused during towing operations is on the shoulders of the towing ship's husband**,** unless the fault of the towed ship is proven, in accordance with article 867 of the Maritime law**.**

But when it comes to force majeure, are these two ships exempt?

Article 868 of the Maritime law stipulates that if the towed ship or towing ship is damaged; and the damage was caused by force majeure, the ships' husbands may exempt each other from any damages.

But when it comes to the liability for damages that occurred during the towing operations towards the other, Article 869 of the Maritime law stipulates that this liability is borne by the two ships in solidarity; and this liability can only be denied by proving that the damage was caused by the other or by force majeure.

2-4- Collision Between The Pilot Boat And The Piloted Ship:

Navigational custom settled on steering sea maritime ships as they enter or leave ports or inland waters, and this is known as Pilotage[13], The maritime law defines pilotage in the text of article 171 " it is the assistance provided to the captain by the users of the port authority licensed by the State to guide ships when entering and leaving ports and Inland waters", and Article 172 of the Maritime law stipulates that pilotage is compulsory for all ships; whether national or foreign, with the exemption of certain ships according to article 178 of the Maritime law because of its cargo or because of what it was designated for.

The question that arises here is about the collision between the piloted ship and the pilot boat.

The Algerian maritime law excluded pilot boats from maritime collision provisions, and subjected them to a special provision contained in article 177/1 of the Maritime law "**During the piloting operations, the pilot is under the command of the captain of the piloted ship**", and then the ship's husband is liable for damages caused to the other due to the pilot's errors in his work, as confirmed in article 183 of the Maritime law " **the piloted ship's husband is considered to be liable towards the others for damages resulting from the pilot, which are considered as damages caused by a member of the ship's crew".** The piloted ship's husband is not exempted from liability except by proving the serious error of the pilot or any member of the pilot unit, as stipulated in article 186 of the Maritime law.

Section 2: Provisions for the Effects of Maritime Collisions Types:

The provisions for the effects of maritime collision vary according to its cause, and there are four types of collision that can be distinguished, By the occurrence of the maritime collision, a set of procedures must be taken in order to identify the liable person, and this will be dealt with in accordance with the provisions of maritime law.

1- Types of Maritime Collision

There are four types of collisions; compulsive collision, suspected cause collision, collision with a captain's fault and collision due to a common fault, and the liability provisions vary depending on the type of collision; whether the collision is due to a fault or without it, this will be dealt with in accordance with the provisions of maritime law.

1-1- Compulsive Collision

Compulsive collision is a collision caused by force majeure, like thick fog or a strong storm that makes it difficult to see. It is also considered a maritime collision due to force majeure; state orders in a *war situation*; by obliging ships to turn off the lights in the ports, which leads to a collision between two ships without attributing the fault to one of them [14], It is also considered to be a collision by force majeure; the physical collision between two ships caused by a fault of a third ship; such as the deviation of a ship from its course to avoid a larger ship that was occupying a place where it should not stop, which leads to collide the third ship. In this situation, if it is proven that the colliding ship was not expecting another ship getting in its way and it couldn't avoid its effects; the collision here is considered compulsive between the colliding ship and the collided ship[15].

A collision cannot be considered compulsive unless a set of conditions are met, they are: the exclusion of human will, the unpredictability, and the impossibility to avoid it.

Hence, accidents that could have been expected and avoided are not subject to the provisions of compulsive collision, as if the collision occurred due to normal darkness or storm declared by the meteorological department[16].

According to article 281 of the Maritime law " If the collision was compulsive or due to force majeure, or there were doubts about the causes of the accident, the damages shall be borne by the ship that was exposed to the collision without distinguishing the state in which the ships or one of them was at anchor at the time of the collision". This was also stated in the article 2 of the Brussels Convention on Collision to bear the damages in the event of a compulsive collision, even if the ship was at anchor at the time of the accident "If the collision occurred accidentally or was caused by a force majeure, or there was doubt about the causes of the collision, the losses shall be borne by the ship that was exposed to the collision".

This provision shall also apply in the event that one or more ships are at anchor at the time of the accident.

1-2- Suspected Cause Collision:

It is a collision whose cause cannot be specifically identified, so it is not possible to know whether it was due to force majeure, the fault of one of the captains, or a common fault between them. The Algerian legislator, in the text of article 281 of the Maritime law, appended the suspected cause collisions to the compulsive collision **" If the collision was compulsive or due to force majeure, or there were doubts about the causes of the accident** …**"** and this is what the Brussels convention stipulated in the text of Article 2/2, and therefore, the damages are borne by the ship that was exposed to collision without distinguishing the state in which one or more ships were at anchor at the time of the collision.

1-3- Collision Due To Fault

Every fault is associated with a cause that led to its occurrence, and there is no doubt that someone contributed to it, and due to the multiplicity of persons associated with the exploitation of the ship, it is necessary to identify the reasons for the fault causing the collision.

There are many reasons for committing a fault, it may be caused by the failure to respect the rules for preventing collisions, or as a result of negligence.

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A- Failure to respect the rules for preventing Collision

International efforts ended up with establishing conventions that included rules to prevent collisions at sea, the last of which was concluded in London in 1972, which is known by the acronym COLREGS[17], Its rules aim to avoid collisions between ships by regulating the rules for traffic and lights, sound and light signals, and in the event that these rules are not respected, a fault may occur and result in a collision.

These rules are as follows:

*** Rules For Traffic And Maneuvers**

- Identification of the path to be followed during movements and maneuvers**;** each ship is obliged to follow the path it has chosen and not deviate from it unless necessary.

- Commitment to a safe speed, and there is no number of miles to express this speed, but it depends on the prevailing conditions of limited visibility, and this was stated in rule 19/b of the London convention " each ship shall proceed at a safe speed appropriate to the prevailing conditions of limited visibility, and the oncoming ship shall have its machinery ready for any immediate maneuver"

The Safe speed does not necessarily mean medium speed, the speed may be great but safe when the ship is sailing in good conditions.

Estimating the safe speed is mainly related to several considerations, including visibility, weather conditions, and the ship's ability to maneuver, meaning that the safe speed is the speed at which the ship can stop at every moment to avoid a collision[18].

*** Rules for Lights:**

The London convention for the prevention of Collision, in Part IV, included rules for lights and shapes at the same time.

As stated in Rule 20, the application of the rules related to lights from sunset to sunrise, regardless of the weather, and every violation of this obligation may cause a collision, and this violation has several forms; the ship may not carry the lights at all or not use them, or the lights may be weak and cannot be seen at a certain distance, or the ship may display lights other than those specified in the international regulation[19].

*** special Rules for marks or shapes**

The Marks and shapes are signals that the vessel is obliged to place in accordance with the provision of rule 20/d of the Treaty of London that "The rules on forms apply by day." Examples of cases in which a ship is committed to marking are those contained in rule 27 of the Convention It is the case of vessels that are not Under control or unable to manœuvre.

In the first case, they are obliged to show a similar arrangement or two forms in a vertical line where they can be seen ; In the second case it is obliged to clearly show three upper and lower shapes in the shape of a ball and the middle in a particular shape and each is in a vertical line ; The delinquent ship is also bound by rule 30 of the Treaty to show three balls in a vertical line and Violation of these marking rules constitutes a fault causing the collision : Violation of these rules may also be manifested by the fact that these marks are not already in place or misplaced [20].

*** Rules for Sound and Light Signals**

These rules appear from Rule 32 to 37 in part D of the London Convention, and they distinguish between the following three cases:

- ✓ The case of ships that are 100 meters in length and over, and must be equipped with a whistle, a bell, and a drum.

- ✓ The case of ships with a length of more than 12 meters and less than 100 meters, these are obliged to put a whistle and a bell without a drum. The bell, drum, or both can be replaced by any equipment with the same sound properties, provided that they can be manually operated to obtain the signals required, in accordance with Rule 33/A.

- ✓ The case of ships less than 12 meters in length, which, if they are obliged to carry sound signals, in turn, they are not obliged to carry whistles and bells, it is sufficient to be equipped with other means that make effective sound signals, in accordance with rule 33/B.

These sound signals are issued when maneuvering and warning, they include the case of ships in full sight of each other in accordance with rule 34/A, the case of a ship about to be overtaken by another ship in a narrow channel or fairway, in accordance with rule 34/2, or the state of limited vision, attracting attention, distress, or request for assistance.

Each signal mentioned in the international rules has a particular meaning, for example, when ships are in sight of each other and one of them is maneuvering, it must clarify it by a signal from its whistle.

One short whistle means I change my line to the right, two short whistles mean I change my line to the left, and three short whistles mean I'm running my engines back[21].

Violating the sound signal rules has different forms, as the ship may not be equipped with these signals, or it may be poorly equipped that other ships cannot hear, also, another form of violation is the failure to use the signals at the appropriate time.

B- Fault Due To Negligence

Negligence is an important factor in the occurrence of a collision and is achieved due to the failure to take necessary precautions required by maritime expertise, circumstances, and conditions,

as if a ship passed quickly and leaving wives behind it, it would cause the sinking of another ship smaller than it[22].

C- People From Whom A Fault May Be Issued:

The fault is attributed to a person who has a relation to the ship, he is either a worker on board the ship as the crew members and the pilot, or an exploiter of the ship as the ship's husband, and this will be addressed as follows:

*** Faults Of People Working On Board The Ship:**

Each ship has a maritime crew operating under the authority of the captain, and the pilot is considered a crew member when he is on board the ship.

The law specifies certain obligations for both crew members and the pilot, and violating them results in gross negligence that leads to a collision. According to Article 580 of the maritime law, the captain is one of the legally qualified persons, and according to Article 581, he remains on board the ship throughout its voyage, even if there is a pilot with him, according to Article 293. The captain must make sure, before the start of the voyage, that the ship is in good condition for navigation and well equipped, according to article 589 of the Maritime law, and if the captain fails to observe these obligations, a maritime collision may result.

Negligence is not limited to the captain of the ship, it may be caused by the crew members who work under his authority; they are the total number of workers on board the ship in accordance with article 384 of the Maritime law.

*** Faults Of Ship Owner Or Ship's Husband**

According to Article 572 of the maritime law, the owner of the ship is the one who has the right to own it, and the ship's husband is the one who exploits it for his own account; either he is the owner or another one who rented the ship from the owner.

Article 574 of the Maritime law defines the obligations of the ship's husband, he must insure to the ship he is exploiting, all the validity rules for navigation, security, equipment, and supply, in accordance with the regulations in force.

Therefore, the ship's husband is liable when he violates these obligations, by allowing the ship to sail without being navigable, such as if it is not equipped with sufficient crew or lights and signs.

It is worth noting here that all the committed faults are borne by the ship's husband. If the fault is committed by the crew, he will be held liable for their faults as they are subordinate to him; Whether it is the fault of the captain, the crew, or the pilot, in accordance with Article 577 of the Maritime Law.

However, the ship's husband has the right to adhere to the principle of determining liability when it comes to the fault of his subordinates, while he is deprived of this right when it is proven that he was the one who committed the fault, and this is according to Article 92 of the Maritime Law.

1- 4- Provision Of Liability Resulting From Collision By Fault:

Collision resulting from a fault is caused by one of the colliding ships; whether it was due to the fault of the ship's husband, or the fault of one of the workers on its deck. The matter in this case

does not differ from what is established in the general rules requiring the person who caused the damage to compensate, in accordance with article 124 of the Civil Code. Thus, if a collision is caused by one of the ships, the compensation for damages would be borne by the ship that committed the fault, in accordance with article 277/1 of the Maritime law **"If the collision resulted from the fault of one of the ships, compensation for the damages shall be borne by the ship that committed the fault**" [23].

The burden of proving the fault falls on the basis of the thing keeper according to article 138 of the Civil Code, and this is stated in article 282/1 of the maritime law **« no place for legitimate assumptions of fault regarding liability for a collision of ships at sea »**.

However, Article 282/2 makes an exception to this principle, that it is permissible to deviate from this principle and assume the fault, provided that certain conditions are met, which are: the ship's collision must be with a fixed facility or object at a certain point in the public maritime property, and the rules of the maritime signal must be available in the fixed facility or object, and the cause of the collision must not be force majeure.

Since the collision is a material act, the captain must submit a detailed report on the collision, in accordance with article 604 of the Maritime law; the captain must, within 24 hours of arriving at the first port, draft a detailed report on the accident to be submitted to the competent maritime authority, this is when this accident or collision affects the ship itself or the people or cargo on it.

According to Article289/1, the limitation of actions for compensation for damages resulting from the collision is two years, starting from the occurrence of the accident.

1-5- Provision Of Liability For Collision Resulting From A Common Fault

Article 278 of the Maritime law provides for the distribution of liability between ships in proportion to the severity of the fault committed by each of them, with an equal distribution of liability when the proportion cannot be determined or the faults are equal.

The Collision resulting from a common fault is a collision caused by two ships, that is to say, both ships violated previously established rules; each of them contributed by its own fault in causing harm to itself, to the other ship that collided with it, or others. Meaning that every fault affected the other in the occurrence of the maritime collision to the extent that if the fault of one of the ships is excluded, the fault of the other ship would be sufficient for the collision to occur. The doctrine requires that the collision should take a place at the same time, not before or after because if one of them occurs before the other, the former is liable for the collision as a result of its fault that led to the subsequent fault [24].

The Algerian legislator adopted the rule of the distribution of liability between ships in proportion to the severity of the fault committed by each of them, and this was approved by the Brussels convention of 1910, if the collision committed by both ships is equal or it is difficult to determine its proportion in terms of fault, the liability shall be divided equally between them, which arises the question about the extent of solidarity between the two colliding ships due to a common fault towards the others. Solidarity means the commitment of each ship's husband to pay the full compensation to the injured party, therefore, the Brussels Convention and the majority of maritime legislations provide for certain exceptions regarding the liability provisions for collisions resulting from a common fault.

*** Lack Of Solidarity With Regard To Material Damage Caused To Others:**

Article 279/1 states: "**In the case referred to in the previous article, damages caused to ships, their cargo, luggage, crew's money, passengers or persons on board the ship, shall be borne by ships that committed the fault in the proportion mentioned in the previous article and without solidarity towards others**", Through the text, the legislator refers to the lack of solidarity of ships towards others when it comes to material damage, it means the damage caused to ships, their cargo, sailors, passengers, luggage, and other persons on board the ship during the collision.

However, in the case of bodily damages, as stipulated in article 279/2 " Ships that committed a common fault shall be in solidarity with others for damages causing death or injury", through this paragraph, the legislator refers to the solidarity of ships toward others for damages resulting in death or injuries, meaning bodily (physical) damages. This provision authorizes the injured party to claim compensation from any ship that contributed to causing the damage, and the ship that paid compensation that exceeds the compensation required to bear is entitled to claim the recovery of the difference from the ship in solidarity with her, in accordance of Article 280 of the Maritime law.

The question that arises here is about the issue of intentional maritime collisions.

Algerian legislator did not include intentional maritime collision among the provisions of maritime collision, because the liability in it lies undisputedly with the deliberate ship, even if the intention was from both. With the reference to Article 481 of the Maritime law, any person who intentionally, by any means, causes stranding, destroying, or damaging any ship, with criminal intent, shall be punished by death, even though the legislator did not directly address the collision, he used the terms "destruction" or "damage".

2- Procedures Taken After A Maritime Collision:

Procedures followed after a collision differ from one state to another. These procedures can be limited in accordance with the provisions of maritime law as follows:

2-2- Investigation of maritime collision in accordance with maritime law

Investigation is all the different evidence that clarifies this fact. It involves a qualified person or persons belonging to the Algerian State according to the origin; which is the jurisdiction of the flag- holding State that has the right to exercise its sovereignty over its ships through investigating maritime accidents that occur on its ships, in accordance with Regulation No. 21 of the 1974 SOLAS Convention, Article 94 of the 1982 UNCLOS Convention, Article 23 of the 1966 Load Lines Convention, article 12 of the 1973 MARPOL Convention, as well as the provisions of maritime law [25].

A- **Administrative And Technical Investigation :**

The Algerian legislator addressed the administrative and technical investigation of maritime accidents in Articles 237 and 241 of the Maritime Law. It is an informal preliminary investigation that takes a place at the site of the accident and is entrusted to the Ships Safety Committees in accordance with Article 235 of the Maritime law.

B- Judicial Investigation:

The legislator dealt with this investigation in an unclear manner in article 565 of the Maritime law; after the loss, collision or stranding of the ship, and after any maritime accident or violation

stipulated in maritime law, the captain or pilot is obliged to submit a report on the facts to the first administrator of maritime affairs who can be contacted, and the latter must immediately inform the regionally competent public prosecutor.

In its content, this article referred indirectly to judicial investigation, as submitting a report on the maritime collision to the First administrator of Maritime affairs, considering this administrator a person qualified for research and inspection in accordance with the provisions of article 577 of the Maritime law, as well as, informing the public prosecutor by this administrator, which indicates the initiation of judicial proceedings that may include judicial investigation and prosecution.

C-Maritime Investigation as Applied in Algerian Ports:

The practical reality has proven that the procedures taken are not stipulated in maritime law. The task of investigating the accident is entrusted to port officers, to inspect the accident without exceeding the port limits. But in the event of a collision outside the port's borders, the task of investigation is entrusted to coastguards, with the possibility of seeking the assistance of port officers whenever necessary, and this is due to the fact that the majority of accidents occurring in Algeria are small and do not reach the level of ship collision at sea, therefore, the aforementioned safety committees are not established at the practical level[26]

2-2-Litigation in Maritime Collision Disputes :

The maritime collision results in damages that require compensation by resorting to the competent court, whether civil or criminal.

A- Civil Jurisdiction of Maritime Collision Claim :

The 1910 Brussels Convention for the Unification of Certain rules of law with respect to Collision between vessels neglected the issue of jurisdiction of civil claims in the area of maritime collision. However, the situation was addressed under the Brussels Convention for the Unification of Certain Rules concerning Civil Jurisdiction in matters of Collision on 10/05/1952 [27]; Article 1 states that, in accordance with the provisions of this Convention, the claim shall be heard by the following courts:

- before the Court of the defendant’s homeland or the court in which one of his centers of exploitation falls within its jurisdiction, It is the court competent to hear the claim in most comparative legislations, on the grounds that the claim for damages arising from the maritime collision is personal, so, the plaintiff can file his claim before the court that falls within its jurisdiction the defendant‘s usual place of residence, and if the latter is a professional in the maritime transport activity and has multiple centers to manage his business, the claim may be filed before the court in which one of his work centers falls within its jurisdiction [28].

- before the court of the place where the defendant’s ship is seized or on any other ship owned by the same defendant, if the seizure is permissible, or before the court of the place where the seizure could have been made, but the defendant paid that seizure by providing a surety or any other guarantee.

- or before the Court of the place where the collision occurred, if such collision occurred in ports, harbors, or in the inland waters.

The Algerian legislator dealt with the issue of civil jurisdiction in maritime collision claims in accordance with articles from 287 to 293 of the Maritime Law. Civil jurisdiction in the case of maritime collision rests with the competent court either on a territorial basis, or qualitative basis, or on the basis of arbitration.

According to article 290 of the Maritime law, the plaintiff may file his or her claim according to his or her choice, either before the court of the defendant's homeland, the court of the place where one of his centers of exploitation is located, the court of the place where the defendant's ship or any other ship owned by him was seized, or the place where the seizure was supposed to take place, or before the court of the place where the maritime collision occurred, if such collusion occurred in ports, harbors or inland waters, and these choices are derived from the 1952 Brussels Convention.

As for the qualitative jurisdiction, the jurisdiction to hear a maritime collision claim rests with specialized poles stipulated in article 32/6 of the Code of Civil and Administrative Procedures; the specialized poles held in some courts are exclusively competent to hear disputes related to international trade, bankruptcy, judicial settlement, bank disputes, intellectual property disputes, maritime disputes, air transport, and insurance disputes.

However, these specialized poles have not yet been formed, thus, these disputes remain within the jurisdiction of the Commercial Department at the level of ordinary courts in accordance with article 531 of the Code of Civil and Administrative Procedures.

B- Penal Jurisdiction Of Maritime Collision Claims:

The 1952 Brussels Convention regarding the penal jurisdiction of maritime collision dealt with only collisions that occur on the high seas, not those that occur in ports, marinas, and inland waters.

Article 1 of the above-mentioned convention states that« No action may be taken in this respect except before the judicial or administrative authorities of the State that the ship is carrying its flag at the time of the collision or maritime accident. ” Article 2 of the same Convention adds that « In the case stipulated in the previous Article, it is not permissible for other than the authorities that the ship is carrying their flag, to order the ship’s seizure or prevent it from traveling, even if the matter is related to conducting an investigation”. And Article 3 of the same convention states that “the provisions of the convention do not prejudice the right any state, in the event of a collision or a navigation accident, to take by its own authorities all procedures related to the certificates of eligibility or licenses issued by it, or to prosecute its citizens for crimes committed by them or committed while they are on ships carrying the flag of another country, [29]” which are the same provisions that the Algerian legislator adopted in the texts of Articles 294, 295 and 296 of the Algerian Maritime law.

C- **Statute of Limitations for Maritime Collision Claim**

According to article 289 of the Maritime law, the statute of limitations for a maritime collision claim is two years starting from the date of the accident, As for the claim for the difference in accordance with the principle of solidarity in bodily damages, according to Article 280 of the maritime law, it is one year only; valid from the day of payment, and this period shall not apply in the event that it is not possible to seize the defendant’s ship in the waters subject to the Algerian judiciary.

Conclusion :

The Cruise is exposed to many risks, including maritime accidents such as maritime collision; causing losses to the ship, cargo, or persons on board the colliding ships.

All this prompted the international community to conclude the 1910 Brussels Convention for the Unification of Certain rules of law with respect to collisions between vessels; which regulated the legal aspect of a maritime collision by defining it, determining its terms, forms liability resulting from it, and the applicable law in the case of conflict of laws over legal situations with a foreign element, and this was adopted by the Algerian legislation in the content of maritime law, despite Algeria's failure to sign this Convention.

However, it should be noted here that the issue of the applicable law may arise in the case of a collision between two or more ships, one of which belongs to a State that is not a party to the Brussels Convention; whose provisions are not adopted by its national legislation.

In this situation, the issue of determining the law applicable to the collision incident remains in place, in order to determine the liability and indicate the amount of compensation and the party that bears it, and this is what calls States that are not parties to the Brussels Convention to accede to it or at least enrich their domestic laws with its provisions in order to avoid the issue of conflict of law.

The Algerian legislator did well when he adopted the provisions of the Brussels Convention in the content of maritime law, however, given that the maritime collision is considered a living reality of sea dangers, States, including Algeria, should not be confined to the legal aspect of resolving maritime collision disputes, but rather, they should develop, maintain and modernize their maritime fleets, and provide the continuous training for sailors, especially captain, on good driving in order to avoid all collisions.

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[1] Article 1 of the Convention for the Unification of Certain Rules of Law with respect to collisions between Vessels « Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation, the compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place »Algeria did not sign the Brussels Convention but it was largely affected by its provision.

[2] بن عصمان جمال. المسؤولية التقصيرية المترتبة عن التصادم البحري في القانون الدولي الخاص. أطروحة دكتوراه. جامعة أبي بكر بالقايد جامعة تلمسان. كلية الحقوق.2008-2009.ص.ص 27.26

[3] This is confirmed by the majority of legislations and all that is consistent with the Brussels convention on Collision Article 1, as well as the draft convention of Rio de Janeiro Article 1/1 on 09/30/1977 on the unification of certain rules related to civil jurisdiction, the applicable law, the implementation of foreign provisions in the maritime collision article. Until today, this draft has not been submitted to the Legal Committee of the International Maritime Organization for approval.

[4] René rondière .p.lureau. Traité général de droit maritime, Dalloz, 1972.p 28

[5] بن عصمان جمال. المرجع السابق. ص 50

[6] خياط محمد. التصادم البحري. رسالة دكتوراه. جامعة عين شمس. كلية الحقوق.1987. ص. ص 97.96

[7] Article 13 of the Brussels Convention « This convention extends to the making good of damages which a vessel has caused to another vessel, or to goods or persons on board either vessel, either by

the execution or non-execution of a maneuver or by the non-observance of the regulations, even if no collision had actually taken place »

[8] Article 1/2 clause A of RIO draft "This convention shall not apply to warships and not to ships of a State designated for a non-commercial public interest"

[9] Rene rodiere.P. lureau.op.cit. p 30

[10] This is what the Egyptian legislator stated in article 384/1 of the Maritime Trade Act« The insurances held on several ships belonging to one ship's husband shall apply as if each ship belongs to a different ship's husband» See :

مصطفى كمال طه.القانون البحري الجديد. دار الجامعات الجديدة للنشر.1995. ص 360

[11] Article 10 of the Brussels Convention « Without prejudice to any conventions which may be made, the provisions of this Convention do not affect in any way the law in force in each country with regard to limitation of shipowner's liability, nor do they affect the legal obligations arising from contracts of carriage or any other contracts »

[12] Towing companies used to make model contracts in which three issues are specifically specified: who is liable for managing the towing operation, who is liable towards others for collisions, and who is liable for the losses caused to one of the two ships. See: خياط أحمد. الرجع السابق. ص 120

[13] مصطفى كمال طه.القانون البحري. دار المطبوعات الجامعية.2006.ص 231

[14] مصطفى كمال طه.القانون البحري الجديد. دار الجامعة الجديدة للنشر.1995.ص 362

[15] بن عصمان جمال.المرجع السابق. ص 66

[16] خياط محمد. المرجع السابق. ص 150

[17] The international Régulations for Preventing Collisions at Sea 1972.

[18] خياط محمد، لمرجع السابق، ص 150

[19] Convention sur le Règlement international de 1972 pour prévenir les abordages en mer (Règlement COLREG), Adoption 20 octobre 1972 ; entrée en vigueur : 15 juillet 1977.

[20] بن عصمان جمال، المرجع السابق، ص 75

[21] المرجع نفسه، ص 76

[22] المرجع نفسه، ص 77

[23] Article 3 of Convention Brussels « if the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault»

[24] حسان سعاد. الحوادث البحرية وفقا للقانون الجزائري والاتفاقيات الدولية (التصادم والمساعدة والإنقاذ البحريين) رسالة دكتوراه 2018.جامعة أبي بكر بالقايد تلمسان. كلية الحقوق والعلوم السياسية.2019/2018. ص 113

[25] International Convention for the safety of life at sea (SOLAS) adoption : 1 november 1974: entry into force 25/05/1980 UNCLOS United Nations Convention on the Law of the sea, adoption 10/12/1980 and entry into force in 16/11/1994, international convention on laod lines on 1966 adoption 5/04/1966 entry on force 21/07/1968, Marpol international convention for the prévention of pollution from ships (acronym, marine pollution, adoption 12/11/1973 convention, 1978 (protocol 1978), 1997 (protocol – Annex) entry into force 2/10/ 1983.

[26] حسان سعاد. المرجع السابق. ص 167

[27] Algeria ratified this Convention under Decree No. 64-172 of 08/06/1964 regarding the participation in the International Convention on the Unification of Certain Rules concerning Civil

Jurisdiction in matters of Collision, Signed in Brussels on 10/05/1952, Official Gazette No. 12 of 7/06/1964.

[28] خالد جاسر غفري. القانون البحري.ط 1. دار الإصار للنشر والتوزيع. عمان. الأردن 2018.ص 314

[29] مدحت ربان خلوصي. السفينة والقانون البحري. الشنهابي للطباعة والنشر. الإسكندرية.1993.ص 276.275

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- the draft convention of Rio de Janeiro on 30/09/1977 on the unification of certain rules related to civil jurisdiction.

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