MARITIME INSOLVENCY IN AN ERA OF DECLINING MULTILATERALISM: TERRITORIALITY AND INTERNATIONAL JUDICIAL COOPERATION

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Although the last major crisis occurred a decade ago, its shadow still looms over the shipping industry as no legislative action has been taken since to address the issues that arise in the administration of maritime insolvencies. Therefore, today, courts may well be faced with the same issues as a decade ago. Against this background, the current contribution proposes a guiding paradigm for the administration of maritime insolvencies that is both best from a normative perspective and the most feasible in the current geopolitical climate of declining multilateralism. This paradigm starts from the territorial administration of maritime security interests following the physical location of the debtor's ships. Existing cross-border insolvency instruments already provide for territorial exceptions in this regard, but the special nature of maritime security interests is not properly taken into account. This has led to distinct outcomes depending on the jurisdiction, and hence legal uncertainty. A consistently territorial administration of maritime security interests would also benefit the overall administration of maritime insolvencies as it would enable intervention by insurers and the international recognition of the effects of the insolvency through the recently introduced Beijing Convention on the Judicial Sale of Ships. Nevertheless, the territorial starting point should be complemented by international judicial cooperation to enable a coordinated response to maritime insolvencies. The recently published JIN Admiralty Guidelines can serve as a useful vehicle in this regard, thereby advancing the paradigm of cooperative territoriality in the administration of maritime insolvencies.

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1. INTRODUCTION

Since the spike in insolvencies in the shipping industry about a decade ago,[1] no legislative action has been taken to address the challenges arising in the administration of insolvencies of shipping companies or maritime insolvencies. At the Comité Maritime International (CMI), some efforts were made in this respect, but the last report of the International Working Group on Cross-Border Insolvency already dates back to 2016.[2] In that report, the preliminary view was that international support for a maritime protocol to the prevailing international instrument on cross-border insolvency, i.e. the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (MLCBI), "may be unrealistic".[3] As a result, the shipping industry runs the risk that the same chaos, as transpired most notably in the wake of Hanjin's insolvency in 2016,[4] would also ensue from maritime insolvencies happening nowadays.

In the current geopolitical context of fragmentation and declining multilateralism,[5] broad international support for legislative action on maritime insolvency seems even less realistic than it was in 2016. Against this background, a more feasible solution to address the challenges in maritime insolvencies would be the territorial administration of maritime insolvencies, whereby jurisdiction is granted by simply following the physical location of the different ships of the debtor, complemented by international judicial cooperation to coordinate and streamline the process. In short, maritime insolvencies should be administered

1 See United Nations Conference on Trade and Development (UNCTAD), Review of Maritime Transport, 2017, p. 15, https://unctad.org/system/files/official-document/rmt2017_en.pdf (accessed 10 June 2026).

2 See Davis, C., Report on the Work of the International Working Group on Cross-Border Insolvency, New Orleans, 5 April 2016, in: CMI IWG, *Cross Border Insolvencies*, https://comitemaritime.org/work/cross-border-insolvencies/ (accessed 10 June 2026).

3 *Ibid*., p. 2.

4 For an overview of the legal issues, see Kim, H., Legal Implications of Hanjin Shipping's Rehabilitation Proceeding, *Hong Kong Law Journal*, vol. 47 (2017), part 3, pp. 915-936.

5 See Balzacq, T.; Ramel, F., The Enduring Crisis: Reclaiming the Normative Foundations of Multilateralism, in: Guilbaud, A.; Petiteville, F.; Ramel, F. (eds.), *Crisis of Multilateralism? Challenges and Resilience*, Palgrave Macmillan, London, 2023, pp. 93-110; Schippers, M., Multilateralism, Rules-Based Trade & the Rule of Law v. the EU-US Trade Relationship, *Journal of World Trade*, vol. 60 (2026), no. 3/4, pp. 467-468.

under a cross-border insolvency paradigm of cooperative territoriality.[6] The current contribution explains why this paradigm is not only the most feasible in the current global context, but also has the normative potential to address most fittingly the unique risks arising in the administration of maritime insolvencies.

2. UNIQUE MARITIME RISKS: THE PROTECTION OF MARITIME SECURITY INTERESTS

Although insolvencies of shipping companies are arguably as international or cross-border as insolvencies can be,[7] their administration under existing cross-border insolvency instruments is particularly challenging. In essence, this is due to the Janus-faced nature of the ship to creditors: on the one hand, it is the most valuable asset;[8] and on the other, it is the most volatile and elusive one in the insolvency estate. The latter characteristic follows from the peripatetic[9] or ever-mobile nature of ships, which makes it difficult for creditors to access the collateral value of the ship that secures the payment of their claims.

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[6] As first conceptualised by LoPucki, L. M., The Case for Cooperative Territoriality in International Bankruptcy, *Michigan Law Review*, vol. 98 (2000), no. 7, pp. 2216-2251.

[7] As per Rares, S., The Far from *Halcyon Isle*: Maritime Liens, Renvoi and Conflicts of Law, *Australian and New Zealand Maritime Law Journal*, vol. 28 (2014), no. 1, p. 1: "Ships are probably the paradigm examples of the effects of cross-border insolvencies. The commercial failure of a ship on an international voyage had been a well-known legal problem for perhaps millennia before the more recent advent of the collapse of a multinational corporation or corporate group".

[8] Particularly when creditors must deal with special purpose vehicles in the form of single-ship companies, as is usually the case. See Delebecque, P., Les «Single ship companies», *Chambre Arbitrale Maritime de Paris*, p. 1, https://www.arbitrage-maritime.org/CAMP-V3/fr/Misc/Singleshipcompany.pdf (accessed 10 June 2026): "*Toutes ou presque en tout cas, qu'il s'agisse d'armements traditionnels ou occasionnels, recourent à la technique qui consiste à créer autant de sociétés distinctes qu'il y a de navires à armer et exploiter. Le navire est ainsi le seul élément du patrimoine de la personne morale en cause. Les sociétés d'armement sont alors des sociétés d'un seul navire. Ce sont des single ship companies"* ("Always or virtually in all cases, whether traditional or occasional shipping companies, the technique is used to create as many separate companies as there are ships to be equipped and operated. The ship is thus the only asset of the legal entity in question. Shipping companies are therefore companies with a single ship. These are single ship companies").

[9] As described notably by Rares J in *Kim v Daebo International Shipping Co Ltd* [2015] FCA 684, para. 14: "[…] long established principles of international maritime law developed by sea trading nations over millennia […] protect the interests of those who trade or have encounters with a peripatetic ship and those interested in her which may never again call in a port of the creditor's own jurisdiction".

To offset this challenge, maritime laws across domestic legal systems have developed special mechanisms which allow specific creditors to immobilise ships for the purpose of securing the payment of their claims through the collateral value of the ship.[10] In this context, various creditors have the right to arrest the ship,[11] but only certain designated claims give rise to a security interest in the ship, thereby offering their holders further safeguards that the collateral value of the ship will be available to satisfy their claims. Particularly when the shipowner faces insolvency, the strength of these maritime security interests should be reflected in the priority accorded to the claims of their holders over other unsecured claims.[12]

Broadly speaking, maritime security interests consist of two categories: ship mortgages and maritime liens. Ship mortgages (or their civil law equivalent, ship hypothecs) are typically negotiated by ship financiers to secure the repayment of loans to shipowners.[13] In turn, maritime liens arise by operation of law and use the ship as security for certain designated claims arising in the operation of the said ship, including claims for salvage, for collision, for port dues, and for seafarers' wages. The security offered by maritime liens is particularly strong, amongst other things because they typically rank higher than ship mortgages.[14]

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10 Fisher, R., The Purpose of Admiralty Law, *Maritime Law Association of Australia and New Zealand (MLAANZ) Journal*, vol. 18 (2004), p. 17: "The quest begins with the conditions which justified a special system of law for admiralty matters. A creditor's recovery from a shipowner or charterer is inherently difficult. A ship in port is an asset of large value from which to satisfy debts. Claims arising in connection with ships are likely to be numerous and substantial. A relatively large number of parties are likely to be involved with implications for procedures designed to co-ordinate multiple claims. There is a need to maintain a reasonable level of international reciprocity and uniformity due to the peripatetic nature of the ship and of those having some legal connection with it. That combination of circumstances suggested the need for a procedure to seize and sell ships and divide their proceeds among creditors. The action in rem, the associated powers of arrest and realisation, and maritime liens, were the result. [...] So the principal purpose of admiralty law is to provide an effective debt collection system focused upon the proceeds of a ship".

11 See Arts. 1 and 2 of the International Convention relating to the arrest of seagoing ships (1952 Arrest Convention), currently the most successful convention with most signatory states, notably also including the United Kingdom, as opposed to the International Convention on Arrest of Ships, 1999.

12 Berlingieri, F., Foreword, in: Comité Maritime International, *Essays on Maritime Liens and Mortgages and on Arrest of Ships*, Dalian, People's Republic of China, 1984, pp. 1-3.

13 Philip, A., The Need for Securities on Ships and for the Order of Priority, Civil Law Approach, in: Comité Maritime International, *Essays on Maritime Liens and Mortgages and on Arrest of Ships*, Dalian, People's Republic of China, 1984, p. 10.

14 *The Tolten* [1946] P 135, p. 150: "The charge goes with the ship everywhere, even in the hands of a purchaser for value without notice, and has a certain ranking with other maritime liens, all of which take precedence of mortgages".

The security offered by ship mortgages and maritime liens can only take effect if their holders can access their collateral, which hinges on the immobilisation of the ship through arrests in the short periods it calls at port along its voyages.[15] In other words, ensuring the efficacy of maritime security interests presupposes enforcement directly on the ship itself, wherever it calls at port. Therefore, the safeguards which are encapsulated in maritime security interests have become territorial in nature, following the physical location of the ship.[16] When the shipowner faces insolvency, however, these territorial safeguards for maritime security interests are at odds with the pooling of all the assets of the debtor in insolvency proceedings.[17] This typical feature of insolvency law enables the maximisation of the value of the assets of the debtor and an equitable redistribution of this value between the body of creditors and the debtor involved.[18]

In insolvencies with an international dimension, the paradigm of universalism on which modern cross-border insolvency instruments are predicated further exacerbates the tension with the territorial safeguards prevalent in maritime law.[19] Following universalism, the insolvency of the debtor should be administered under a single domestic insolvency regime, which is set in the legal system where the centre of main interests of the debtor is located.[20] In principle, this main insolvency regime governs the entire insolvency of the debtor, irrespective of the physical

[15] See also Comité Maritime International, XXXIIIrd International Conference of the Comité Maritime International, Lisboa 1985 Documents, Imprimerie E. Heyvaert & Fils, Bruxelles, 1985, p. 45: "In view of the strict links existing between the matters dealt with in the 1967 Convention on Maritime Liens and Mortgages and in that on Arrest of Ships it was also felt desirable to investigate whether it would have been preferable to merge the two conventions and, if so, to provide for the possible ratification or acceptance of one or more distinct sections of a global new convention, such as the section on mortgages, that on maritime liens or that on arrest of ships".

[16] As per Justice Steven Chong in *Natixis, Singapore Branch v Seshadri Rajagopalan* [2025] SGCA 29, para. 2: "On the one hand, the law of admiralty prioritises the rights of admiralty and maritime claimants by creating a regime – the action in rem – that effectively ringfences ships and other maritime property for the priority satisfaction of their claims over those of other creditors and claimants".

[17] *Ibid*.: "But, on the other hand, the law of insolvency places a premium on collectivism and equality amongst the insolvent's creditors […]".

[18] Mangano, R., What Is Insolvency Law? in: Bork, R.; Mangano, R. (eds.), *The Anatomy of Corporate Insolvency Law*, Oxford University Press, Oxford, 2024, p. 2, para. 1.02.

[19] Davies, M., Cross-Border Insolvency and Admiralty: A Middle Path of Reciprocal Comity, *The American Journal of Comparative Law*, vol. 66 (2018), no. 1, p. 103.

[20] Art. 3, para. 1 of the European Insolvency Regulation (EIR); Art. 17, para. 2(a) and (b) of the Model Law on Cross-Border Insolvency (MLCBI). See also Recital 23 of the EIR and Guide to Enactment and Interpretation of the MLCBI (2014), p. 19, para. 1.

location of assets abroad.[21] It follows that, in the event of a maritime insolvency, all ships of the debtor, irrespective of their physical location, should be pooled together under the universalist main insolvency proceedings. The risk thereof is that the territorial safeguards from which maritime security interests take effect are swept away.

Although modern cross-border insolvency instruments include certain territorial protection grounds for proprietary security interests,[22] these protection grounds are tailored primarily to traditional security interests on land-based property.[23] As a result, the international mobility of the ship is not properly taken into account under these provisions, which results in legal uncertainty regarding the fate of the maritime security interests. In particular, there are striking differences in the treatment of the territorial enforcement of maritime liens when concurrent main insolvency proceedings are opened abroad, as illustrated under the next heading by a selection of court decisions on this matter from Belgium, France, the Netherlands, and the US.

3. DIVERGENT CASE LAW ON THE PROTECTION OF MARITIME LIENS

In Belgium, courts have been generous in enabling the broad enforcement of maritime liens on the ship, despite concurrent universalist insolvency proceedings opened against the shipowner in another EU Member State. In the decision of *The Normed Istanbul (ex-Hannes C)*,[24] the Antwerp Court of Appeal, although only provisionally,[25] even held that the mere right to arrest a ship based on a

[21] As first described by Westbrook, J. L., Theory and Pragmatism in Global Insolvencies: Choice of Law and Choice of Forum, *American Bankruptcy Law Journal*, vol. 65 (1991), no. 4, p. 461.

[22] Art. 8 of the EIR on the protection of rights *in rem*. See also Recitals 68-69 of the EIR and Guide to Enactment and Interpretation of the MLCBI (2014), p. 30, para. 38.

[23] Most notably, the reference to the *lex rei sitae* (law of the physical location of the asset) for the characterisation of the relevant right is prevalent for rights on land-based assets, but does not apply to highly mobile assets such as ships. See e.g. Virgós, M.; Schmit, E., Report on the Convention on Insolvency Proceedings, Council of the European Union, Brussels, 3 May 1996, p. 71, para. 95. On the authority of the Virgós and Schmit Report (1996) as an instrument to interpret the EIR, see the Opinion of Advocate General Jacobs in the Court of Justice of the European Union (CJEU), Case C-341/04, *Eurofood IFSC*, ECLI:EU:C:2005:579, 27 September 2005, fn. 5.

[24] The Court of Appeal of Antwerp, 4 March 2009, *The Normed Istanbul (ex-Hannes C)*, *European Transport Law*, 2009, p. 256.

[25] *Ibid*., p. 264, para. 30.

maritime claim could be protected as a right *in rem*. As a result, a carve-out from the debtor's insolvency was allowed, thus permitting ship arrests based on such a maritime claim to continue unhindered.[26]

In even firmer language, the Ghent Court of First Instance in *The ms Pretty Flourish*[27] underscored the proprietary nature of mere maritime claims, based on which they are entitled to territorial *in rem* protection in the insolvency.[28] Thus, the prevailing position of Belgian courts is that ship arrests based on any maritime claim should be offered immunity against concurrent universalist insolvency proceedings opened abroad. *A fortiori*, maritime liens, with their stronger claims to the collateral value of the ship, should also receive such *in rem* protection.

In France as well, ship arrests based on a maritime lien can continue unhindered despite concurrent universalist insolvency proceedings opened against the shipowner abroad. Although the Court of Appeal of Aix-en-Provence denied the *in rem* protection of a maritime lien claim in the case of the *Ital Ro-Ro I*,[29] the Court did so for reasons alien to the *in rem* nature of maritime liens. Instead, *in rem* protection of the claim in question was denied because the claim was not enforced on the ship encumbered by the maritime lien, but on a sister ship under the same ownership against which the maritime lien could not take effect.[30] Nevertheless, the Court of Appeal noted that, if the maritime lien had actually been enforced on the ship which it encumbered, *in rem* protection would have been accorded and the ship arrest would not have been affected by the concurrent foreign insolvency proceedings.[31]

Despite being devoid of maritime lien security, the claim was still a maritime claim in relation to the *Ital Ro-Ro I*, legitimising its arrest.[32] Contrary to the Belgian decisions discussed above, French courts do not offer special protection to mere maritime claims. When concurrent insolvency proceedings have been opened abroad, ship arrests based on mere maritime claims cannot be initiated

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26 *Ibid*., pp. 264-265, paras. 30-31.

27 Ghent Court of First Instance, 7 July 2009, *The ms Pretty Flourish, Rechtspraak van de Haven van Antwerpen (RHA)*, no. 4, 2010, p. 359.

28 *Ibid*., p. 370.

29 Cour d'appel d'Aix-en-Provence, 29 June 2011, *Navire Ital Roro I, Le Droit Maritime Français (DMF)*, no. 733, 2012, p. 131.

30 *Ibid*., p. 133.

31 *Ibid*.

32 Presumably based on Art. 1, para. 1(k) and Art. 3 of the International Convention relating to the arrest of seagoing ships (1952 Arrest Convention). See Cour d'appel d'Aix-en-Provence, 29 June 2011, *Navire Ital Roro I, Le Droit Maritime Français (DMF)*, no. 733, 2012, p. 133.

or proceed, as also confirmed explicitly by the Aix-en-Provence Court of Appeal in the case of the *Michele Iuliano*.[33] Thus, the French view is that holders of a maritime claim cannot arrest the ship before French courts when the shipowner is insolvent, but should simply file their claim in the forum of the main insolvency proceedings.

In contrast to Belgium and France, maritime liens do not receive *in rem* protection in the Netherlands, as illustrated in the decision of *X Reederei*.[34] In that decision, the Arnhem District Court categorically dismissed *in rem* protection for maritime liens.[35] Although the exact reasons for this dismissal remain obscure, this denial of *in rem* protection of maritime liens aligns with the prevailing scholarly classification of maritime liens under Dutch law as rights *in personam*, notwithstanding their strong proprietary characteristics.[36]

Remarkably, however, Dutch courts do offer *in rem* protection to typically lower-ranked ship hypothecs, as was done, for instance, by the Rotterdam District Court in the *Hannes C*.[37] As a result, ship arrests based on a ship hypothec or mortgage can ensue unhindered at the time of the shipowner's insolvency, while the opposite is true for a ship arrest based on a maritime lien. *De facto*, therefore, the statutory priority ranking between maritime liens and mortgages could be reversed perversely, at a time when the insolvency of the shipowner makes legal certainty in upholding this priority ranking most pressing.[38]

Similarly, the New Jersey Bankruptcy Court in the US, in a decision regarding the Hanjin collapse, did not grant any special protection to maritime liens against the universalist scope of main insolvency proceedings opened in a foreign jurisdiction.[39] Instead, the court held that the automatic stay of proceedings

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[33] Cour d'appel d'Aix-en-Provence, 7 December 2012, *Michele Iuliano, Le Droit Maritime Français (DMF)*, 2014, p. 239.

[34] Arnhem District Court, 3 December 2008, *X Reederei GmbH v FLB SPRL*, ECLI:NL:RBARN:2008:BG6986.

[35] *Ibid*., para. 2.2.

[36] Flach, R., *Scheepsvoorrechten. Aard en omvang van de op schepen rustende voorrechten*, Kluwer, Deventer, 2001, p. 25.

[37] Rotterdam District Court, 29 April 2009, *Hannes C* (2009) S&S 122, para. 4.4.

[38] For more general reflections on the perverse reversal of the priority ranking which a denial of *in rem* protection can create, see Veder, M., *Cross-Border Insolvency Proceedings and Security Rights: A Comparison of Dutch and German Law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency*, Kluwer Legal Publishers, Deventer, 2004, pp. 344-347.

[39] US Bankruptcy Court for the District of New Jersey, *In re Hanjin Shipping Co., Ltd. ("Hanjin")*, Case No. 16-27041, 2016.

following the recognition of foreign main insolvency proceedings precludes the initiation or continuation of ship arrests based on a maritime lien.[40] Although this outcome is aligned with the strongly universalist stance taken under the US enactment of the MLCBI,[41] it ignores the territorial safeguards on the ship encapsulated in maritime lien security.[42] Considering that, in maritime lien enforcement, US law treats the ship as a legal entity separate from its owner,[43] it is even questionable whether the ship falls in the debtor's insolvency estate at all. In addition, the ships in question were chartered by Hanjin under bareboat charter hire purchase agreements. This further raises the question of whether, before the full completion of the purchases under these agreements, the ships belong to the insolvency estate.[44]

4. LEGAL PLURALISM IN MARITIME INSOLVENCIES

The differences in the treatment of maritime liens in insolvency illustrated above not only create legal uncertainty, but also lead to unwarranted actions by the different parties involved. To name a few, ships avoid the territorial waters of certain countries for fear of being arrested,[45] port authorities refuse entry to ships of the debtor because they are considered a potential financial

[40] *Ibid*., paras. 26-32.

[41] *Ibid*., paras. 19-21. See also Hathorn, P., Cross-Border Insolvency in the Maritime Context: The United States Universalism vs. Singapore's Territorialism, *Tulane Maritime Law Journal*, vol. 38 (2013), no. 1, pp. 248-257.

[42] Davies, M., Cross-Border Insolvency and Admiralty…, *op. cit*. in fn. 19, p. 109.

[43] Following the "personification of the ship" theory. See Davies, M., In Defense of Unpopular Virtues: Personification and Ratification, *Tulane Law Review*, vol. 75 (2000), no. 2, pp. 345-350.

[44] Cf. the reasoning employed in US Bankruptcy Court for the District of New Jersey, *In re Hanjin Shipping Co., Ltd. ("Hanjin")*, Case No. 16-27041, 2016, para. 30: "While it is true that the chartered vessels are not owned by the Debtor, the claims against these vessels are based in part upon liabilities of the Debtor. And, so long as these vessels are under charter by the Debtor, its property rights are impacted. In order to achieve the practical objective of moving cargo from the Debtor's vessels to intended destinations in the United States […] it was necessary to extend the stay to vessels chartered by the Debtor". See also Myers, T. P., Hung up on Hanjin: Universalism and Bareboat Charter Hire Purchase Agreements Leave Maritime Lienholders Adrift, *Tulane Maritime Law Journal*, vol. 42 (2017), no. 1, pp. 206-208.

[45] As reported by Wackett, M., Hanjin Captains Ordered to Slow Steam or Drift to Avoid Arrest, *gCaptain*, 1 September 2016, https://gcaptain.com/hanjin-captains-ordered-slow-steam-drift-avoid-arrest/ (accessed 10 June 2026).

burden,[46] and creditors engage in opportunistic forum shopping in countries where their claims are more favourably treated, thereby seeking to elude the equality of creditors underlying insolvency law.[47] As a result, at a time when the financial hardship of an insolvent shipping company can already place considerable strain on maritime trade, its expeditious operation can be affected even further with the most consequential impact falling on the most vulnerable parties involved, such as seafarers.[48]

In the longer term, the legal uncertainty surrounding the administration of maritime liens and its effect on ship mortgages undermines the intended security function of maritime security interests. The legal protection of creditors essential to the operation of the ship becomes imperilled, which may lead to a re-evaluation of the conditions on which credit is provided to the ship. As a result, the cost of credit may increase, which affects the cost-effective and efficient operation of maritime trade.[49] Therefore, it is critical to address the existing legal uncertainty in the administration of maritime insolvencies, particularly in the current geopolitical context in which maritime trade is already under considerable pressure.

Eliminating the existing legal uncertainty is a complex endeavour given the legal pluralism characteristic of the legal phenomenon of maritime insolvency. At the international level, two main cross-border instruments coincide, i.e.

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[46] As reported by Staff and agencies in Los Angeles and Seoul, Hanjin Shipping Bankruptcy Causes Turmoil in Global Sea Freight, *The Guardian*, 2 September 2016, https://www.theguardian.com/business/2016/sep/02/hanjin-shipping-bankruptcy-causes-turmoil-in-global-sea-freight (accessed 10 June 2026).

[47] To illustrate, in the Hanjin insolvency, proceedings were opened by different interests in at least 43 different fora. See Tan, W. Z., Hanjin to Initiate Legal Action in 43 Countries, *Lloyd's List*, 6 September 2016, https://www.lloydslist.com/LL023580/Hanjin-to-initiate-legal-action-in-43-countries?vid=Maritime&processId=965e9be2-c01b-4acb-b74d-881e7cb096c2 (accessed 10 June 2026).

[48] As documented by the BBC, seafarers on board Hanjin ships became virtually imprisoned aboard in the wake of the insolvency. See Illmer, A., Hanjin Ships, Cargo and Sailors Stranded at Sea, *BBC News*, 1 September 2016, https://www.bbc.com/news/business-37241727 (accessed 10 June 2026) and Illmer, A., The Strange Story of a Seized Hanjin Ship and Its Lonely Crew, *BBC News*, 14 September 2016, https://www.bbc.com/news/business-37335614 (accessed 10 June 2026).

[49] On the role of maritime liens in facilitating short-term credit to the ship, see e.g. Berlingieri, F., Lien Holders and Mortgagees: Who Should Prevail? *Lloyd's Maritime and Commercial Law Quarterly*, vol. 2 (1988), pp. 161-162. On the role of ship mortgages in facilitating long-term credit to the ship, see e.g. Philip, A., The Need for Securities on Ships…, *op. cit*. in fn. 13, p. 10.

the MLCBI[50] and the EIR.[51] Although both instruments are based on the same theory of mitigated or modified universalism,[52] their scope and practical operation vary significantly,[53] with distinct issues in the administration of maritime insolvencies as a result. Under the EIR, the ambiguity surrounding the scope and protection standard of Art. 8 EIR, the protection ground for rights *in rem*, hampers the adequate administration of maritime security interests.[54] In turn, the soft law nature[55] of the MLCBI gives rise to divergences in its domestic enactments, resulting in substantial differences in the administration of maritime security interests across enacting states.[56]

Moreover, these international cross-border insolvency instruments intersect with prevalent international maritime law conventions, notably the successive Maritime Liens and Mortgages Conventions. Although they have not achieved

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50 Currently enacted by 62 states in a total of 65 jurisdictions. For its current status, see https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (accessed 10 June 2026).

51 Directly applicable in all EU Member States with the exception of Denmark. See Art. 288, para. 2 of the Treaty on the Functioning of the European Union (TFEU) and Recital 88 of the EIR.

52 See Recitals 22-23 of the EIR and Walters, A., Modified Universalisms & the Role of Local Legal Culture in the Making of Cross-Border Insolvency Law, *American Bankruptcy Law Journal*, vol. 93 (2019), no. 1, pp. 47-110.

53 As put succinctly in Walters, A., Modified Universalisms…, *op. cit*. in fn. 52, p. 59: "[…] the Model Law contrasts with the E.U. Insolvency Regulation – a more complete procedural private international law code forming part of the E.U.'s acquis communautaire, the body of supranational law directly applicable in E.U. member states by virtue of the E.U.'s founding treaties. This establishes a reciprocal legal framework containing uniform rules on jurisdiction, applicable law, recognition of insolvency proceedings, and recognition and enforcement of insolvency-related judgments. Importantly, the E.U. Insolvency Regulation leaves less leeway for divergent local implementation because it directly applies in Member States and its binding, supranational legal character is further reinforced by the centralized role that the Court of Justice of the European Union plays in its interpretation".

54 As introduced succinctly in Berlingieri, G., Defaulting Shipowners and the Regulation of their Insolvency Status, *European Maritime Law Organization, Spring Conference in Conjunction with Malta Maritime Law Association*, Valletta, Malta, 7 and 8 May 2014, pp. 4-6.

55 Guide to Enactment and Interpretation of the MLCBI (2014), pp. 24-26, paras. 19-23.

56 E.g., the aforementioned position before US courts, as illustrated by the US Bankruptcy Court for the District of New Jersey, *In re Hanjin Shipping Co., Ltd. ("Hanjin"),* Case No. 16-27041, 2016; cf. the protection of maritime lienholders under the Singaporean enactment of the MLCBI in *The Ocean Winner* [2021] SGHC 8; cf. the even more extensive protection of maritime claimholders under the Australian enactment of the MLCBI in *Yu v STX Pan Ocean Co Ltd (South Korea), in the matter of STX Pan Ocean Co Ltd (receivers appointed in South Korea)* [2013] FCA 680.

the widespread acceptance desired, both the 1926[57] and the 1993 Maritime Liens and Mortgages Conventions[58] are currently in force in several countries. In these countries, the applicable convention provides for an internationally uniform regime for maritime liens and mortgages,[59] which can conflict with their administration under the applicable cross-border insolvency law, in particular when the latter leads to a reversal of the priority ranking.

Differences at the domestic level also affect the administration of maritime insolvencies. Despite the widespread international acceptance of maritime liens,[60] the exact scope of protection varies significantly between domestic systems.[61] Some only accord maritime lien status to a few categories of claims,[62] while others

[57] Its depositary, Belgium, refers to 22 remaining state parties to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, 1926. See https://diplomatie.belgium.be/sites/default/files/documents/CDM5.%20Convention%20internationale%20pour%20l'unification%20de%20certaines%20r%C3%A8gles%20relatives.pdf (accessed 10 June 2026).

[58] The UN depositary of the International Convention on Maritime Liens and Mortgages, 1993 refers to 21 state parties. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-D-4&chapter=11&clang=_en (accessed 10 June 2026).

[59] Notably with uniformly recognised categories of maritime liens and a uniform priority ranking between them and in relation to ship mortgages, see Arts. 2-3 and 5 of the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926, and Arts. 4-5 of the International Convention on Maritime Liens and Mortgages, 1993.

[60] Thomas, D. R., *Maritime Liens*, Stevens & Sons, London, 1980, p. 2, para. 1: "A maritime lien is a concept of international familiarity and is recognised in most of the principal maritime jurisdictions. As between different countries the precise appellation adopted may of course vary; for example, in France equivalent claims are known as 'créances privilégiées', but in all cases the nature of the right which thereupon arises is fundamentally the same".

[61] Berlingieri distinguishes four traditional systems: "The English system in which there were relatively few maritime liens […]. The United States system […] to include all supplies and services to the ship […]. The French system, adopted in all civil law countries, in which practically all claims in contract arising during the voyage of a ship were secured by a privilège maritime. The German system, in which all claims subject to the shipowner's limitation of liability were secured by a gesetzliches Pfandrecht (statutory pledge)" (Berlingieri, F., Lien Holders and Mortgagees…, *op. cit*. in fn. 49, p. 157).

[62] Notably English law, see *Bankers Trust International Ltd v Todd Shipyards Corporation ("The Halcyon Isle")* [1981] AC 221, p. 240: "The United Kingdom policy, reflected in its refusal to ratify the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926, had been to keep down to a minimum the number of maritime liens that should be recognised, so as to prevent what can be described as 'secret charges' arising and gaining priority over mortgagees and over subsequent purchasers for value of the ship".

recognise a wider variety of maritime liens.[63] Furthermore, the exact priority ranking between the different categories of maritime liens can also vary significantly depending on the legal system.[64] Therefore, significant international differences exist in the security afforded by maritime liens, which become more consequential during insolvency. Another internationally contentious issue is the characterisation of maritime liens as proprietary,[65] procedural,[66] or personal rights.[67] As a result, maritime liens do not consistently enjoy proprietary or *in rem* protection against universalist cross-border insolvency laws,[68] despite the undeniably strong proprietary claims which maritime liens hold on the collateral value of the ship.[69]

Finally, depending on the legal system, a wide variety of conflict-of-law rules applies to legal questions related to the recognition and ranking of maritime liens. These rules affect the degree of protection afforded to foreign maritime liens in the forum in which they are brought.[70] This implies that, even when

[63] Notably US law, see 46 US Code, sections 31301–31343. As expressed by the US delegation at the 1907 CMI Conference in Venice: "[…] from the point of view of a cargo owning nation and not a shipowning nation, we feel that there has been no adequate or fair compromise yielded to the owners of cargoes, but that every favour has been accorded to the owners of ships". See International Maritime Committee, Venice Conference, September 1907, J.-E. Buschmann, Rempart de la Porte du Rhin, Antwerp, 1909, pp. 742-743.

[64] For an overview of these international differences, see Berlingieri, F., Lien Holders and Mortgagees…, *op. cit*. in fn. 49, p. 157 and Paunesco, A., *L'Unification internationale des privilèges et hypothèques en droit maritime et en droit fluvial*, Thèse de doctorat, Université de Paris, Faculté de droit, Département de droit commercial, 1933.

[65] As upheld in most civil law legal systems. For French law, see Scapel, C.; Bonassies, P.; Bloch, C., *Droit maritime*, 4th Edition, LGDJ, Paris, 2022, pp. 495-496, para. 620 and for German law, see Rabe, D.; Bahnsen, K. U., *Seehandelsrecht: Fünftes Buch des Handelsgesetzbuches mit Nebenvorschriften und Internationalen Übereinkommen*, 5th Edition, C. H. Beck, München, 2017, Vor § 596, no. 18.

[66] Notably under English law, see *Bankers Trust International Ltd v Todd Shipyards Corporation ("The Halcyon Isle")* [1981] AC 221, in fn. 62, p. 234. On the controversies and objections to this classification, see Rares, S., The Far from *Halcyon Isle*…, *op. cit*. in fn. 7, p. 8.

[67] Prevalent under Dutch law, see Fischer, H. F. W. D., Zakelijke en absolute rechten, *Nederlands Juristenblad*, vol. 24 (1949), no. 30, pp. 591-594; Flach, R., *Scheepsvoorrechten…, op. cit*. in fn. 36, p. 25.

[68] See above, in particular the lack of protection of maritime liens before Dutch courts, as illustrated in Arnhem District Court, 3 December 2008, *X Reederei GmbH v FLB SPRL*, ECLI:NL:RBARN:2008:BG6986, cited in fn. 34.

[69] Jackson, D., *Enforcement of Maritime Claims*, 3rd Edition, Informa Law from Routledge, London, 2000, pp. 443-444, nos. 17.57-17.58 and Staniland, H., The Halcyon Isle Revisited: A South African Perspective, *Lloyd's Maritime and Commercial Law Quarterly*, 1989, p. 189.

[70] For a brief overview, see International Maritime Committee, New York Conference 1965, Imprimeries Générales Lloyd Anversois, Antwerpen, 1965, pp. 76-77, paras. 1-5.

maritime liens are protected during insolvency and hence ship arrests based on maritime liens can proceed, further differences in the treatment of maritime liens can arise depending on the applicable conflict rule and the corresponding legal system of origin, which adds yet another layer of complexity to the intricate administration of maritime insolvencies.

5. COOPERATIVE TERRITORIALITY AS A GUIDING PARADIGM: A TERRITORIAL STARTING POINT

In view of the legal pluralism sketched out above, a multidimensional approach is required to address comprehensively the issues arising in maritime insolvencies. A guiding conceptual paradigm under which maritime insolvencies can be administered, which can be adhered to and implemented across different dimensions, could facilitate this process. Cooperative territoriality[71] would be the most suitable paradigm for this purpose because it most aptly advances the common objectives of insolvency law and maritime law. In addition, cooperative territoriality is most feasible as a guiding paradigm because its implementation requires only minimal legislative action.

The overall picture under cooperative territoriality shifts from the prevalent single universalist regime under which maritime insolvencies are administered to the concurrence of various territorial regimes following the physical location of the ships of the debtor. More specifically, the starting point under cooperative territoriality is the enforcement of maritime security interests directly on the ships in the countries where they call at a port. In this way, maritime lien or mortgage holders can still arrest the ship and enforce their secured claims directly on the relevant ship despite concurrent insolvency proceedings opened abroad, thereby upholding the security function which maritime security interests are supposed to perform.[72]

Although the advancement of cooperative territoriality in the administration of maritime insolvencies implies a conceptual paradigm shift from the dominant cross-border insolvency theory of modified universalism, its implementation under existing cross-border insolvency instruments would not require drastic legislative changes. In the EU, for instance, the protection of rights *in rem* under Art. 8 EIR is prompted by grounds that are highly comparable to those

[71] *Supra* 1; LoPucki, L. M., The Case for Cooperative Territoriality…, *op. cit.* in fn. 6.

[72] As would happen under the current approach taken by Belgian, French, Australian, and Singaporean courts. *Supra* 5-7 and fn. 56.

underlying the protection of maritime security interests, notably their importance in facilitating and enabling the provision of credit.[73] Furthermore, maritime security interests perform their security function just as traditional rights *in rem* do, i.e. by using valuable assets as collateral to secure the reimbursement of loans. Therefore, as is appropriate, maritime security interests should be included within the scope of Art. 8 EIR as well.[74]

In the same vein as Art. 8 EIR, the Guide to Enactment and Interpretation of the MLCBI explicitly leaves room for territorial exceptions for secured claims and for the execution of rights *in rem* in alignment with the relevant provisions under the domestic law of the enacting states.[75] The introduction of such territorial exceptions for maritime security interests should thus be encouraged, following the example of Singapore's enactment of the MLCBI[76] and of Australian case law in the wake of the introduction of the MLCBI in its legal system.[77]

In countries that do not adhere to either of the two internationally prevailing cross-border insolvency instruments, territoriality remains the default.[78] It follows that, in these countries, the territorial administration of maritime security interests in principle does not require any legislative intervention at all. Thus, apart from its normative value in adequately protecting maritime security interests, a territorial starting point for their administration is feasible across countries that subscribe to varying cross-border insolvency regimes, whether it be the EIR, the MLCBI, or a domestic territorial regime.

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[73] Recital 68 of the EIR: "There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since such rights are of considerable importance for the granting of credit". Cf. the similar rationale for maritime liens, *supra* fn. 49.

[74] See the definition in Art. IX.-1:102 of the Draft Common Frame of Reference (DCFR) of security rights as "any limited proprietary right in the asset which entitles the secured creditor to preferential satisfaction of the secured right from the encumbered asset". On the characteristics which make maritime security interests limited proprietary rights as well, see *supra* 3-4.

[75] Guide to Enactment and Interpretation of the MLCBI (2014), p. 30, para. 38. See also UNCITRAL Legislative Guide on Insolvency Law (2004), p. 71, para. 88 for more on exceptions to the *lex fori concursus* (the law applicable in the forum of insolvency) for rights *in rem*.

[76] Insolvency, Restructuring and Dissolution Act 2018 (IRDA), Third Schedule. See *The Ocean Winner* [2021] SGHC 8.

[77] *Kim v Daebo International Shipping Co Ltd* [2015] FCA 684; *Hur v Samsun Logix Corporation* [2015] FCA 1154; *Yakushiji v Daiichi Chuo Kisen Kaisha* [2015] FCA 1170.

[78] LoPucki, L. M., The Case for Cooperative Territoriality…, *op. cit*. in fn. 6, p. 2218.

6. BENEFITS OF A TERRITORIAL STARTING POINT TO THE INSOLVENCY ESTATE

Besides the obvious advantage to maritime security interests, the territorial starting point advocated in this paper also creates the least hindrance to maritime trade and can even benefit the overall administration of the insolvency estate, and hence all the creditors and the debtor involved. Most significant in this regard is the fact that a ship arrest based on a maritime lien, as would be permitted by a territorial approach, often triggers insurance coverage.[79] Through this coverage, the claims secured by a maritime security interest are recovered from a source external to the insolvency estate, thereby removing the secured claims in question from the *concursus* with the other creditors and the debtor. In this way, the recovery rate for all parties involved increases following the territorial administration of maritime security interests. In addition, the alternative security provided by insurers after a ship arrest enables the swift release of the ship.[80] Accordingly, the ship can quickly continue its voyages and continue generating revenue, which ultimately also benefits the insolvency estate.

In the opposite scenario, i.e. when maritime security interests are engulfed in the (modified) universalism of the main insolvency proceedings, the *Sword of Damocles* of often lengthy insolvency proceedings may follow the ships for an extensive period.[81] Moreover, given the international mobility of the ship and the different approaches taken to the status of maritime liens, the ship may be subject to different conflicting insolvency regimes. If maritime security interests are ultimately administered in the insolvency proceedings, the outcome may well be very similar to what it would have been following territorial administration, owing to the widely accepted priority ranking of maritime security interests, the international consensus on certain core categories of maritime liens,[82]

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79 Davies, M., Cross-Border Insolvency and Admiralty…, *op. cit*. in fn. 19, pp. 110-111.

80 Generally, in the form of a letter of undertaking, offered by P&I insurers often even without contractual obligation as an "act of friendship" in view of the mutual nature of this kind of insurance. See *Gregory Maritime Ltd v Thos. R. Miller & Son* [1966] 1 Lloyd's Rep. 296, p. 299.

81 Gurrea-Martínez, A., The Digitalization of Insolvency Proceedings, Singapore Management University Yong Pung How School of Law Research Paper No. 9/2025, European Corporate Governance Institute – Law Working Paper No. 865/2025, *International Insolvency Review,* 21 February 2025, p. 2: "Despite the international divergences existing in the design of insolvency law, there is a common feature of insolvency proceedings that, to a greater or lesser extent, is somehow universal: insolvency proceedings are generally costly and lengthy processes".

82 In fact, the international controversies on which maritime liens to recognise can be attributed to two controversial categories of maritime liens, i.e. the maritime lien for cargo

and the widespread international acceptance of ship hypothecs and mortgages.[83] Critically, however, in insolvency proceedings, this outcome will typically only be achieved after lengthier and costlier procedures than the generally expeditious administration of ship arrests and ensuing procedures on the merits. In addition, the collateral in the form of the ship will typically not be present in the insolvency forum, which creates enforcement issues that do not arise when secured claims are enforced territorially, directly on the ship.[84]

However, the insolvency of the debtor and the ensuing moratorium on the insolvency estate often prevent insurers from intervening[85] or trigger provisions in the insurance contract that suspend or terminate the coverage.[86] As a result, the advantages of a territorial starting point that follow from the pre-existing insurance coverage are neutralised. Thus, security holders can no longer be paid by this alternative source of funding, but, following a territorial starting point, they should still be able to enforce their secured claim directly on the ship and avoid the *concursus*.

The enforcement of maritime security interests on the ship ultimately culminates in its judicial sale. By virtue of the recently introduced Beijing Convention,

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damage (Flach, R., *Scheepsvoorrechten…, op. cit*. in fn. 36, p. 170) and the maritime lien for necessaries claims, see Sandström, J. M., The Changing International Concept of the Maritime Lien as a Security Right, *Tulane Law Review*, vol. 47 (1973), no. 3, pp. 683-687. Broadly speaking, an international consensus exists on the other categories of maritime liens, including for seafarers' wages, for damage claims, for salvage, and for port dues.

83 *The Panglobal Friendship* [1978] 1 Lloyd's Rep. 368, p. 371: "For at least a quarter of a century, if not more, the method of obtaining finance for building ships [...] was widely adopted on both sides of the Atlantic. It may be summarised in these words. The bank advances to one or more owning companies a large sum of money. It of course requires security. It will take a mortgage on the ship for that security". See also Philip, A., The Need for Securities on Ships…, *op. cit*. in fn. 13, p. 10.

84 As illustrated in *Re Northsea Base Investment Limited* [2015] EWHC 121 (Ch), in which the determination of the centre of main interests of the debtor shipping company was the issue under dispute. The court ultimately decided for administrative reasons, unrelated to the physical location of the ship, that the COMI of the debtor was located in Cyprus, which is why main insolvency proceedings had to be opened there (see, in particular, para. 27).

85 UNCITRAL Legislative Guide on Insolvency Law (2004), p. 84, para. 30: "Some States adopt the approach that, in order to ensure the effectiveness of the [insolvency] stay, it must be very wide, applying to all remedies and proceedings against the debtor and its assets […]".

86 Davies, M., Cross-Border Insolvency and Admiralty…, *op. cit*. in fn. 19, p. 111 (fn. 48): "[P&I] Club rules typically contain an ipso facto termination of cover in the event of the shipowner's insolvency", e.g. Rule 17.1(2) of the NorthStandard P&I Club Rules 2025/26; Rule 25.1(a) of the Gard Rules for Ships 2026 and Rule 5(3) of the American P&I Club Rules 2026.

such judicial sales of ships can now be recognised across jurisdictions in a harmonised and simplified manner.[87] Hence, judicial sales of ships which follow directly from the territorial administration of maritime security interests during a maritime insolvency can also be recognised internationally in a relatively straightforward manner. Therefore, even without insurers stepping in, the territorial administration of maritime security interests is advantageous to the overall administration of maritime insolvencies.

Through this harmonised and simplified method of international recognition, the Beijing Convention can provide for a system of global recognition of judgments on maritime insolvencies in a way which no cross-border insolvency instrument has been able to achieve, thereby enhancing legal certainty and facilitating global trade.[88] While the EIR provides for the automatic international recognition of insolvency decisions,[89] its scope of application is strictly restricted to EU Member States, with the exception of Denmark.[90] Therefore, in contrast to the aspirations of the Beijing Convention, truly global recognition of insolvency decisions is not possible under the EIR. The MLCBI regime, in turn, only provides for the recognition of a foreign insolvency proceeding and corresponding relief measures, but not for the international recognition of substantive judgments rendered to settle the insolvency.[91]

For the latter purpose, UNCITRAL introduced a Model Law on Recognition and Enforcement of Insolvency-Related Judgments (MLIJ), but since its introduction in 2018 no country has yet enacted it.[92] In a relatively short time, by contrast, the Beijing Convention has managed to achieve the requisite number of ratifications to enter into force.[93] Moreover, with the recent conclusion of the

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87 United Nations Convention on the International Effects of Judicial Sales of Ships (2022). See also UNCITRAL Explanatory Note to the 2022 Beijing United Nations Convention on the International Effects of Judicial Sales of Ships (2023), pp. 21-22, paras. 1-3.

88 *Ibid*., para. 3.

89 Art. 32 of the EIR.

90 Which is why Veder refers to the theory underlying the EIR as "Europeanism" (Veder, M., *Cross-Border Insolvency Proceedings…, op. cit*. in fn. 38, p. 108).

91 See Guide to Enactment and Interpretation of the MLCBI (2014), paras. 29-34.

92 For more, see Bork, R.; Veder, M. (eds.), *The UNCITRAL Model Laws on Cross-Border Insolvency and on the Recognition and Enforcement of Insolvency-Related Judgments: An Article-by-Article Commentary*, Edward Elgar Publishing, Cheltenham, 2025, Part II.

93 After the requisite number of three ratifications by Barbados, El Salvador, and Spain, the Beijing Convention entered into force on 17 February 2026. See The Beijing Convention on the Judicial Sale of Ships Enters into Force, UNIS/L/392, Vienna, 17 February 2026, https://unis.unvienna.org/unis/en/pressrels/2026/unisl392.html (accessed 10 June 2026).

Beijing Convention by the European Union, the momentum is in favour of more widespread international acceptance of this regime.[94]

In sum, because of the limited avenues for international recognition of insolvency decisions under existing cross-border insolvency instruments, ships administered under a universalist insolvency regime may be exposed to claims predating the insolvency when they sail to different jurisdictions. This exposure to predating claims affects the effective administration of the maritime insolvency. The resulting legal uncertainty in relation to the clean title of the purchaser is precisely what the Beijing Convention intends to avoid.[95] Therefore, a territorial starting point in administering maritime insolvencies is to be preferred irrespective of the potential intervention of insurers, because the judicial sale of the ship resulting from such territorial administration can trigger the international recognition of the effects of the insolvency under the Beijing Convention.

7. PROTECTION OF MARITIME SECURITY INTERESTS AND THE EQUITABLE TREATMENT OF CREDITORS

Despite the advantages of a territorial starting point presented above, it could be argued that the territorial administration of maritime security interests affords such interests excessive protection, to an extent to which they would not be entitled under the universalist main insolvency proceedings. Such excessive protection, it could be argued, affects the fundamental principle of *pari passu* distribution among competing creditors in insolvency law,[96] which is safeguarded under a single universalist insolvency regime.[97]

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[94] Council Decision (EU) 2026/1099 of 27 April 2026 on the conclusion, on behalf of the European Union, of the United Nations Convention on the International Effects of Judicial Sales of Ships (the 'Beijing Convention on the Judicial Sale of Ships'), *Official Journal of the European Union*, 2026/1099, 18 May 2026.

[95] To avoid the uncertainty which transpired e.g. in the Maltese decision in *The Bright Star* [2023] App Ċiv 846/18/2, in which a Maltese ship mortgage predating the judicial sale of the ship in Jamaica was brought before a court in Malta. See Art. 6 of the Beijing Convention and UNCITRAL Explanatory Note to the 2022 Beijing United Nations Convention on the International Effects of Judicial Sales of Ships (2023), pp. 70-71, paras. 172-175.

[96] Van Zwieten, K., *Goode on Principles of Corporate Insolvency Law*, 5th Edition, Sweet & Maxwell, London, 2018, p. 291, para. 8-02.

[97] See fn. 16, *Natixis, Singapore Branch v Seshadri Rajagopalan* [2025] SGCA 29, para. 2: "[…] the law of insolvency places a premium on collectivism and equality amongst the insolvent's creditors, a focus which finds its clearest expression in the pari passu principle that functions as a sort of default rule in insolvency proceedings […]". See also Wessels,

This argument can be countered, however, with reference to the lack of connection between this single universalist regime and maritime security interests. Whereas the single universalist regime is determined by following the country where the debtor's centre of main interests is located,[98] maritime security interests generally have no connection to this regime. Varying connecting factors determine the regime applicable to maritime security interests, including by referring to the forum of enforcement,[99] to the ship's registry,[100] and to the law applicable to the underlying claim,[101] but the debtor's centre of main interests is never one of them. Accordingly, it would affect legal certainty for this alien legal system to suddenly appropriate the administration of maritime security interests at the time of the debtor's insolvency, when it is most pressing for security holders for their expected protection to take effect.

Therefore, it remains preferable to administer maritime security interests on a territorial basis in the event of a maritime insolvency. Although such territorial enforcement may somewhat overprotect maritime security interests, differences in protection are hardly avoidable as long as no internationally uniform regime on their scope of protection exists.[102] At least, a territorial administration of maritime security interests respects their strong connection to the ship, thereby granting their holders direct access to its collateral value. Given the paramount ranking of maritime security interests and the pivotal role they play in the facilitation of maritime trade,[103] there are strong reasons to prioritise safeguarding their protection by way of a territorial starting point.

B., *International Insolvency Law Part I: Global Perspectives on Cross-border Insolvency Law*, 5th Edition, Wolters Kluwer, Deventer, 2022, p. 17, para. 10018.

98 *Supra* 5.

99 Notably (and controversially), under English law. See *Bankers Trust International Ltd v Todd Shipyards Corporation ("The Halcyon Isle")* [1981] AC 221, in fn. 62, p. 234 and Rares, S., The Far from *Halcyon Isle..., op. cit*. in fn. 7. As also followed in Australia (*The Sam Hawk* (2016) 246 FCR 337) and South Africa (*Transol Bunker v MV Andrico Unity 1989* (4) SA 325 (C)).

100 E.g. under Belgian law. See Art. 2.2.5.1 §1 *Scheepvaartwetboek* (Belgian Shipping Code).

101 E.g. under German law. See Art. 45(2) *ab initio, Einführungsgesetz zum Bürgerlichen Gesetzbuche* (Introductory Act to the German Civil Code).

102 See Michaels, R., Private International Law and the Legal Pluriverse, in: Green, M. S.; Michaels, R.; Banu, R. (eds.), *Philosophical Foundations of Private International Law*, Oxford University Press, Oxford, 2024, p. 264.

103 *Supra* 2-4 and fn. 49.

8. A COORDINATED RESPONSE BY WAY OF JUDICIAL COOPERATION

Another objection to a territorial starting point is that it precludes a coordinated response to the maritime insolvency. As a result, inefficiencies can arise in the administration of the insolvency, affecting the recovery rate for the body of creditors and the debtor. Creditors may, for instance, file their (secured) claims on distinct ships in different jurisdictions, in the hope of a maximal recovery of their claim. The result may be that the same claim is satisfied in different jurisdictions to a larger extent than justified and thus to the detriment of the other creditors and the debtor. In this context, territoriality has been described pejoratively as a "grab rule".[104]

To mitigate these drawbacks of a strict territorial approach, international coordination measures are necessary.[105] Fortunately, no drastic interventions would be needed for the implementation of such measures, because both the EIR[106] and the MLCBI[107] already offer a framework that facilitates international cooperation and communication between the different actors in the same insolvency.

In addition, a Model Law on Enterprise Group Insolvency (MLEG) has been introduced within the institutional framework of UNCITRAL, which hinges on international cooperation and communication between the different actors in enterprise group insolvency.[108] Such coordination mechanisms in relation to enterprise groups are particularly useful in the administration of maritime insolvencies, given the often intricate corporate structure of shipping companies.[109] Unfortunately, the MLEG has not been successful so far, with no enactments to date.[110] Under the EIR, a similar coordination framework for enterprise group

[104] Notably by Westbrook, one of the first and most authoritative proponents of universalism in cross-border insolvency law. See Westbrook, J. L., Theory and Pragmatism…, *op. cit*. in fn. 21, p. 460 and Westbrook, J. L., Universalism and Choice of Law, *Penn State International Law Review*, vol. 23 (2005), no. 3, p. 625.

[105] LoPucki, L. M., The Case for Cooperative Territoriality…, *op. cit*. in fn. 6, pp. 2219-2220.

[106] Arts. 41-44 of the EIR. See also Recitals 48-49 of the EIR.

[107] Arts. 25-27 of the MLCBI. See also Preamble (a) of the MLCBI and Guide to Enactment and Interpretation of the MLCBI (2014), pp. 30-32, paras. 40-45.

[108] Arts. 9-18 of the MLEG. See also Guide to Enactment of the MLEG (2019), p. 25, para. 27.

[109] See Delebecque, P., Les «Single ship companies», *op. cit*. in fn. 8, p. 1; Stopford, M., *Maritime Economics*, 3rd Edition, Routledge, London, 2009, pp. 303-310.

[110] However, Singapore is set to become the first country to enact the MLEG into its domestic law. See Singapore Ministry of Law, Acceptance of Recommendations by the Committee to Enhance Singapore's Corporate Restructuring and Insolvency Regime Following Public Consultation, 14 May 2026, para. 4(d), https://www.mlaw.gov.sg/

insolvencies was introduced after its 2015 recast.[111] Since its introduction, however, legal practice has made little use of this framework.[112] Nevertheless, these UNCITRAL and EU initiatives suggest a developing consensus on international coordination through cooperation mechanisms in the administration of enterprise group insolvencies, and even acceptance in this respect of a cooperative territoriality approach.[113] In fact, outside these formal frameworks, insolvency practitioners and courts are already increasingly engaging in international cooperation in relation to intricate insolvencies with a cross-border impact.[114]

Against this background of increased international cooperation and coordination, the 2025 publication of Admiralty Guidelines[115] by the Judicial Insolvency Network (JIN)[116] comes at an opportune time. In essence, the JIN Admiralty Guidelines encourage courts from different jurisdictions active in the same maritime insolvency to seek international cooperation through a set of

acceptance-of-recommendations-by-the-committee-to-enhance-singapore-s-corporate-restructuring/ (accessed 10 June 2026).

111 Chapter V of the EIR. See also Recitals 49-63 of the EIR.

112 Geroldinger, A.; Mailly, M.; Madaus, S.; Wouters, N., CERIL Statement 2021-2 on EU Group Coordination Proceedings, Conference on European Restructuring and Insolvency Law, 29 June 2021, p. 1, https://www.ceril.eu/news/ceril-statement-2021-2-on-eu-group-coordination-proceedings (accessed 10 June 2026).

113 As suggested explicitly by Mevorach: "As in single entity cross-border insolvencies, cooperation in group cases is crucial. The instruments emphasize that it is a duty. [The EIR and the MLEG] are, however, quite light regarding the results of cooperation, and, here, they lean toward what is called 'cooperative territoriality'". See Mevorach, I., A Fresh View on the Hard/Soft Law Divide: Implications for International Insolvency of Enterprise Groups, *Michigan Journal of International Law,* vol. 40 (2019), no. 3, p. 519.

114 Through international insolvency protocols concluded *ad hoc*, as regards specific insolvencies, as explicitly encouraged under the EIR (see Recital 49 of the EIR). For an overview of reported protocols, see International Insolvency Institute, III: Insolvency Protocols, https://www.iiiglobal.org/initiatives/iii-insolvency-protocols/ (accessed 10 June 2026).

115 Judicial Insolvency Network, JIN Admiralty Guidelines, Guidelines on Management of Applications for Arrest of Vessel where Vessel Owner or Bareboat Charterer is the Subject of Cross-Border Insolvency Proceedings, 3 December 2025, https://www.jin-global.org/initiatives/jin-admiralty-guidelines/ (accessed 10 June 2026).

116 Since its inception in 2016, the Judicial Insolvency Network is an influential international platform of insolvency courts and judges seeking judicial cooperation in international insolvencies. The earlier 2017 JIN Guidelines on Communication and Cooperation in (general) Cross-Border Insolvency Matters are regularly cited in international restructurings and have been formally adopted in 18 countries. See https://www.jin-global.org/about-us/ (accessed 17 August 2026) and Verma, A., Soft Law, Hard Choices: Lessons from India's Cross-Border Insolvency Protocols, *International Insolvency Review,* vol. 35 (2026), no. 1, p. 108.

best practices.[117] Notwithstanding their emphasis on international cooperation, the JIN Admiralty Guidelines also give latitude to the territorial enforcement of security interests, directly on the ship itself.[118] They therefore hold promise for facilitating the international coordination needed to mitigate the drawbacks of adhering to a strictly territorial approach in maritime insolvencies. By doing so, they can serve as a useful vehicle to advance the paradigm of cooperative territoriality in the administration of maritime insolvencies advocated in the current contribution.

Given the limited success of the existing formal cooperation frameworks and in the current geopolitical climate of declining multilateralism, the international judicial cooperation championed by the JIN Admiralty Guidelines may not merely be useful but may even be indispensable. Moreover, recent experience shows that courts are inclined to cooperate in international insolvencies when it is apparent that such international cooperation creates a beneficial outcome for the body of creditors and the debtor.[119] In this context, the soft law nature of the JIN Admiralty Guidelines allows them to act as a catalyst for further international judicial cooperation, without imposing cooperation where it would be cumbersome, unnecessary, or even detrimental to the administration of the maritime insolvency.

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[117] JIN Admiralty Guidelines, para. B.

[118] See Guideline 8(ii) JIN Admiralty Guidelines: "In managing the Arrest Application, the Arresting Court may further consider the following options: […] having the applicant bear the burden of persuasion that an order or warrant for arrest should be issued, unless the applicant has secured interests and/or priority under the law of the Arresting Court and can demonstrate reasonable prospects of significant recovery".

[119] As per LoPucki: "Each court appoints a 'representative' for the estate of each entity filing in its jurisdiction. Those representatives then negotiate a solution to the debtor's financial problems. If the estates are worth more in combination than they are separately, it will be in the interests of the representatives to combine them" (LoPucki, L. M., The Case for Cooperative Territoriality…, *op. cit.* in fn. 6, p. 2219). Indeed, in the maritime insolvency context, this has been confirmed most recently in the successful preventive restructuring of the Dutch shipping company *Vroon* in 2023, in which Dutch and English insolvency practitioners cooperated voluntarily. See *Re Lamo Holding BV* [2023] EWHC 1558 (Ch) and Zeeland-West-Brabant District Court, 26 May 2023, (*Vroon*) JOR 2023/277, ECLI:NL:RBZWB:2023:5306 as commented on by Kokorin, I., Parallel Restructurings: Challenges and Opportunities, Hazelhoff Research Paper Series No. 17, *Tijdschrift voor Insolventierecht (TvI)* 2024/12, pp. 1-24.

9. CONCLUSION AND THE WAY FORWARD

Although in the last decade the shipping industry has been spared massive insolvencies on the scale of Hanjin's, the current geopolitical climate and its impact on shipping call for vigilance. Given that the legal framework on maritime insolvencies has not undergone any substantial changes since the last crisis, the same challenges may well resurface in future maritime insolvencies. If the paradigm of cooperative territoriality is adhered to, the legislative changes needed to address these challenges would be minimal and, hence, feasible. Beyond its feasibility, cooperative territoriality is also the paradigm which most adequately balances the upholding of the security function of maritime security interests in the event of insolvency with the safeguarding of the interests of the general body of creditors and the debtor.

Therefore, across different legal systems, the paradigm of cooperative territoriality should be adhered to consistently, providing normative guidance which enables the coherent administration of maritime insolvencies. In this respect, the JIN Admiralty Guidelines can act as a vehicle for courts to transform this conceptual paradigm into action to give it practical effect. Because of the forum of insolvency judges from which they originate, the perspective taken by the JIN Admiralty Guidelines is primarily that of insolvency courts. Therefore, it would be prudent for the international maritime law community, notably the CMI, to investigate whether any adjustments from a maritime law perspective are desirable, but without affecting the overall advancement of cooperative territoriality. In addition, the international maritime law community is advised to monitor new developments in the field of cross-border insolvency.

In particular, the imminent review of the EIR, scheduled for 2027,[120] presents a welcome opportunity to address the issues related to maritime security interests and their *in rem* protection. Within the UNCITRAL institutional framework, in turn, a new model law on applicable law in insolvency proceedings[121] is in the making, which also includes a specific protection ground for rights *in rem*.[122] In

[120] Art. 90, para. 1 of the EIR.

[121] See UNCITRAL Working Group V (Insolvency Law), Applicable law in insolvency proceedings, Draft model law, A/CN.9/WG.V/WP.207, 20 January 2026, https://docs.un.org/en/A/CN.9/WG.V/WP.207 (accessed 17 August 2026) and UNCITRAL Working Group V (Insolvency Law), Applicable law in insolvency proceedings, Draft guide to enactment of the UNCITRAL Model Law on Applicable Law in Insolvency Proceedings, A/CN.9/WG.V/WP.205, 22 September 2025, https://docs.un.org/en/A/CN.9/WG.V/WP.205 (accessed 17 August 2026).

[122] See UNCITRAL Working Group V (Insolvency Law), Applicable law in insolvency proceedings, Draft guide to enactment of the UNCITRAL Model Law on Applicable Law in Insolvency Proceedings, A/CN.9/WG.V/WP.205, 22 September 2025.

its latest draft, this protection ground focuses rather narrowly on the applicable law on rights *in rem* in the sense of its *material* law,[123] which could preclude the protection of maritime security interests that enables the *procedural* continuation of ship arrests. If implemented, the territorial starting point in maritime insolvencies advocated in the current contribution and indirectly in the JIN Admiralty Guidelines could be jeopardised, which is why the international maritime law community is advised to urgently engage with UNCITRAL on this matter. Besides the new applicable law instrument, UNCITRAL is currently also revising the Guide to Enactment and Interpretation of the MLCBI.[124] In the ongoing work in this respect, the challenges in the administration of maritime insolvencies have already been raised.[125] To ensure that maritime interests are adequately considered, the international maritime law community is advised to engage in the revision process, ideally by championing cooperative territoriality as a conceptual paradigm to administer maritime insolvencies.

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Sažetak:

INSOLVENTNOST U BRODARSTVU U DOBA SLABLJENJA MULTILATERALIZMA – TERITORIJALNOST I MEĐUNARODNA PRAVOSUDNA SURADNJA

Iako je od posljednje velike krize prošlo već deset godina, njezine se posljedice i dalje osjećaju u pomorskoj industriji jer od tada nisu poduzete zakonodavne mjere kojima bi se riješila pitanja koja se pojavljuju pri vođenju postupaka u slučajevima insolventnosti u brodarstvu. Stoga se sudovi i danas mogu suočiti s istim pitanjima kao i prije deset godina. U tom kontekstu ovaj rad predlaže temeljnu paradigmu za provođenje postupaka povodom insolventnosti u brodarstvu koja je najprikladnija s normativnog stajališta, a ujedno primjenjiva u sadašnjim geopolitičkim okolnostima obilježenima slabljenjem multilateralizma. Predloženi pristup polazi od toga da se osiguranje pomorskih tražbina ostvaruje prema mjestu na kojem se nalaze dužnikovi brodovi. Postojeći instrumenti prekogranične insolventnosti već predviđaju teritorijalne iznimke, ali pritom se ne vodi dovoljno računa o posebnostima osiguranja pomorskih tražbina na brodu. Zbog toga se rješenja razlikuju ovisno o pravnom sustavu, što dovodi do pravne nesigurnosti. Dosljedna primjena teritorijalnog pristupa na osiguranje pomorskih tražbina na brodu pridonijela bi i cjelokupnom provođenju postupaka povodom insolventnosti u brodarstvu jer omogućuje intervenciju osiguratelja te međunarodno priznanje učinaka insolventnosti na temelju nedavno donesene Pekinške konvencije o sudskoj prodaji brodova. Ipak bi teritorijalni pristup trebalo nadopuniti međunarodnom pravosudnom suradnjom kako bi se omogućilo usklađeno postupanje u slučajevima insolventnosti u brodarstvu. Nedavno objavljene Smjernice JIN-a za postupanje sa zahtjevima za privremeno zaustavljanje broda mogu u tom smislu poslužiti kao koristan instrument te pridonijeti razvoju paradigme kooperativne teritorijalnosti u provođenju postupaka povodom insolventnosti u brodarstvu.

***Ključne riječi**: pomorski privilegiji; hipoteke na brodu; prekogranična insolventnost; kooperativna teritorijalnost; pravni pluralizam.*