

DEMYSTIFYING MARITIME GOVERNANCE

A Primer on the Governance of Shipping with a Focus on Canada

November 2022





About Us

Clear Seas Centre for Responsible Marine Shipping (Clear Seas) is an independent Canadian not-for-profit research centre that provides impartial and fact-based information about marine shipping.

Clear Seas' work focuses on identifying and sharing best practices for safe and sustainable marine shipping, encompassing the human, environmental and economic impacts of the shipping industry.

Clear Seas research and publications are available at clearseas.org.

About this Report

Clear Seas Centre for Responsible Marine Shipping commissioned the multi-part project **Demystifying Maritime Governance**, with researchers at Dalhousie and Memorial Universities, to better understand the governance of marine shipping in Canada. This primer, written by Dr. Chircop with editorial and graphics support provided by Clear Seas, is the product of one of

the sub-projects from the larger project. The project was supported by a blended grant, with principal funding provided by Clear Seas and Mitacs, and contributory funding from the Safe Navigation and Environment Protection project supported by the Ocean Frontier Institute with a Canada First Research Excellence (CFREF) grant.

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Message from the Executive Director

When Clear Seas first issued a call for research to better understand maritime governance and the implications of governance systems on the safety and sustainability of marine shipping, we knew we would face a few hurdles.

For many Canadians, shipping is something that is often far from their regular day-to-day thoughts. For those who live on one of our active coastlines, they may see shipping in the form of a passing container ship, a car ferry or a naval vessel and not give that much thought to it. Some – and especially those living in Indigenous and coastal communities – may see these large vessels as a source of pollution and a possible threat to marine life. The fact is that most people have awareness of or have raised some concerns about the effects of shipping, but for nearly all, the rules and regulations governing the industry and its operations, remain quite obscure.

Maritime governance – the complex set of rules and regulations enacted for the regulation of shipping – has evolved over centuries based on complicated legal processes and precedents. The marine shipping industry spans the globe and involves a myriad of bodies, people and interests ranging from individuals, corporations, governments, and regulators. The system that governs it is not always open or transparent, and with many complicated rules, it's difficult for people outside the industry to get involved. For shipping to remain safe and sustainable, it is essential that robust, well managed and accountable governance processes are in place.

Understanding the complexity of this system is a challenge for anyone, including specialists, let alone the public at large. While the public, and even those people who work in shipping, may rely on and trust that government agencies and industry associations have rules and systems in place for a safe operating environment, it is not easy for them to navigate the labyrinth of procedures and conventions in marine shipping if they need information. Political, governmental and industry decision-makers who have a fuller understanding and appreciation of this system can take more informed action.

Yet it was ultimately the very challenge and intricacy of the topic that provided the inspiration for Clear Seas to explore research needs related to maritime governance and to support development of this primer. At Clear Seas, we make it our focus to take complex information and present it in a fact-based, understandable fashion that meets the needs of policy makers but is understood by the public. Shipping governance is a highly complex but equally essential issue, and the need for clear and accessible resources on maritime governance is paramount.

So, we selected an incredible research team, co-led by Dr. Aldo Chircop, Dalhousie University, and Dr. Desai Shan, Memorial University, to embark on the multi-part “Demystifying Maritime Governance” project researching the governance of marine shipping in Canada. This primer, written by Dr. Chircop, is the product of one of the five sub-projects from the larger project.

Dr. Chircop has brought an unrivalled knowledge to the subject, helping to create a comprehensive and easy to use guide that will help increase knowledge of the maritime governance framework in Canada and add much needed clarity around the complexities of the governance of shipping. It will also help inform decision-makers, rights holders, and stakeholders, and the public.

We also believe that the primer will play an important role as a resource for the next generation of leaders including those working anyone interested in better understanding how this important sector is governed.

Paul Blomerus

Executive Director

Preface

The Origins of Maritime Governance

The need for governance in shipping has been accepted and practiced for centuries. The earliest known instrument, the Code of Hammurabi governed shipping on the Tigris and Euphrates rivers around 2200 BC. It was followed by the Laws of Manu (Manusmriti) that governed shipping between Egypt and Mesopotamia in the period between 1500 BC to 200 AD. In each case, the style and extent of governance met the needs of the time to transport goods and people.

The advent of the steam engine in the 19th century, and the industrial revolution with it, ushered in the modern era of shipping regulation. The changes to ships and shipping that emerged with the revolution sparked the need for different kinds of rules to serve such purposes as preventing collisions and determining the maximum cargo that a ship could load without impairing its stability.

Still missing was any kind of broadly recognized system or structure that put a priority on maritime safety. As a result, society had no way of giving or withholding its license to an industry that was, more and more, carrying types and volumes of cargoes with real potential to cause harm to people's lives and welfare if unmanaged. The 20th century marked a dramatic change in this regard. International organizations focused on maritime safety began to emerge, leading to the development of common rules that promoted public order in the use of oceans.

Governance Today - More Voices at the Table

Today, as the lens has been widened to an even broader range of potential impacts and outcomes that shipping can have on society, there is a mounting need to understand and promote its governance. Which begs the question - what is governance and how is it different than government? The answer is that governance is much more than government. Government is the public authority that has been given power, through constitutional and legislative authority, to make decisions. Governance on the other hand, is what delivers society's expectations of how welfare and the common good will always be respected, especially where there are commercial interests involved.

To formulate such expectations, people outside the industry need to understand its current governance. This primer is a start to encourage people to acquire this knowledge and develop informed opinions and ideas that need to be at the table. A general understanding by society is of vital importance so that decision-makers, administrators, rightsholders, stakeholders, and the public at large can engage and participate effectively in such activities as public consultations and reporting. These activities and others are integral to ensuring that society's expectations are heard and respected as they relate to due process, diversity, transparency, and accountability of decision-making by the institutions that actually make and enforce the laws.

How well does the current governance system work? Reasonably well, given the complexity. It owes its success to commitments that ensure that governance is relevant, dynamic, adaptive, and representative.

Relevant because the services provided by the system to global trade and all other ocean uses are governed by rules and standards designed to enhance quality shipping and provide valuable economic, social, and environmental benefits. Where improvement is needed is to be more proactive in problem anticipation and prevention. This has been true of much safety and pollution prevention regulation triggered by major maritime casualties.

Dynamic because there are always emerging drivers where shipping and its governance must play its role. Yes, criticism is sometimes warranted for its slow response, as in the case of the urgency of decarbonization. This is an area where public pressure can add urgency to deliver action.

Adaptive because both at the international and Canadian domestic levels, new approaches to governance are always being considered. The International Maritime Organization (IMO) itself has evolved from a consultative organization to a regulatory body, and in Canada we have seen major legislative and institutional reorganization over time to respond to the changing needs of maritime governance.

Representative because governance of such a global activity with far-reaching implications can only succeed if all shipping nations are engaged to be part of the solution to the challenges we face. The IMO, which may have in the past given the impression of being a club, has become an intergovernmental organization with broad representation. The IMO Council has evolved to be more representative of the different types of shipping-related interests that states experience or participate in. And very importantly, in view of the objectives of this primer, the IMO today includes a wide diversity of organizations with consultative status.

Yes, maritime governance has many areas of success to point to, however there is considerable room for continuous improvement. This will be best served by having all relevant voices at the table.

An Introduction to this Primer and its Use

Demystifying Maritime Governance: A Primer on the Governance of Shipping with a Focus on Canada has been written by Professor Aldo Chircop as part of an initiative spearheaded by the Clear Seas Centre for Responsible Marine Shipping in Canada to educate maritime stakeholders and the wider public on the complexities of the shipping industry in Canada and its international context. To achieve this, using plain English as much as possible, the primer clarifies the international and domestic legal and institutional frameworks with their respective actors. It strives to explain how the governance of shipping is applied in the Canadian context where there are complexities due to multiple levels of government – federal, provincial, territorial, Aboriginal, and municipal.

There is no expectation that a user's area of interest will lead them to read the full document 'cover to cover'. As such, the primer is divided into four parts, each one accessible and standing on its own as an independent discussion:

- Part 1 provides the fundamentals of maritime governance and sets it in some international context
- Part 2 explains the legal framework that maritime governance instruments are structured around
- Part 3 describes the international institutional framework of organizations that support maritime governance over a wide range of interests and needs
- Part 4 discusses the governance of shipping in Canada and how it is delivered and enforced through government and 'the laws of the land'

The sheer number of acronyms in the maritime governance space can present a challenge to a reader. To at least partly remedy this, the beginning of each part lists the acronyms that appear in that part. As well, the first mention in each part is spelled out in full.

While standards cut across all classes of ships and sectors, the matter of governance plays most significantly in the regulation of cargo and passenger-carrying commercial vessels. As such, this primer does not go into detail on governance that relates to other shipping activities that largely exist to provide services of various descriptions. In some cases, other shipping types and activities are provided with references to assist those who have an interest in such areas of shipping and governance. There is no treatment in this document for vessels that are used for recreation. Also lightly treated in the primer are highly technical aspects of governance that are the domain of experts in those areas and hold little interest for a non-technical reader or the public at large. That said, same-page footnotes are offered to readers looking for additional background and information.

Should a reader go through all parts of this primer, they may reasonably wonder how the various components of the international and domestic governance of shipping come together. Indeed, maritime governance is a complex system with international and domestic components in all countries, including Canada. These are not independent components, but rather a continuum of international and domestic systems. Each of the components has its own rules, structures, and processes, that are closely interrelated and interdependent. This complexity of shipping has in turn necessitated rather complex regulatory and institutional systems in response.

Acknowledgements

“Demystifying Maritime Governance: Analysis of the frameworks and emerging issues for the governance of shipping in Canada” is a project supported by a blended grant. The grant consisted of principal funding from Clear Seas Centre for Responsible Marine Shipping and Mitacs (Mitacs Accelerate IT22485), as well as contributory funding from the Safe Navigation and Environment Protection project supported by the Ocean Frontier Institute with a Canada First Research Excellence (CFREF) grant. The project had five subprojects with each producing multiple deliverables. This primer is the product of one of these subprojects.

Support for this work included a MITACS intern and two research assistants from Dalhousie University and the Memorial University of Newfoundland during 2020-2022. The author is grateful to MITACS intern Cornelia Opoku Gyemfi, Schulich School of Law, Dalhousie University, for her research assistance on Parts II and III and for helping co-write aspects of Part 2. The author is also grateful to Alireza Jahanbaksh and Om Prakash Yadav, Memorial University of Newfoundland, for providing research assistance for Part 4 and to Dr. Desai Shan, Division of Community Health and Humanities, Faculty of Medicine, for helping guide their work.

Finally, the author is grateful to the Clear Seas team for the editing and graphics work on this primer to make it accessible to non-specialist readers and the public.

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November 2022

Table of Contents

About Us.....	ii
Board of Directors Clear Seas Centre for Responsible Marine Shipping	iii
Message from the Executive Director.....	iv
Preface	vi
Acknowledgements	ix
Table of Contents	x
Acronyms and Abbreviations.....	xii
List of Figures	xv
List of Tables.....	xvi
PART 1: Fundamentals of Maritime Governance	1
1.1 Introduction	1
1.2 Terminology in Maritime Governance	1
1.3 Legal Framework of International Maritime Governance.....	4
1.4 The Life of the Ship - Cradle to Grave Governance	5
1.5 Global Governance of Economic and Operational Aspects of Shipping.....	9
1.6 Social, Environmental, and Public Health Aspects of Shipping.....	12
1.7 Conclusion - A Complex Undertaking	14
PART 2: The International Legal Framework for Shipping	16
2.1 Introduction	16
2.2 The Nature of Maritime Regulation.....	17
2.3 The International Law Concerning Public Order at Sea.....	19
2.3.1 Global Level - The Law of the Sea	19
2.3.2 International Maritime Law	24
2.3.3 Regional Level Cooperation	37
2.3.4 Bilateral Level Cooperation	38
2.4 International Law Governing Relations Between Private Maritime Actors	41
2.4.1 Limitation of Liability	41
2.4.2 Principal Areas of Private International Maritime Law	41
2.5 Conclusion	50
PART 3: The International Institutions of Maritime Governance.....	51
3.1 Introduction	52
3.2 Intergovernmental Organizations	53
3.2.1 The Principal Regulator - IMO	56
3.2.2 Issue-Specific Regulators	57
3.2.3 Trade, Carriage, and Customs Regulators.....	58
3.2.4 Sectoral Regulators	60

3.2.5	Services to Shipping.....	61
3.3	Regional Inter-Governmental Organizations	64
3.3.1	Arctic Region	65
3.3.2	Other Regions	66
3.4	International Non-Governmental Organizations.....	66
3.4.1	Shipping Sectors and Services.....	67
3.4.2	Maritime Labour.....	69
3.4.3	Professional Associations	70
3.4.4	Environmental Organizations.....	71
3.4.5	Maritime Education and Training	71
3.4.6	Science, Standardization, and Public Policy	71
3.5	Indigenous Peoples	72
3.6	Conclusion	72
PART 4: The Governance of Shipping in Canada.....		75
4.1	Introduction	76
4.2	The Organization of Maritime Governance.....	77
4.2.1	Parliament and Standing Committees.....	78
4.2.2	Prime Minister, Cabinet, and Ministers.....	79
4.2.3	Departments.....	79
4.2.4	Agencies, Boards, and Commissions	82
4.2.5	Crown Corporations.....	84
4.2.6	Not-for-Profit and Private Corporations	84
4.2.7	Office of the Auditor General of Canada	84
4.2.8	Provincial Government	85
4.2.9	Indigenous Rightsholders	86
4.2.10	Stakeholder Organizations	88
4.2.11	Role of Dispute Settlement Bodies.....	90
4.3	Legal Framework of Maritime Governance.....	92
4.3.1	Constitutional Considerations.....	92
4.3.2	Legal Framework	93
4.4	Conclusion	107

Acronyms and Abbreviations

AEPA	Antarctic Environment Protection Act
AWPPA	Arctic Waters Pollution Prevention Act
CBSA	Canada Border Services Agency
CCG	Canadian Coast Guard
CEC	Commission on Environmental Cooperation
CEPA	Canadian Environmental Protection Act
CIRB	Canada Industrial Relations Board
CNWA	Canadian Navigable Waters Act
COLREGS	International Regulations for Preventing Collisions at Sea
CMAC	Canadian Marine Advisory Council
CMI	Comité Maritime International
CSA 2001	Canada Shipping Act, 2001
DFO	Fisheries and Oceans Canada
ECTOA	Eastern Canadian Tug Owners Association
EEZ	exclusive economic zone
EPPR	Emergency Prevention, Preparedness and Response (Working Group, Arctic Council)
FAO	Food and Agricultural Organization of the United Nations
GHG	greenhouse gas emissions
Hague Rules	International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading
Hague-Visby Rules	Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924
Hamburg Rules	United Nations Convention on the Carriage of Goods by Sea
HFO	heavy fuel oil
HNS	hazardous and noxious substances
IACS	International Association of Classification Societies
IAEA	International Atomic Energy Agency
IALA	International Association of Marine Aids to Navigation and Lighthouse Authorities
ICAO	International Civil Aviation Organization
ICC	Inuit Circumpolar Council
IGO	intergovernmental organization
IHO	International Hydrographic Organization
ILA	International Law Association

ILO	International Labour Organization
IMO	International Maritime Organization
IMSO	International Mobile Satellite Organization
INGO	international non-governmental organization
INMARSAT	International Maritime Satellite Organization
IOC	Intergovernmental Oceanographic Commission of UNESCO
IOPCF	International Oil Pollution Compensation Fund
ISA	International Seabed Authority
ISM Code	International Safety Management (ISM) Code
ITF Canada	International Transport Forum Canada
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
IUCN	International Union for Conservation of Nature
IUU	illegal, unreported and unregulated fishing
IWC	International Whaling Commission
MARPOL	International Convention for the Prevention of Pollution from Ships
MBCA	Migratory Birds Convention Act
MEPC	Marine Environment Protection Committee (IMO)
MLC	Maritime Labour Convention
MSC	Maritime Safety Committee (IMO)
MSCA	Merchant Seamen Compensation Act
MTSA	Marine Transportation Security Act
NAECA	North American Emission Control Area
NMCA	National Marine Conservation Areas Act
OAG	Office of the Auditor General
OAS	Organization of American States
Polar Code	International Code for Ships Operating in Polar Waters
PAME	Protection of the Arctic Marine Environment (Working Group, Arctic Council)
PSSA	particularly sensitive sea area
RCMP	Royal Canadian Mounted Police
RIAS	Regulatory Impact Assessment Statements
Rotterdam Rules	United Nations Convention on Contracts for the International Carriage of Goods
SCCA	Safe Containers Convention Act
SOPF	Ship-Source Oil Pollution Fund
SOLAS	International Convention for the Safety of Life at Sea

STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Navigation
TDGA	Transportation of Dangerous Goods Act
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNWTO	World Tourism Organization
WAHVA	Wrecked, Abandoned and Hazardous Vessels Act
WCO	World Customs Organization
WHO	World Health Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

List of Figures

Figure 1-1. The Life of a Ship: Construction, Operation and Recycling 7

Figure 1-2. Complex Jurisdiction of Ships: Registration, Ownership, Control, and Mobility 10

Figure 1-3. Complexity of Governance of Shipping 15

Figure 2-1. Maritime Zones and Jurisdictions of States in *UNCLOS* 21

Figure 2-2. International Navigation Rights in *UNCLOS* 23

Figure 2-3. North American Emission Control Area 30

Figure 2-4. Arctic Waters in the *Polar Code* 31

Figure 2-5. Great Lakes and St. Lawrence Seaway 40

Figure 3-1. Headquarters of Intergovernmental Organizations in Shipping 54

Figure 3-2. What drives IMO decision-making 73

Figure 4-1. Parliamentary Standing Committees 78

Figure 4-2. Departmental Roles in Maritime Governance 80

Figure 4-3. Transport Canada’s Marine Safety and Security Directorate 81

Figure 4-4. Canada’s Maritime Institutional Complexity 107

List of Tables

Table 1-1. Impact of Ship Emissions in the North American Emission Control Area (adapted from MEPC, 2009) ...13

Table 3-1. Intergovernmental Organization Roles and Mandates.....55

Table 3-2. Shipping Sectors and Services INGOs.....68

Table 4-1. Examples of Stakeholder Organizations.....89

Table 4-2. Principal Legislation.....94

PART 1: Fundamentals of Maritime Governance

Acronyms

The following acronyms are used in Part 1 and are spelled out in full with each first occurrence:

- GHG – greenhouse gas
- IACS – International Association of Classification Societies
- ILO – International Labour Organization
- IMO – International Maritime Organization
- NAECA – North American Emission Control Area
- UNCLOS – United Nations Convention of the Law of the Sea

1.1 Introduction

Shipping is a global and highly complex industry, consisting of multiple providers and sectors that support international trade and other ocean uses. Likewise, the governance of shipping is complex and intertwined. Part 1: Fundamentals of Maritime Governance gives a high-level description of how the universe of governance is applied to the global shipping industry, notably commercial shipping. While there is a significant history of shipping governance that tells the story of ‘how we got to where we are’, the focus here is on the contemporary governance picture.

1.2 Terminology in Maritime Governance

Governance and its Central Participants

Governance is much more than ‘government’. ‘Government’ is the public authority that has been given power, through constitutional and legislative authority, to make decisions. ‘Governance’ on the other hand, is what delivers society’s expectations of due process, diversity, transparency, and accountability of decision-making by institutions (governmental, non-governmental organizations (NGOs), corporations, etc.) to ensure legitimacy and social license. In other words, governance for shipping ensures that non-government actors can have a vital role in the processes of decision-making in shipping, even though the actual decision-making is done by law-making bodies and public authorities.

Countries (standardly referred to as states in international law) that engage in shipping generally have a national maritime administration body. In Canada, this is Transport Canada. However, governance in shipping almost always involves a wide range of actors beyond that administrative body. Using Canada as the example, there are other government departments, levels of government (federal, provincial, territorial, Aboriginal, municipal), industry associations, Indigenous organizations, NGOs, community organizations and other bodies that may also have some role, responsibility, or interest over aspects of shipping.

Clearly, governance also needs to happen outside of domestic boundaries. United Nations agencies, such as the International Maritime Organization (IMO) and the International Labour Organization (ILO), adopt rules and standards to make shipping safe, secure, and sustainable. In some regions, most especially in the European Union, there are additional rules that apply to international shipping, for example with respect to recording fuel use and greenhouse gas (GHG) emissions from ships. Some countries have rules made by other levels of government in addition to federal rules for dealing with ships in ports, for example for air emissions and handling of ballast water. Part 3 provides more information on the work of the IMO and how it collaborates with other organizations with international mandates. As a member of the IMO, Canada generally applies international rules and standards through legislation.

There are three types of states – coastal, port, and flag – that can apply different measures of authority over shipping.

The **coastal state** has maritime zones that include regulatory authority over shipping for limited purposes, such as to regulate navigation in the territorial sea in accordance with international rules and standards.

The **port state** that ships enter (and which may be different from the coastal state), has broad powers over ships in its ports. This is because when foreign ships voluntarily enter ports, they are implicitly submitting themselves to the territorial sovereignty of the port state.

The **flag state**, discussed later in Section 1.5, is the jurisdiction where ships are registered. In general, warships and other government-owned ships and their cargoes, used in non-commercial operations, have sovereign immunity of the flag state and are exempt from the jurisdiction of any other state.

Regulation by public authorities is not the only form of ship regulation. International shipping is also, in part, self-regulating. Industry associations, in particular classification societies (also known as recognized organizations), are important because they set ‘class rules’ for different classes of ships. These rules are recognized by the IMO and national maritime administrations. The leading recognized organizations are members of the International Association of Classification Societies (IACS), an international industry association responsible for developing unified rules that follow from agreed-upon interpretations of IMO rules and standards.

The IMO adopts rules and standards either as prescriptions or as goals to be achieved. Prescribes regulation means it has to be applied as adopted. Differently, with goal-based regulation the IMO sets the goals to be reached and the industry associations, and national regulators, set the technical rules that ships use to meet IMO expectations. Prescriptions are generally used in pollution prevention regulation, whereas goal-based regulation is used for safety standards. For example, the *Polar Code*, which is the international standard for polar shipping, relies on IMO goals and IACS rules in its provisions on maritime safety and IMO prescriptions in its pollution prevention provisions.

Shipping Defined

As this primer is about the governance of shipping, there is some merit to defining the term 'shipping'. In Canada, 'shipping' includes not only traditional commercial shipping, but also all vessels employed in most ocean and water uses, including fishing and offshore oil and gas activities. It even includes boats and craft used for recreational purposes, even on inland waterways and lakes.

There is a distinction between international and domestic shipping:

- International shipping services global maritime trade and, as per Section 1.3 below, is subject to international rules and standards.
- Domestic shipping, also known as cabotage or coasting trade, is trade which is conducted port-to-port, or port-to-domestic waters in Canada, and is subject to domestic rules. An example is shipping from Canadian ports to supply Arctic communities. International rules are sometimes applied to enhance standards, such as for safety.

Ships and Vessels

There is great diversity in the types of ships, all of which, in some way, serve as platforms for a wide variety of ocean uses. What first comes to mind are commercial vessels designed to carry goods and passengers, for example oil tankers, bulk carriers, container vessels, cruise ships, ferries, roll-on and roll off vessels. These ships are also serviced by other types of ships providing pilotage, towage, and salvage. Additionally, there are many other classes of ships dedicated to certain ocean uses – ships used in the oil and gas industry to lay submarine cables and pipelines are one example. There are also vessels that service offshore wind farms, aquaculture operations, seabed mining, and marine scientific research. A wide variety of aquaculture, fishing and recreational vessels round out the picture. Such diversity requires common rules for maritime safety and pollution prevention as well as dedicated rules and standards for each class of ship.

All parts of this primer use the terms 'ship' and 'vessel' interchangeably. This does not mean the two terms aren't assigned their own definitions or criteria, such as build and tonnage, for pollution prevention and safety purposes from one jurisdiction to another. There is however no universally applied distinction. Part 4 of this primer deals with the Governance of Shipping in Canada where some distinctions between the use of ship or vessel in Canadian administration of shipping are applied.

Ocean, Maritime, and Marine - How these Terms Appear in Governance

Ocean, marine, and maritime are often used interchangeably by laypersons and sometimes even by academics and practitioners. When used in the context of ocean management and shipping, being precise can minimize confusion and ambiguity.

Ocean

Ocean refers to the entire space between the surface of the ocean and the depths of the ocean. As a term, it is frequently used as a generic adjective and substitute for marine and sea. Hence the Oceans Protection Plan,¹ a major federal funding program for safety and environment protection at sea. When combined with 'management', the combined term takes on its own meaning, such as in integrated ocean management under the *Oceans Act*.

Maritime

Maritime has a distinct meaning as it applies to shipping. It appears in the regulation of the industry, claims in judicial proceedings, and in international discourse.

International maritime law is the body of international law concerning shipping and is distinguished from the larger and overarching law of the sea, although the two have a close relationship.

The term 'admiralty' law is also used in shipping. It is a traditional term from the United Kingdom that continues to be used by maritime lawyers in Canada to describe court jurisdiction proceedings, for example in the Federal Court of Canada. More commonly today, Canadian courts use the term Canadian maritime law to refer to the body of federal law applicable to all navigable waters in Canada, which includes inland waterways, rivers, and lakes where navigation is possible.

Marine

Marine is a generic adjective and frequently used as such in shipping. It may also be combined with other terms, such as marine spatial planning and marine protected area, to create distinct terms for specific area-based planning processes and tools for marine uses.

1.3 Legal Framework of International Maritime Governance

Part 2 is dedicated to the legal framework of maritime governance. The discussion below provides an overview for the purpose of understanding the fundamentals of that framework.

The development and implementation of 'laws' for governing the shipping began with the emergence of maritime trade. The early laws were enacted to control trade and the benefits it generated. Merchants also developed their own trading practices which eventually provided the basis for the regulation of private and contractual arrangements, such as the terms for transporting goods and insurance. While early practices took care of the business at hand, and generated common ways of addressing shipping matters in some regions such as the Mediterranean and northern European seas, they did not engender

¹ Transport Canada (2021). *Report to Canadians: Investing in our coasts through the Oceans Protection Plan*. Retrieved from: <https://tc.canada.ca/en/initiatives/oceans-protection-plan/report-canadians-investing-our-coasts-through-oceans-protection-plan>

consistent and safe practices on a larger international scale. Nor did they consider any protections for society or the environment. The first international rules that were expressly negotiated and adopted for broad global application were adopted in the late 19th and early 20th centuries, well before the United Nations was established. With the establishment of the United Nations, and the IMO in particular, there emerged a body of truly global international rules and aimed for uniform application. Today, there are two main bodies of international law – public and private – that continually strive to achieve uniformity in their application.

Public international law instruments are negotiated and adopted by states to govern rights and responsibilities among themselves and set up overarching frameworks for shipping. At the highest level, rules are set out in conventions adopted by diplomatic conferences. Once adopted, they are maintained by international organizations with the IMO playing a leading, but not exclusive role in this system. The IMO does not enforce the laws but rather relies on member states to apply the requirements of conventions in their own laws. This is enabled by a wide range of codes, guidelines, and other instruments that serve as regulations under the conventions to address more specialized aspects of shipping.

The central public law that deals with all ocean uses and the protection of the marine environment is commonly referred to as the law of the sea. Much of the law of the sea is set out in the *United Nations Convention on the Law of the Sea (UNCLOS)*, adopted in 1982 as a constitution for the world's oceans and seas. International maritime law consists of the specialized public law concerning shipping adopted by the IMO and other organizations mandated to do so, for example on maritime labour.

Private international maritime law deals with private relationships and the language terms that go into a maritime contract, and includes areas such as the transportation of goods and passengers; salvage of ships in need of assistance; liens and mortgages; liability rules; and the enforcement of maritime claims through a civil procedure that includes provision of security, the arrest (including bail) and judicial sale of ships and cargoes. The liability rules concern the consequences of negligence or breach of contract, including death or personal injury of passengers and loss of their luggage; property damage; delay, loss or damage to cargoes; and pollution damage and.

1.4 The Life of the Ship - Cradle to Grave Governance

Most aspects of the governance for shipping have been designed and built around the life of commercial vessels, the services they receive and the services they provide. Figure 1-1 provides a snapshot of the life of the ship from cradle (construction) to grave (eventual recycling). Some areas of governance are profiled below in the interest of introducing the reader to the diverse range of headings under which governance can fall, representing the application of public law regulation in some cases and private law arrangements in others:

- Design and Construction
- Working Conditions
- Inland and Port Services

- Safety and Emergency Response
- Carriage of Oil
- Carriage of Passengers

All of these, and more, receive more in-depth discussion in the various parts of this primer.

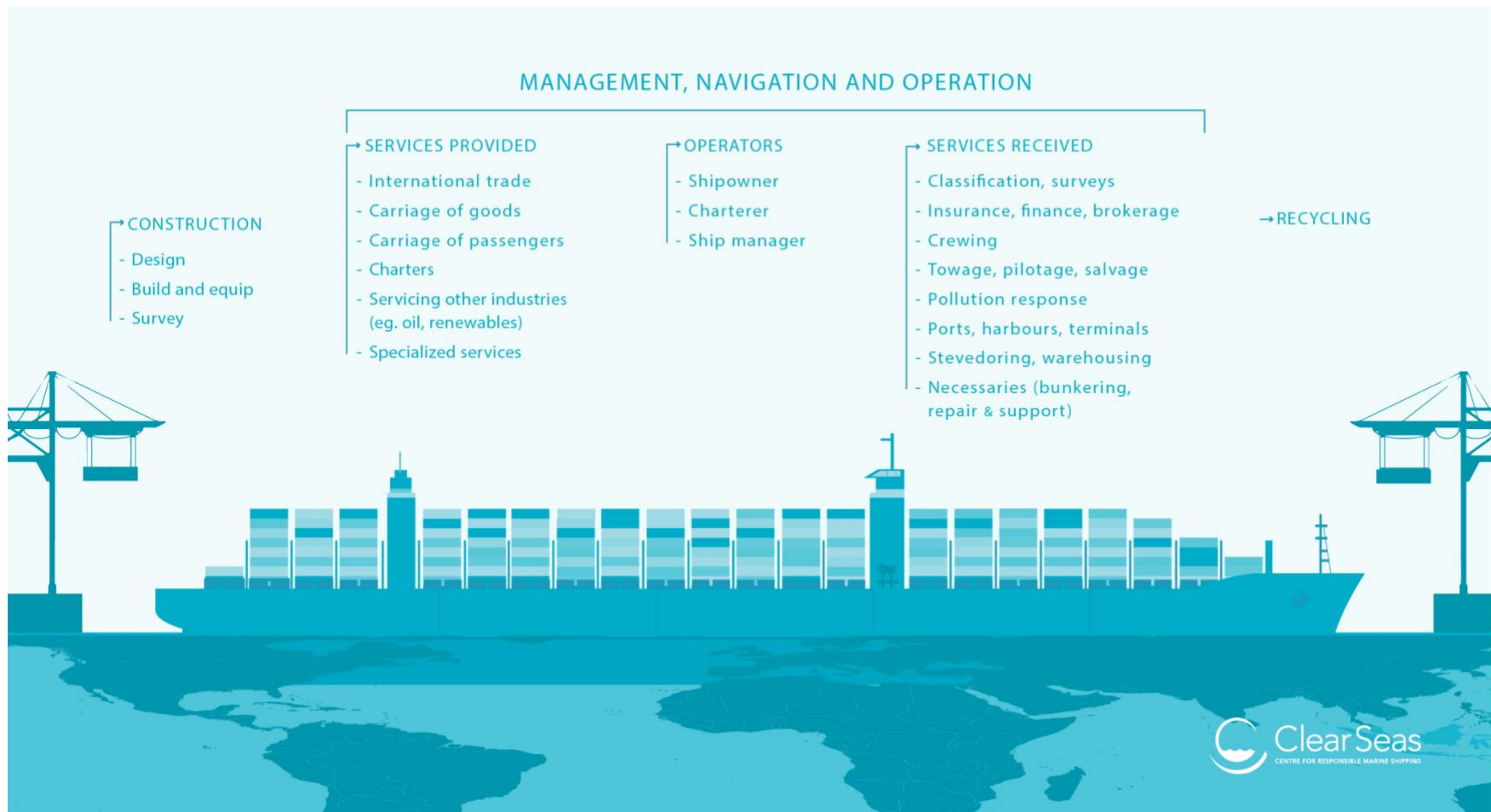


Figure 1-1. The Life of a Ship: Construction, Operation and Recycling

Design and Construction

The ship's conception starts with an architect's design and eventual construction in a shipyard. The ship is built and equipped in accordance with IMO rules and standards and will be surveyed by a classification society to ensure it complies with rules applicable to its class. Throughout its life, the ship carries an IMO number exclusively assigned to it to help its identification. Over the course of its life, the ship will undergo periodic surveys especially if it undergoes retrofitting, for example to install scrubbers to reduce air emissions or a ballast water management system to minimize the translocation of invasive species.

Working Conditions

The ship's design must provide for a safe working space for the master, officers and crew trained. Their work conditions are governed by rules of the ILO, another United Nations specialized agency like the IMO. Management, operations, and navigation are similarly subject to international standards. Seafarers are normally trained by maritime academies around the world that train prospective seafarers according to the knowledge and skills required by international conventions.

Inland and Port Services

The safe navigation of a ship in harbour environments, and other areas such as inland waterways, often requires pilotage, and perhaps even towage to assist it with mooring. Ships also receive various services in ports, harbours, and terminals, such as stevedoring to load and offload cargo, access to onshore power supply, facilities for receiving waste generated onboard, and necessities such as supplies, repairs, and bunker fuel. All these services are provided on contract or by other means required by local regulation, for example in the case of mandatory pilotage in the ports of Halifax and Vancouver.

Liabilities

The ship will take on liabilities across the various jurisdictions where it trades. In the case of bankruptcy involving claims made in a Canadian court against a foreign ship, creditors from other countries are represented in that court to protect and enforce their claims. The Canadian court may even need to apply foreign law to recognize creditors' claims and provide them with local remedies.

Safety and Emergency Response

A ship in jeopardy may request a place of refuge that is not its intended destination. This can lead to difficult situations for coastal authorities, especially when a foreign ship poses potential environmental or public health threats to coastal communities. There are many potential scenarios. One of many potential scenarios is where a ship carrying dangerous goods has a fire on board - no port will permit entry before the fire is extinguished. Another is that a ship may need help to medically evacuate injured or ill crew members or passengers. When the very safety of the ship is at stake, it may be necessary to call on the external assistance of salvors. In worse case scenarios, the crew and passengers may have to abandon the ship on the order of the captain, who also issues a 'mayday' call, an international signal for

situations of distress calling for immediate assistance. In such cases, public authorities such as the Canadian Coast Guard respond to calls for assistance, are expected to provide search and rescue services, and may even require other ships in the vicinity to assist.

Carriage of Oil

Canada requires vessels of a certain tonnage operating in its waters to have a standing agreement with one of the four response organizations certified by Transport Canada to enable the provision of oil pollution response services to these ships. When a vessel in distress threatens pollution of the marine environment, the Canadian Coast Guard is also likely to intervene and, depending on the threat to coastal communities and amenities, joint federal-provincial emergency teams may be mobilized. International agreements provide funds and procedures to cover the costs of preventing and responding to spills of oil cargo, bunker fuel, and hazardous and noxious substances.

Carriage of Passengers

There are international agreements concerning the carriage of passengers, the possible claims they and their dependants may make because of death, injury, and loss of personal property on board, and the defences the ship operator has to respond to such claims.

1.5 Global Governance of Economic and Operational Aspects of Shipping

The shipping industry carries 90% of global trade, linking markets around the world. Cargoes that arrive in major ports are often distributed to other ports through feeder services and inter-modal transportation, by road and rail, taking goods to the ultimate buyers. The advent of container shipping in the 1950s dramatically changed how world trade is carried out. This new player on the scene enabled just-in-time delivery of cargoes that minimize the need for warehouses. Indeed, container ships, and for that matter also ships carrying bulk cargoes, often act like floating warehouses whose cargoes are sold and resold while still at sea, eventually coming to port to offload sold cargoes.

Commercial vessels are highly mobile assets. Ships trading between distant ports, such as from Asia to North American markets, need to navigate marine areas under the jurisdiction of many different coastal states as well as on the high seas where there is no coastal state jurisdiction. As such, it is vital that shipping be regulated to international standards so that there can be uniform rules and unimpeded trade. In this regard, the IMO plays a critical role so that ships can expect to be subject, as much as possible, to the same rules no matter where they are.

Jurisdiction of Ships - Registration and the Flag State

Ships have the nationality and carry the flag of the state that registers them. As such, ships are always subject to the jurisdiction of their flag state. Registration allows a ship to move and trade anywhere - in fact there are ships that never enter the waters of their port of registry. Figure 1-2 gives an appreciation of the complexity of ship registration, ownership, control, and mobility.

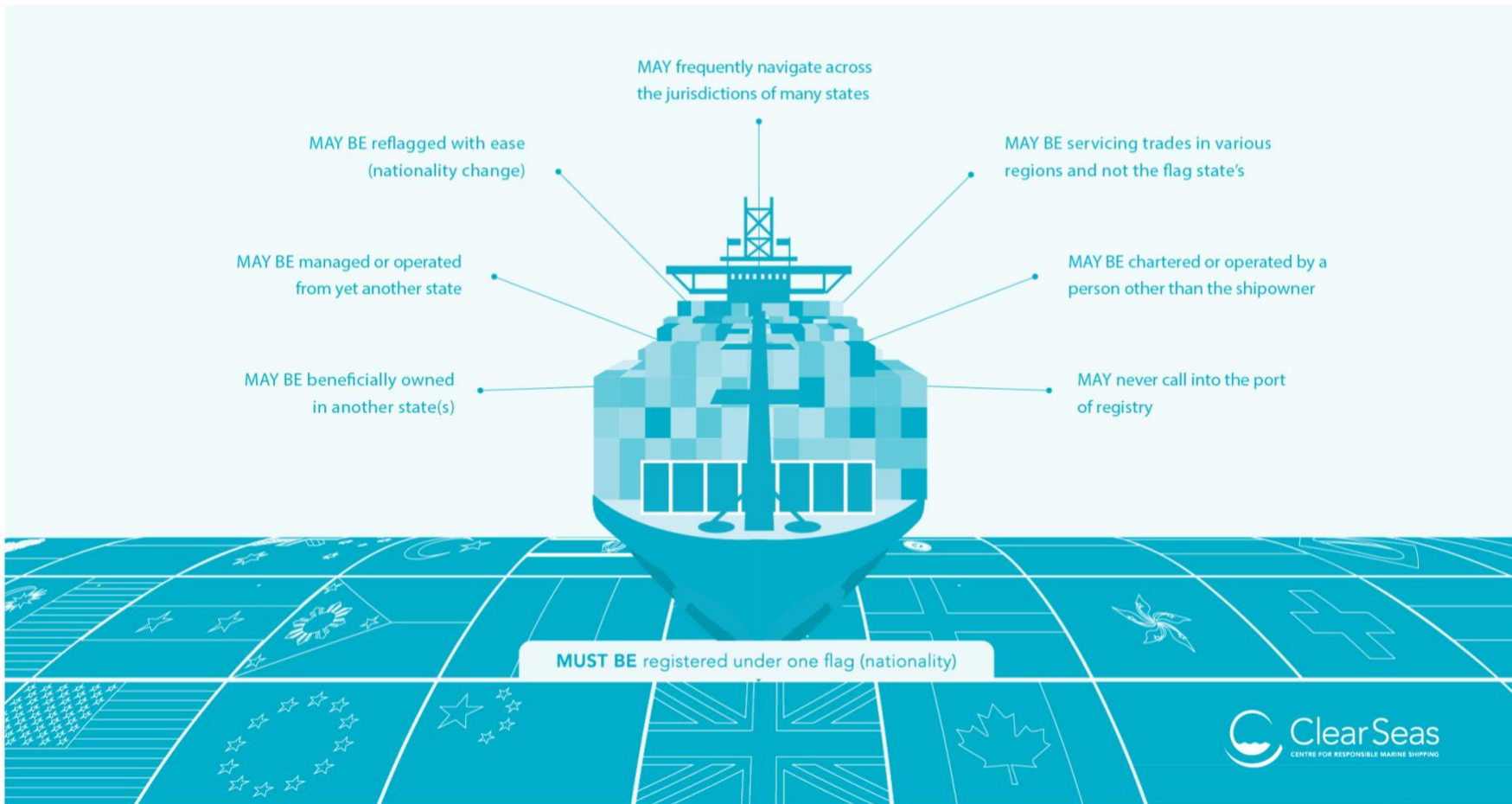


Figure 1-2. Complex Jurisdiction of Ships: Registration, Ownership, Control, and Mobility

The registration of ships is a competitive international business run by state bodies or corporations delegated by a state and that are sometimes located in a different state. It is possible to re-register in a different state so long as the ship is only registered in one state at any given time.

The registering state (i.e., flag state) has the principal responsibility of oversight over its ships, irrespective of who owns the ships. Ownership can be complex but, simply put, the corporation owning the ship and the registered ships are divided into shares and each share may be owned by a person or corporation.

There are two ways for states to register ships – closed registry and open registry – that affect what rules apply to a ship and how flag states exercise their responsibilities. As discussed below, these differences raise some issues that the United Nations attempted in 1986 to address with common rules for the registration of ships, including a requirement for beneficial ownership.² The attempt was not successful.

- A **closed register**, as in the case of Canada, requires that the beneficial owners (i.e., the actual owners) must be people or corporations with a business office in that state. Canadian ships and their owners are subject to federal law and must have Canadian crews and pay registration fees and corporate taxes.
- **Open register** states register foreign-owned ships. They do not have rules on crew nationality and may have lower (or no) corporate tax rates or other financial incentives.

Ship registration is a highly competitive business and open register flag states are under increasing international scrutiny. Described by the International Transport Workers Federation, a global trade union, as ‘flags of convenience’, there is no beneficial link to the registering state. A shell company is typically the declared owner in the registration documents and the true owner(s) may even be hard to find. With their ability to hire international crews they generally pay lower wages and benefits than closed registers. There have been instances of some open register states being lax in the oversight of their ships, allowing the use of substandard vessels or vessels for illegal, unreported, and unregulated fishing. Crews may not receive protections they deserve – there are cases where they have been abandoned in foreign ports when the owner goes bankrupt.

In 2021, the top three flags of registration were Panama, Liberia and Marshall Islands, all open registers, whereas the top three ship-owning states were Japan, Greece and China, all closed registers.³

Non-Owner Operation

A ship may not necessarily be operated by the owner. Indeed, the owner may be a bank which forecloses on a mortgage. Frequently ships are operated by specialized management companies and

² *United Nations Convention on Conditions for Registration of Ships*, 17 December 1985, A/RES/40/187 (in force 7 February 1986).

³ United Nations Conference on Trade and Development. (2021). *Review of Maritime Transport 2021*. Retrieved from: https://unctad.org/system/files/official-document/rmt2021_en_0.pdf

may be chartered to other users. When a ship is bareboat chartered, the shipowner parts with possession and control of the ship and the charterer even hires the crew of the ship. Charters may also be sub-chartered for a period or specific voyage. Thus, the shipowner is not necessarily always the person in possession and control of the ship.

1.6 Social, Environmental, and Public Health Aspects of Shipping

Shipping provides platforms for virtually all industrial uses of the ocean. Most notably, the quality of life enjoyed by most nations depends on the ability of shipping to connect near and distant markets. The sheer size and nature of the industry makes it a major employer, not only directly but indirectly through industries such as shipbuilding and ship repair, marine engineering, equipment manufacturers, chandlers, insurance, and ship recycling to name a few. This employment is vital for port economies.

The benefits however come with costs, particularly public health and environmental threats. As such, governance responses are in place to address impacts on the marine environment and port areas regarding:

- Waste and biothreats
- Greenhouse gas (GHG) emissions and air pollution

Below is a brief discussion of threats arising from the operation and activity of ships, where governance needs to strengthen its role and address certain gaps. These governance challenges are covered in greater depth in subsequent parts of this primer.

Waste and Biothreats

Ships produce various wastes due to the cargoes they carry, crew activity (sewage and garbage), and from engine room operations and other machinery (waste oils). Ships can also transport exotic species in ballast waters or as fouling on the hull exterior, unknowingly bringing them in to different ecosystems, resulting in environmental harm and threats to local species.

The IMO has adopted rules and standards for the prevention and minimization of such wastes and biothreats. For example, they require that ports provide reception facilities for wastes and regulated ballast operations. Even so, discharge in low concentrations is allowed at sea, albeit at a distance from coasts.

GHG Emissions and Air Pollution

Huge volumes of fuel oil are used to propel ships and because of this they are major emitters of air pollutants and greenhouse gases (GHGs), especially carbon dioxide.

The burning of fuel oil produces particulate matter harmful to human and environmental health. The burning of heavy fuel in particular produces black carbon, known to contribute to climate change and accelerate the loss of sea ice. As a result, international efforts have developed a phased approach of

increasing regulations that will essentially reduce the use and carriage for use of heavy oil to fuel ships to be replaced with cleaner alternatives. These efforts extend even to full bans in polar waters.

There are other harmful substances that come from the burning of heavy oil fuel. Sulphur oxides harm marine and terrestrial ecosystems and affect biogeochemical cycles through the deposit on land, soils, vegetation, and surface waters. Additionally, nitrogen oxides produce nutrient overloading, eutrophication, and acidification.

Emissions from ships are of particular concern in port and populated coastal areas where harmful substances can lead to a range of serious health problems. Table 1-1 describes the health impacts from a report prepared by the Environment Protection Agency for a joint United States-Canada submission to the IMO Marine Environment Protection Committee proposing the designation of the North American Emission Control Area (NAECA).^{4,5} The two countries made their argument successfully and today ships are required to control their emissions of particulate matter (PM_{2.5}) and ozone while within the NAECA. The northernmost limit of NAECA does not at this time allow for Canadian Arctic waters to benefit from this protection.

Table 1-1. Impact of Ship Emissions in the North American Emission Control Area (adapted from MEPC, 2009)

Estimated PM _{2.5} - and Ozone-Related Human Health Impacts Associated with Ship Emissions in the United States and Canada		
Health Effect	2020 Annual Ship-Related Incidence	2020 Annual Reduction in Ship-Related Incidence with an ECA ^a
Premature Mortality ^b	5,100 - 12,000	3,700 - 8,300
Chronic Bronchitis	4,600	3,500
Hospital Admissions ^c	8,400	3,300
Emergency Room Visits	4,100	2,300
Acute Bronchitis	13,000	9,300
Acute Respiratory Symptoms	6,500,000	3,400,000

^a Based on ship emission inventory reductions due to switching from 2.7% sulphur residual fuel to 0.1% sulphur distillate fuel and an overall fleet NOx reduction in the ECA of 23%, in 2020, from Tier II levels. In the long term, a 75% reduction in NOx emissions from Tier II levels would be expected in the ECA.

^b Includes both PM_{2.5}- and ozone-related estimates of premature mortality. The range is based on the high and low-end estimate of incidence derived from several alternative studies used to estimate PM_{2.5}- and ozone-related premature mortality in the United States.

^c Includes estimates of both cardiovascular- and respiratory-related hospital admissions.

⁴ International Maritime Organization, Marine Environment Protection Committee. (2010). Information on North American Emission Control Area (ECA) Under MARPOL Annex VI (MEPC.1/Circ.723). Retrieved from: <https://www.epa.gov/sites/default/files/2016-09/documents/mepc1-circ-re-na-eca.pdf>

⁵ International Maritime Organization, Marine Environment Protection Committee. (2009). 59/6/5, Interpretations of, and Amendments to, MARPOL and Related Instruments. Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter. Retrieved from: <https://www.epa.gov/sites/default/files/2018-05/documents/mepc59-6-5.pdf>

Governance Gaps

The governance of shipping is an ongoing and evolving process and as such there are still gaps to be addressed. Examples of current gaps include:

- Lack of international and domestic regulation on the considerable external underwater noise from ships that has been shown to affect marine ecosystems and wildlife.
- No expression of dedicated protections in the international conventions for slow-moving marine mammals that are vulnerable to ship strikes, especially in high traffic areas.
- Discharge of grey water, especially from passenger vessels, is not yet regulated by the IMO in a mandatory manner.
- In Arctic waters, icebreaking ships impact Inuit communities and wildlife that use ice for mobility purposes, an issue which is unregulated.

1.7 Conclusion - A Complex Undertaking

There is broad recognition of the importance of governing the global shipping industry. The task is daunting given that shipping is not a simple, singular, and independent ocean use. There is a myriad of elements that enable ship operations, each one of which requires policy and regulatory intervention at international or domestic levels, or both. In the public law realm, international conventions establish common rules and standards that states agree to conform to, essentially by building them into their domestic laws. At the same time, several aspects of ship operations would not function without the private element and the use of maritime contracts.

The aspiration of having international uniformity of rules and standards that enable unimpeded international trade relies not only on international conventions, but also on a host of other instruments, including model contracts. In this way, the public and private elements are seen as a continuum, as much as the international and domestic elements also create cross-cutting complexity at the centre of Figure 1-3.

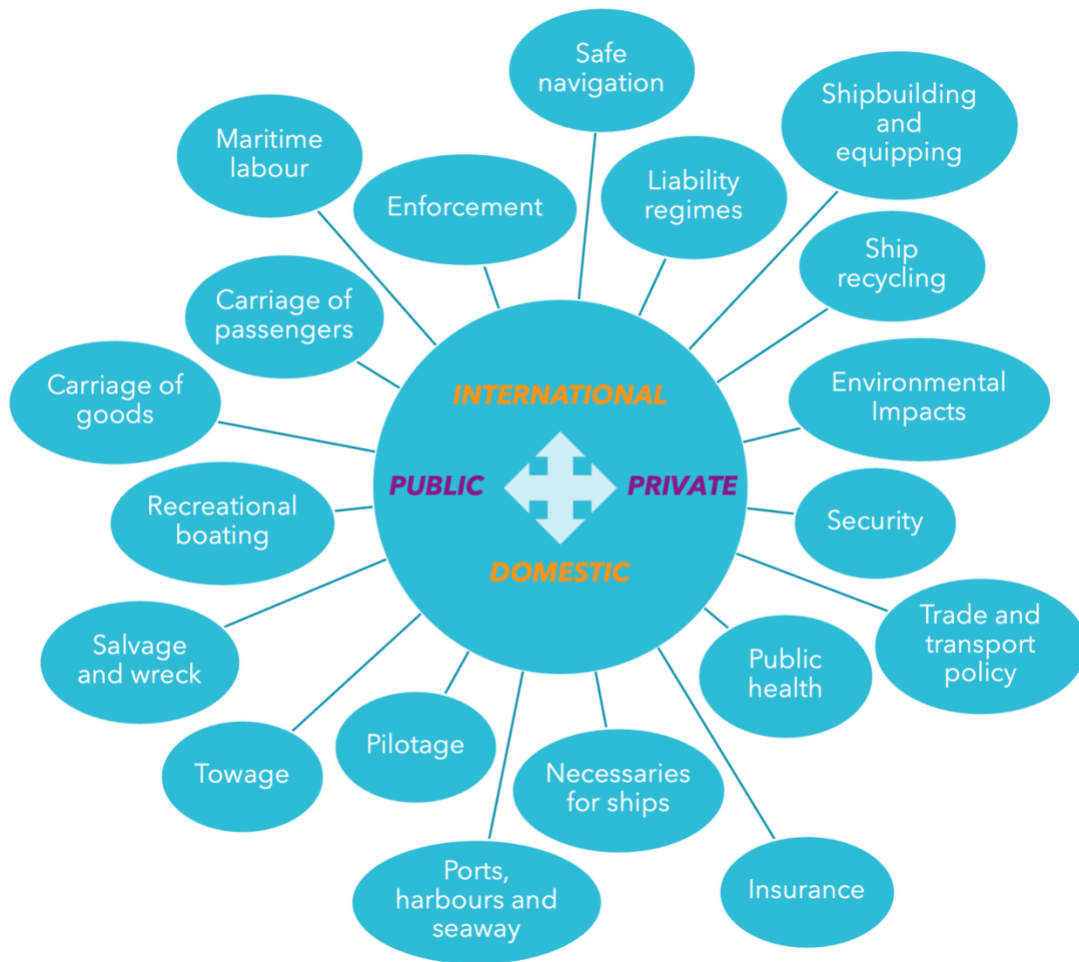


Figure 1-3. Complexity of Governance of Shipping

PART 2: The International Legal Framework for Shipping

Acronyms

The following acronyms appear in Part 2 and are spelled out in full with each first occurrence:

- COLREGS - Convention on the International Regulations for Preventing Collisions at Sea
- EEZ - Exclusive Economic Zone
- HFO - Heavy Fuel Oil
- HNS - hazardous and noxious substances
- ICAO - International Civil Aviation Organization
- ILO - International Labour Organization
- IMO - International Maritime Organization
- IOPCF - International Oil Pollution Compensation Fund
- ISM Code - International Safety Management (ISM) Code
- ITLOS - International Tribunal for the Law of the Sea
- MARPOL - International Convention for the Prevention of Pollution from Ships
- PSSA - particularly sensitive sea area
- SOLAS - International Convention for Safety of Life at Sea
- SOPF - Ship-Source Oil Pollution Fund
- STCW - International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers
- UNCITRAL - United Nations Commission on International Trade Law
- UNCLOS - United Nations Convention of the Law of the Sea
- UNCTAD - United Nations Conference on Trade and Development
- WHO - World Health Organization

2.1 Introduction

Shipping has had some form of governance since early times. The first rules were likely customs which were eventually codified. The earliest known examples include the Code of Hammurabi which, among other things, addressed shipping on the Tigris and Euphrates rivers around 2200 BC., and the Laws of Manu (Manusmriti) which also applied to shipping between Egypt and Mesopotamia in the period between 1500 BC to 200 AD.

The modern era of shipping regulation began in the 19th century with the industrial revolution and the advent of the steam engine. This necessitated early rules to avoid collisions and load lines to guide the maximum cargo that these higher-powered ships could load without impairing their stability. Since then, technology and refinement of commercial transactions have played a critical role in shaping the development of commerce and shipping.

As maritime safety became the priority for shipping, a major step forward was the *International Marine Congress as to Uniform Rules to Secure Life and Property at Sea*. Convened by the United States in 1889, representatives of 27 states gathered to consider a broad range of maritime safety topics, such as rules on navigation, seaworthiness, load lines, marking of vessels, saving of life, crew qualifications, sea lanes, night communication signals, weather warnings, wrecks and obstructions to navigation, danger notices, and buoys and beacons. A proposal for the establishment of a permanent international maritime commission was put forward but not supported.

The 20th century marked a dramatic change in the legal framework for shipping. This was due to the emergence of international organizations and the development of common rules promoting public order and use of the oceans. However, it was not until the United Nations was formed in 1945 and the International Maritime Organization (IMO) in 1948, that an intergovernmental organization took on the responsibility for regulating ships on behalf of the international community. Today, the IMO is responsible for more than 50 conventions and protocols and numerous other regulatory instruments, such as codes and guidelines.

Other intergovernmental organizations also helped develop international maritime standards, such as the International Labour Organization (ILO) first established in 1926. There would be several more organizations during the United Nations era, such as the United Nations Conference on Trade and Development (UNCTAD) and United Nations Commission on International Trade Law (UNCITRAL) on commercial aspects, and the World Health Organization (WHO) on health regulations as they apply to shipping. These organizations are discussed in more detail in Part 3.

Following from this historical background of shipping regulation, Part 2 continues to explain how ships are regulated in the contemporary setting. This is followed by discussions of the numerous themes addressed by international instruments in public and private international law and where they fit in the overall governance of shipping. It concludes with consideration of compliance with international rules and standards and an overview of the approach taken in Canada.

2.2 The Nature of Maritime Regulation

International Law Instruments

Today, the international legal framework for maritime law consists of a wide range of public and private law instruments. This section provides a high-level description of this framework while Sections 2.3 and 2.4 provide detail on the various themes into which they are structured to enable governance.

Public international law instruments, as discussed in Part 1, are instruments adopted by states at global, regional, and bilateral levels to govern their rights and responsibilities among themselves and set up overarching frameworks for shipping. Public law also sets community standards of conduct, such as for safety and pollution prevention.

There is a hierarchy of public instruments. At the highest level, rules are set out in conventions adopted by diplomatic conferences. Once adopted, they are maintained by international organizations with the IMO being at the forefront of this system. As a common feature of conventions, annexes set out more detailed rules and these rules, in turn, are frequently accompanied by detailed codes. Additionally, to assist with implementation, there are often guidelines that facilitate application of a convention's rules and codes. These are usually adopted by the IMO through resolutions.

Not all instruments are mandatory. IMO resolutions may also adopt non-mandatory guidance for states and maritime actors. Examples are guidance for biofouling of ship hulls, underwater noise radiated by ships, and places of refuge for ships in need of assistance.

Private international law instruments, as explained in Part 1, are adopted by states to govern the relations among the many actors in shipping. They set out what jurisdictions have the legal authority for a range of maritime claims, related securities, and civil procedures including enforcement. Private law deals with private relationships as reflected by the language that goes into a contract. Examples include liability clauses on loss of or damage to cargoes, pollution damage, and death or personal injury of passengers.

When combined, this large body of law – both public and private – governs the roles of states through their national maritime administrations and private actors so that maritime trade can be conducted in a safe and sustainable manner. The national maritime administration is the state body responsible for leading the domestic implementation of international rules and standards for shipping and is therefore designated as the contact point of the IMO. In Canada, this organization is Transport Canada. The private actors are numerous commercial actors that are service providers or receivers in the industry, such as shipbuilders, shipowners, charterers, ship managers, ship operators, cargo-owners, brokers, insurers, classification societies, salvors, port authorities, and others.

As noted in Part 1, maritime regulation also includes self-regulation at the industry level, consisting of standards adopted by industry associations and made binding on its shipping company members. For example, classification societies undertake surveys and classing of ships. They also develop 'house rules' based on interpretation of the international rules. It is a definite plus that the major classification societies work together through IACS to unify standards across the industry. In the case of some instruments, such as the *Polar Code*, detailed safety rules are developed by classification societies and referentially incorporated in the code.

Prescriptive vs Goal-Based Regulation

In the past, most maritime regulation was prescriptive, as in 'command and control', with specific binding rules that were enforced by a public authority. Today, the trend in regulatory strategy has shifted from prescriptive to goal-based regulation, generally based on the nature of the risks. With goal-based regulation, the regulator sets out goals to be achieved by those being regulated. Instead of specific requirements, there is guidance that allows flexibility for different strategies and means, both

technological and commercial, to produce compliance. In turn they are assisted by the meta-regulators who provide specific rules and guidance on actual implementation.

This approach to regulation has generated mixed views. On the one hand, maritime regulation provides flexibility and recognizes that technological and operational expertise rest with private rather than with public authorities, and that private actors need to make commercial choices in providing services. On the other hand, reliance by national maritime administrations on private actors to deliver on regulatory goals may lead to results that fall short of public expectations.

Universality and Uniformity

It would be ideal for all maritime trading states to become parties to the international conventions so that they are bound to those instruments. The fact that not all trading states do become parties can, and does, lead to some weakness in IMO's ability to be effective. That said, nothing stops a state from applying instruments they are not party to, as shown in Part 4 to be the case of Canada. This is because states tend to subscribe to agreements that help them advance their national interests or other domestic goals.

Uniformity refers to the expectation that all states that are parties to instruments implement them in good faith at the domestic level, and in a uniform manner. This is not always the case because the financial, technological, and human resource capabilities vary widely among states.

2.3 The International Law Concerning Public Order at Sea

2.3.1 Global Level - The Law of the Sea

The law of the sea sets out the powers and authority that states may exercise over ocean space. Adopted in 1982 by the Third United Nations Conference on the Law of the Sea held between 1973 and 1982, the ***United Nations Convention on the Law of the Sea (UNCLOS)*** is the constitution of the world's oceans.⁶ In regulating all aspects and uses of ocean space and its resources based on international cooperation, *UNCLOS* considers the issues of ocean space to be interrelated and need to be considered 'as a whole'. Currently, *UNCLOS* has 168 state parties, including Canada.

Among other, *UNCLOS* sets out the jurisdictional rights and responsibilities of states over:

- Ships bearing their nationality,
- The various navigation rights and duties of ships, and
- The rights and duties of other states with respect to foreign ships navigating close to their coasts.

⁶ *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 397 (in force 16 November 1994).

Jurisdiction of States

Under *UNCLOS*, there are three types of states – flag, port, and coastal – that can apply different measures of authority over shipping, as described in Figure 2-1.

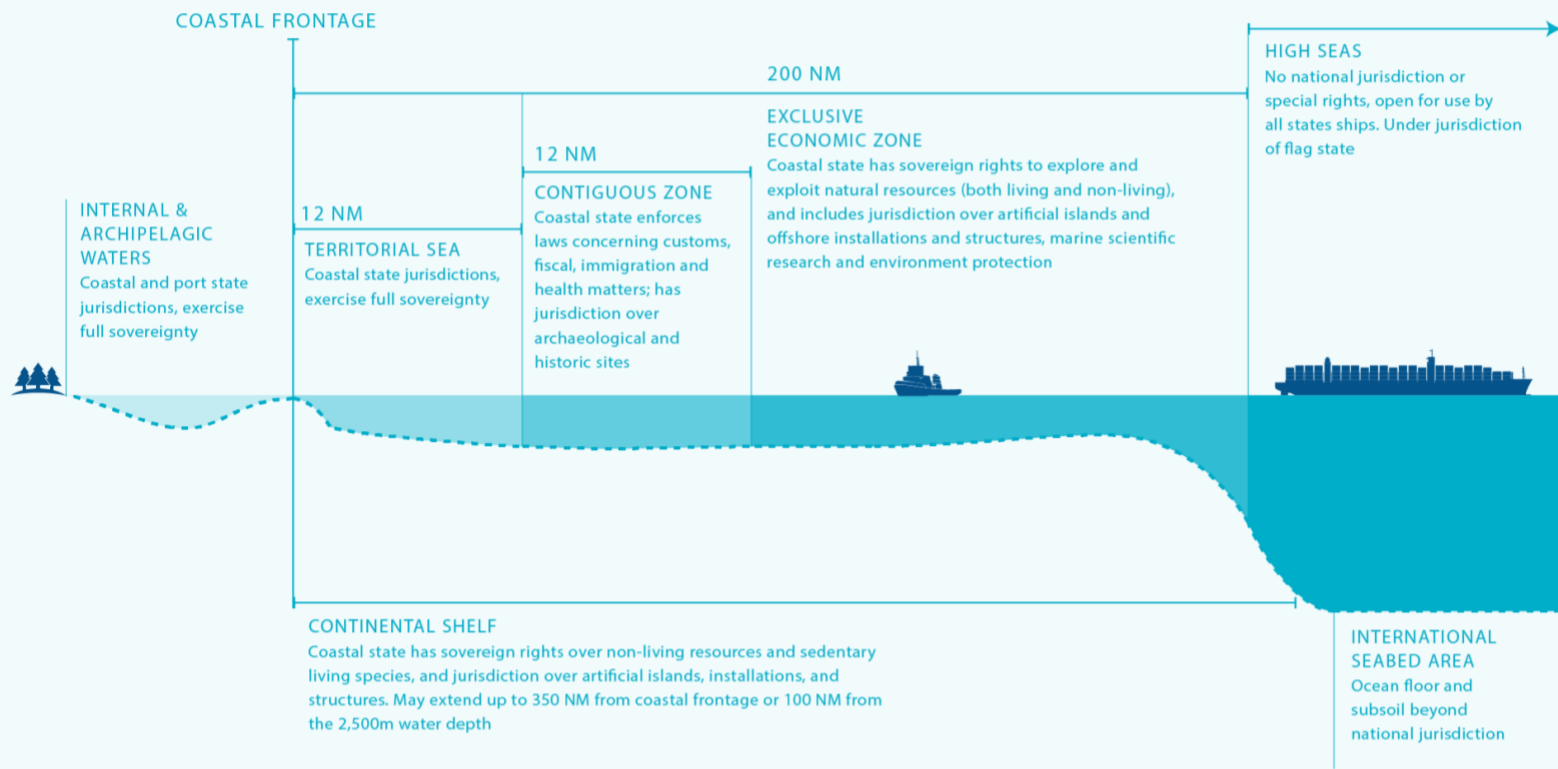
The **flag state** is the jurisdiction where ships are registered and, as we saw in Part 1, it has primary, but not exclusive, jurisdiction over its ships except on the high seas. The flag state has full freedom to register ships. If it is an ‘open registry’ state as discussed in Part 1, it is not limited to only register ships that have a direct beneficial link to it.

The **port state** that ships enter (and which in certain enforcement situations may be different from the coastal state), has broad powers over ships in its ports. This is because when foreign ships voluntarily enter ports, they are implicitly submitting themselves to the territorial sovereignty of the port state.

The **coastal state** has maritime zones that include regulatory authority over shipping for limited purposes, such as to regulate navigation in the territorial sea. Figure 2-1 shows the demarcations that affect the jurisdictional rights that a coastal state may, or may not, have beyond its shores.

In brief, coastal states enjoy a 12-nautical mile territorial sea where they have sovereignty. Beyond this, they have a 12-nautical mile zone where they can enforce laws concerning customs, fiscal, immigration and health matters. Also extending beyond the territorial sea, the state enjoys a 200-nautical mile exclusive economic zone (EEZ) where they have sovereign rights to resources and energy production from the seabed and water column. In this area it also has jurisdiction over artificial islands and offshore installations and structures, marine scientific research and environment protection. The continental shelf, which extends up to 200 nautical miles beyond the territorial sea, provides for sovereign rights over non-living resources and sedentary living species (e.g., lobsters and scallops) and jurisdiction over artificial islands, installations, and structures. Where permissible, an extended continental shelf may go as far as 350 nautical miles beyond the limits of the territorial sea. Beyond the continental shelf lies the international seabed area. The water above the continental shelf and the international seabed area is considered high seas. The high seas and international seabed area are known as ‘the commons’ and are open for use by all states.

States that are composed entirely of islands, such as Indonesia and the Philippines, qualify as archipelagic states and this lets them claim the interconnecting waters as areas over which they have sovereignty (the same as if they were land). This is subject to certain conditions, such as international navigation rights through those waters.



NM: NAUTICAL MILE



Figure 2-1. Maritime Zones and Jurisdictions of States in UNCLOS

International Navigation Rights

International navigation rights are protected in both the maritime zones of coastal states and on the high seas. There are no international navigation rights within state internal waters, such as bays, ports, harbours, and the waters between islands fringing the coast and the mainland.

Figure 2-2 indicates the applicable international navigation rights that ships have in the various maritime zones and on the high seas. They have 'innocent passage' (uninterrupted navigation and with no threat posed to the coastal state) through territorial seas and archipelagic waters, 'archipelagic sea lanes passage' (with lanes designated by IMO at the request of the archipelagic state) through archipelagic waters, and 'transit passage' (also with lanes designated by IMO) through international straits. There is freedom of navigation in EEZs, over continental shelves and on the high seas. It is of note that freedom of navigation in the contiguous zone, the EEZ and over the continental shelf leaves the coastal state with very little authority to regulate foreign shipping, and no authority on the high seas.

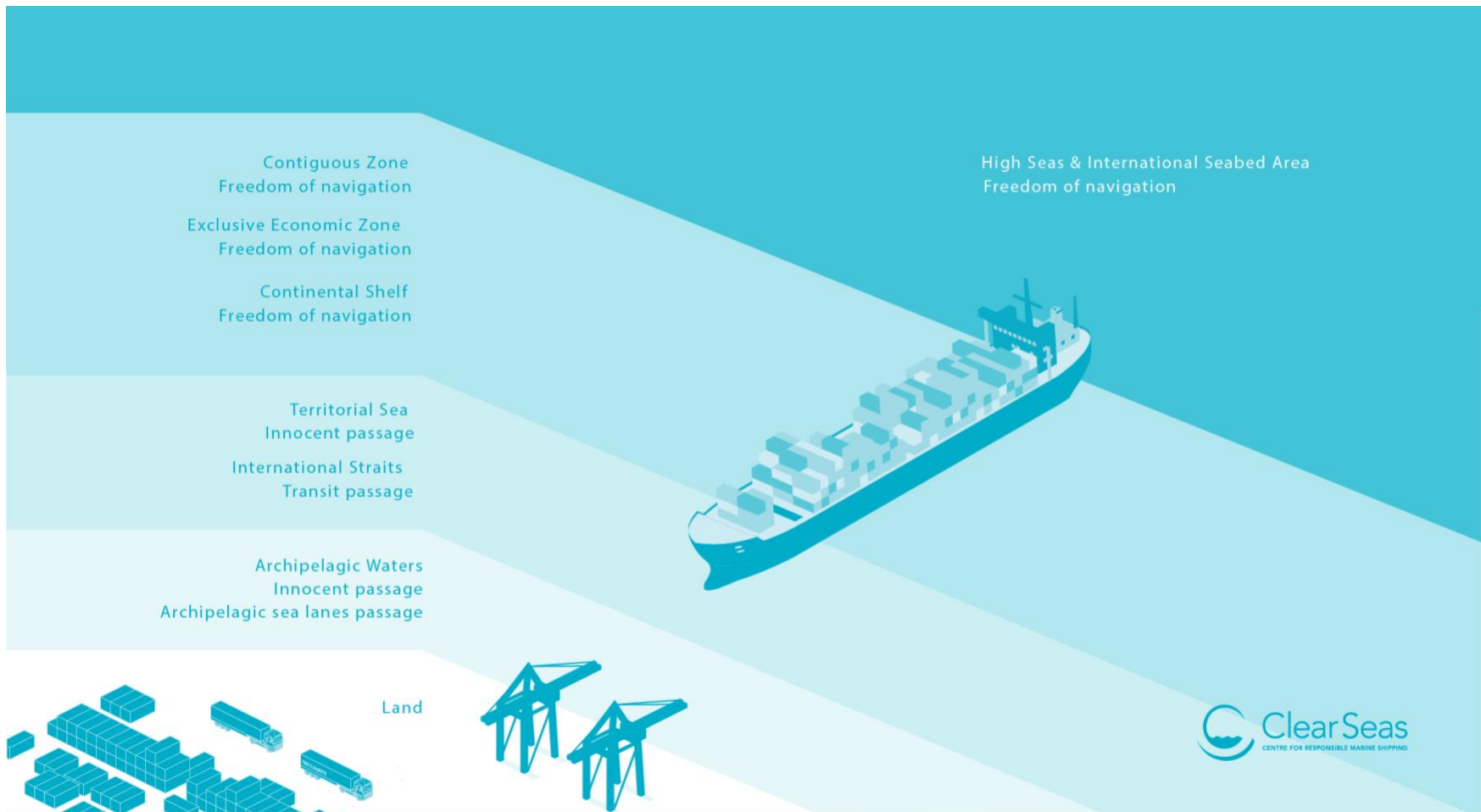


Figure 2-2. International Navigation Rights in *UNCLOS*

Given the tension between protecting international navigation rights while respecting the interests of coastal states, *UNCLOS* has given the IMO a vital role to establish generally accepted international rules, standards, and procedures so that international shipping and the coastal, port and flag states are subject to the same rules.

In addition to the IMO, *UNCLOS* provides roles for other competent international organizations such as the ILO on the regulation of maritime labour. These organizations will be discussed further in Part 3.

Other Bodies Established by UNCLOS

New bodies established by *UNCLOS* include the International Tribunal for the Law of the Sea (ITLOS) and International Seabed Authority. Described briefly below, these organizations are discussed in greater detail in Part 3.

ITLOS is an independent judicial body with expertise on disputes entailing the interpretation and application of the law of the sea. An example of such a case is a complaint by a flag state whose ships were detained in foreign waters where the vessels (mostly fishing) and crews were not released even after the posting of reasonable bonds as required by *UNCLOS*.

The **International Seabed Authority** is a self-governing organization through which states (that are party to *UNCLOS*) coordinate and manage all mineral resources-related activities in the international seabed area for the benefit of humanity. It has adopted exploration regulations and is currently developing exploitation regulations which rely on IMO and ILO regulation because ships are used as platforms for seabed mining.

There is little in international shipping and navigation that is not regulated by *UNCLOS*, or by the IMO as the organization designated by *UNCLOS* to adopt international rules and standards for shipping. One notable issue that remains unregulated is the ancient custom of states to provide a place of refuge to ships in distress. As highlighted in Section 1.4 (Safety and Emergency Response), this custom has come under stress because ships requesting refuge may pose threats to the marine environment, public safety, or coastal economies. Hence, the custom has changed somewhat with refuge being granted or denied on a case-by-case basis. To help this kind of decision, the IMO has provided guidelines⁷ to assist coastal states, ship captains and salvors assess the risks.

2.3.2 International Maritime Law

International maritime law covers an extensive range of instruments adopted by states at global, regional, and bilateral levels to govern their rights and responsibilities among themselves and set up overarching frameworks for shipping and community standards for conduct. The following subject areas are particularly relevant for the gaining and sustaining of social license in the governance of shipping:

⁷ Guidelines on Places of Refuge for Ships in Need of Assistance, Resolution A.946(23) adopted 27 November 2003.

- Maritime safety
- Marine environmental protection
- Search and rescue
- Security of ships
- Training and protection of maritime workers
- Protection of public health
- Facilitation of international maritime trade

Maritime Safety

Maritime safety is a multi-faceted subject concerning a range of topics including the all-important international convention for safety at sea, cargo safety, safety compliance, and navigational safety for the prevention of collisions.

SOLAS

The tragic loss of the *Titanic* in 1912 put the inadequacy of safety standards at sea fully into the spotlight. The first ***International Convention for the Safety of Life at Sea (SOLAS)*** adopted by a multilateral conference in 1914 provided the first comprehensive rules on maritime safety. Subsequent years saw new *SOLAS* iterations in response to new technologies and lessons from accidents and loss of life at sea. The most recent version is *SOLAS 1974*,⁸ which has been amended regularly, and to which Canada is a party.

SOLAS specifies the minimum standards for ships to enhance maritime safety. Today it is widely recognized as the most important of all international treaties relating to the safety of merchant ships and generally for activities at sea. It addresses numerous topics that include: surveying and documentation; construction; fire protection; life-saving equipment and arrangements; radiocommunications; safety of navigation, including sufficient manning, routing and reporting measures; meteorological services; search and rescue services; voyage data recorders; automatic identification systems; carriage and stowage of cargoes, including dangerous goods; safety management; role of recognized organizations in carrying out surveys and inspections on behalf of the flag state; additional measures for large bulk carriers; and verification of compliance. It is the flag state's responsibility to ensure their ships comply with the international rules and standards in the convention, its numerous codes, and guidelines.

SOLAS uses a system of documentation and certifications as evidence of compliance, enabling a port state to inspect ships visiting its ports. If inspectors have reasonable grounds to believe a ship and its equipment do not comply with the convention's standards, they may detain a ship in port until the deficiencies are fixed.

⁸ *International Convention for the Safety of Life at Sea*, 1 November 1974, 1184 UNTS 3 (in force 25 May 1980).

Much of the detailed regulation in *SOLAS* is in codes. Of the many codes that exist, two are cited here as examples. The *International Management Code for the Safe Operation of Ships and for Pollution Prevention*,⁹ generally known as the *International Safety Management (ISM) Code*, sets standards for the owning, management, and operation of ships, including the captain's responsibilities. The *International Maritime Dangerous Goods Code*¹⁰ covers the thousands of dangerous or hazardous cargoes carried on board ships and the standards for their packaging, handling, and transportation. It is updated regularly as new chemical products are invented and traded.

In addition to *SOLAS*, other instruments address additional aspects of safety, such as uniform principles and rules for determining the tonnage of ships.¹¹

Cargo Safety

Maritime safety is very much tied to cargo safety, as ultimately the safe loading and stowage of cargo directly bears on vessel and crew safety. Today, in the modern era of **containerization**, the safe carriage of consumer goods is almost taken for granted because of uniform international standards for containers.¹² The standards include requirements that enable safe carriage and handling across all modes of surface transportation – marine, road and rail.

As mentioned earlier, the first rules on **load lines** were adopted in the 19th century to prevent overloading of ships to maximize earnings. The first international rules on load lines, with a focus on ensuring stability and hull integrity, were adopted only in 1930. The current international rules were adopted by the IMO in 1966¹³ to ensure that ships do not exceed their load limits so as to avoid problems of vessel stability and possibly sinking. Under the rules, ships may only be loaded to the waterline and they have different load lines depending on such factors as whether they sail tropical or northern waters in the summer or winter seasons. Canada is a party to the most recent load lines convention and its 1988 protocol.¹⁴

Safety Compliance

Maritime safety depends on a system of certificates issued to ships following surveys which can then be inspected in port. These certificates show a ship's compliance with the international standards set out in *SOLAS* and other conventions and codes for maritime safety. A ship is subject to several standard surveys - initial, periodical, renewal, intermediate and annual - that allow it to commence operations and remain operational. There may be additional surveys following retrofitting or repairs. Moreover, different

⁹ *International Management Code for the Safe Operation of Ships and for Pollution Prevention* (Resolution A.741(18)), adopted 17 November 1993.

¹⁰ *International Maritime Dangerous Goods Code*, 1 November 1974, Resolution A.716(17) adopted 6 November 1991.

¹¹ *International Convention on Tonnage Measurement of Ships*, 23 June 1969, 1291 UNTS 3 (in force 18 July 1982).

¹² *International Convention for Safe Containers*, 2 December 1972, 1064 UNTS 3 (in force 6 September 1977).

¹³ *International Convention on Load Lines*, 5 April 1966, 640 UNTS 133 (in force 21 July 1968).

¹⁴ *Protocol of 1988 Relating to the International Convention on Load Lines*, 11 November 1988, CTS 2010 No 17 (in force 3 February 2000).

classes of ships have different certificate and survey requirements. Ships may be out of operation for several days during inspections, especially if dry-docking is necessary. The IMO has taken steps to try to harmonize the system in a way that allows coordination of inspections to improve efficiency.

Navigational Safety - Collision Prevention

Ships navigate in compliance with the 'rules of the road' to ensure their safety and the safety of others at sea. Most notably, this includes rules for the prevention of collisions.

The first rules for the prevention of collisions at sea were proposed in the mid-19th century coincided with a rise in collisions attributed to the growing use of steam engine-powered vessels. These international rules of the road came out of the International Marine Conference convened by the United States in 1889. The rules came into effect in 1897 and were updated subsequently.

The currently applicable rules for all vessels on the high seas and navigable waters are contained in the ***Convention on the International Regulations for Preventing Collisions at Sea (COLREGS)*** adopted by the IMO in 1972,¹⁵ and to which Canada is a party. The convention provides general rules on responsibility, and specific rules on conduct of vessels in any condition of visibility. Vessels experiencing restricted visibility are expected to maintain a proper lookout and to watch out for each other's safety. Steering and sailing, lights for nighttime and shapes for daytime, and sound and light signals, are all regulated. Based on the notion of good seamanship, the many rules on ship navigation include safe speed, proper lookout, action to take to avoid collisions, vessel traffic separation schemes, overtaking, stand-on and give way action, and responsibilities between vessels.

The rules permit national modifications as needed. Canada has taken advantage of this to deal with the narrow navigation channels on the St. Lawrence Seaway.

Marine Environment Protection

The protection of the marine environment is one of the most pivotal environmental issues of modern times. In shipping, marine environmental protection initially focused on pollution, but today a broad range of impacts produced by shipping are addressed by international regulations.

Although most of the pollution of the marine environment is from land-based sources, pollution from ships is a concern. The adoption of international agreements to regulate marine pollution, where the vessel is the source, has been the preferred means of addressing the problem globally. Because the list of potential pollutants from ships is as varied as the ships and the cargoes themselves, this is a complex problem that cannot rely on a single specific approach.

¹⁵ *Convention on the International Regulations for Preventing Collisions at Sea*, 20 October 1972, 1050 UNTS 16 (in force 15 July 1977).

Response to Tanker Spills

The first instrument regulating oil pollution, adopted in 1954, was focused on tanker spills.¹⁶ Eventually however, inadequacies became apparent with the first supertanker casualty, involving the *Torrey Canyon*, in 1967. The vessel was on the high seas, but just outside the territorial sea of the United Kingdom when it ran into trouble and eventually drifted and wrecked on the coast of the Cornish peninsula where the environmental and economic losses were massive. This disaster revealed four areas of regulatory inadequacy: lack of international standards for vessel operational and accidental pollution; the legal inability of coastal states to protect themselves given exclusive flag state jurisdiction on the high seas; the limitations of a young IMO; and the lack of a regime for civil liability for oil pollution damage to compensate victims for the losses they suffered.

Comprehensive and far-reaching changes took place in international law, and to the IMO, following the *Torrey Canyon* disaster. The law of the sea was changed in 1969 by a new convention allowing coastal states to take measures against foreign ships carrying oil on the high seas when they threaten to become casualties that could damage their coastal area.¹⁷ In 1973, this convention was broadened to include substances other than oil in recognition of the many other hazardous substances carried on board ships.¹⁸ Canada is a party to this instrument.

More protection for the marine environment was made possible by substantial institutional development in the IMO itself. At the time of *Torrey Canyon*, the IMO had only one principal regulating body, the Maritime Safety Committee. The obvious need to strengthen the IMO's legal and environmental functions led to the establishment of the Legal Committee in 1967 and the Marine Environment Protection Committee in 1973.

Dumping

Following *Torrey Canyon*, one of the first instruments to strengthen the environmental regulation of shipping was the ***Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter***, adopted in 1972.¹⁹ While the convention concerned the dumping of wastes of various origins, it also covered deliberate disposal at sea of wastes or other matter from vessels, including the disposal of ships themselves. In 1996, there was an amendment and an added protocol to the convention, known as the London Protocol,²⁰ to introduce tighter controls over what could be dumped

¹⁶ *International Convention for the Prevention of Pollution of the Sea by Oil, 1954*, 12 May 1954, 327 UNTS 3 (in force 26 July 1958).

¹⁷ *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties*, 29 November 1969, 970 UNTS 211 (in force 6 May 1975).

¹⁸ *Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973*, 2 November 1973, 1313 UNTS 3 (in force 30 March 1983).

¹⁹ *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, 1046 UNTS 120 (in force 30 August 1975).

²⁰ *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter*, 7 November 1996, Can TS 2006 No 5 (in force 24 March 2006).

into the marine environment. Unfortunately, the new protocol failed to get the support of all states resulting in the existence of two parallel legal regimes. There are ongoing efforts to coordinate the two regimes. Canada is a party to the London Protocol.

MARPOL

By far the most comprehensive regulatory instrument of pollution from ships to emerge in the wake of *Torrey Canyon* was the ***International Convention for the Prevention of Pollution from Ships (MARPOL)***.²¹ First adopted in 1973, *MARPOL* did not enter into force quickly and in fact its eventual entry into force was triggered by yet another major oil tanker casualty. In 1978, the modern supertanker *Amoco Cadiz* grounding off the coast of Western Brittany in France resulted in an even larger oil spill than *Torrey Canyon*. Remaining issues that prevented support for the convention to enter into force were quickly resolved through an amending protocol in 1978. *MARPOL* introduced a system to harmonize, regulate, certify, inspect, and enforce the international rules and standards for vessel-source pollution. It addresses various vessel-source pollutants through individual annexes on oil, hazardous and noxious substances carried in bulk or packaged form, sewage, garbage, and air emissions. Canada is a party to the 1978 protocol and all annexes.

The *MARPOL* rules are targeted to different types of ships. The annexes establish roles, duties, and responsibilities for regulation, certification, and inspection. The annexes also provide for the designation of special areas and emission control areas that impose even higher standards and controls for specified wastes and emissions in certain areas of the marine environment. Special area designation requires state parties in the region to provide port reception facilities for ships to offload wastes for the designation to take effect. Since not all states have established such facilities, the special area designation is not in effect in some regions.

To date, no marine areas in Canada have been designated as *MARPOL* special areas. Rather, in 2009 the IMO established the North American Emission Control Area (NAECA) (Figure 2-3) on a proposal by Canada and the United States. The NAECA imposes much higher standards than the norm for sulfur oxides, nitrogen oxides, and particulate matter which are harmful to human health, particularly in coastal areas. It is pertinent to note that the northern limits of NAECA do not include Arctic waters.

²¹ *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships of 1973*, 17 February 1978, 1340 UNTS 61 (in force 2 October 1983).

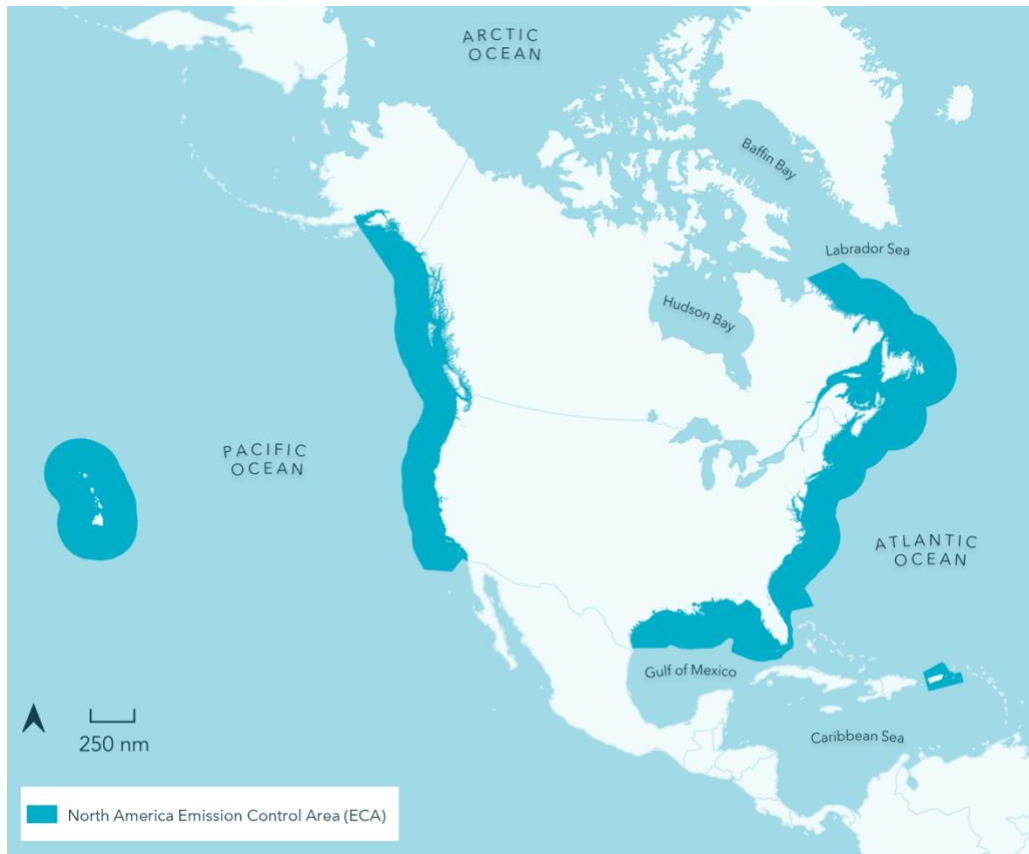


Figure 2-3. North American Emission Control Area

A separate instrument for protection of coastal areas, outside of any *MARPOL* convention, is a measure introduced by the IMO under the authority of its own constitutive instrument.²² This new measure is known as a Particularly Sensitive Sea Area (PSSA) and can be used as a designation where a coastal state has marine protected areas that are vulnerable to international shipping. IMO member states may request the IMO to designate a PSSA to strengthen their limited authority to regulate international shipping in their territorial seas and EEZs. The designation usually sets out appropriate protective measures that ships are to abide by such as routing measures, no-anchoring areas, speed restrictions, deep water routes for large vessels, and vessel traffic separation schemes. Canada has not yet approached the IMO for a PSSA designation in Canadian waters, but, in a similar vein, has requested the IMO to adopt a seasonal and voluntary area to be avoided to protect the endangered North Atlantic Right Whale in Roseway Basin in the territorial sea off Nova Scotia.

²² Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (PSSAs), Resolution A.982(24) adopted 6 February 2006.

Polar Waters

Arctic waters (unlike the Antarctic Treaty area) have not been designated as a special area. The *International Code for Ships Operating in Polar Waters*,²³ known as the *Polar Code* and operating under the auspices of both *SOLAS* and *MARPOL*, sets the standard for maritime safety and pollution prevention by ships in Arctic and Antarctic waters. Arctic waters are generally defined as waters north of 60 degrees latitude with adjustments to reflect the southernmost limit of ice cover (Figure 2-4).

Ships navigating polar waters have much higher safety and onboard waste management and discharge requirements than the norm because of the risks and harsh navigation conditions, and the highly sensitive marine environment. However, the *Polar Code* does not regulate air emissions from ships and therefore the general *MARPOL* air pollution rules apply to Arctic waters. Also, the *Polar Code* does not regulate the use of heavy fuel oil (HFO), however, the IMO recently adopted a new rule to phase in a ban on the use and carriage for use of HFO in Arctic waters.



Figure 2-4. Arctic Waters in the *Polar Code*

²³ The *Polar Code* was adopted through the following MSC and MEPC resolutions: Res MSC.385(94) adopted 21 November 2014 (effective 1 January 2017); Amendments to the International Convention for the Safety of Life at Sea 1974, Res MSC.386(94) adopted 21 November 2014 (effective 1 January 2017); International Code for Ships Operating in Polar Waters (*Polar Code*), Res MEPC.265(68) adopted 15 May 2015 (effective 1 January 2017); Amendments to *MARPOL* Annexes I, II, IV and V, Res MEPC.266(68) adopted 15 May 2015 (effective 1 January 2017).

Spill Response

Through the IMO, a 1990 convention²⁴ was adopted, followed by a protocol in 2000,²⁵ to promote the development of a state's preparedness and response capacity to deal with oil and hazardous and noxious substances spills from ships, oil handling facilities, and offshore installations. Ships and port facilities are required to have response plans. This convention also helps regions to develop coordination and capacity for emergency response, including in Arctic waters. Canada is a party to these instruments.

Other Threats to the Marine Environment

Anti-fouling systems are used to deal with accumulated flora and fauna on a ship's hull with the effect of slowing its speed and increasing fuel consumption. Examples of anti-fouling measures include biocidal paint that is highly toxic and persists in the environment. It kills both target and non-target species, making it a public health concern. For this reason, a convention on the control of harmful anti-fouling systems on ships was adopted in 2001²⁶ to regulate these systems for a wide range of ships. Canada and other state parties now prohibit or restrict the use of such systems on ships under their control or in their ports.

Ballast water is another threat posed by ships to the marine environment. The water taken in may contain living organisms which may later be discharged to a different marine environment, introducing species that could be harmful to the new host environment. A convention for the control and management of ship ballast water and sediments²⁷ was adopted in 2004 to address this threat through standards and procedures that apply to ships engaged in international voyages and the removal of sediment. Ships are required to carry out ballast water exchanges according to specified volumes, limits on the number of viable organisms, and at certain depths and distances from coasts. This convention also has provisions on reception facilities analogous to *MARPOL*. Canada is also party to this convention.

Recently, Canada became a party to a convention on the **removal of wrecks** in the marine environment adopted in 2007.²⁸ This convention addresses the risks of vessel-source pollution and dangers posed to the safety of ships from sunken or stranded ships located in the territorial sea and EEZ. A coastal state may require the shipowner to remove the wreck within a reasonable time limit and in the event of non-compliance, the wreck may be removed at the shipowner's expense.

²⁴ *International Convention on Oil Pollution Preparedness, Response and Cooperation*, 30 November 1990, 1891 UNTS 78 (in force 13 May 1995).

²⁵ *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances*, 15 March 2000, ATS 2007 4 (in force 14 June 2007).

²⁶ *International Convention on the Control of Harmful Anti-fouling Systems on Ships*, 5 October 2001, CTS 2010 No 15 (in force 17 September 2008).

²⁷ *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, 13 February 2004, IMO Doc. BWM/CONF/36 (16 February 2004), (in force 8 September 2017).

²⁸ *Nairobi International Convention on the Removal of Wrecks Nairobi*, 18 May 2007, 46 ILM 694 (in force 14 April 2015).

Even at the **decommissioning** stage, ships continue to pose safety and environmental risks. Once a ship is decommissioned it may be difficult to ascertain who the owner is and whether it will be recycled safely, rather than simply abandoned or broken down in an unsafe manner. Ship recycling itself potentially exposes workers and the marine environment to harmful materials used in ship construction and the toxic wastes that might still be onboard, such as asbestos and oily residues. If a ship is beached and then broken, as is often the case in some South Asian countries, wastes may leach into the marine environment. In response to these risks, in 2009 the IMO adopted a new convention to address the safe and environmentally sound recycling of ships.²⁹ This instrument involves multiple parties – the flag states to ensure compliance by their ships, port states to inspect documents for compliance, and recycling states to ensure their shipbreaking facilities are authorized. It is a preventative system that requires planning and document-tracking during the life cycle of a ship. Canada is not a party to this convention.

Governance Gaps Pertaining to the Marine Environment

Not all threats to the maritime environment are covered by current regulations. For example, underwater noise generated by ships is still only subject to voluntary guidelines,³⁰ rather than mandatory rules and standards. Hull biofouling, where exotic species attach to the hull are transported to different ecosystems, is also only subject to guidelines.³¹ Icebreaking also poses threats because of the noise introduced and the disruption to Indigenous uses and marine animals. In spite of the risks, icebreaking is not addressed by international guidelines, let alone regulation, although commercial shipping with icebreaking capability is growing in the North.

Search and Rescue

Search and rescue operations prevent the loss of human lives in distress in aeronautical or maritime accidents at sea. The duty of coastal state authorities and ships to save life at sea is a long-established custom and has in fact been codified in both *UNCLOS* and *SOLAS*. However, the vastness of ocean space frequently requires coordination of search and rescue operations beyond the abilities of a single state.

To this end, an international convention on maritime search and rescue was adopted in 1979³² to which Canada is a party. A subsequent protocol adopted in 2000 enhanced the regional approach and coordination between maritime and aeronautical operations. Under this convention, state parties committed themselves to providing search and rescue in their coastal waters and to cooperate with neighbouring states through bilateral or regional arrangements. Building on this convention, the IMO established search and rescue areas around the world in which states have assumed responsibility to

²⁹ *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships*, 15 May 2009 IMO Doc. SR/CONF/45 (19 May 2009) (not in force). See also *Guidelines for Safe and Environmentally Sound Ship Recycling*, Resolution MEPC.210(63) adopted 2 March 2012.

³⁰ *Guidelines for the Reduction of Underwater Noise from Commercial Shipping to Address Adverse Impacts on Marine Life*, IMO Doc MEPC.1/Circ.833 (7 April 2014).

³¹ *Guidelines for the Control and Management of Ships' Biofouling to Minimize the Transfer of Invasive Aquatic Species*, Resolution MEPC.207(62) adopted 15 July 2011.

³² *International Convention on Maritime Search and Rescue*, 27 April 1979, 1405 UNTS 97 (in force 22 June 1985).

provide the service. Furthermore, the IMO and International Civil Aviation Organization (ICAO) have jointly developed and maintained the International Aeronautical and Maritime Search and Rescue Manual to help guide both aeronautical and maritime search and rescue efforts.

Also, in 1979, Canada joined France, the former Soviet Union, and the United States to initiate the International Cospas-Sarsat Programme as a satellite system-based to facilitate search and rescue efforts by detecting and locating emergency beacons. The system has since expanded to include many countries that are parties to a related international agreement adopted in 1988³³ to provide alert and location services for maritime, aviation and terrestrial distress and safety. Canada is a party to this agreement.

Security of Ships

In recent years, the security of ships has become a matter of great concern. Piracy has long been a threat to the safety of ships on the high seas, but in recent decades it has evolved and expanded, largely because of terrorism at sea and the growing inequities in international development. The abduction of crews, hijacking of ships in coastal waters, and intentional grounding, among other actions by people outside the ship, pose serious threats to the security of ships, passengers, and crews.

SOLAS sets out special measures to enhance the security of ships and port facilities. For their part, states are expected to establish security levels and to provide security level information to ships that are operating in, or are about to enter, their territorial sea. They are also to set security levels for their ports and provide this security information to their ships, ports, and foreign ships in their ports. With this information, companies and ships are required to set their security levels accordingly. SOLAS' principal subsidiary instrument on security is the *International Ship and Port Facility Security Code*³⁴ which provides mandatory requirements for states, ship companies, ship operators, and port facilities. The detailed rules include security plans for ships and port facilities to control unauthorized access.

Maritime terrorism is addressed by the ***Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA)***,³⁵ adopted together with an accompanying protocol in 1988.³⁶ The SUA Convention was adopted in response to the hijacking of the cruise ship *Achille Lauro* in the Mediterranean and on which a disabled person was murdered. Canada is a party to this convention whose primary goal is to ensure that effective action is taken against those who conduct illegal actions against ships. Such actions include the forcible capture of ships, acts of violence against passengers, and the placement of devices on board that can kill people or harm the vessel. State parties are required to either prosecute or extradite accused offenders.

³³ *International COSPASS-SARSAT Programme Agreement*, 1 July 1988, 1518 UNTS 209 (in force 30 August 1988).

³⁴ *International Ship and Port Facility Security Code*, adopted by Resolution MSC.196(80) adopted 20 May 2005.

³⁵ *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, 1678 UNTS 201 (in force 1 March 1992).

³⁶ *1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*, 10 March 1988, 1678 UNTS 201 (in force 1 March 1992).

A diplomatic conference was convened in 2005 to adopt significant changes to the SUA instruments³⁷ to address concerns over the weaponization of ships and use of weapons of mass destruction. This followed on the horrific events of September 11, 2001, that revealed material gaps in the SUA that allowed hijacking and weaponization of civilian aircraft against the World Trade Center in New York and the Pentagon in Washington. Subsequent amendments extended the convention's application to include unlawful acts against offshore installations on the continental shelf.³⁸

Training and Protection of Maritime Workers

The maritime industries employ many seafarers and other workers on board vessels at sea. The ***International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW)***³⁹ is the most important major instrument on this topic, adopted by the IMO in 1978, and to which Canada is a party. A detailed *STCW Code*⁴⁰ accompanies the convention to set uniform standards for the training of seafarers by maritime academies to ensure competent and safety-minded crews. Other instruments address various worker safety aspects. For example, the load lines convention discussed earlier ensures safe passageways for the crew while the *SOLAS* convention addresses survival equipment, such as lifeboats and flotation devices, and such procedures as mustering stations on cruise ships.

Equally important, the ***Maritime Labour Convention***,⁴¹ adopted by the ILO in 2006, uses a wide definition of seafarer to include all persons working on board ships. Canada is a party to this convention that is described as a seafarer's bill of rights. The first goal of the convention is to ensure robust and global security of seafarers' rights. Secondly, it is to provide a level playing field for states and ship owners as they provide good occupational health and safety and living conditions for seafarers, thereby safeguarding them from working on substandard ships. The convention's expressed purpose is to set out firm rules that state parties enforce.

The ***Maritime Labour Convention*** does not cover fishers. Despite the distinct dangers of the profession, finding international consensus on standards for fishers has been difficult given the many different interests, ships, fishing methods, and conditions of operation in the industry. A convention on

³⁷ *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 14 October 2005, IMO Doc LEG/CONF 15/21 (1 November 2005) (in force 28 July 2010).

³⁸ *Protocol for the Suppression on Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf*, 10 March 1988, 1678 UNTS I-29004 (in force 1 March 1992).

³⁹ *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers*, 7 July 1978, 1361 UNTS 2 (in force 28 April 1984).

⁴⁰ *Standards of Training, Certification and Watchkeeping for Seafarers Code* (7 July 1978), 1361 UNTS 2 (in force 28 April 1984).

⁴¹ *Maritime Labour Convention*, 23 February 2006, CTS 2013 No 16 (in force 20 August 2013).

safety of fishing vessels⁴² and its superseding protocol⁴³ failed to achieve sufficient international support. Eventually in 2012, agreement was reached in Cape Town⁴⁴ to address the issues of implementation of the earlier instruments by introducing a safety certification system like *SOLAS*. The resulting certification system and minimum training requirements, similar to what *STCW* applies to seafarers, are addressed by a 1995 convention on standards of training, certification, and watchkeeping for fishing vessel personnel.⁴⁵ Canada is party to the 1995 convention.

Protection of Public Health

Ships may become carriers of disease and pose threats to the port communities they visit. As such, the International Health Regulations⁴⁶ adopted by the WHO, set out rules that require states to monitor and control ship discharges of sewage, refuse, ballast water, and other potentially disease-causing matter which might contaminate port or inland waters and international waterways. The regulations also address ships in transit and at points of entry, and goods in transit. The ship captain must submit a Maritime Declaration of Health before port arrival as a preventive measure and, in turn, port authorities issue sanitation certificates.

Facilitation of International Maritime Trade

A vital aspect of maritime regulation is facilitation of maritime trade itself. This was recognized early in 1926 by the League of Nations, leading to a convention on maritime ports⁴⁷ requiring port states to treat visiting ships equally and fairly, regardless of nationality. Parties agreed to give all ships free access to maritime ports and to not discriminate against ships depending on the flag they fly.

Another aspect of maritime trade facilitation is uniform documentary requirements. In exercising their sovereignty, states legislate their own customs, immigration, and other standards. This means a ship trading in various ports on the same voyage could be subject to duplicative and time-consuming paperwork. To alleviate this, a convention on the facilitation of maritime traffic⁴⁸ was adopted in 1965 to introduce uniform standards and recommended procedures for ship, cargo, and passenger arrivals, stays and departures, treatment of stowaways, and public health and quarantine procedures, including measures for animals and plants. Canada is a party to this instrument.

⁴² *The Torremolinos International Convention for the Safety of Fishing Vessels*, 2 April 1977 BPP Misc 17 (1978), Cmnd 7252 (not in force).

⁴³ *The Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for The Safety of Fishing Vessels*, April 1993, BPP Misc 19 (1996), Cmnd 3339 (not in force).

⁴⁴ *Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels*, 11 October 2012, IMO Doc. SFV-P/CONF 1/16 (29 October 2012) (not in force).

⁴⁵ *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel*, 7 July 1995, Can TS 2012 No 21 (in force 29 September 2012).

⁴⁶ *International Health Regulations (2005)*, 23 May 2005, 2509 UNTS 79 (in force 15 June 2007).

⁴⁷ *Convention and Statute on the International Regime of Maritime Ports*, 9 December 1923, 58 LNTS 285 (in force 2 December 1926).

⁴⁸ *Convention on Facilitation of International Maritime Traffic*, 9 April 1965, 591 UNTS 265 (in force 5 March 1967).

2.3.3 Regional Level Cooperation

In some parts of the world, global cooperation is mirrored at the regional level. States may do this by adapting global rules to the specific needs of their marine region, or perhaps even to enhance the enforcement of global instruments.

The Arctic

The Arctic is a good example of how regional instruments can mirror global instruments. In 2011, the Arctic Council facilitated a regional agreement on cooperation on aeronautical and maritime search and rescue⁴⁹ to mirror the global instrument on search and rescue discussed earlier. Designed for the Arctic context, the agreement brings together international search and rescue coverage and response, definition of state parties' responsibility areas, and coordinated use of each other's territory to extend assistance to remote areas. Canada is both a party and the depository of the agreement.

In addition to search and rescue, the Arctic Council facilitated the adoption in 2013 of a regional agreement on cooperation on marine oil pollution preparedness and response.⁵⁰ This agreement also mirrors a global agreement on oil pollution preparedness and response discussed earlier with similar aims to increase cooperation and coordination among Arctic countries to protect Arctic marine and coastal ecosystems from oil spill incidents. Parties commit to provide mutual assistance to other countries as required, share critical information to enhance the effectiveness of response operations, and cooperate on training and exercises in the Arctic region. Canada is also party to this agreement.

A novel cooperative arrangement is the Arctic Coast Guard Forum,⁵¹ established as an independent multilateral forum in 2015 by the region's Canadian, Danish, Finnish, Icelandic, Norwegian, Russian, Swedish and United States coast guards. The mission is to cooperate at the operations level to deliver safe, secure, and environmentally responsible maritime activities. The forum organizes live search and rescue exercises to test coordination among the member coast guards.

Port State Control

Aside from the Arctic, Canada is party to the Paris⁵² and Tokyo⁵³ memorandums of understanding on port state control. The Paris memorandum, adopted in 1982, covers the North Atlantic basin from North

⁴⁹ *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*, 12 May 2011, CTS 2013 No. 6 (in force 19 January 2013).

⁵⁰ *Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic*, 15 May 2013, CTS 2013 No. 6, (in force March 25, 2016).

⁵¹ Arctic Coast Guard Forum (n.d.). About the ACGF. Retrieved from: <https://www.arcticcoastguardforum.com/>

⁵² *Memorandum of Understanding on Port State Control in Implementing Agreements on Maritime Safety and Protection of the Marine Environment*, 26 January 1982, 21 ILM 1 (in force 1 July 1982).

⁵³ *Memorandum of Understanding on Port State Control in the Asia-Pacific Region*, 1 December 1993, (in force 1 April 1994).

America to Europe, whereas the Tokyo memorandum, adopted in 1993, encompasses the Asia Pacific region.

The objective of port state control is to address the failings of flag states to exercise effective jurisdiction and control over their ships to ensure compliance with international standards. These memorandums, unlike treaties, are agreements made by national maritime authorities, such as Transport Canada, rather than by states themselves. Rather than establish legal obligations, the two memorandums provide procedures and coordinate the enforcement of international rules and standards, such as *MARPOL* and *SOLAS*, for ships visiting regional ports. In port, ships are inspected without any discrimination as to flag. They may be given warnings or required to rectify minor deficiencies, but in serious cases they may be either detained in port until deficiencies are rectified or given permission to proceed to the nearest port where the deficiencies can be fixed. A record of each inspected ship is entered into a shared database to enable subsequent ports to follow up on problem ships.

2.3.4 Bilateral Level Cooperation

Maritime governance also occurs at the bilateral level between neighbouring states. Bilateral agreements and other arrangements tend to focus on management of good neighbourly maritime relations and specific matters. Canada has several such arrangements with Denmark (Greenland/Kalaallit Nunaat), France (St. Pierre et Miquelon), and most especially the United States with whom we share maritime neighbourhoods in the Atlantic, Arctic, Great Lakes, and Pacific regions.

Canada-Denmark (Greenland/Kalaallit Nunaat)

In 1983, Canada and Denmark, on behalf of Greenland, entered into an agreement to cooperate on the marine environment,⁵⁴ including the prevention, reduction, and control of pollution from offshore activities and shipping. The agreement commits both sides to:

- Exchange information and notification,
- Investigate violations,
- Take steps to ensure that offshore installations minimize the risk of pollution, and
- Cooperate on vessel traffic management and provide ship reporting services (identify, monitor, and review routes considering vessel types, passage frequency, cargoes, propulsion, ice conditions and other hazards).

The agreement has annexes on joint contingency plans for pollution incidents from offshore and shipping activities.

⁵⁴ *Agreement between the Government of Canada and the Government of the Kingdom of Denmark for Cooperation Relating to the Marine Environment*, 26 August 1983, CTS 1983 No. 19 (in force 26 August 1983).

Canada-France

In 1994, with mostly resolved fisheries and maritime boundary disputes behind them, Canada and France forged an agreement for regional cooperation with respect to St. Pierre et Miquelon and the Atlantic provinces.⁵⁵ Under the agreement, a Joint Commission meets regularly to oversee its implementation with the actual work being done by subcommittees. In the maritime domain, the agreement provides for cooperation on the improvement of sea links and law enforcement to combat illicit traffic. The subcommittee on security is concerned with police and customs matters, cooperation in marine rescue, marine pollution, and security issues that arise.

Canada-United States

Canada and the United States have a long history of cooperation through their respective coast guards, who meet in annual summits. The two organizations coordinate tasks in shared waterways, such as icebreaking on the Great Lakes, marine environmental emergencies, search and rescue, vessel traffic management, and navigation aids. This cooperation is largely seamless and ongoing.

In 1909, Canada and the United States created the International Joint Commission through the Boundary Waters Treaty.⁵⁶ The treaty ensures free navigation of all shared rivers, lakes, and waterways along the international border, and sets out principles for cooperation and dispute prevention and resolution. Either party may apply rules, regulations, and tolls to navigation on its side of the boundary as long as vessels of both countries are treated the same.

The Great Lakes and St. Lawrence Seaway system is perhaps one of the best-known bilateral arrangements with its focus on the governance of shipping in an international waterway between Canada and the United States. The seaway extends from the Atlantic Ocean to the Great Lakes along a 3,700 km route (Figure 2-5). With reference to the International Joint Commission, construction of the waterway was commenced, completed, and formally opened in 1955. The management of the waterway is shared and coordinated by the St. Lawrence Seaway Management Corporation, a not-for-profit body established in Canada, and the Saint Lawrence Seaway Development Corporation operating within the United States Department of Transportation.

⁵⁵ *Agreement Between the Government of Canada and the Government of the Republic of France Relating to the Development of Regional Cooperation Between the Canadian Atlantic Provinces and the French Territorial Collectivity of St. Pierre and Miquelon*, 2 December 1994, CTS 1994 No. 33 (in force 2 December 1994).

⁵⁶ *Treaty Relating to the Boundary Waters and Questions Arising Along the Border between the United States and Canada (The Boundary Waters Treaty)* 1909, 11 January 1909, RSC 1985 c I-17 (in force 5 May 1910).



Figure 2-5. Great Lakes and St. Lawrence Seaway

In 1978, Canada and the United States concluded the *Great Lakes Water Quality Agreement*⁵⁷ in an undertaking to improve water quality of the Great Lakes. The goal is to preserve and sustain the chemical, physical, and biological integrity of the waters of the Great Lakes basin ecosystem through policies, procedures, and technologies and to eliminate or mitigate pollution discharge. After the adoption of the global convention on oil pollution preparedness and response cooperation, the agreement spun off a Joint Marine Pollution Contingency Plan⁵⁸ in 2017 to meet their obligations under that convention. The plan provides for a Joint Environmental Emergency Response Team through which the countries' coast guards lead and jointly prepare and respond to spills in their adjacent coastal waters and the Great Lakes region. The plan has annexes that deal specifically with the Atlantic coast, Beaufort Sea, Dixon Entrance, Great Lakes, and Pacific coast. The two coast guards conduct regular exercises in the regions covered.

Differing views on the legal status of Arctic waters and jurisdiction for navigation in those waters, led Canada and the United States to adopt a bilateral agreement on Arctic Cooperation⁵⁹ in 1988. The agreement is effectively a cooperative arrangement that allows both sides to 'agree to disagree' on the legal status of Arctic waters. Through the agreement, both countries committed to facilitate icebreaker navigation in their respective Arctic waters and develop and share research on the marine environment. The United States pledged to seek Canada's consent for the passage of icebreakers in Canadian internal waters. The agreement operates without prejudice to either country's position on the law of the sea.

⁵⁷ *Agreement between Canada and the United States of America on Great Lakes Water Quality*, 22 November 1978 CTS No. 1978/20 (in force 22 November 1978).

⁵⁸ *Canada-United States Marine Pollution Contingency Plan*, 3 August 2017 (effective 3 August 2017).

⁵⁹ *Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation*, 11 January 1988, CTS 1988 No 29 (in force 11 January 1988).

2.4 International Law Governing Relations Between Private Maritime Actors

This primer has thus far focused on public international maritime law governing relations between states. However, states do not always share common maritime trading interests and partners, and there is much diversity in international commercial practices. As such, there are also rules of international maritime law that govern the relations between private actors, with the aim of having uniform commercial practices that minimize interruptions in the movement of goods and services by ships, including services provided to ships. Rules for private actors are generally concerned with specific civil obligations of commercial actors or model clauses for maritime contracts.

2.4.1 Limitation of Liability

The provision of shipping services carries much risk which private actors attempt to mitigate and control by limiting potential liabilities. Hence, limitation of liability is a common theme in contracts governed by maritime law and in situations of negligence at sea leading to death, personal injury, and property loss. It is also the basis for civil liability for oil pollution damage. At its core, limitation of liability exists to encourage shipowners and ship operators to take on the risk of providing shipping services in support of the many aspects of maritime trade and ancillary supporting services. With limitation of liability, the service provider's liability is capped at a certain amount. Consequently, the amount of actual compensation is often less than what was claimed.

2.4.2 Principal Areas of Private International Maritime Law

The principal areas of private international maritime law discussed here include:

- Securities and enforcement
- Carriage of goods
- Carriage of passengers
- Collisions
- Salvage
- Pollution damage
- Wreck removal
- State-owned ships

Securities and Enforcement

Ships need various services to enable them to carry trade and perform other functions. For example, ships need finance to be built and retrofitted and to receive necessities such as food, fuel, repairs, towage, and other services. At the same time, ships are highly mobile property and can easily frustrate creditors from getting paid and acting on their claims. For this reason, creditors can use various securities to secure their debts. Examples are mortgages or a similar security in the case of ship finance and liens for such necessities as ship repair. The various claims a ship accumulates cannot be treated the same because they may belong to a different class, or arise at different dates, or may be eligible for privileged status as discussed below.

Privileged claims, known as maritime liens, come into play for vital services, such as seafarer salaries and salvage, or to benefit victims from the wrongful conduct of the ship. They can also protect suppliers of necessities. Should a ship go into bankruptcy of, privileged claims are next in line for payment after any expenses that were incurred in the common interest of all creditors. Other security holders, such as mortgagees and secured creditors are paid next, followed by unsecured creditors.

National laws vary in how they provide protections and procedures to creditors and for this reason, international conventions on maritime liens and mortgages were adopted in 1926,⁶⁰ 1967⁶¹ and most recently in 1993 to promote uniform international practices. Unfortunately, these efforts have not been fruitful. The 1967 convention never entered into force and, while the latest *International Convention on Maritime Liens and Mortgages*⁶² adopted in 1993 is in force, its effectiveness is reduced because most developed states, including Canada, are not parties.

Ship arrest is a central procedure in the enforcement of maritime claims. The ship can be arrested if the owner defaults on debts and an action *in rem* (a court proceeding against the ship) is brought to court. The ship's owner may pay an appropriate security or bond to have the vessel released on bail and enable proceedings to continue. In turn, this enables the ship to continue trading.

International conventions were adopted in 1952⁶³ and 1999,⁶⁴ the latter under UNCTAD, to attempt to unify the rules concerning the arrest of sea-going ships. As in the case of liens and mortgages, these instruments have not received support from most countries. Although Canada is not a party, Canadian courts have applied some of the principles of the 1952 convention. An example is sister-ship arrest, which allows the arrest of another ship of the same owner when the ship with unpaid services is outside the jurisdiction of the enforcing court.

Transportation of Goods

The carriage of goods is the central function of maritime trade. Yet it has been one of the most difficult areas to achieve international consensus. There are three major aspects to this matter: how the transportation of trade is to be shared, model rules to promote uniformity, and special carriage concerns.

⁶⁰ *International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages*, 10 April 1926, 2765 LNTS (not in force).

⁶¹ *International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages*, 27 May 1967 (not in force).

⁶² *International Convention on Maritime Liens and Mortgages*, 6 May 1993, UNTS 2276 (in force 5 September 2004).

⁶³ *International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships*, 10 May 1952, 6330 UNTS 439 (in force 2 October 1962).

⁶⁴ *International Convention on Arrest of Ships*, 12 March 1999, UN Doc A/CONF.188.6 (19 March 1999) (in force 14 September 2011).

Sharing of trade transportation: In 1974, UNCTAD facilitated a code of conduct for liner conferences⁶⁵ that allows any national shipping company to become a full member of a conference that serves its foreign trade. Today, much of the earlier rationale of liner conferences, such as avoiding price wars and eliminating excess capacity, has eroded such that liner conferences may be terminated to let strategic industry alliances operate in open markets. Some jurisdictions, such as the European Union, have abolished liner conferences.

Uniformity in rules and documentation: Rules for uniform carriage of goods are important so that contracts of carriage enabling trade can be guided by common and predictable rules and unified documentation requirements. There also needs to be a balance between rights and duties of carriers and shippers of goods. Without common rules, carriers could use contracts to exclude liability altogether. The rules tend to be adopted as contractual terms governing the carrier's responsibility to firstly provide a seaworthy ship and additionally provide such items and information as:

- A bill of lading as a receipt for the goods, stating their condition
- Important information on the cargo
- Limitations on dangerous goods
- Deviation or delay of the voyage
- Exclusions of liability for certain risks
- Limited liability for the carrier

The *Hague Rules*⁶⁶ were adopted in 1924 as the first convention to provide minimum standards for the carriage of goods and was widely regarded to favour the carrier. They were amended by protocols in 1968 and 1979⁶⁷ and with the 1968 protocol they came to be known as the *Hague-Visby Rules*.⁶⁸ The rules remained slanted in favour of the carrier and generally favoured developed states, and for this reason in 1978 UNCITRAL facilitated the adoption of the *Hamburg Rules*,⁶⁹ levelling the playing field between developed and developing countries. The new rules also reflected the emergence of containerized transportation and created a balance between carrier and shipper rights and responsibilities. However, these efforts were not sufficiently embraced and what emerged were parallel regimes of the *Hamburg Rules* and what preceded them. A subsequent effort by UNCITRAL to address the problem of parallel regimes led to the adoption in 2008 of a United Nations convention known as the *Rotterdam Rules*,⁷⁰ but this also failed to gain broad international support. The current situation

⁶⁵ *United Nations Convention on a Code of Conduct for Liner Conference*, 6 April 1974, 1334 UNTS 15 (in force 6 October 1983).

⁶⁶ *International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*, 25 August 1924, 120 LNTS 155 (in force 2 June 1931).

⁶⁷ *Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*, 23 February 1968, 1412 UNTS 121 (in force 14 February 1984).

⁶⁸ *Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924*, 23 February 1968, 1412 UNTS 128 (in force 23 June 1977).

⁶⁹ *United Nations Convention on the Carriage of Goods by Sea*, 31 March 1978, 1695 UNTS 3 (in force 1 November 1992).

⁷⁰ *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, 11 December 2008, GA Res 63/122, UNGAOR, 63d Sess, UN Doc A/RES/63/122 (2 February 2009) Annex.

continues to be one of multiple parallel regimes. Canada has remained faithful to the original *Hague-Visby Rules*, although without becoming an actual party to that convention because they are more widely adopted by our trading partners than the other rules.

Special Carriage as it Relates to Nuclear Material: While maritime carriers were historically reluctant to transport nuclear material, the most viable way to transport nuclear material was by ship. This was addressed in 1971 by a dedicated convention on civil liability for the carriage of nuclear material⁷¹ that shifted liability for a nuclear accident during carriage exclusively to the operator of the nuclear facility to or from where the material was transported. This instrument aligned the carriage regime with the Paris convention on third party liability in the field of nuclear energy⁷² and the Vienna convention on civil liability for nuclear damage,⁷³ which held the operator responsible for the operation of a nuclear facility. Canada is not a party to the 1971 convention.

Carriage of Passengers

The carriage of passengers is usually offered as a contract of adhesion wherein the carrier sets the terms and the passenger simply agrees to the contract. This is done to help standardize the terms of the service. The difficulty with such agreements is that there is no balance of power between the two parties such that the agreement will be one-sided. To address this issue, the transportation of passengers is regulated by a regime aimed at protecting consumers while ensuring the carrier can contain the risk of liability.

In the maritime field, the principal instrument is a convention adopted in Athens in 1974⁷⁴ on the carriage of passengers and their luggage. The liability limits were amended in 1976,⁷⁵ 1990⁷⁶ and 2002⁷⁷ and the right to limit liability tightened. Under current liability limits, the carrier is subject to compulsory insurance and has limited liability for the death or personal injury of a passenger, and damage or loss of vehicles and luggage. The language makes it extremely difficult for a victim to challenge the right of the carrier to limit liability. Although Canada is not a party to the Athens convention, it has implemented it through the *Marine Liability Act*.

⁷¹ *Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material*, 17 December 1971, 974 UNTS 256 (in force 15 July 1975).

⁷² Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol of 28 January 1964, 956 UNTS 251 (in force 7 October 1988).

⁷³ *Vienna Convention on Civil Liability for Nuclear Damage*, 21 May 1963, 1063 UNTS 265 (in force 12 November 1977).

⁷⁴ *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974*, 13 December 1974, 1463, UNTS 20 (in force 28 April 1987).

⁷⁵ *Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1976*, 1545 UNTS 339 (in force 30 April 1989).

⁷⁶ *Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*, 29 March 1990, IMO Doc. LEG/CONF.8/10 (not in force).

⁷⁷ *Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*, 1 November 2002, UKTS 2014 No 14 (in force 23 April 2014).

Collisions

The enforcement of claims arising from collisions can be complex. In large part, this is because the ships, victims and property owners may carry different nationalities added to the fact that collisions may occur in domestic or foreign waters or on the high seas. Thus, it is difficult to determine in which court civil liability claims may be advanced. A convention adopted in 1952⁷⁸ clarified that the civil action should be brought in one of three places - the jurisdiction of the defendant's residence or business, the court where the ship is arrested, or the court of the port or internal waters where the collision occurred.

In a sister instrument that covers criminal jurisdiction concerning collisions or other incidents of navigation,⁷⁹ the rules emphasize the jurisdiction of the flag state in proceedings against a ship or its captain, other than collisions in ports or internal waters, and in the territorial sea if a state party reserved this right. No arrest or detention, even for investigation purposes, may be undertaken by other than the flag state. Canada is not a party to either instrument.

The collision avoidance regulations discussed earlier are accompanied by a liability regime. Conventions adopted in 1910 and 1924 set out liability rules. The rules on liability were further developed in 1957,⁸⁰ including clarification of eligible claims and establishing the right to limitation if the owner was not actually at fault or privy to the loss. While the intention of the rule was to cap the limit of liability, it was frequently defeated, often because the limit of liability was considered too low to fairly compensate claimants.

In 1976, the ***Convention on Limitation of Liability for Maritime Claims***⁸¹ introduced major change to the rule on conduct that barred limitation of liability. It effectively shifted the burden from the owner to prove they were not negligent onto the victim to demonstrate that the owner is not entitled to limit liability because the loss was brought about by the owner with intent to cause loss, or at least with the knowledge that such loss would probably result. The unsurmountable evidentiary burden exerted by such a rule in effect ensures that shipowners and others entitled to limit liability would retain that ability and, thereby, ensure their insurance cover. While the limits of liability were raised and reviewed again in a protocol in 1996,⁸² the ongoing criticism is that the amount available for compensation is still not high enough and that the owner should be taking on more of the risk by seeking full insurance cover that reflects the actual risk. Canada is not a party to the 1976 convention but is a party to the 1996 protocol and has implemented the two instruments through the *Marine Liability Act*.

⁷⁸ *International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision*, 10 May 1952, 439 UNTS 217 (in force 14 September 1955).

⁷⁹ *International Convention for the Unification of certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation*, 10 May 1952, 439 UNTS 233 (in force 20 November 1955).

⁸⁰ *International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships*, 10 October 1957 1412 UNTS 81 (in force 31 May 1968).

⁸¹ *Convention on Limitation of Liability for Maritime Claims*, 19 November 1976, 1456 UNTS 221 (in force 1 December 1986).

⁸² *Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims*, 2 May 1996, CTS 2008 No 18 (in force 13 May 2004).

Salvage

Even the best of ships at times needs assistance at sea because of an accident or some other unforeseen event that places the ship, its cargo, and crew in peril, such as fire on board or damage resulting from collision. In more dire situations, the response may require professional salvage. Salvage may be provided to save the ship, its freight, and cargo.

The salvor is a commercial entity that has the necessary equipment and professional expertise to help the stricken vessel and bring it to a place of safety. Salvage is a risky service for many reasons. For one, it often faces situations of grave danger to both the stricken ship and the salvage vessel and its crew. Also, it is because the service is usually provided on a no-cure/no-pay basis in a standard contract, the best example being the Lloyd's [Standard Form of Salvage Agreement](#), commonly known as Lloyd's Open Form. This means that, even despite the salvor's best efforts, if the stricken vessel is still lost, the salvor may be left with no compensation. Hence, public policy has tended to protect and incentivize salvors to ensure their readiness. They do this by rewarding them through a percentage of the value of the property salvaged - not only to cover their services but also to incentivize them to continue to provide this essential service.

The first convention for salvage was adopted in 1910,⁸³ setting out the basics of the salvage contract and the criteria for the award. It was amended in 1967 to extend salvage to warships or other government-owned ships receiving or providing salvage.⁸⁴ However, the advent of vessels carrying substantial bunkers and large volumes of oil as cargo (liable to be lost through fire or spillage) made it apparent that existing provisions for salvage providers were outdated.

In 1989, the *International Convention on Salvage*⁸⁵ was adopted as the response to demands of modern salvage that included '**environmental salvage**'. Having previously been party to the 1910 convention, Canada became a party to the 1989 convention instead. This instrument, now including prevention of environmental damage, sets out the duties of the salvors and owners, the rights of coastal states, rights of salvors, and the salvor's claim and procedure. Prevention or minimization of environmental damage is one of the many salvor's duties included. Under the convention, the normal reward for salvors reflects the traditional public policy rationale to incentivize the industry, at the same time recognizing efforts to protect the environment. There are still situations where the normal salvage award does not sufficiently reward the salvor. In such a case, there is provision for a mark-up by between 30-100% of the expenses incurred by the salvor by way of special compensation so long as the salvage operations were successful in preventing or minimizing environmental damage.

⁸³ *Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea*, 23 September 1910, UKTS 1913 No 4 (in force 1 March 1913).

⁸⁴ *Protocol to amend the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea* 27 May 1967, UKTS 1978 No 22 (in force 15 August 1977).

⁸⁵ *International Convention on Salvage*, 28 April 1989, 1953 UNTS 165 (in force 14 July 1996).

Unfortunately, the special compensation provision was interpreted by an English court in a manner that limited the amount salvors could be paid to out-of-pocket expenses with no allowance for profit margin, significantly reducing the amount claimed for expenses and any special compensation. To ensure salvors are adequately compensated for expenses, industry subsequently introduced a contracting clause that would be triggered at the option of the salvor to operate instead of the compensation regime in the convention. Described as an accounting framework, the clause introduced a list of tariffs for equipment, personnel, and so on, to provide a basis for a mark-up of 25%.

Another form of salvage concerns the **protection of underwater cultural heritage**. The property concerned may consist of physical sites, vessel, and aircraft, among other, that have been submerged for at least 100 years. This type of salvage is not governed by the law of commercial salvage described above, but rather by a specialized convention adopted in 2001.⁸⁶ This instrument sets out a framework for actions by states, rather than private persons, although it includes an annex containing rules for activities that should also guide all salvors of underwater cultural heritage.

Pollution Damage

When ships lose their cargo and fuel, there are often impacts on the marine environment and local economies from the spill. A well-organized response effort will attempt to recover as much of the spilled oil while it remains offshore by deploying booms and skimmers.

Should the oil slick reach the coast and foul beaches and other coastal amenities, marine wildlife and birds are usually adversely affected and suffer high mortality rates. The coastal response generally requires clean-up by an army of personnel and volunteers and disposal of the recovered oil. It is also likely that the spill response might lead to the designation of a temporary exclusion zone and closure of local activities, such as fishing and tourism-related services. This all comes at significant cost in environmental, economic, social, and ultimately in monetary terms. For these reasons, and drawing on the lessons of *Torrey Canyon*, the IMO has facilitated the development and maintenance of a multi-tiered international civil liability compensation scheme to address reasonable and quantifiable losses.

The first tier of compensation was established by a convention adopted in 1969,⁸⁷ and amended in 1976,⁸⁸ 1984⁸⁹ and 1992.⁹⁰ Based on the polluter pays principle, it addresses spills by the most damaging of cargo and fuel oils, namely persistent heavy oil. The ship must be insured, and the

⁸⁶ *UNESCO Convention on the Protection of Underwater Cultural Heritage*, 2 November 2001, 2562 UNTS 3 (in force 2 January 2009).

⁸⁷ *International Convention on Civil Liability for Oil Pollution Damage*, 29 November 1969, 973 UNTS 3 (in force 19 June 1975).

⁸⁸ *Protocol to the International Convention on Civil Liability for Oil Pollution Damage*, 19 November 1976, 1225 UNTS 356 (in force 8 April 1981).

⁸⁹ *Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage*, 25 May 1984, Misc Series No 008/1986, Cmnd 9927 (not in force).

⁹⁰ *Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage*, 27 November 1992, 1956, UNTS 255 (in force 30 May 1996).

shipowner, operator, or person in possession of the ship is strictly liable subject to limited liability based on a tonnage formula. Canada is a party to the 1992 amending protocol. In 2020, the shipowner's limit of liability was around CAD\$ 155 million.

There are situations where an instrument known as the International Oil Pollution Compensation Fund (IOPCF) is activated as the second tier of liability. Such situations arise when the shipowner is exempt from liability, or the amount reflected in all claims exceeds the limited liability of the shipowner, or the shipowner is incapable of meeting liabilities and the insurance is insufficient. Established in London in 1971, the IOPCF works as a supplementary level of compensation to the shipowner's liability and is funded from levies on major oil importers in states parties. It has been amended by several protocols with increasingly higher liability levels. Today it consists of two funds, the 1992 Fund with a limit just under CAD\$ 355 million, and the 2003 Supplementary Fund with a limit over CAD\$ 1.3 billion and constituting a third tier with even higher amounts of compensation. Canada is party to both compensation funds. Additionally, Canada has created the Ship-Source Oil Pollution Fund (SOPF) under the *Marine Liability Act* as a separate domestic fund. Today this fund operates as part of the compensation system and is now operating without a ceiling of liability. This will be discussed further in Part 4.

While for the most part successful, the compensation system has limitations. For example:

- States must be parties to the schemes to access compensation
- The schemes cover only persistent oils with no consideration for light oils
- Spill damage is limited to the land territory, territorial sea and EEZ, thus excluding the high seas unless the spill first occurs on the high sea and migrates inland
- The compensation regime has not yet evolved to cover the actual loss of environmental values
- The ability to be commensurate with actual claims from large spills, e.g., claims on the *Amoco Cadiz* in France, *Exxon Valdez* in Alaska and *Prestige* in Spain were in the billions of dollars.

Another gap in the compensation schemes discussed above was pollution from a ship's bunker oil, which can be any kind of hydrocarbon-based fuel, not just heavy oil. In 2001, the gap was addressed by a separate convention⁹¹ creating a civil liability scheme for bunker oil damage, and to which Canada became a party in 2009.

Finally, a longstanding major gap in the international system for compensation for pollution damage is the ability to address damage from hazardous and noxious substances other than oil. The gap appeared to be addressed by the 1996 *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* (HNS),⁹² but neither this

⁹¹ *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*, 23 March 2001, CTS 2010 No 3 (in force 21 November 2008).

⁹² *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea*, 2 May 1996, 35 ILM 1406 (not in force).

instrument nor a subsequent protocol in 2010 received enough support to enter into force.⁹³ While Canada is not yet a party to these instruments, it has implemented the HNS Convention and protocol through the *Marine Liability Act*. This will be discussed in Part 4.

Wreck Removal

The convention on wreck removal⁹⁴ discussed earlier introduced civil liability for the shipowner. The shipowner's liability for wrecks extends to the costs of locating, marking, and removing them, with very few exceptions. The convention also requires shipowners of vessels of 300 gross tonnage or more to maintain insurance for such eventualities. That said, the shipowner of a wrecked vessel still enjoys limitation of liability under the 1976 convention discussed earlier.

State-Owned Ships

In general, warships and other government-owned ships and their cargoes, used in non-commercial operations, have sovereign immunity of the flag state and are exempt from the jurisdiction of any other state. A 1926 convention attempted to unify the rules on when such ships enjoy immunity,⁹⁵ for example that they cannot be seized or arrested. A 1934 protocol further extended immunity to vessels chartered by governments for non-commercial service.⁹⁶

Immunity does not necessarily mean that state-owned ships are not liable for damage and injury they cause. The flag state may be subject to a claim by another state when its warships cause damage or injury to other ships. This has happened in situations where naval vessels were involved in collisions with commercial and fishing vessels. Also, there may still be the right of private persons to bring proceedings in domestic courts against their government to recover loss or damage, as would certainly be the case in Canada.

The situation is different for government-owned ships carrying cargo on commercial service. In general, international law deems these ships are subject to the same rights, responsibilities, and general rules as privately owned ships with respect to claims concerning the ships themselves, their equipment, and the cargoes and persons they carry. In this way, courts are able to exercise civil jurisdiction over claims against such ships.

⁹³ *Protocol of 2010 to Amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996*, 30 April 2010, IMO Doc LEG/CONF.17/10 (4 May 2010) (not in force).

⁹⁴ *Nairobi International Convention on the Removal of Wrecks*, 18 May 2007, 46 ILM 694 (in force 14 April 2015).

⁹⁵ *International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels*, 10 April 1926, 4056 LNTS 176 (not in force).

⁹⁶ *Protocol Supplementary to the International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships*, 10 April 1926, 4056 LNTS 176 (not in force).

2.5 Conclusion

Shipping is vital to international trade and the global economy. It is at the heart of a supply chain that connects markets providing essential services between sellers and shippers on the one hand, and consignees and buyers and consumers generally. With today's technologies and practices, shipping can deliver to just-in-time timelines that enable cost-effective inventorying and market availability.

This system would not be possible without a comprehensive and effective international legal framework. To this end, the IMO has developed and continues to maintain much of the international maritime law that enables trade, while ensuring safety, security, and environment protection. In particular, the IMO has brought states together on many international maritime conventions and who implemented them in the hope that the rules will be uniform. Uniform rules enable international navigation and movement of trade without unnecessary restrictions, such as unreasonable controls by coastal states. At the commercial level, the many actors engaged in every step of the supply chain can rely on uniform rules and standard terms for the provision of services. Naturally, the system is not perfectly efficient, effective, or equitable, but it functions.

The weaknesses of the system however should not be overlooked. Despite IMO efforts, not all states are parties to the international maritime conventions, in some cases also when they participate in the development of an instrument. Even when they become parties, they might not implement an instrument into their domestic law and the result is that domestic laws are not harmonized across the states making uniformity a challenge. Furthermore, flag states do not always perform their duty to exercise effective jurisdiction and control over their ships. In the worst of cases, substandard ships may be allowed to continue to operate, posing serious risks to those on board and the marine environment. Seafarers' human rights are often violated even on seaworthy ships and while in port. Sadly, poor occupational health and safety, extended contracts on board, abandonment in foreign ports, and denial of shore leave continue to occur.

Canada has a strong reputation of being a successful coastal, port, and flag state, and IMO member. It is party to most of the international public maritime law conventions and takes extensive steps to implement its international commitments. Although Canada has participated in diplomatic negotiations without eventually becoming party to a new instrument, it has occasionally implemented instruments to which it is not party. In turn, Canadian courts render decisions that respect Canada's international commitments.

PART 3: The International Institutions of Maritime Governance

Acronyms

The following acronyms appear in the body text in Part 3 with their first occurrence spelled out in full. The list does not include some single occurrences. Table 3-1 and Table 3-2 in this section also cite many additional acronyms including reference links:

- CEC - Commission on Environmental Cooperation
- CMI - Comité Maritime International
- EPPR - Emergency Prevention, Preparedness and Response (Arctic Council)
- FAO - Food and Agriculture Organization of the United Nations
- GESAMP - Group of Experts on the Scientific Aspects of Marine Environmental Protection
- IAEA - International Atomic Energy Association
- IALA - International Association of Marine Aids to Navigation and Lighthouse Authorities
- ICAO - International Civil Aviation Organization
- ICC - Inuit Circumpolar Council
- IGO - intergovernmental organizations
- IHO - International Hydrographic Organization
- ILA - International Law Association
- ILO - International Labour Organization
- IMO - International Maritime Organization
- IMSO - International Mobile Satellite Organization
- INGO - international non-governmental organization
- INMARSAT - Convention on the International Maritime Satellite Organization
- IOC - Intergovernmental Oceanographic Commission of UNESCO
- ISA - International Seabed Authority
- ITU - International Telecommunication Union
- IUU - illegal, unreported, and unregulated fishing
- IWC - International Whaling Commission
- MEPC - Marine Environment Protection Committee
- MSC - Maritime Safety Committee
- OAS - Organization of American States
- PAME - Protection of the Arctic Marine Environment (Arctic Council)
- UNCITRAL - United Nations Commission on International Trade Law
- UNCLOS - United Nations Convention of the Law of the Sea
- UNCTAD - United Nations Commission on Trade and Development
- UNEP - United Nations Environment Programme
- UNFCCC - United Nations Framework Convention on Climate Change
- UNWTO - World Tourism Organization
- WCO - World Customs Organization

- WHO - World Health Organization
- WMO - World Meteorological Organization
- WTO - World Trade Organization

3.1 Introduction

As we saw in Part 2, customary practices and codifications evolved literally over millennia. The governance of shipping was largely the concern of industry actors such as merchants, shipowners, shipbuilders, and financiers, as well as coastal states and ports. Much of the early practice on the building, financing, crewing, and operations of ships engaged in maritime trade originated in customs, codifications, and local practices of merchants and the maritime powers of the day.

The current governance of international shipping is possible thanks to the work of intergovernmental organizations (IGOs) and international non-governmental organizations (INGOs). IGOs have an international legal personality and their membership consists of states who are represented by national delegations at the organization's meetings. INGOs are non-state actors whose membership consists of non-governmental institutions or professionals at the domestic level. Most INGOs in shipping enjoy consultative status at the International Maritime Organization (IMO). The admission of the Inuit Circumpolar Council (ICC) in 2021, as a consultative organization at the IMO, heralds the arrival of a new category of international institution representing the interests of an Indigenous People in the governance of shipping.

The international governance of shipping emerged with the rise of international organizations. The International Law Association (ILA) established in 1873 was the first international organization to consider shipping, anticipating the International Marine Congress of 1889, and paving the way for the creation of the Comité Maritime International (CMI) in 1897 as the first international organization expressly dedicated to shipping. The Treaty of Versailles in 1919 ending the First World War, while failing to establish an intergovernmental organization for shipping generally, launched the International Labour Organization (ILO) with a focus on labour rights and conditions, including seafarers, and remains vibrant today.

The creation of the IMO in 1948 marked the beginning of the modern era of maritime governance. This development saw two major shifts. Maritime powers gradually supplanted most (but not all) industry self-regulation, and intergovernmental organizations led to the adoption of international standards through structured negotiations.

In the early years of the IMO, the principal actors were member state delegations, but this changed in 1961 with the participation of 'organizations with consultative status' as observers in the IMO. In time, the observer organizations, representing a wide variety of industry interests, became important active participants in IMO deliberations. They brought in valuable expertise and frequently partnered with member states in joint submissions for new regulatory initiatives.

Other intergovernmental organizations soon accompanied the IMO in the governance of shipping by virtue of their mandates and expertise. Over time, INGOs grew exponentially in size, expertise, and capacity to participate in and influence the development of international rules and standards for shipping. What has emerged is an ecosystem of institutions at the international and domestic levels. These developments have not always been smooth. Concerns inevitably emerged over the extent of influence some INGOs, with their specific interests, might exert over the process of legal development, possibly at the expense of the public interest. The danger of regulatory capture is heightened when an arm's length relationship between regulator and regulatee is not maintained.

This part describes the role of IGOs and INGOs in the international governance of shipping. The first section identifies and explains the roles of IGOs and their interface in the governance of shipping. The second section will address the roles and contributions of INGOs. In both cases, the discussion uses a broad-brush approach to paint the big picture rather than being overly granular.

3.2 Intergovernmental Organizations

There are numerous IGOs established by the United Nations, or by states in separate diplomatic conferences, that play some role in facilitating the governance of international shipping. The amount of power an organization has depends on the instrument that created it and the willingness of member states to let it fully exercise its mandate. Figure 3-1 shows the headquarter locations of IGOs involved in shipping and their primary roles, and Table 3-1 additionally sets out their mandates while also offering references to learn more about each organization.

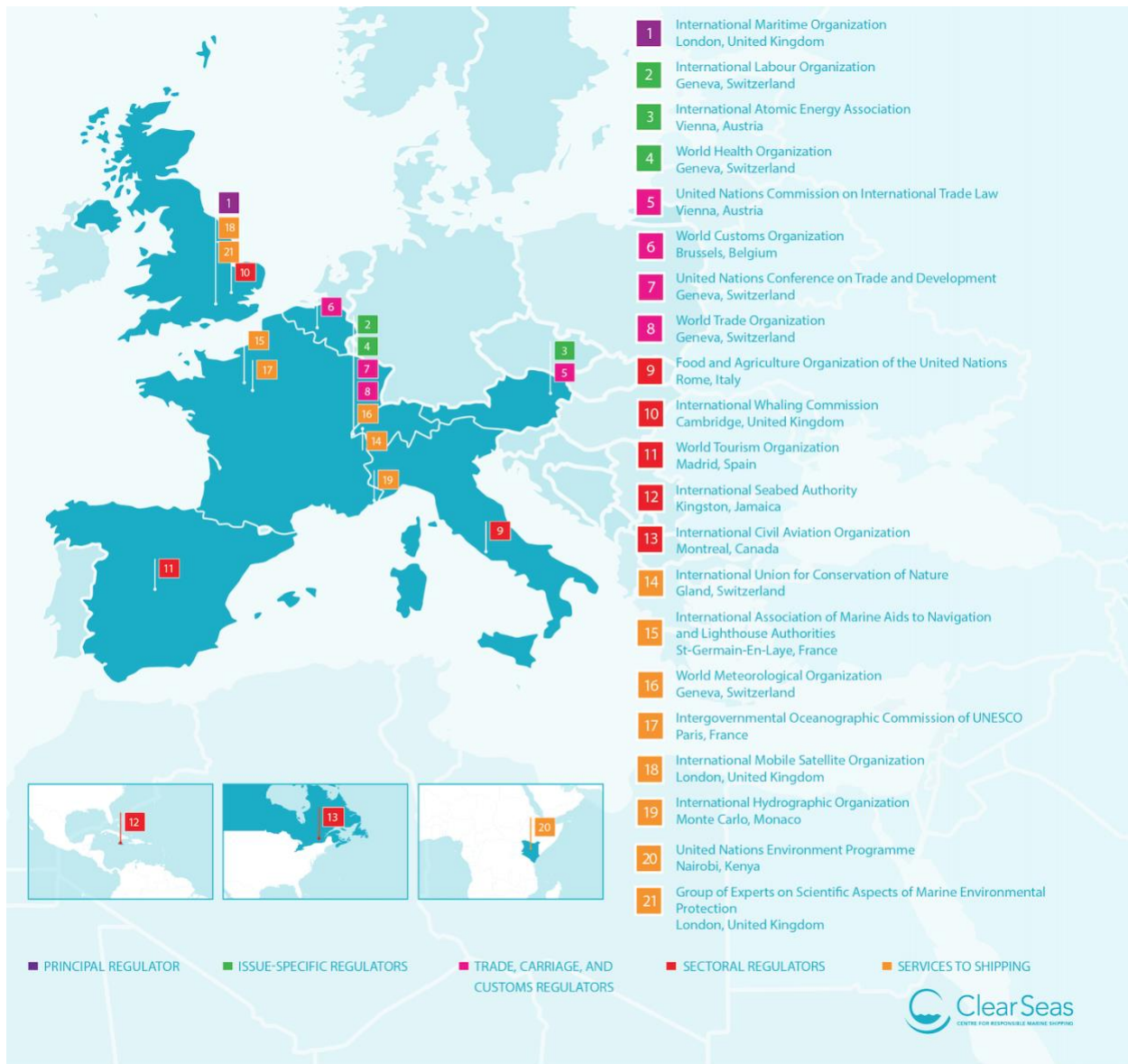


Figure 3-1. Headquarters of Intergovernmental Organizations in Shipping

Table 3-1. Intergovernmental Organization Roles and Mandates

Roles	Mandates	Organizations
Principal regulator	Maritime safety, pollution prevention and security	International Maritime Organization (IMO)
Issue-specific regulators	Maritime labour	International Labour Organization (ILO)
	Nuclear energy	International Atomic Energy Association (IAEA)
	Public health	World Health Organization (WHO)
Trade, carriage, and customs regulators	Carriage of goods	United Nations Commission on International Trade Law (UNCITRAL)
	Customs	World Customs Organization (WCO)
	Liner shipping	United Nations Commission on Trade and Development (UNCTAD)
	Trade	World Trade Organization (WTO)
Sectoral regulators	Aviation	International Civil Aviation Organization (ICAO)
	Marine living resources	Food and Agriculture Organization of the United Nations (FAO) International Whaling Commission (IWC)
	Seabed mining	International Seabed Authority (ISA)
	Tourism	World Tourism Organization (UNWTO)
Services to shipping	Environment	Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) International Union for Conservation of Nature (IUCN) United Nations Environment Programme (UNEP)
	Hydrography	International Hydrographic Organization (IHO)
	Navigation aids	International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA)
	Meteorology	World Meteorological Organization (WMO)
	Oceanography	Intergovernmental Oceanographic Commission of UNESCO (IOC)
	Satellite communications	International Mobile Satellite Organization (IMSO)

The IMO is the principal regulator of international shipping. It is designated by its own convention and *United Nations Convention of the Law of the Sea (UNCLOS)* as the competent international organization for international shipping. When its work overlaps with that of another IGO, the IMO comes to agreement on cooperation with that IGO.

The next tier represents IGOs that have regulatory power over specific issues in international shipping allocated by treaty. These include the International Atomic Energy Association (IAEA), the International Labour Organization (ILO), and the World Health Organization (WHO). The IMO defers to the lead role played by these organizations in their respective remits and coordinates with them on overlapping regulatory initiatives.

On the next tier are organizations that have rule-making powers on trade, carriage of trade, and customs regulators. Typically, these organizations consult the IMO when they launch initiatives aimed at producing maritime conventions in their respective remits.

Further down the table are IGOs responsible for other transportation modes and resource sectors in the marine environment. Civil aviation is included because aspects of maritime governance apply to aircraft, such as international overflight rights for search and rescue.

Finally, there are IGOs that have a general mandate over environmental matters, generate knowledge or provide services to shipping, or otherwise contribute to the safety of navigation. The discussion below describes the roles and contributions of these organizations to maritime governance.

3.2.1 The Principal Regulator - IMO

The IMO is the IGO responsible for safety, security, pollution prevention, and trade facilitation. According to its constitutive instrument, it provides the machinery for cooperation on international shipping matters. The machinery consists of layers of bodies tasked with different responsibilities.

The Assembly is the highest decision-making body, meeting biennially with a composition consisting of all member states. The Council is the executive body, responsible for setting the direction of the IMO's agenda and strategy. The Council has a complementary composition of three groups of states based on their interests, namely:

- States having the largest shares in the provision of international shipping services (such as ship-owning),
- States who are among the largest shippers in international seaborne trade, and
- Other states not elected under the first two categories, but which have special interests in transport and navigation and representing all major trading regions.

Importantly, IMO conventions do not rely only on the number of state parties to bring them into force, but also on the registered tonnage they represent. This is important because the IMO regulates ships and not states, and the more ships that are captured by its rules, the more its regulations will have a global reach.

The Secretariat, led by an elected Secretary-General, supports this system.

Committees and sub-committees carry out the bulk of the work of the IMO. The composition of the Maritime Safety Committee (MSC), the first committee to be established, is based on registered tonnage.⁹⁷ This signaled the growing importance of open registers because the membership dues of

⁹⁷ International Court of Justice. (1960). *Pleadings, Oral Arguments, Documents. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (Advisory Opinion of 8 June 1960)*. Retrieved from: <https://www.icj-cij.org/public/files/case-related/43/9239.pdf>

the IMO are based on registered tonnage. Hence, large registries are positioned to influence the activities and direction of the organization.

As discussed in Part 2, the *Torrey Canyon* casualty triggered the establishment of two major committees, namely the Legal Committee and the Marine Environment Protection Committee (MEPC). The formation of these committees gradually enabled the IMO to emerge as a regulatory body. Today the bulk of the regulation of shipping occurs in the MSC and MEPC, while the Legal Committee considers all legal matters cutting across the organization's work as well as development of distinct conventions for such regimes as salvage and limitation of liability for maritime claims.

The MSC and MEPC maintain a large regulatory agenda thanks to a system of seven subcommittees, namely: the Carriage of Cargoes and Containers (CCC), Human Element, Training and Watchkeeping (HTW), Implementation of IMO Instruments (III), Navigation, Radio-communication, and Search and Rescue (NCSR), Pollution Prevention and Response (PPR), Ship Design and Construction (SDC), and Ship Systems & Equipment (SSE). As the subcommittee names suggest, this structure enables the IMO to undertake highly technical work in a focused manner.

The IMO has two other committees concerned with technical cooperation and trade facilitation. The Technical Cooperation Committee was established in 1977 to enable the organization to provide capacity-building to member states. The Facilitation Committee was created in 1991 to ensure a reasonable balance between regulation and movement of maritime trade. Much of its work concerns the movement of maritime traffic and cargo in ports, for example by promoting efficiency through simplification and reduction of unnecessary documentation.

While the IMO is usually described as an international regulator, the development of international rules and standards for shipping is done by member states and supported by a large body of INGOs as consultative organizations working through the organization's structure. INGOs play significant roles in facilitating the development of international rules and standards for shipping and are further discussed in the following section.

3.2.2 Issue-Specific Regulators

There are three key organizations - all specialized agencies of the United Nations - that work with the IMO to develop international rules and standards on specific issues. The ILO deals with labour rights of seafarers, the IAEA with the use of nuclear energy to power ships, and the WHO with public health on ships and in ports. Additional background on these organizations is provided here.

ILO: Based in Geneva, Switzerland, the ILO is a specialized agency of the United Nations that aims to establish labour standards for decent work for all employees in most industries, including shipping. Participants include governments and workers' and employers' organizations at the international level, and all have equal opportunity to express their views. The ILO ensures their opinions are exchanged and reflected in the adopted labour standards and in shaping policies and programs of the organization. The most important instrument adopted by the ILO that provides a single set of principles, norms, and

guidelines for the protection of all seafarers is the *Maritime Labour Convention* of 2006 discussed earlier.⁹⁸ As such, the ILO succeeded in producing an international seafarers' bill of rights.

IAEA: Based in Vienna, Austria, the IAEA exercises oversight over the development and use of atomic energy for peaceful purposes through international cooperation. In accordance with its statute⁹⁹ the IAEA consults with other United Nations specialized agencies, such as the IMO and ILO, to create and adopt safety standards that protect health of workers and minimize danger to life and property. Hence its scope includes nuclear-powered ships, and, to this end, the IAEA and IMO have an agreement to cooperate on matters concerning nuclear energy in shipping.¹⁰⁰ While at this time there are no nuclear-powered vessels in commercial operation, it is conceivable that the need for decarbonization of international shipping may open a debate on nuclear-powered ships.

WHO: The WHO constitution¹⁰¹ specifies its primary goal as the attainment of the highest possible level of health for all. Headquartered in Geneva, it has a global presence with regional and field offices on all continents (except Antarctica). WHO is responsible for the administration of the *International Health Regulations*¹⁰² adopted in 1969, which include protocols to be followed in cases of disease and epidemics on board ships and in ports. An example of a regulatory requirement is that, when entering a foreign port, ship captains must submit a maritime declaration of health attesting to health conditions on board. The WHO works closely with the IMO and ILO to ensure ships are safe working spaces for seafarers.

3.2.3 Trade, Carriage, and Customs Regulators

Of major importance to global trade is uniformity of international rules to enable efficient transportation of goods between world markets. It is not only vital that there be common rules, but also that the application of rules is uniform. There are additional tools to enable uniformity beyond the international conventions already discussed. These include laws at the domestic level and model instruments to be used in commercial agreements such as standard contracts, general conditions of sale and standard trade terms.

Several organizations detailed below are responsible for the facilitation of trade, carriage, and customs procedures.

⁹⁸ *Maritime Labour Convention*, 23 February 2006, CTS 2013 No 16 (in force 20 August 2013).

⁹⁹ *Statute of the IAEA*, approved 23 October 1956 (in force on 29 July 1957). As amended up to 28 December 1989.

¹⁰⁰ *Agreement between the International Atomic Energy Agency and the Inter-Governmental Maritime Consultative Organization*, 13 April 1961 and 5 October 1961, IAEA INFCIRC/20/Add. 1 (10 April 1962).

¹⁰¹ *Constitution of the World Health Organization*, signed on 22 July 1946 (in force 7 April 1948). Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirty-ninth and Fifty-first World Health Assemblies (resolutions WHA26.37, WHA29.38, WHA39.6 and WHA51.23) came into force on 3 February 1977, 20 January 1984, 11 July 1994 and 15 September 2005 respectively.

¹⁰² *International Health Regulations (2005)*, 23 May 2005, 2509 UNTS 79 (in force 15 June 2007).

United Nations Conference on Trade and Development (UNCTAD): Based in Geneva, Switzerland, the UNCTAD supports the shipping industry's trade sector by providing a range of services to states that maximize opportunities for trade and investment. Of particular note, and which is the case for shipping, it helps developing countries and facilitates their equitable integration into the world's economy. Among other services, UNCTAD produces the annual [Review of Maritime Transport](#) report providing valuable and authoritative data and reports on global shipping, ports, multimodal transport, container traffic and a range of cargoes (e.g., liquid bulk, dry bulk).

United Nations Commission on International Trade Law (UNCITRAL): Based in Vienna, Austria, the UNCITRAL was established by a United Nations General Assembly resolution¹⁰³ in 1966 to promote the progressive harmonization and unification of the law of international trade and encourage participation by developing countries. It undertakes a wide range of activities to advance this goal. UNCITRAL consists of 29 states representing all geographical regions, economic and legal systems. Both developed and developing countries are included. As discussed in Part 2, in the maritime field, UNCITRAL was responsible for the development of the *Hamburg Rules*¹⁰⁴ and *Rotterdam Rules*¹⁰⁵ for the carriage of goods by sea.

World Customs Organization (WCO): Another important factor in maritime trade is efficient customs procedures for the export and import of goods. Uncoordinated customs procedures and unnecessary levies have the capacity to impede trade. The WCO was established in 1952 (originally as the Customs Co-operation Council) as an IGO tasked with securing harmony and uniformity in customs systems.¹⁰⁶ In its work, the WCO develops international standards for customs procedures and builds capacity to facilitate legitimate trade, fair revenue collection and protection of society. For example, the WCO Data Model consists of data requirements to meet the procedural and legal needs of cross-border regulatory agencies to control export, import and transit transactions. Recently, the IMO and the WCO harmonized the interface between maritime-related electronic data requirements and the WCO Data Model.

World Trade Organization (WTO): For reasons that are clear given the importance of shipping to global trade, the institutions of world trade, in particular the WTO, have a role to play in the governance of shipping. The WTO administers a global trade law system,¹⁰⁷ provides a framework for trade negotiations, and establishes dispute settlement procedures. The trade rules on services that are

¹⁰³ Establishment of the United Nations Commission on International Trade Law, General Assembly Resolution 2205 (XXI) adopted on 17 December 1966.

¹⁰⁴ *United Nations Convention on the Carriage of Goods by Sea*, 31 March 1978, 1695 UNTS 3 (in force 1 November 1992)

¹⁰⁵ *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, 11 December 2008, GA Res 63/122, UNGAOR, 63d Sess, UN Doc A/RES/63/122 (2 February 2009) Annex (not in force).

¹⁰⁶ *Convention Establishing a Customs Co-operation Council*, 15 December 1950, 157 UNTS 129 (in force 4 November 1952).

¹⁰⁷ *General Agreement on Tariffs and Trade*, 30 October 1947, 55 UNTS 194 (in force 1 January 1948), followed by *General Agreement on Tariffs and Trade*, 15 April 1994, 1867 UNTS 187 (in force 1 January 1995); *Agreement on Technical Barriers to Trade*, 15 April 1994, 1868 UNTS 120 (in force 1 January 1995); *General Agreement on Trade in Services*, 15 April 1994, 1869 UNTS 183, 33 ILM 1167 (in force 1 January 1995).

relevant for shipping are those that concern most-favoured nation treatment, national treatment, and market access. These rules serve to control restrictive domestic maritime policies.

3.2.4 Sectoral Regulators

As mentioned earlier, there are several ocean uses which rely on the use of ships and which are governed by dedicated IGOs. In this section, organizations concerned with seabed mining, marine living resources, and tourism are explored.

Seabed Mining - International Seabed Authority (ISA): Deep-sea minerals in the international seabed area are beyond national jurisdiction and, as such, are the regulatory responsibility of the ISA. Established by Part XI of *UNCLOS*, ISA is described as the organization through which states parties to *UNCLOS* organize and control activities in the international seabed area and administer the resources therein. While numerous prospecting and exploration licenses have been issued, there is no commercial deep-sea mining at this time. Rather, the Authority's current efforts are primarily concerned with building a regulatory regime for when this time comes. Seeing as mining activities will use ships as platforms, as well as dedicated vessels for extraction and transportation activities, the ISA will regulate activities undertaken from ships on the mine sites. However, the IMO remains responsible for maritime safety, pollution prevention and security standards for ships and for this reason the ISA and IMO have an agreement to coordinate their respective mandates.¹⁰⁸

Fishing and Aquaculture - Food and Agriculture Organization of the United Nations (FAO): Fishing and aquaculture are two other ocean uses that make use of ships and have safety concerns. The IGO responsible for these sectors is FAO, based in Rome, Italy. Initially established by the United Nations at the end of the Second World War to help address such problems as global food shortages through agriculture and fishing, its mandate to develop fishing capacity and production evolved to also include management and conservation. The FAO has adopted numerous instruments to address illegal, unreported, and unregulated fishing (IUU) and threats to marine conservation. Examples include an IUU plan of action,¹⁰⁹ a code of conduct for responsible fishing,¹¹⁰ a compliance agreement,¹¹¹ an agreement on port state measures,¹¹² guidelines for flag states,¹¹³ and other international plans of action for the conservation of endangered species. With respect to maritime safety of fishing vessels and fishers at sea, the FAO collaborated with the IMO to develop international standards similar to those existing for

¹⁰⁸ Agreement of Cooperation between the International Maritime Organization (IMO) and the International Seabed Authority (ISA) (IMO, ISA, 2016).

¹⁰⁹ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (FAO, 2001).

¹¹⁰ Code of Conduct for Responsible Fisheries Rome (FAO, 1995).

¹¹¹ *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, 24 November 1993, 2221 UNTS 91 (in force 24 April 2003).

¹¹² *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, 22 November 2009, CTS 2019/21 (in force 5 June 2016).

¹¹³ Voluntary Guidelines for Flag State Performance (FAO, 2015).

commercial shipping. It is hope these will gain sufficient international support to enter into force in 2023.¹¹⁴

Whale Protection - International Whaling Commission (IWC): Ships pose various risks to cetaceans through animal strikes, underwater noise, and pollution. Whales, including several threatened or endangered species, are especially susceptible to ship strikes. Based in Cambridge, United Kingdom, the IWC was established in 1947¹¹⁵ as the global body responsible for the conservation of whale stocks. The IWC has adopted catch limits and measures to prevent ship strikes of whales which are frequently unnoticed and unreported.¹¹⁶ Working through Conservation and Scientific Research Committees, the Commission has adopted a comprehensive strategy to prevent and mitigate the effects of ship strikes on cetacean populations.¹¹⁷ The IWC and the IMO have collaborated on data collection of ship strikes and mitigation measures.

Tourism - World Tourism Organization (UNWTO): Cruise ships play an important role in global tourism. Established by the United Nations in 1974 with headquarters in Madrid, Spain, the UNWTO is responsible for promoting tourism as a source of economic growth, inclusive development, and sustainable practices. Cruising is a sub-sector of tourism and supports economic growth through job creation and contributing significantly to the global economy. Although not a regulatory body, the UNWTO plays an important role in promoting ethics in global tourism and recently adopted a convention for this purpose.¹¹⁸ The UNWTO cooperates with the IMO on the tourism aspects of cruise ships. The two recently issued a joint statement for the safe resumption of cruise ship operations following suspension due to the Covid-19 pandemic.¹¹⁹

3.2.5 Services to Shipping

While not performing a regulatory role in the governance of shipping, there are several IGOs that either provide services to shipping or do other work that benefits international shipping.

Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP): GESAMP was established in 1969 as an advisory body to the United Nations system. While based at the

¹¹⁴ *Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels*, 1977, 11 October 2012 (not in force).

¹¹⁵ *International Convention for the Regulation of Whaling*, 2 December 1946, 161 UNTS 72 (in force 10 November 1948).

¹¹⁶ International Whaling Commission. (n.d.). Ship Strikes: collisions between whales and vessels. Retrieved from: <https://iwc.int/ship-strikes>

¹¹⁷ Cates, K., DeMaster, D.P., Brownell Jr, R.L., Silber, G., Gende, S., Leaper, R., Ritter, F., and Panigada S. (2017). Strategic Plan to Mitigate the Impacts of Ship Strikes on Cetacean Populations: 2017-2020. Retrieved from: https://iwc.int/private/downloads/dr1UJzeCuNpAWs9Xf9caBw/IWC_Strategic_Plan_on_Ship_Strikes_Working_Group_FI_NAL.pdf

¹¹⁸ *Framework Convention on Tourism Ethics*, adopted by the Resolution A/RES/722(XXIII) of the General Assembly of UNWTO (9-13 September 2019).

¹¹⁹ World Tourism Organization and International Maritime Organization. (2020). Joint statement to support the safe resumption of cruise ship operations following the COVID-19 pandemic. Retrieved from: <https://webunwto.s3.eu-west-1.amazonaws.com/s3fs-public/2020-11/201105-joint-statement-imo-en.pdf>

IMO in London, it is sponsored by ten UN and other intergovernmental organizations such as IMO, FAO, and IAEA. Its membership consists of eminent multidisciplinary experts who undertake assessments of the marine environment and focused studies on ocean environmental concerns such as pollution. They participate in the regular intergovernmental process of global reporting and assessment of the state of the marine environment first established by the United Nations General Assembly in 2002, resulting in the World Ocean Assessment, and now recognized for its importance for the implementation of the United Nations 2030 Agenda for Sustainable Development setting out goals for sustainable development.

United Nations Environment Programme (UNEP): Based in Nairobi, Kenya, UNEP was established by the United Nations General Assembly in 1972 as an outcome of the Stockholm United Nations Conference on the Human Environment, the first mega-conference on the world environment, including oceans. The Stockholm conference influenced development of the environmental provisions of *UNCLOS* and the IMO's mandate and eventual creation of the MEPC in 1973. The UNEP is not a specialized agency of the United Nations, but rather a program led by a Governing Council, composed of states and supported by an executive director and secretariat, and answerable to the United Nations General Assembly. Its functions include promoting international environmental cooperation, recommending environmental policies, and providing general policy guidance for the direction and coordination of environmental programs within the United Nations system. IMO has collaborated with UNEP on some shipping matters, for example in contributing expertise on oil pollution preparedness and response planning in UNEP's Regional Seas Programme.

International Hydrographic Organization (IHO): The IHO oversees the standards for surveying and mapping of oceans and navigable waters, such activities being vital for safe navigation, economic prosperity, and marine environment protection. Headquartered in Monaco, the IHO operates through a system of expert technical working groups and other bodies working under the Secretariat and Council and answers to the UN General Assembly. Its work guides the operations of national hydrographic departments and encourages accuracy in nautical charts and records. Additionally, the IHO determines best practices for surveys, offers guidance on optimizing data from hydrographic surveys and helps build hydrographic capacity in its member states.

International Mobile Satellite Organization (IMSO): A vital requirement of maritime safety is reliable communications. To this end, the *Convention on the International Maritime Satellite Organization*¹²⁰ established the International Maritime Satellite Organization (INMARSAT) in 1979 as an IGO that provides a commercial service to facilitate communications for maritime safety. Essentially, INMARSAT was established to provide the space segment (i.e., satellites and the equipment and activities to support them) that is open for use by ships and aircraft of all nationalities. This assists with maritime distress communications and the efficient operation and management of ships and aircraft. In 1999, an

¹²⁰ *Convention on the International Maritime Satellite Organization (INMARSAT)*, 3 September 1976, 1143 UNTS 105 (in force 16 July 1979).

amendment led to the reorganization of INMARSAT into a commercial service and the continuation of the IGO as a regulatory body with the new name of IMSO. IMSO oversees public satellite safety and security communication services and coordinates the Long-Range Identification and Monitoring of Ships (LRIT) system established under SOLAS to track ships. Also, IMSO ensures that providers of satellite services for the Global Maritime Disaster and Safety System (GMDSS) operate in compliance with SOLAS. IMSO is based in London at the IMO headquarters.

World Meteorological Organization (WMO): Originally known as the International Meteorological Organization, the WMO was established by a dedicated convention¹²¹ in 1950 and became a United Nations specialized agency in 1951, based in Geneva, Switzerland. Its purposes include cooperative efforts to build networks of meteorological observation stations, create standards for observations and information exchange, and advance the use of meteorology to aid shipping. In cooperation with the IMO, WMO enhances the safety of shipping through the Worldwide Met-Ocean Information and Warning Service (WWMIWS). Meteorological forecasts are organized on a regional and sub-regional basis and include weather, wave, and ice alerts for safe navigation.

Intergovernmental Oceanographic Commission of UNESCO (IOC): Mariners rely on the scientific knowledge of the oceans delivered by programs of the IOC of UNESCO. The IOC was created in 1960 by the UNESCO General Conference as an IGO to promote intergovernmental cooperation in the marine sciences. Based in Paris, France, IOC focuses on ocean science, observation, and data sharing. It also coordinates global and regional scientific research programs. More recently, IOC has promoted marine spatial planning. At the national level, the IOC works with relevant maritime, ocean and coastal protection agencies to ensure that policymakers have the best possible access to ocean science and services. The IOC has worked with the IMO on environmental issues in shipping, such as on ballast water and other ship vectors.

International Telecommunication Union (ITU): Initially established in 1865 as the International Telegraphic Union, ITU is one of the oldest IGOs. In 1947 ITU became a United Nations specialized agency based in Geneva. The *Convention of the International Telecommunication Union*¹²² is the modern legal basis of ITU.¹²³ With the mission to maintain and extend international cooperation for the improvement and rational use of telecommunications, ITU's activities include allocation of radio-frequency spectrum bands, radio frequencies and their registration, and orbital positions of geostationary satellite orbits. It also coordinates efforts to eliminate harmful interferences between radio stations in different states and facilitates standardization of telecommunications. ITU has regulatory

¹²¹ *Convention of the World Meteorological Organization*, 11 October 1947, 77 UNTS 14, (in force 23 March 1950).

¹²² *Constitution and Convention of the International Telecommunication Union*, 22 December 1992, 1825 UNTS 3 (in force 1 July 1994); Subsequent plenipotentiary conferences have adopted only amending instruments to the 1992 documents. The Constitution and Convention currently in force are the Constitution and Convention of the International Telecommunication Union (Geneva, 1992) as amended by subsequent plenipotentiary conferences.

¹²³ International Telecommunication Union. (2019). *Collection of the basic texts of the International Telecommunication Union adopted by the Plenipotentiary Conference Edition 2019*. Retrieved from: <https://search.itu.int/history/HistoryDigitalCollectionDocLibrary/5.22.61.en.100.pdf>

power for these purposes. The IMO and ITU maintain a Joint Experts Group on Maritime Radiocommunication Matters.

International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA): Uniform standards for navigation aids is an essential service for the safe movement of ships. In 1957, the International Association of Lighthouse Authorities was established for this purpose. A name change (retaining the same IALA acronym) in 1998 better reflected its important contemporary role with respect to navigation aids. In 2014 the IALA Assembly resolved that its work would be best pursued through the establishment of an IGO as a consultative and technical organization, rather than a regulatory body, and this occurred with the adoption of the *Convention on the International Organization for Marine Aids to Navigation*.¹²⁴ The modern aim of IALA is to bring states and industry together on the improvement and harmonization of marine aids to navigation for the benefit of the maritime community and marine environment protection.¹²⁵ Its functions include the development and communication of non-mandatory standards, recommendations, guidelines, manuals, and other appropriate documents. They recommend these to states and other organizations as a valued contribution to the SOLAS standards for safety of navigation.

3.3 Regional Inter-Governmental Organizations

Prior sections highlighted the role of the IMO as the leading international regulator of shipping and the roles played by other global IGOs. This section completes the picture by describing the vital supplementary roles played by regional IGOs to further promote uniformity in the governance of international shipping. The regional organizations discussed below are not the only bodies that promote regional cooperation, but they are some of the most important.

Regional IGOs play vital supplementary roles to the work of the IMO in several marine regions around the world. They facilitate the implementation of global commitments by mobilizing regional cooperation for their operationalization. Regional IGOs address the needs of global instruments directly or may also do so indirectly by facilitating the adoption of complementary instruments at the regional level. They serve as forums for coordination of international action and as clearing houses for the exchange of information and capacity-building. Regional cooperation also occurs through arrangements separately from or related to the work of IGOs.

¹²⁴ *Convention on the International Organization for Marine Aids to Navigation*, 28 February 2020, (not in force), Retrieved from: <https://www.iala-aism.org/content/uploads/2020/03/KL-Convention.pdf>

¹²⁵ International Association of Marine Aids to Navigation and Lighthouse Authorities. (2020). IALA Constitution. BASIC Documents - Constitution Edition 5.0. Retrieved from: <https://www.iala-aism.org/content/uploads/2021/02/IALA-Basic-Documents-Ed5-December-2020.pdf>

3.3.1 Arctic Region

The Arctic Council is perhaps the best-known regional organization contributing to polar shipping that is relevant to Canada. Established in 1996 by the Ottawa Declaration,¹²⁶ the Arctic Council facilitates cooperation for protection of the unique and fragile Arctic environment among the eight Arctic states, namely Canada, Denmark (on behalf of Greenland), Finland, Iceland, Norway, Russian Federation, Sweden and the United States, and Permanent Participants consisting of organizations of Indigenous peoples. These states and Indigenous organizations are in the frontline of the protection of the Arctic marine environment. Numerous other states without land territory in the Arctic region and other IGOs and INGOs also participate as observers in the Arctic Council's activities.

Of the Arctic Council's six working groups, two have particular relevance to the governance of shipping, namely the Protection of the Arctic Marine Environment (PAME) and the Emergency Prevention, Preparedness and Response (EPPR). PAME's work, including the Arctic Marine Strategic Plan 2015-2025,¹²⁷ works to increase the understanding of the impacts of human activities, climate change and ocean acidification on the Arctic environment. The *Arctic Marine Shipping Assessment 2009 Report*¹²⁸ sets out the pathway for the global and regional governance of Arctic shipping. The report helped in the adoption of the *Polar Code*¹²⁹ by the IMO in 2014 and 2015 after which PAME established a Shipping Expert Group and the Arctic Shipping Best Practice Forum to promote cooperation in implementing the code. The IMO is an accredited observer of the Arctic Council and active participant in the Shipping Expert Group.

The EPPR complements the work of the Arctic Council as it relates to preparedness and response to environmental and other emergencies in the Arctic region. Of its various expert groups, the Search and Rescue Expert Group and Marine Environmental Response Expert Group are most relevant to shipping. As discussed in Part 2, the EPPR is largely responsible for to the adoption of the *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic* in 2011 and the *Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic* in 2013.

Also relevant to the Arctic region, although separate from the Arctic Council, is the Arctic Coast Guard Forum discussed in Part 2. This is an independent multilateral forum of the Arctic states' coast guards

¹²⁶ Declaration on the Establishment of the Arctic Council, Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council, Ottawa, 19 September 1996.

¹²⁷ Arctic Council. (2015). Arctic Marine Strategic Plan 2015-2025. Protecting Marine and Coastal Ecosystems in a Changing Arctic. Retrieved from <https://www.pame.is/doclink/arctic-marine-strategic-plan-2015-2025/>

¹²⁸ Arctic Council. (2009). Arctic Marine Shipping Assessment 2009 Report: AMSA Executive Summary with Recommendations. Retrieved from: https://www.pame.is/images/03_Projects/AMSA/AMSA_2009_report/AMSA_2009_Report_2nd_print.pdf

¹²⁹ *International Code for Ships Operating in Polar Waters (Polar Code)* (in force 1 January 2017). The *Polar Code* is mandatory under both *SOLAS* and *MARPOL*. The *Polar Code* and *SOLAS* amendments were adopted during the 94th session of IMO's Maritime Safety Committee (MSC), in November 2014; the environmental provisions and *MARPOL* amendments were adopted during the 68th session of the Marine Environment Protection Committee (MEPC) in May 2015.

with a mission to cooperate on operational maritime safety, security, and environmentally responsible activities.

3.3.2 Other Regions

Canada participates in the Maritime and Port Security Program of the Organization of American States (OAS), the IGO through which the states of the Americas advance peaceful, multilateral cooperation. The program's goals include maritime capacity-building in infrastructure (e.g., ports), shipping, and related processes. It provides advice on planning matters, information exchange, and raises awareness of cyber security. It also supports implementation of the IMO's *International Ship and Port Facility Code*.¹³⁰

The Commission on Environmental Cooperation (CEC) was established by the *North American Agreement on Environmental Cooperation*, 1993, between the United States of America, the United Mexican States, and Canada. Today, it operates under the newer *2018 Agreement on Environmental Cooperation*¹³¹ to pursue the objectives of the *Canada-United States-Mexico Agreement (CUSMA)*.¹³² The CEC's work program includes pollution reduction and supporting low emission economies, conservation of biological diversity, sustainable resource management, and green and sustainable economic development. Each of these areas has aspects relevant to shipping.

3.4 International Non-Governmental Organizations

INGOs are non-state actors actively engaged in the governance of shipping. They have no international legal status as states and are usually registered as corporations or foundations with headquarters in one state and may have subsidiary offices and activities in other states. Typically, INGOs apply to have consultative status as observers in IGOs. While not able to vote, INGOs represent the interests of their constituencies, thereby gaining the attention of decision-makers through which they can influence decisions, often successfully. In addition to their work in IGOs, INGOs advance the interests of their constituencies on the world stage and in many countries.

The IMO has numerous INGOs with consultative status¹³³ that enable the IMO to obtain expert advice and special knowledge. They contribute to the work of the IMO through submissions and presentations on regulatory initiatives in the IMO committees and sub-committees. This expertise is an essential and defining feature of how the IMO, and many United Nations bodies and other IGOs function. At the same

¹³⁰ *International Ship and Port Facility Security Code* adopted December 2002 (in force 1 July 2004).

¹³¹ *Agreement on Environmental Cooperation*, signed by Canada (18 December 2018), Mexico (30 November 2018), and United States (11 December 2018), (in force 1 July 2020).

¹³² *Canada-United States-Mexico Agreement*, 30 November 2018 (in force 1 July 2020).

¹³³ International Maritime Organization. (2019). Rules and guidelines for consultative status of non-governmental international organizations with the International Maritime Organization. Retrieved from:

<https://wwwcdn.imo.org/localresources/en/OurWork/ERO/Documents/RULES%20AND%20GUIDELINES%20FOR%20CONSULTATIVE%20STATUS%20-%20December%202019.pdf>

time, INGOs get the opportunity to represent large stakeholder groups whose activities bear on the IMO's work. INGOs that tend to be more influential than others are typically well-resourced, have access to scientific and other expertise, and are politically savvy and adept at the procedures of the organization.

Discussed briefly earlier, regulatory capture can occur when a particular interest group exercises undue influence over the regulator, potentially swaying decisions in favour of that group's constituents and potentially to the detriment of the public interest. Examples of regulatory capture exist, most notably where industry groups have managed to get greater access to regulators than other organizations and the public at large. Concerns have been expressed on the disproportionate influence of industry in the IMO.¹³⁴

Not all INGOs active in shipping necessarily have consultative status at the IMO. There are other opportunities to influence an IGO's work or hold it accountable for its work. These include participation in other United Nations fora where specialized agencies are expected to report, such as the Conference of the Parties of the United Nations Framework Convention on Climate Change, or simply through media and social network activities.

For ease of discussion, this part groups the numerous INGOs into major themes that describe their basic contributions, in particular: shipping sectors and services; maritime labour; professional associations; environmental organizations; maritime education and training; and science and standardization.

3.4.1 Shipping Sectors and Services

This is the largest group of INGOs active in the governance of shipping, most of them representing industry interests. This probably harks back to earlier times when the governance of shipping was largely taken on by merchants involved in maritime trade, trading ports and particular services such as insurance. Even with the advent of international regulation and the rise of IGOs, industry groups remained organized and grew, and learned how to influence international regulatory agendas. In addition to industry organizations, labour organizations, in particular the ITF, were also early movers. The extensive participation of industry and labour organizations in the governance of shipping predates, by many decades, the participation of other important INGOs that have more recently emerged, such as those concerning the environment.

Table 3-2 portrays the wide diversity of INGOs representing the various shipping sectors and service providers to the industry. It reflects the discussion in Part 1 on the great diversity to be found in the types of ships and their respective functions and cargoes. Each of the different transportation modes (such as tankers, cruise lines, ferries, liner shipping such as containers, nuclear transport, tramp shipping, and so on) has its own representative INGO. Recreational shipping has its own organizations. In turn, the cargo

¹³⁴ Transparency International. (2018). *Governance at the International Maritime Organization: the case for reform*. Retrieved from: https://images.transparencycdn.org/images/2018_Report_GovernanceatIMO_English.pdf

owners have their own organizations, and these also tend to specialize in their specific cargo sector. The industries behind the various cargoes carried at sea have their own separate associations.

Various service providers, such as brokerage (ship, cargo, and others), classification, insurance (underwriters and P&I clubs), salvage, search and rescue, standardization, supplier, and contractor bodies, all have dedicated organizations. Likewise, shipbuilders, bunker suppliers, and ports are organized through their own INGOs.

Table 3-2. Shipping Sectors and Services INGOs

Service Area	Organizations
Brokerage	<ul style="list-style-type: none"> Federation of National Associations of Ship Brokers and Agents (FONABSA)
Bunker	<ul style="list-style-type: none"> International Bunker Industry Association (IBIA) Society for Gas as a Marine Fuel (SGMF)
Cargo	<ul style="list-style-type: none"> Dangerous Goods Advisory Council (DGAC) International Association of Dry Cargo Shipowners (INTERCARGO) International Cargo Handling Coordination Association (ICHCA) Institute of International Container Lessors (IICL) International Iron Metallics Association (IIMA) International Vessel Operators Dangerous Goods Association (IVODGA)
Chemical tankers	<ul style="list-style-type: none"> International Parcel Tankers Association (IPTA)
Classification	<ul style="list-style-type: none"> International Association of Classification Societies (IACS)
Commerce	<ul style="list-style-type: none"> International Chamber of Commerce (ICC)
Containers	<ul style="list-style-type: none"> Bureau International des Containers et du Transport Intermodal (BIC) Institute of International Container Lessors (IICL)
Cruise lines	<ul style="list-style-type: none"> Cruise Lines International Association (CLIA) International Association of Antarctica Tour Operators (IATTO)
Ferries	<ul style="list-style-type: none"> Interferry
General shipping	<ul style="list-style-type: none"> Baltic and International Maritime Council (BIMCO) International Chamber of Shipping (ICS)
Insurance	<ul style="list-style-type: none"> International Group of Mutual Protection and Indemnity Associations (IG) International Union of Marine Insurance (IUMI)
Liner shipping	<ul style="list-style-type: none"> World Shipping Council (WSC)
Nuclear transport	<ul style="list-style-type: none"> World Nuclear Transport Institute (WNTI)
Oil tankers and spills	<ul style="list-style-type: none"> International Association of Independent Tanker Owners (INTERTANKO) International Tanker Owners Pollution Federation Limited (ITOPF)
Ports and terminals	<ul style="list-style-type: none"> International Association of Airport and Seaport Police (INTERPORT POLICE) International Association of Ports and Harbors (IAPH) International Bulk Terminals Association (IBTA) International Port Community Systems Association (IPCSA) Society of International Gas Tanker and Terminal Operators (SIGGTO)
Salvage	<ul style="list-style-type: none"> International Salvage Union (ISU)

Service Area	Organizations
Search and rescue	<ul style="list-style-type: none"> • International Maritime Rescue Federation (IMRF)
Shipbuilding	<ul style="list-style-type: none"> • Active Shipbuilding Experts' Federation (ASEF) • Community of European Shipyards Association (CESA)
Specific industries	<ul style="list-style-type: none"> • European Chemical Industry Council (CEFIC) • International Association of Drilling Contractors (IADC) • International Association of Oil & Gas Producers (IOGP) • IPIECA (formerly International Petroleum Industry Environmental Conservation Association) • Oil Companies International Marine Forum (OCIMF)
Standardization	<ul style="list-style-type: none"> • International Electrotechnical Commission (IEC) • International Organization for Standardization (ISO)
Suppliers and contractors	<ul style="list-style-type: none"> • Comité International Radio-Maritime (CIRM) • European Association of Internal Combustion Engine Manufacturers (EUROMOT) • International Life-saving Appliance Manufacturers' Association (ILAMA) • International Marine Contractors Association (IMCA) • International Shippers & Services Association (ISSA)
Yachts, boats and sailing	<ul style="list-style-type: none"> • International Council of Marine Industry Associations (ICOMIA) • Superyacht Builders Association (SYBAss) • World Sailing

While members of INGOs compete among themselves for market access and dominance in their respective sectors, they tend to cooperate through their INGOs in the international regulatory arenas. However, it is a mistake to generalize the views of the 'shipping industry' as if it was one industry as various sectors may not share the same interests when it comes to the efforts of regulatory bodies such as the IMO and the ILO. An example is the current debate in the IMO on the decarbonization of shipping, where views on the pace of decarbonization may not be shared by all shipping sectors.

3.4.2 Maritime Labour

Without seafarers, world trade would not be possible. However, seafarers and their human rights frequently do not fully receive the full protection they deserve. Although the exception, there are shipowners who mistreat their crews, ignore their physical and mental welfare, and even abandon them in foreign ports despite standards set out in the *Maritime Labour Convention*. In Covid-19 pandemic times, the challenges faced by seafarers were made worse by lack of ready access to vaccines, inability to leave ships while in port, obstacles to crew changeovers, and other circumstances, all leading to physical and mental health concerns.

Together with the ILO's work on international standards for fair and safe conditions of work for seafarers, it is the INGOs work focusing on maritime labour that deliver the real support to seafarers at the operational level. Chief among these is the International Transport Workers' Federation (ITF), a global federation of trade unions that includes representation of seafarers, that has been vocal in its criticism

of flags of convenience and the frequent bad treatment of seafarers on ships registered under those flags. They have conducted industrial action against irresponsible shipowners.

Beyond the work of unions, seafarers have been assisted by several religious and other charities that have gradually expanded their humanitarian assistance to seafarers in foreign ports around the world. They attend to their health, spiritual, cultural and other needs while in port. They also assist them with repatriation when abandoned in foreign ports.

3.4.3 Professional Associations

The knowledge and skills needed to navigate ships, operate companies, and provide services calls on the expertise of numerous professions in the natural sciences, marine architecture and engineering, social sciences, navigation studies, maritime training, and others. These professions are generally subject to professional standards that entail education and training to practice.

Requirements may be set out by international conventions, national government bodies, and/or by representative professional and trade associations, some of which may be self-regulating. For example, the education and training requirements of master mariners and officers are set out by international convention is the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)* and the *STCW Code*. Professional associations active in the various fields of shipping are usually first established at the domestic level and tend to form federations with INGO status at the international level. No matter how the various professions are regulated, the overall goal shared by all is to provide society with essential services subject to the highest knowledge, skills, and ethical standards.

There are many INGO professional associations representing constituencies at the international level. They represent numerous professions, including harbour masters, shipmasters, ship architecture, marine engineering, and ship management, maritime economists, maritime lawyers, and so on. Some of these organizations are especially active and influential in the work of IGOs. The CMI is an example having evolved into an advisory body to the IMO's Legal Committee where it has played a key role in developing important IMO instruments, such as the *International Convention on Salvage*.

Some professional associations have consultative status with IGOs. The ones that do not may still influence the governance of shipping in other ways, as in the case of International Association of Maritime Economists (IAME) that fosters government and industry understanding of maritime economics. Similarly, the Marine Technology Society (MTS) and Society of Naval Architects and Marine Engineers (SNAME) are two professional associations with large international membership who operate major networks for the advancement of marine technology design and development. Despite not operating directly in IGOs, they wield unquestionable influence in their respective fields.

3.4.4 Environmental Organizations

Environmental INGOs play important roles in the governance of shipping, such as providing expertise and informing deliberations, helping to develop instruments, and ensuring that the IMO and its member states act on their commitments.

Several active environmental organizations have consultative status at the IMO with some gathering enough resources to participate effectively through well-researched submissions and secure highly qualified and well-informed representation. At times they work closely with national delegations, in addition to other INGOs, and participate in joint and collective submissions. Their work often straddles other IGOs and major intergovernmental fora, such as UNEP and the United Nations Framework Convention on Climate Change (UNFCCC) COP process.

The influence that environmental INGOs exercise in the IMO is not as far reaching as organizations representing shipping sectors and service. Their efforts to influence the directions of the IMO on environmental goals, such as the decarbonization of shipping, have not yet been particularly fruitful. Nonetheless, their contributions have served to raise awareness of complex issues in weighing the pros and cons of proposed new or amended standards. For example, World Wildlife Fund made important contributions to the development and maintenance of guidelines on particularly sensitive sea areas (PSSAs). At times, an environmental INGO's work has influenced deliberations at the IMO, albeit without consultative status, such as the International Council on Clean Transportation (ICCT) on discussions on the decarbonization of shipping.

3.4.5 Maritime Education and Training

The governance of shipping relies on recruitment of qualified personnel in management and operations in all sectors. As noted earlier, the training of seafarers is conducted according to international standards adopted by the IMO. In turn, maritime universities and training academies articulate those standards into curricula.

There are INGOs that represent institutions and personnel conducting education and training for the maritime professions and seafaring. Examples include the Global Maritime Education and Training Association (GlobalMET), the International Association of Maritime Universities (IAMU), and The Nautical Institute. In some cases, they play important roles in informing the IMO on appropriate standards for training and certification.

3.4.6 Science, Standardization, and Public Policy

There are other INGOs that contribute important perspectives and knowledge concerning science, standardization of technologies, and public policy in the governance of shipping.

Standardization is a vital function in the governance of shipping so that technical regulations use the same metrics and criteria for specific technologies, and thereby facilitate compliance and enforcement

actions. ISO standards are generally accepted across all industries, for example to measure a wide range of technologies and procedures.

Several INGOs conduct scientific and technological work in aspects of shipping. Some perform multiple functions, for example the Association for Materials Protection and Performance (AMPP) as it works on training and professional standards as well as technical standards. Also of interest is the public policy work of The Pew Charitable Trusts which help inform the IMO through its consultative status.

3.5 Indigenous Peoples

Indigenous peoples have rights in international law, including the right to self-determination. As such, although non-state actors, organizations of Indigenous peoples are not like INGOs as their membership consists of rightsholders rather than stakeholders. In the Canadian context, Indigenous peoples are parties to numerous historic and modern Treaties in the form of land claim agreements and they may also have aboriginal government. Hence, it is appropriate to consider the role of Indigenous organizations in maritime governance as separate and distinct from that of IGOs and INGOs. This is particularly relevant in the Arctic and Pacific regions of Canada where Indigenous peoples are especially concerned about the impact of shipping on their rights as set out in Indigenous law and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).¹³⁵

At the international level, Inuit of Alaska, Canada, Chukotka, and Greenland are organized as the Inuit Circumpolar Council (ICC). In Canada they include the Inuvialuit Settlement Region, Nunavut, Nunavik, and Nunatsiavut, together forming Inuit Nunangat. In 2021, the ICC attained the status of an organization with consultative status at the IMO, becoming the first international Indigenous organization to have such status in the global governance of shipping.

Inuit have unique interests that are affected by shipping in the Arctic region as international and domestic shipping increase due to the loss of sea ice because of climate change. In addition to being a pollution threat, ships produce noise that affects marine wildlife and can disturb ice routes used by hunters and animals. Hence, the ICC represents vital interests at the IMO.

3.6 Conclusion

The institutional response to the complexity of shipping is not in the form of a central and hierarchical organization. As we have seen, the International Maritime Organization (IMO) is not the only intergovernmental organization (IGO) concerned with the governance of shipping. Rather, the IMO, which plays a leadership role as the competent international organization with respect to international shipping, provides leadership in the system, frequently in cooperation with other IGOs.

¹³⁵ *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), GA Res A/RES/61/295 adopted 13 September 2007.

At times the IMO's leadership on issues, such as the decarbonization of shipping has been challenged. For example, in the European Union there is growing pressure to regionalize the governance of shipping on climate change matters, with the effect of creating regional, rather than global rules for a cap-and-trade system for greenhouse gas (GHG) emissions. However, the IMO has also its supporters, who consist of most maritime trading nations that prefer to see a strengthened and global, rather than a weakened IMO, as the world's best hope to create uniform of rules and standards for ships to trade and become greener.

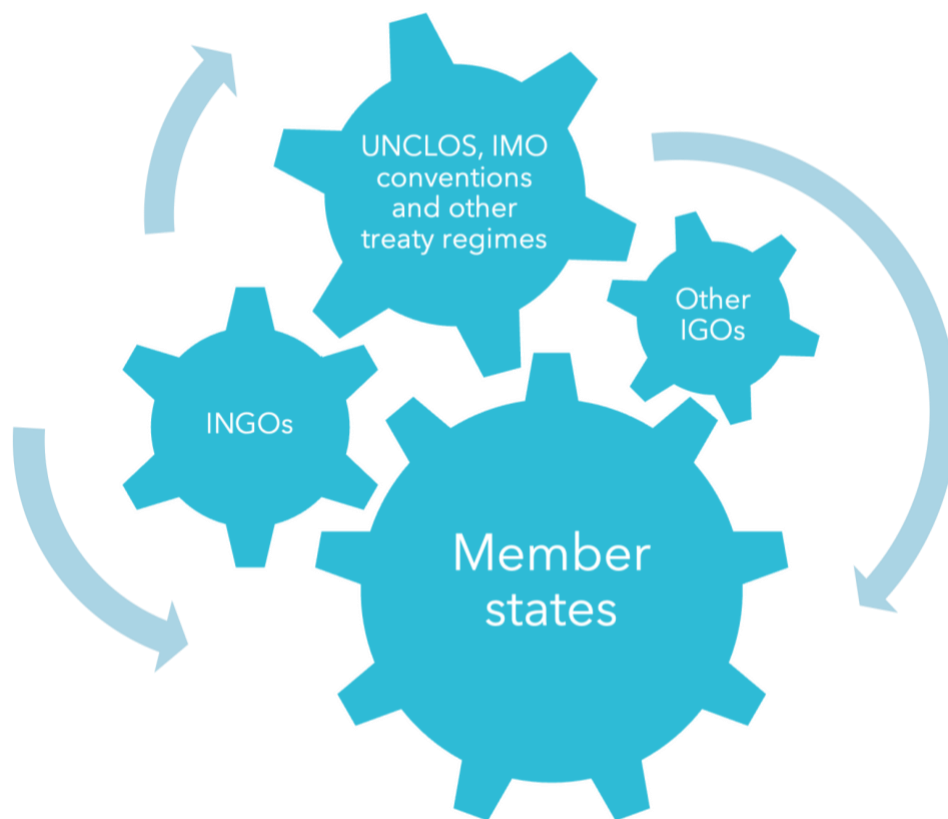


Figure 3-2. What drives IMO decision-making

At the heart of things, is how decisions are made. A frequent public misperception is that the IMO is the actual regulator of shipping, just like a domestic governmental regulator would be. This is not the case as the IMO is the structure through which states, as the chief players, make decisions. The aggregate decision-making of the membership is what gives the organization direction, in part to adopt rules and standards, and thereby enable it to play the lead role in international maritime governance. Clearly, the IMO operates within the parameters of the law of the sea, international maritime conventions, and other treaty regimes, such as the climate change regime. As these are dynamic and continue to evolve, so does the IMO response.

The IMO also must consider its interface with other IGOs, not only when its own mandate overlaps with those of other organizations, but also because the IMO is an integral part of the United Nations system, and it is expected to work with the rest of the system.

PART 4: The Governance of Shipping in Canada

Acronyms

The following acronyms appear in the body text in Part 4 with their first occurrence spelled out in full. The list does not include some single occurrences. Table 4-1 and Table 4-2 in this section also cite many additional acronyms including reference links:

- AEPA – Antarctic Environmental Protection Act
- AWPPA – Arctic Waters Pollution Prevention Act
- CBSA – Canada Border Services Agency
- CCG – Canadian Coast Guard
- CEPA – Canadian Environmental Protection Act
- CIRB – Canada Industrial Relations Board
- CMAC – Canadian Marine Advisory Council
- CNWA – Canadian Navigable Waters Act
- CSA, 2001 – Canada Shipping Act, 2001
- DFO – Fisheries and Oceans Canada
- ECTOA – Eastern Canadian Tug Owners’ Association
- GHG – greenhouse gas emission
- ICC Canada – Inuit Circumpolar Council Canada
- INGO – international non-governmental organization
- ITF Canada – International Transport Forum Canada
- IOPCF – International Oil Pollution Compensation Fund
- ILO – International Labour Organization
- MARPOL – International Convention for the Prevention of Pollution from Ships
- MBCA – Migratory Birds Convention Act
- MSCA – Merchant Seamen Compensation Act
- MTSA – Marine Transportation Security Act
- NMCA – National Marine Conservation Areas Act
- OAG – Office of the Auditor General of Canada
- RCMP – Royal Canadian Mounted Police
- RIAS – Regulatory Impact Assessment Statements
- SCCA – Safe Containers Convention Act
- STCW – International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
- SOPF – Ship-Source Oil Pollution Fund
- TC – Transport Canada
- TDGA – Transportation of Dangerous Goods Act
- UNCITRAL – United Nations Commission on International Trade Law
- UNCTAD – United Nations Commission on Trade and Development
- UNDRIP – United Nations Declaration on the Rights of Indigenous peoples
- UNDRIP Act – United Nations Declaration on the Rights of Indigenous Peoples Act
- WAHVA – Wrecked, Abandoned and Hazardous Vessels Act

4.1 Introduction

Shipping plays a vital role in Canada's international and domestic trade and the economy overall. Canada has free trade agreements with the United States, the European Union, and several other countries that ensure a growing role for shipping in the well-being of Canadians.

The United States accounts for 75 percent of Canada's international trade. About 20% of Canadian exports and imports by dollar value are seaborne and 95% of exported commodities and processed goods to all other trading partners are also seaborne. A recent report of the Council of Canadian Academies estimated the gross domestic product of Canada's marine shipping industry at \$ 3 billion with a larger economic impact at \$ 30 billion because of the trade that is leveraged by shipping.¹³⁶ Other shipping activities are beneficial in how they support domestic ocean uses, such as government services, fishing, mariculture, ocean energy, marine scientific research, and recreational uses such as yachting.

Shipping is also an essential component of the country's infrastructure that ensures human mobility and logistical support of remote communities, most especially in the northern region. Bordering on three oceans with geographic and economic diversity, Canada's regional shipping and governance structure, in turn, are diverse. This is reflected in the country's major ports highlighted below.

Port of Vancouver - The port of Vancouver is the busiest in British Columbia and in the country. Extensive economic activities along the Fraser River and Burrard Inlet waterways call on the services of a large fleet of tugs and barges to transport cargoes and lumber. Ferries move people along coasts and islands, and bulk carriers and container vessels service trade with Pacific Rim countries. The domestic trade includes lumber products shipped from northern to southern ports in the province.

Great Lakes and St. Lawrence Seaway - Looking eastward, the Great Lakes and St. Lawrence Seaway services a large trade with the United States, European Union, and many other markets. Around 45 ports, 15 of which are major international ports, service trade between Canada and the United States. As mentioned in Part 2, the Canadian St. Lawrence Seaway Management Corporation and the American Saint Lawrence Seaway Development Corporation coordinate the management of the seaway in their respective sectors. The trade of the region includes bulk carriers, self-unloaders, small oil tankers, and tug and barge operations. Coal, grain, and iron ore are transported in Great Lakes ports while, in the Laurentian area, larger ships service international trade. The port of Montreal is the busiest port in this sector.

Port of Halifax - In the Atlantic region, the port of Halifax services trade with the east coast of the United States, the European Union, and other markets, as well as providing logistics for northern shipping. Halifax and other regional ports, most especially St. John's, service the offshore oil and gas industry off

¹³⁶ Council of Canadian Academies. (2017). The Value of Commercial Marine Shipping to Canada. Ottawa (ON): The Expert Panel on the Social and Economic Value of Marine Shipping to Canada. Retrieved from: https://cca-reports.ca/wp-content/uploads/2018/08/ValueMarineShipping_fullreport_EN.pdf

Newfoundland and Labrador. Oil produced by Newfoundland's offshore industry is shipped by tankers. As on the Pacific coast, ferries ensure mobility of people and cargoes among the Maritime Provinces as well as Newfoundland and Labrador.

All three of the above regions have world-class shipbuilding facilities and marine technology clusters. As nodal points for international and domestic transportation, ports are connected to a road and rail network that reaches deep into the North American economy. Ports provide services to international shipping and, at least before the Covid-19 pandemic, international cruise shipping was active in all of Canada's marine regions. Recreational yachting and boating are also very popular in all the above regions.

Northern Canada – Albeit with much lower shipping volumes, northern Canada has extensive and vital shipping that supports the local and remote coastal communities of the Eastern and Western Arctic. The port of Churchill in Manitoba, owned and managed by Indigenous interests, is the largest port in that area, primarily exports grain and supplies goods to northern communities. In the Western Arctic, tugs and barges move a range of bulk petroleum and dry cargoes to the Mackenzie River delta and islands of the western Arctic Archipelago, and on their return, transport extracted natural resources. Ferry services also operate in the Yukon. In the Eastern Arctic, Nunavut coordinates the sealift of bulk liquid and dry cargoes. Shipping from Churchill and Montreal support the Eastern Arctic economy and logistics, including general cargo ships, roll-on and roll-off vessels, tankers, and tugs and barges. Government shipping, marine scientific research vessels, fishing vessels and even recreational vessels are active in Arctic waters.

In the overarching picture, Canada is a major shipper country, with exports consisting of natural resources (e.g., coal, iron ore, oil), agricultural products (e.g., grain), and finished consumer and other goods. However, Canada is also a ship-owning state. According to the United Nations Conference on Trade and Development (UNCTAD) *Review on Maritime Transport 2021* (UNCTAD, 2021), it was the 30th largest flag state in the world. It owns a merchant fleet of dry bulk carriers, tankers, general cargo vessels and ferries, with 210 vessels registered in Canada and 164 under foreign flags. In addition to these numbers, Canada has a huge fleet of fishing and other small vessels, many of which are unregistered because of their small size. A complex governance system, supported by layers of legal frameworks, has evolved to address Canada's maritime diversity. This part goes on to explain the governance framework that addresses this diversity and how its various aspects relate to the international system discussed in Parts 2 and 3.

4.2 The Organization of Maritime Governance

The governance of shipping in Canada is a complex system that consists of a medley of interacting, inter-related, and coordinated institutions, collectively working within our democratic system of government according to public policy and legal principles. The system is continually evolving as policies change, political portfolios are assigned and reassigned, and institutional arrangements modified. Moreover, aspects of the system operate at both national and regional levels to respond to the needs of the

Canadian confederation and various marine regions. On certain issues, the system has bilateral mechanisms to reflect our close and good neighbourly working relationship with the United States.

The following section discusses the types of institutions involved in the governance of shipping in Canada including their functions and how they interface with each other.

4.2.1 Parliament and Standing Committees

Parliament sits at the top of the pyramid of maritime governance institutions as the country's top legislator. A large part of Parliament's work is performed by Standing Committees within both the House of Commons and the Senate. The governing party and other political parties assign parliamentarians to House of Commons standing committees dedicated to specific legislative concerns and, similarly, senators participate in the Senate's own standing committees. The standing committees oversee the development of legislation and performance of departments and subsidiary bodies, and their policies, programs, and expenditures. They also study and deliberate on legislative initiatives. Figure 4-1 depicts this system and gives a few key examples of standing committees that mirror each other's functions in the maritime governance context. There are several other committees addressing maritime governance functions of other departments.

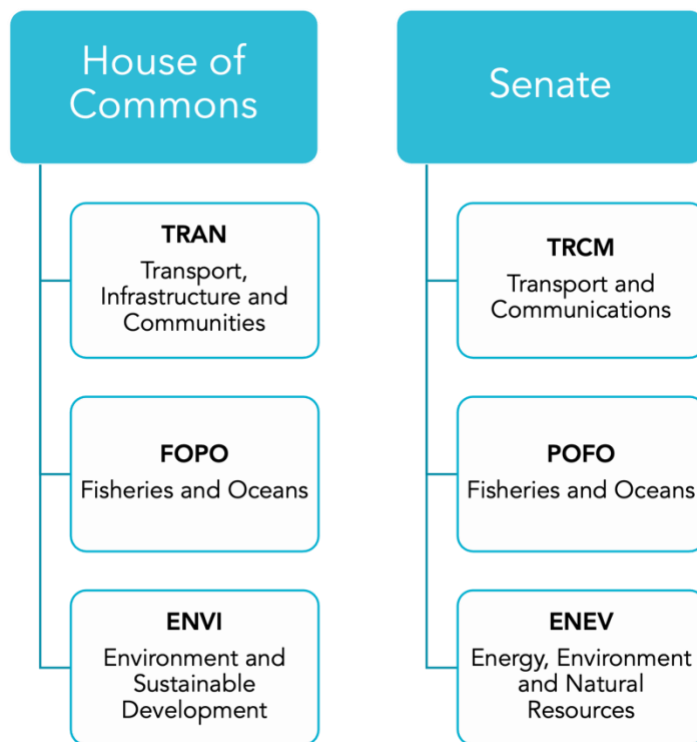


Figure 4-1. Parliamentary Standing Committees

4.2.2 Prime Minister, Cabinet, and Ministers

The Prime Minister assigns portfolios to Ministers following an election or a cabinet shuffle. Several cabinet Ministers have portfolios that include one or more aspects of maritime governance, in particular the Minister of Transport and the Minister for Fisheries, Oceans, and the Coast Guard. Ministers are responsible for departments, agencies affiliated with a department, and other subsidiary bodies and crown corporations. Other portfolios such as Health, Foreign Affairs, Labour, Justice, National Defence, Environment and Climate Change, Public Safety, and Immigration, Refugees and Citizenship include certain maritime governance functions. At times, other Ministers are also engaged for certain maritime governance issues.

On appointment, Ministers receive institutional mandate letters from the Prime Minister that highlight policy priorities. For example, in 2021 the Minister of Transport, Omar Alghabra, received a mandate letter with instructions that cover far-ranging aspects of maritime governance¹³⁷ that encompass health and safety, commitments to Indigenous livelihood, environment and ocean protection, infrastructure and supply chain, and others. Most instructions require collaboration with other Ministers.

Not all ministers with maritime governance roles preside over departments and may in fact have other institutional responsibilities as part of their portfolios. For example, the Minister of Labour presides over the Canada Industrial Relations Board (CIRB) and administers, with TC, the *Maritime Occupational Health and Safety Regulations*,¹³⁸ whereas the Minister of Public Safety is responsible for the Canada Border Services Agency (CBSA) and Royal Canadian Mounted Police (RCMP).

4.2.3 Departments

Established by the *Department of Transport Act*,¹³⁹ **Transport Canada** (TC) is the lead department in maritime governance; it is Canada's 'national maritime administration' and the contact point for responsibilities assumed under international maritime conventions. It leads Canada's delegation to the IMO and has a permanent representative at the Canadian High Commission in London, UK.¹⁴⁰ Figure 4-2 shows how TC is central to the full scope of maritime governance in Canada with smaller circles of the diagram showing the contributions of other departments that have a role.

¹³⁷ Office of the Prime Minister. (2021, December 16). Minister of Transport Mandate Letter. Retrieved from: <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-transport-mandate-letter>

¹³⁸ *Maritime Occupational Health and Safety Regulations*, SOR/2010-120.

¹³⁹ *Department of Transport Act*, RSC 1985 c T-18.

¹⁴⁰ Transport Canada. (2022). Permanent Mission of Canada to the International Maritime Organization. Retrieved from: <https://tc.canada.ca/en/marine-transportation/canada-s-international-maritime-presence/permanent-mission-canada-international-maritime-organization>

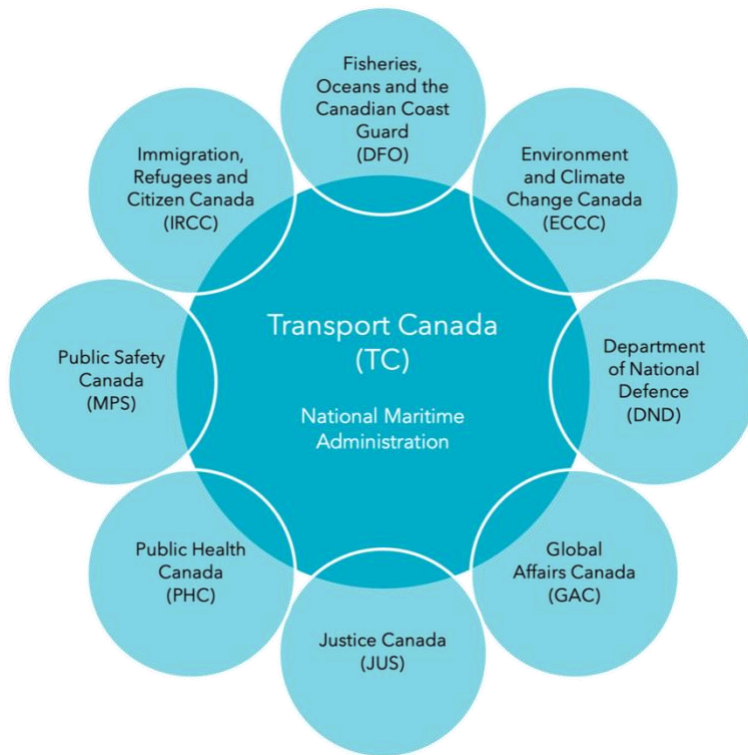


Figure 4-2. Departmental Roles in Maritime Governance

TC has four directorates responsible for policy, programs, safety and security, and corporate services, each led by a deputy minister. The department also has assistant deputy ministers for each of the major transportation regions, namely Pacific, Prairie and Northern, Ontario, and Quebec and Atlantic.

Each directorate has its own structure. For example, safety and security, which oversees an extensive portfolio of maritime regulatory and operational matters, has five units led by directors as described in Figure 4-3. Each director has multiple functions. For example, the main functions of the Director of Legislative, Regulatory, Policy and International Affairs include the IMO secretariat, international affairs (e.g., IMO, International Labour Organization (ILO)), the national Canadian Marine Advisory Council, regulatory process, and regulatory reform.

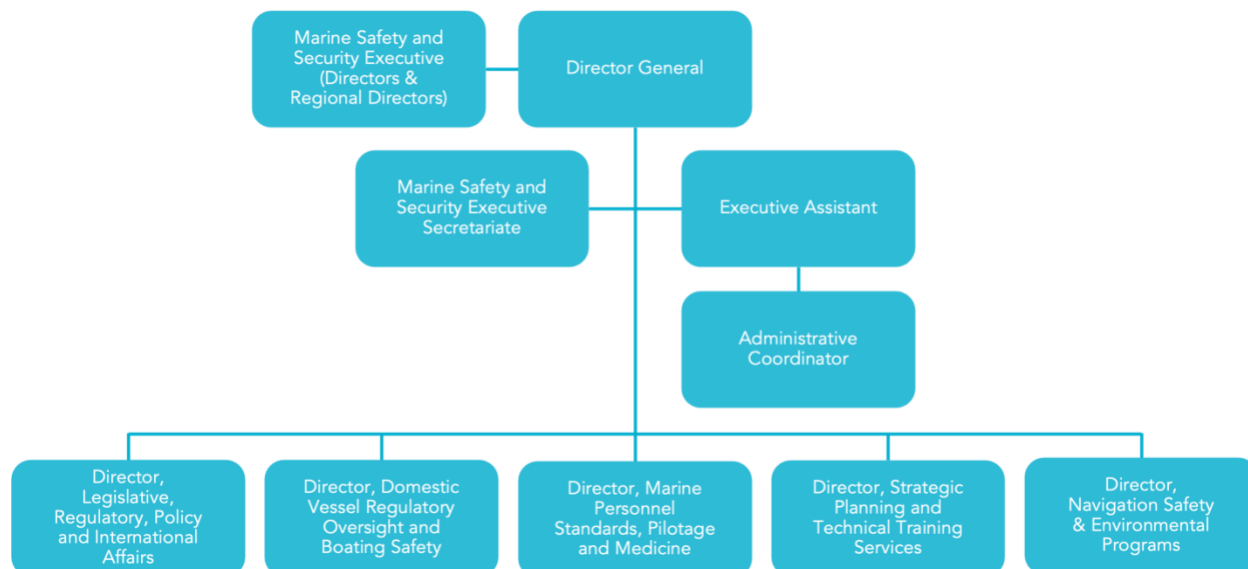


Figure 4-3. Transport Canada's Marine Safety and Security Directorate¹⁴¹

Profiled below are the other departments mentioned above (and shown in Figure 4-2) that bring their respective mandates and expertise to maritime governance in Canada.

Fisheries and Oceans Canada¹⁴² leads the planning and coordination of ocean management as mandated by the *Oceans Act* and provides services to shipping through the Canadian Coast Guard (CCG) and the Canadian Hydrographic Service. Also, the department designates marine protected areas, which may have potential implications for shipping and conducts marine scientific research that is beneficial to all ocean uses.¹⁴³

Environment and Climate Change Canada monitors air and water quality and GHG emissions, forecasts meteorological patterns and reports on weather conditions provided by the Meteorological Service of Canada (including the Canadian Ice Service within it)¹⁴⁴, and enforces pollution offences.

The **Department of National Defence**¹⁴⁵ provides maritime and aeronautical search and rescue capacity in coordination with the Canadian Coast Guard and enables a platform for policing action, such as for the RCMP, against drug smuggling, piracy, terrorism, and transport of dangerous substances.

¹⁴¹ Transport Canada. (2018). Marine Safety and Security Organizational Chart and Responsibilities. Retrieved from: <https://tc.canada.ca/en/marine-transportation/marine-safety/marine-safety-security-organizational-chart-responsibilities>

¹⁴² *Department of Fisheries and Oceans Act*, RSC 1985 c F-15.

¹⁴³ *Oceans Act*, SC 1996 c 31.

¹⁴⁴ Government of Canada. (2021a). Meteorological service standards. Retrieved from:

<https://www.canada.ca/en/environment-climate-change/services/meteorological-service-standards.html>

¹⁴⁵ *National Defence Act*, RSC 1985 c N-5.

Global Affairs Canada¹⁴⁶ is responsible for promoting international trade and provides consular assistance to Canadians and Canadian ships overseas.

The **Department of Justice** oversees the administration of justice at the federal level and provides legal advice and litigation and legislative services to federal departments and agencies.¹⁴⁷

The **Department of Immigration, Refugees and Citizenship Canada** administers immigration law¹⁴⁸ and is responsible for matters concerning immigrants and refugees that arrive by sea.

4.2.4 Agencies, Boards, and Commissions

Agencies, boards, and commissions are established by statutes to administer specific government activities. They report to a Minister, who in turn reports to Parliament.

Agencies

The **Canadian Coast Guard** is a special operating agency that was moved to Fisheries and Oceans Canada in the early 1990s, when the Fisheries and Oceans Canada and CCG fleets were merged for cost saving reasons. Today, the CCG operates under two statutes - the *Oceans Act* and the *Canada Shipping Act, 2001*. Its mandate under the *Oceans Act* includes aids to navigation, maintenance of navigable channels, search and rescue, pollution response, icebreaking and ice-management services, and marine communications and traffic management services. Under the *Canada Shipping Act, 2001 (CSA, 2001)*, its responsibilities include aids to navigation, search and rescue, pollution response, and vessel traffic services. To deal with some overlap between the TC and CCG mandates, the two organizations came to an agreement¹⁴⁹ in 1996 to coordinate in a way that recognizes their distinct, interrelated responsibilities for the management of marine transportation safety and environment protection.

The **Canadian Transportation Agency**, created by the *Canadian Transportation Act*, is an independent regulator and quasi-judicial tribunal with powers like a superior court. It has responsibilities under the *Canada Marine Act*, *Coasting Trade Act*, *Pilotage Act*, and *Shipping Conferences Exemption Act, 1987*. With the marine sector included in its mandate to ensure fair and efficient operation of the entire Canadian transportation system, the agency has delivered numerous decisions on coasting trade complaints.

The **Public Health Agency of Canada** plays a vital role in issuing public health advisories that include Canadian ships and shipping in Canadian ports. It administers the International Health Regulations that

¹⁴⁶ *Department of Foreign Affairs, Trade and Development Act*, SC 2013 c 33 s 174.

¹⁴⁷ *Department of Justice Act*, RSC 1985 c J-2.

¹⁴⁸ *Department of Citizenship and Immigration Act* (S.C. 1994, c. 31).

¹⁴⁹ Memorandum of Understanding between: Transport Canada and Fisheries & Oceans Respecting Marine Transportation Safety and Environment Protection (April 1996).

help prevent ships becoming vectors of disease. The agency conducts public health inspections on cruise ships and ferries and its Environmental Health Officers have powers to issue measures under the *Quarantine Act*.¹⁵⁰

The **Canada Border Services Agency** is responsible for controlling the movement of people¹⁵¹ and goods¹⁵² to and from Canada. Hence, it plays important roles in administering immigration and customs controls in trade. A sister body to the CBSA is the RCMP, the federal police force led by a commissioner under the direction of the Minister of Public Safety. Its responsibilities include the enforcement of offences committed at sea, such as drug trafficking.

Boards

Boards are specialized public bodies established by legislation to administer policies, perform a range of governmental functions, or deliver programs. Like agencies, they may also enjoy regulatory or quasi-judicial functions. A few boards relevant to maritime governance are highlighted below:

- The **Transportation Safety Board of Canada**, created by the *Canadian Transportation Accident Investigation and Safety Board Act*,¹⁵³ conducts investigations into air, marine, rail, and pipeline transportation occurrences and casualties, drawing on its members' extensive experience with public authorities or transport corporations.
- The **Canada Industrial Relations Board**, established under the Canada Labour Code and composed of organizations of employers and employees, is a quasi-judicial tribunal that interprets and administers parts of the code, which includes employees on board ships.
- The **Marine Technical Review Board** was created by the *CSA, 2001* to handle requests for regulatory exemptions for Canadian ships or issuance of marine documents, while ensuring safety of the marine industry.

Canadian Nuclear Safety Commission

While the use of nuclear power by commercial vessels is rare, the carriage of nuclear materials is common. The Canadian Nuclear Safety Commission regulates the use of nuclear energy and materials for the protection of human health and the environment. The Commission and TC have a memorandum of agreement¹⁵⁴ to coordinate their respective statutory obligations under the *Nuclear Safety and Control Act* and the *Transportation of Dangerous Goods Act*.

¹⁵⁰ *Quarantine Act*, SC 2005 c 20.

¹⁵¹ *Immigration and Refugee Protection Act*, SC 2001, c 27.

¹⁵² *Customs Act*, RSC 1985 c 1 (2nd Supp).

¹⁵³ *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989 c 3.

¹⁵⁴ Memorandum of Understanding between Transport Canada (Transportation of Dangerous Goods Directorate) and the Canadian Nuclear Safety Commission (12 March 2018).

4.2.5 Crown Corporations

The main difference between crown corporations and the bodies discussed above is that, while the former remain publicly accountable, they have much more freedom to operate commercially at arm's length from government. They operate within their own policy and operational framework and have separate structures, including boards of directors, but remain publicly accountable. The various pilotage authorities established under the *Pilotage Act* and federal port corporations created under the authority of the *Canada Marine Act* have such status. Another example is the National Research Council Canada, established under its own act¹⁵⁵ and answerable to the Minister of Innovation, Science, and Industry. It has funded numerous research projects on various aspects of shipping.

4.2.6 Not-for-Profit and Private Corporations

Legislation delegates certain public responsibilities to for-profit and not-for-profit corporations. For example, the *CSA, 2001* established a system of oil pollution 'certified marine response organizations', certified by Transport Canada to provide standing arrangements to vessels operating in Canadian waters. These include the Atlantic Emergency Response Team, Eastern Canada Response Corporation Ltd., Western Canada Marine Response Corporation and Point Tupper Marine Services Ltd. These organizations deploy expertise and equipment to combat spills from vessels required to have a standing arrangement.

Another class of private organizations that provide vital services to shipping is 'recognized organizations'. These global corporations act as classification societies and in addition to classing, their services to ships include inspections and surveys that all national maritime administrations are required to conduct as required by international maritime conventions. Governed by the IMO Code for Recognized Organizations,¹⁵⁶ these organizations include the American Bureau of Shipping (ABS) (United States), Bureau Veritas (France), Nippon Kaiji Kyokai (ClassNK) (Japan), Det Norske Veritas (DNV) (Norway), Korean Register, Lloyd's Register (United Kingdom), and RINA Services S.p.A. (Italy). Canada does not have its own classification society. Under the *CSA, 2001*, TC's Delegated Statutory Inspection Program authorizes these organizations to carry out inspection and certification of large commercial vessels larger than 24 metres.

As previously discussed, the St. Lawrence Seaway Management Corporation is a not-for-profit body tasked with managing the seaway in cooperation with its US counterpart, the Great Lakes St. Lawrence Seaway Development Corporation.

4.2.7 Office of the Auditor General of Canada

All federal government bodies are expected to make proper use of public funding in developing policies and programs. Hence the role of the Office of the Auditor General of Canada (OAG), established

¹⁵⁵ *National Research Council Act*, RSC 1985 c N-15.

¹⁵⁶ *Code for Recognized Organizations*, adopted by resolutions MEPC.237(65) and MSC.349(92).

under the *Auditor General Act*,¹⁵⁷ as an independent auditor of federal government departments, agencies, boards and corporations, and territorial governments, agencies, and corporations. The audits may concern financial, performance, or special examinations and reports are made directly to Parliament. The OAG also reports on federal government activity, including transportation and environment. Over the years, the OAG has conducted several audits of TC, as well as other federal organizations involved in maritime governance.¹⁵⁸

The creation of the Commissioner of the Environment and Sustainable Development in 1995 further strengthened the OAG by extending its mandate to include monitoring the meeting of targets in the Federal Sustainable Development Strategy. It also monitors the work of designated agencies across a broad range of sustainability objectives and targets. The Commissioner also carries responsibilities and functions under the *Canada Net-Zero Emissions Accountability Act*¹⁵⁹ and the *Federal Sustainable Development Act*,¹⁶⁰ and responds to environmental petitions requesting the federal government to explain policies, legislation and investigate environmental issues.

The OAG also investigates alleged wrongdoings under the *Public Servants' Disclosure Protection Act*.¹⁶¹ The Treasury Board of Canada is responsible for establishing the code of conduct for the public sector.

4.2.8 Provincial Government

Provincial governments also play significant roles in maritime governance where their constitutional powers apply to shipping activities. For example, Canadian courts hold that the regulation of the occupational health and safety and workers' compensation of fisher persons is a provincial matter, although the safety of ships *per se* is a federal matter. Provincial departments of labour conduct inspections of fishing vessels to ensure they comply with provincial standards, while at the same time federal standards may also apply.

In other situations, the federal and provincial governments have agreed that the administration of some aspects of maritime law can be done at the provincial and municipal level. An example is recreational boating where provincial governments, and even municipalities, tend to have safety regulations for recreational boating, such as the use of flotation devices.

¹⁵⁷ *Auditor General Act*, RSC 1985 c A-17.

¹⁵⁸ Office of the Auditor General of Canada. (n.d.). Reports to Parliament by Federal Institution. Retrieved from: https://www.oag-bvg.gc.ca/internet/English/parl_lpf_e_1173.html

¹⁵⁹ *Canadian Net-Zero Emissions Accountability Act*, SC 2021 c 22

¹⁶⁰ *Federal Sustainable Development Act*, SC 2008 c 33

¹⁶¹ *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46)

4.2.9 Indigenous Rightsholders

The *Constitution Act*, 1982 protects the Indigenous inherent right to self-government. In the contemporary UNDRIP era, efforts are underway to undo federal forms of government over Indigenous peoples and in partnership with First Nations, Inuit, and Metis nations. One area to be addressed is the governance of shipping which has historically ignored the rights of Indigenous peoples in the interests of facilitating maritime trade and uniformity of maritime law.

The federal government has acknowledged the impacts of shipping on Indigenous rights and the need to engage Indigenous peoples in the governance of shipping. Specific measures include recognition of the impacts of shipping in some land claims settlement agreements. Others recognize activities under those agreements, thus necessitating consultation, assistance, or a compensation regime. Examples of this in the North include:

- Activities in Northern Canada pursuant to the **James Bay and Northern Québec Agreement**¹⁶² include marine safety inspection and training by TC.
- In the **Inuvialuit Final Agreement**,¹⁶³ Canada committed to consulting the Inuvialuit Land Administration with respect to the carrying out of governmental functions related to navigation.
- In the **Nunavut Land Claims Agreement**,¹⁶⁴ while public navigation and innocent passage must not be impeded and remain unconditional, there are rights and matters considered appropriate for consultation, notably certain Inuit environmental concerns and disruption of wildlife.
- In the **Labrador Inuit Land Claims Agreement**,¹⁶⁵ the Nunatsiavut Government must be consulted before marine navigation services are established in the tidal waters of the Labrador Inuit Settlement Area and before any approvals or exemptions are issued under the *Navigable Waters Protection Act* in the area.

¹⁶² This agreement reserved hunting, fishing, and trapping for the exclusive use of Crees, Inuit and Naskapis. James Bay and Northern Québec Agreement (11 November 1975). *James Bay and Northern Québec Native Claims Settlement Act*, SC 1976-77 c 32; *Act approving the Agreement concerning James Bay and Northern Québec*, SQ 1976 c 46, art 24.7.1. Fishing included the right to conduct commercial fisheries.

¹⁶³ This agreement covers large areas of the Mackenzie Delta, Beaufort Sea and Amundsen Gulf area, thereby including internal waters, the territorial sea and EEZ, and provides for resource rights. *Inuvialuit Final Agreement* (as amended) (25 July 1984), Annex A and Annex A-1.

¹⁶⁴ This agreement includes internal waters and the territorial sea of the east coast of Nunavut, and, among other, protects Inuit resource rights and rights “to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore”. It also recognizes that “Canada’s sovereignty over the waters of the arctic archipelago is supported by Inuit use and occupancy”. *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (25 May 1993). *Nunavut Land Claims Agreement Act*, SC 1993, c 29.

¹⁶⁵ Among other, this agreement addresses fishing rights and requires the Minister to consult on ocean management and marine protected area initiatives. *Land Claims Agreement between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada* (22 January 2005), chaps 6 and 13.

- In the **Eeyou Marine Region Land Claims Agreement**,¹⁶⁶ the federal government committed to consulting the Grand Council of the Crees (Eeyou Istchee) prior to establishing marine navigation services in marine areas and issuing approvals or exemptions under the *Navigable Waters Protection Act*.
- The federal government agreed to consult the Nunatsiavut Government concerning shipping in the zone directly associated with the **Voisey's Bay Project** in relation to the establishment of marine navigation services, approvals or exemptions under the *Navigable Waters Protection Act*, and hydrographic surveys along the shipping routes to and from the Voisey's Bay Area.
- In the **Nunavik Inuit Land Claims Settlement**,¹⁶⁷ a developer is subject to absolute liability without proof of fault or negligence, for loss or damage caused by its development activities (including marine transportation) to property or equipment used in wildlife harvesting, loss of income, and loss of present and future harvests. The agreement provides for the establishment of a fund to assume liability for marine transportation.

In addition to modern treaties, the federal government committed, with the support of the Oceans Protection Plan (Transport Canada, 2021), to build capacity in Indigenous communities to respond to particular shipping risks. It is consulting with Inuit communities on prospective low-impact shipping corridors in Arctic waters.

In 2018, the federal government and 14 First Nations concluded the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection.¹⁶⁸ The aim is to jointly develop and manage marine initiatives on the Pacific North Coast to enhance ocean governance. Following on this agreement, in 2020, a trial Voluntary Protection Zone for Shipping was designated on the west coast of Haida Gwaii in partnership with the Haida Nation.¹⁶⁹ As part of Transport Canada's Proactive Vessel Management initiative, it mainly applies to vessels of 500 gross tonnage or more, encouraging them to maintain a distance of at least 50 nautical miles from the coast.

The interests of First Nations, Inuit, and Metis in maritime governance are also pursued collectively. For example, the Coastal First Nations, Inuit Circumpolar Council (ICC Canada), and Qikiqtani Inuit

¹⁶⁶ This agreement addresses the aboriginal title of the Crees of Eeyou Istchee to the use and ownership of lands and resources, including fisheries, in Nunavut and in Hudson Bay and James Bay. *Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada concerning the Eeyou Marine Region* (7 July 2010), art 2.23.

¹⁶⁷ This agreement addresses, among other, fishing and wildlife harvesting rights in marine areas in Hudson Bay, Hudson Strait, Ungava Bay and Labrador Sea. *Nunavik Inuit Land Claims Settlement* (1 December 2006), preamble and art 3.

¹⁶⁸ Office of the Prime Minister. (2018, June 21). Reconciliation Framework Agreement for Bioregional Oceans Management and Protection. Retrieved from: <https://pm.gc.ca/en/news/backgrounders/2018/06/21/reconciliation-framework-agreement-bioregional-oceans-management-and>

¹⁶⁹ Transport Canada (2020, September 3). The Government of Canada and the Haida Nation announce Voluntary Protection Zone trial on west coast of Haida Gwaii. Retrieved from: <https://www.canada.ca/en/transport-canada/news/2020/09/the-government-of-canada-and-the-haida-nation-announce-voluntary-protection-zone-trial-on-west-coast-of-haida-gwaii.html>

Association have engaged with the federal government on shipping, marine conservation areas and other marine issues. The ICC has also obtained consultative status at the IMO.

4.2.10 Stakeholder Organizations

As in the case of maritime governance at the international level, there are numerous organizations representing stakeholders in the governance of shipping in Canada. By participating in structured standing and ad hoc public consultative processes, these organizations share important information to help formulate public policy and launch new regulatory initiatives. Accordingly, they may have considerable influence on decision-making.

The Canadian Marine Advisory Council (CMAC)¹⁷⁰ is the best example in Canada of a structure designed for the purpose of consultative process in the governance of shipping. CMAC is comprised of stakeholder representative organizations that have a recognized interest in the policy and regulation of shipping generally, including navigation safety, marine pollution, maritime security, and crew training. Chaired by senior departmental officials, it advises on a range of topics including the development and adoption of international instruments by Canada, development of national legislation, standards and practices, operations and services, and any other matters concerning maritime safety, vessel-source pollution, and services to shipping. CMAC meetings normally give TC officials an opportunity to present on current policy, and regulatory and management initiatives. Stakeholder organizations are also given the opportunity to present and pose questions to TC officials.

CMAC works through numerous standing committees that reflect the complexity of regulatory topics and the country's regional marine interests. Their responsibilities are as follows:

- **Standing Committee on Construction and Equipment** is concerned with construction, design, and equipment standards for maritime safety.
- **Standing Committee on Domestic Vessel Regulatory Oversight** is concerned with policy and regulatory initiatives for non-recreational vessels.
- **Standing Committee on Navigation and Operations** is concerned with operational aspects of maritime safety such as navigation safety, ship-radio communications, and cargo and ship operations.
- **Standing Committee on the Environment** focuses on environmental issues in shipping and the department's regulatory program, such as pollution prevention, environmental response, and decarbonization of shipping.
- **Standing Committee on Fishing Vessel Safety** focuses on construction, design, equipment, crewing (including training and certification), operations and compliance.
- **Standing Committee on Marine Security** is concerned with international and domestic maritime security for ships and ports.

¹⁷⁰ Canadian Marine Advisory Council, <<https://tc.canada.ca/en/marine-transportation/marine-safety/terms-reference>>.

- **Standing Committee on Personnel** is concerned with crewing requirements and certification of qualifications, seafarer welfare, schools and training for marine personnel, medical examination requirements, and marine occupational health and safety with respect to employers under federal jurisdiction.
- **Standing Committee on Recreational Boating** is concerned with specific topics on recreational boating.

Owing to the size of the country and the diversity of marine regions, CMAC convenes biannual national and regional meetings for designated marine regions.

Table 4-1 provides examples of stakeholder organizations representing collective interests of their constituencies. Some are domestic organizations that are part of larger international organizations, such as Greenpeace Canada, Oceans Canada, World Wildlife Fund (WWF) Canada, ICC Canada, and International Transport Forum (ITF) Canada. Other organizations are members of international non-government organizations (INGO), such as the Canadian Maritime Law Association. Many, but not all the organizers in Table 4-1 participate in CMAC and several of them are registered lobbyists who must abide by Canada’s *Lobbying Act*.¹⁷¹

Table 4-1. Examples of Stakeholder Organizations

Field	Organizations
Education, research, and public information	Canadian Association of Marine Training Institutions (CAMTI) Canadian Consortium of Ocean Research Universities Clear Seas Centre for Sustainable Shipping Oceans Research in Canada Alliance (ORCA)
Environment	Canadian Wildlife Federation Green Marine Greenpeace Canada Living Oceans Society Oceana Canada Oceans North Conservation Society World Wildlife Fund Canada (WWF Canada)

¹⁷¹ *Lobbying Act*, RSC 1985 c 44 (4th Supp).

Field	Organizations
Industry	<ul style="list-style-type: none"> Armateurs du Saint-Laurent British Columbia Maritime Employers Association British Columbia Tow Boat Owners Association Canadian Ferry Association (CFA) Chamber of Marine Commerce Chamber of Shipping Council of Marine Carriers Cruise Lines International Association, North West & Canada (CLIA-NWC) Eastern Canadian Tug Owners' Association (ECTOA) International Ship-Owners Alliance of Canada Lake Carriers' Association (US) Shipping Federation of Canada Western Marine Community Coalition
Marine technology	Centre for Ocean Ventures and Entrepreneurship (COVE)
Ports and harbours	<ul style="list-style-type: none"> Association of Canadian Port Authorities (ACPA) The Pier: Centre for Port Innovation, Planning and Strategy
Professional associations	<ul style="list-style-type: none"> British Columbia Coast Pilots Canadian Institute of Marine Engineering (CIMarE) Canadian Marine Pilots Association Canadian Maritime Law Association (CMLA) Canadian Transportation Research Forum (CTRF) Company of Master Mariners of Canada (CMMC) Corporation des Pilotes du Saint-Laurent Central Vancouver Maritime Arbitrators Association West Coast Environmental Law Association
Recreational boating	<ul style="list-style-type: none"> Boating Atlantic Association Boating BC Association Canadian Safe Boating Council National Marine Manufacturers Association Canada Nova Scotia Boat Builders Association
Seafarer welfare	<ul style="list-style-type: none"> ITF Canada Canadian National Seafarers' Welfare Board North American Maritime Ministry Association Seafarers' International Union of Canada

4.2.11 Role of Dispute Settlement Bodies

The discussion of the organization of maritime governance would not be complete without consideration of roles played by the courts and arbitration tribunals. The role of independent and impartial courts as instruments for the orderly settlement of disputes and according to the rule of law is

an essential part of our democratic system. In Canada, independent and impartial courts are central instruments for the settlement of disputes, including disputes related to maritime governance.

Domestic Claims

The courts concerned with the resolution of maritime disputes are federal, provincial, and territorial. The Federal Court has limited jurisdiction established by the *Federal Courts Act*¹⁷² that concerns only the specific subject-matter assigned to it, for example claims against the federal crown and maritime law. In comparison, provincial and territorial courts are courts of unlimited jurisdiction. As such, they can engage in all types of claims, except for those allocated exclusively to the Federal Court. While provincial and territorial courts are unique to each province or territory and have sittings only in those respective locations, the Federal Court is a national court, and its registry is in Ottawa. Moreover, the Federal Court is a mobile court. Litigants can file documents in sub-registries located across the country and, for their convenience, sittings can take place in these other locations.

As discussed earlier, Canadian maritime law is a body of federal law. However, because it is mostly administered by both federal and provincial courts, maritime claims can be instituted in either, depending on the circumstances and preferences of plaintiffs. There are a few instances of maritime law subject-matter where the Federal court is expressly designated by legislation as the court where claims must be made or defenses mounted. For example, in a case of limitation of liability (under the *Marine Liability Act*), if a defendant establishes a limitation fund to which claims are to be directed while freeing the ship to continue trading, the defendant can only do so in the Federal Court. Further, although the Federal Court's jurisdiction is concurrent with other courts, the institution of most claims against the federal government can only take place in the Federal Court.

Unlike the Federal Court, provincial courts do not usually have rules that enable the arrest of ships. The exception is the Supreme Court of British Columbia. As such, when creditors proceed with claims against a shipowner debtor with the aim of seizing assets, they do so in the Federal Court or, in the case of British Columbia, the British Columbia Supreme Court.

International Claims

Canadian courts recognize international claims against Canadian ships if they are properly rooted in foreign law, at which point they will provide remedies that are available under Canadian law. In other instances, international claims may already have been decided on by a foreign court, but some of the debtor's assets may be in Canada. In these situations, the creditor may opt to enforce the foreign judgment through a Canadian court. Canadian provinces have also legislated the reciprocal enforcement of foreign judgments acts (Quebec has provisions in the *Code Civil*) for this purpose. Such legislation ultimately allows the creditor to proceed with claims against the judgment debtor and their assets.

¹⁷² *Federal Courts Act*, RSC 1985 c F-7.

Judicial Review

Federal Court can also carry out a judicial review of executive actions and decisions by the boards, tribunals and commissions that are established by federal legislation. This addresses instances where such a body uses its position of power in a way that is procedurally unfair or wrongly applies the law, in which case the affected person may apply for judicial review.

Arbitration

For commercial shipping, maritime arbitration is a favoured alternative for dispute settlement. Many maritime contracts, such as charterparties and salvage, will contain an arbitration clause. The advantage of arbitration is that the parties decide in advance where, how, and according to what law they wish to settle their disputes. They can also have some control over the composition of the arbitral tribunal and simplify the procedure. Federal¹⁷³ and provincial legislation provides for commercial arbitration. International commercial interests frequently use model arbitration rules, such as the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.¹⁷⁴ As in the case of foreign court judgments, foreign arbitration awards can likewise be enforced in Canada in accordance with the *Federal Court Rules* and provincial commercial and arbitration legislation.

4.3 Legal Framework of Maritime Governance

4.3.1 Constitutional Considerations

Jurisdiction

The *Constitution Act, 1867* is a good starting point for understanding maritime governance in Canada as it sets out the core responsibilities for the different levels of government. At the time, shipping was recognized to be a vital national interest sector because of the trade it enabled and the domestic connectivity it provided. Parliament was therefore given legislative authority over navigation aids (beacons, buoys, and lighthouses), navigation and shipping, quarantining of ships and marine hospitals, and inter-provincial and international ferry services. Naval service and seacoast and inland fisheries are also federal powers. The key term that identifies federal responsibilities is 'navigation and shipping' and which over time has guided maritime legislation and is interpreted by Canadian courts to include almost all matters concerning the life of the ship discussed in Part 1.

Section 92 of the *Constitution Act, 1867* allocates 'property and civil rights' and 'local undertakings' (other than shipping between provinces or connecting with a foreign country) to provincial jurisdiction.

There are cases where claims fall under both federal and provincial powers, or which relate to maritime sectors other than commercial shipping. For these, Canadian courts have developed a toolbox of

¹⁷³ *Commercial Arbitration Act*, RSC 1985 c 17 (2nd Supp).

¹⁷⁴ United Nations Commission on International Trade Law. (n.d.). UNCITRAL Arbitration Rules. Retrieved from: <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>

approaches and tests to determine when a case is 'integrally connected'¹⁷⁵ to navigation and shipping (where federal law applies), and when it is not the case. For example, the launching of a boat into the water is maritime but preparing a boat for road transportation is not. While the safety regulation of fishing vessels according to international standards is a federal matter, occupational health, and safety aspects on board to ensure safety of fishers living in a province is a provincial occupational health and safety matter. These interpretative solutions attempt to be pragmatic in resolving potential conflicts in the spirit of cooperative federalism.¹⁷⁶ The courts recognize that in a country like Canada, overlapping jurisdictions are unavoidable and best served by finding complementary regulatory solutions.

Indigenous Rights

With the *Constitution Act, 1982* (s 35(1)) comes the affirmation of the existence of Aboriginal and Treaty rights, which also are protected as Indigenous rights under international law notably through the United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP). UNDRIP affirms rights of Indigenous peoples and establishes responsibilities of states in their regard. The state has the duty to obtain Indigenous peoples' free and informed consent prior to the approval of projects affecting their lands, territories, and resources. Given that shipping impacts on Indigenous rights in various ways, such as when ships navigate sensitive areas, and introduce noise and the threat of pollution that can affect marine animals and environmental quality, Indigenous rights have implications for maritime governance. Recently, Canada legislated the *United Nations Declaration on the Rights of Indigenous Peoples Act*,¹⁷⁷ affirming the application of UNDRIP in Canadian law and establishing a framework for its implementation.

4.3.2 Legal Framework

Most of the Canadian legal framework for maritime governance is statutory, i.e., Acts of Parliament. Mainly, they reside in the fields of maritime and environmental law. The resulting regulations made under the authority of an act, not the act itself, provide the detailed rules and procedures of a regulatory regime. As a rule, Regulatory Impact Assessment Statements (RIAS) accompany new regulatory initiatives¹⁷⁸ and describe the anticipated impacts of a proposed regulation so that impacts can be anticipated while referring to the federal government's regulatory policy. Once statutes are enacted, they are subject to periodic reviews.

¹⁷⁵ *Desgagnés Transport Inc v Wärtsilä Canada Inc*, SCC 58 (2019). Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18040/index.do>

¹⁷⁶ *Canadian Western Bank v Alberta*, SCC 22 (2007). Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2362/index.do>

¹⁷⁷ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021 c 14.

¹⁷⁸ Treasury Board of Canada Secretariat. (2010). RIAS Writer's Guide 2009. Retrieved from: <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grrier/riaswg-grrier-eng.pdf>

Table 4-2. Principal Legislation

Topic Area	Legislation
Transportation policy	<i>Canada Marine Act</i> (SC 1998 c 10) <i>Canada Transportation Act</i> (SC 1996, c 10) <i>Oceans Act</i> (SC 1996 c 31)
Jurisdiction over ships	<i>Federal Courts Act</i> (RSC 1985 c F-7) <i>Oceans Act</i> (SC 1996 c 31)
Maritime safety	<i>Canada Shipping Act, 2001 (CSA, 2001)</i> (SC 2001 c 26) <i>Canadian Transportation Accident Investigation and Safety Board Act</i> (SC 1989 c 3) <i>Nuclear Safety and Control Act</i> (SC 1997 c 9) <i>Safe Containers Convention Act (SCCA)</i> (RSC 1985 c S-1) <i>Transportation of Dangerous Goods Act (TDGA)</i> (1992 SC 1992 c 34)
Environment protection	<i>Antarctic Environmental Protection Act (AEPA)</i> (SC 2003 c 20) <i>Arctic Waters Pollution Prevention Act (AWPPA)</i> (RSC 1985 c A-12) <i>Canada Shipping Act, 2001 (CSA, 2001)</i> (SC 2001 c 26) <i>Canada Wildlife Act</i> (RSC 1985 c W-9) <i>Canadian Environmental Protection Act (CEPA)</i> (1999 SC 1999 c 33) <i>Canadian Navigable Waters Act (CNWA)</i> (RSC 1985 c N-22) <i>Canadian Net-Zero Emissions Accountability Act</i> (SC 2021 c 22) <i>Federal Sustainable Development Act</i> (SC 2008 c 33) <i>Fisheries Act</i> (RSC 1985 c F-14) <i>Marine Liability Act</i> (SC 2001 c 6) <i>Migratory Birds Convention Act (MBCA)</i> (1994 SC 1994 c 22) <i>National Marine Conservation Areas Act (NMCA)</i> (SC 2002 c. 18) <i>Oceans Act</i> (SC 1996 c 31) <i>Wrecked, Abandoned and Hazardous Vessels Act (WAHVA)</i> (SC 2019 c 1)
Maritime security	<i>Criminal Code</i> (RSC 1985 c C-46) <i>Marine Transportation Security Act</i> (SC 1994, c 40)
Necessaries	<i>Federal Courts Act</i> (RSC 1985 c F-7) <i>Marine Liability Act</i> (SC 2001 c 6)
Carriage of goods and passengers	<i>Bills of Lading Act</i> (RSC 1985 c B-5) <i>Canada Transportation Act</i> (SC 1996, c 10) <i>Coasting Trade Act</i> (SC 1992 c 31) <i>Marine Liability Act</i> (SC 2001 c 6) <i>Marine Transportation Security Act (MTSA)</i> (SC 1994 c 40) <i>Safe Containers Convention Act (SCCA)</i> (RSC 1985 c S-1) <i>Transportation of Dangerous Goods Act (TDGA)</i> (1992 SC 1992 c 34)
Pilotage, towage, salvage	<i>Pilotage Act</i> (RSC 1985 c P-14) <i>Wrecked, Abandoned and Hazardous Vessels Act (WAHVA)</i> (SC 2019 c 1)
Recreational boating	<i>Canada Shipping Act, 2001 (CSA, 2001)</i> (SC 2001 c 26) <i>Marine Liability Act</i> (SC 2001 c 6) Provincial safe boating legislation
Marine insurance	<i>Marine Insurance Act</i> (SC 1993 c 22)

Topic Area	Legislation
Maritime workers	<i>Canada Shipping Act, 2001 (CSA, 2001)</i> (SC 2001 c 26) <i>Canada Labour Code</i> (RSC 1985 c L-2) <i>Merchant Seamen Compensation Act (MSCA)</i> (RSC 1985 c M-6) Provincial occupational health and safety legislation
Maritime public health	<i>Canada Shipping Act, 2001 (CSA, 2001)</i> (SC 2001 c 26) <i>Quarantine Act</i> (SC 2005 c 20)
Ports, harbours, and seaway	<i>Canada Marine Act</i> (SC 1998 c 10) <i>Customs Act</i> (RSC 1985 c 1 (2nd Supp)) <i>Fishing and Recreations Harbours Act</i> (RSC 1985 c F-24)
Liability	<i>Marine Liability Act</i> (SC 2001 c 6) Provincial worker compensation legislation

Table 4-2 sets out the principal legislation on maritime governance according to key themes. The legislation is primarily federal and secondarily provincial on specific themes. Most of the statutes in the table have subsidiary regulations. The key elements of the statutes and regulations are discussed on a theme-by-theme basis below.

Transportation Policy

The legal framework for the making of Canadian maritime policy is spread across several instruments. At the integrated ocean management level, shipping considerations are included in Canada’s national ocean strategy under the *Oceans Act*, a high-level policy document wherein the overarching strategy is based on principles of sustainable development, integrated management of coastal and marine uses in Canadian waters, and the precautionary approach.¹⁷⁹ The Minister of Fisheries and Oceans has the lead role in the development of the strategy in collaboration with other ministers, federal boards and agencies, provincial and territorial governments, affected Indigenous organizations, coastal communities and other persons and bodies. The Minister of Transport and the various institutions of maritime governance described below are all constituents of Canada’s ocean strategy.

Other statutes set out the authority for sector-specific maritime policy (as distinct from ocean policy). The *Canada Transportation Act* includes shipping in a broader national transportation sense that includes air, road, and rail. The act declares the transportation policy goal as

... a competitive, economic, and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and

¹⁷⁹ Fisheries and Oceans Canada (2002). *Canada’s Oceans Strategy: Our Oceans, Our Future. Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada*. Retrieved from: <https://waves-vagues.dfo-mpo.gc.ca/Library/264678.pdf>

enable competitiveness and economic growth in both urban and rural areas throughout Canada.

Several policy objectives are detailed in the transportation policy goal:

- Competition and market forces are to be the prime agents for the provision of transportation services.
- Regulation and public authority are to only intervene to achieve desired outcomes that cannot be achieved satisfactorily by competition and market forces.
- Regulation and public authority are not to unduly favour or reduce the inherent advantages of any one mode of transportation.
- The regulator and regulated are expected to cooperate to achieve an integrated transportation system.

Economic policies have laid the framework for infrastructure spending to support shipping. For example, funding was committed through the 2009 National Policy Framework for Strategic Gateways and Trade Corridors¹⁸⁰ to develop infrastructure for major trade gateways. The aim is to enhance trade competitiveness and the efficiency of the national transportation system, including short-sea shipping.

In 1995, TC issued the National Marine Policy aimed at modernizing Canadian shipping through new legislation, ports, the St. Lawrence Seaway, ferry services and pilotage. Subsequently in 1998, the *Canada Marine Act* established “marine policies that provide Canada with the marine infrastructure that it needs and that offer effective support for the achievement of national, regional and local social and economic objectives and will promote and safeguard Canada’s competitiveness and trade objectives”. Another purpose is to contribute to the success of Canadian ports and their contribution to the Canadian economy.

To achieve goals and objectives, policies need effective strategies and plans for funded activities. Examples of adopted strategies that apply to shipping in Canada are the National Shipbuilding Strategy¹⁸¹ and the Oceans Protection Plan. The National Shipbuilding Strategy supports the shipbuilding industry through a large long-term investment to renew the Royal Canadian Navy and CCG fleets through procurement contracts with shipyards across the country. The Oceans Protection Plan is a shorter, multi-pronged funding program to enhance the marine safety system in Canadian waters. The plan sets out to preserve and restore marine ecosystems, enhance accident and pollution prevention and response, and build Indigenous partnerships to enhance safety and environment protection.

¹⁸⁰ Transport Canada (2009). National Policy Framework for Strategic Gateways and Trade Corridors. Retrieved from: https://publications.gc.ca/collections/collection_2010/tc/T22-136-2009-eng.pdf

¹⁸¹ Government of Canada. (2021b). National Shipbuilding Strategy. Retrieved from: <https://www.tpsgc-pwgsc.gc.ca/app-acq/amd-dp/mer-sea/sncn-nss/index-eng.html>

Maritime Safety

The most important legislation for the safety of navigation and shipping in Canada is the *CSA, 2001*. The act is administered by both TC and Fisheries and Oceans Canada (DFO).

The *CSA, 2001* is the principal instrument that sets out the legal obligations of Canada to act as a flag state and to run a national maritime administration. It provides substantive rules and procedures, and the personnel and institutions, to administer the various requirements of the act. The rules and procedures include a wide range of marine documents carried by ships, tonnage measurement, registration of ships in the Canadian Register and related recordings (e.g., mortgages), personnel working on board ships, safety requirements on board the ship (master, crew, passengers), ship construction, navigation services (e.g., vessel traffic services, navigation aids, and search and rescue), incidents and accidents (e.g., collisions, death and personal injury) and casualty investigations, pollution prevention and offenses, pleasure craft, enforcement of offences, and various other matters.

Regulations under the act also establish a system of Shipping Safety Control Zones in Canadian Arctic waters to help ships navigate different areas of these waters according to the class and capability of each individual ship and based on a risk assessment system.

The *CSA, 2001* implements many IMO conventions and protocols, generally through references in schedules that are incorporated into the act. Schedule 1 lists the instruments for which TC is responsible, consisting of the bulk of the IMO conventions and protocols. Schedule 2 lists two instruments for which the DFO and the Coast Guard are responsible. These are the search and rescue and oil pollution prevention and response conventions discussed in Part 2.

Various personnel and institutions administer the act and regulations.

- Minister of Transport has regulatory and executive authority over most of the act;
- Marine safety inspectors and recognized organizations ensure compliance through various inspection functions;
- Marine Technical Review Board considers exemptions or alternative requirements from regulations by Canadian ships or persons issued marine documents;
- Registrars register ships in the Canadian Register of Vessels, enabling them to fly the Canadian flag;
- Marine communications and traffic services officers are responsible for vessel traffic services;
- Minister of Transport is responsible for enforcement and implementation of regulations relating to oil handling facilities and response organizations, and oversees enforcement by pollution prevention officers;
- Minister of Fisheries and Oceans and the Canadian Coast Guard are responsible for conducting spill management, providing a national preparedness capacity and ensuring an appropriate response to marine pollution incidents; and
- Minister of Transport is responsible for enforcement of pollution offences from ships and for directing their movements. The Minister of Transport also has other wide-ranging enforcement

powers such as for ship inspections, issuing of clearances, investigations, detention, and sale of ship and foreign ships in contravention of international rules and standards.

Other federal statutes address narrower maritime safety aspects. A few such statutes are mentioned below.

The *Safe Containers Convention Act* provides a framework to ensure the safe loading and movement of cargo in containers. The rules concern international safety requirements for containers, their repair and maintenance, and the carrying of a Safety Approval Plate. The Minister of Transport appoints inspectors to inspect containers.

The *Transportation of Dangerous Goods Act (TDGA)* regulates the transportation of dangerous goods in all transport modes in the interest of public safety. Dangerous goods are internationally classified into nine classes under a system known as the United Nations Orange Book. Under the IMO's International Maritime Dangerous Goods (IMDG) Code, these substances must be properly labelled, stowed, and carried. Nuclear substances are expressly covered by *Nuclear Safety and Control Act*.

The *Canadian Transportation Accident Investigation and Safety Board Act* provides regulations for formal investigations that take place every time there is a serious accident or casualty. The purpose is to determine the causes so that similar accidents in all transport modes can be prevented in the future. *UNCLOS* requires the flag state to conduct investigations concerning their ships. In Canada's case, the body tasked with this is the Transportation Safety Board of Canada.

Marine Environment Protection

The protection of the marine environment from the impacts of shipping is addressed in four layers:

- The prevention of pollution from ships is set out in shipping legislation;
- Offences for waste discharges are set out in legislation to protect the marine environment and its resources;
- A civil liability system compensates for environmental damage and related economic loss; and
- General legislation on sustainable development and decarbonization applies to the maritime sector, as it does for all other sectors.

Prevention of pollution from ships

The *CSA, 2001*, and regulations under it, implement the *International Convention for the Prevention of Pollution from Ships (MARPOL)* and establishes a system of pollution offences when wastes are discharged illicitly into the marine environment. As a public welfare offence, there is no need to prove that there was the intention to pollute. In turn, the offender can demonstrate that they took all reasonable actions to avoid the discharge. The *CSA, 2001*, and regulations under it, also implements international ballast waters management and anti-fouling systems conventions.

The *Arctic Waters Pollution Prevention Act (AWPPA)* establishes an even higher standard for Arctic waters, namely a zero-discharge rule for oil and strictly controlled discharges of other permissible substances, such as treated sewage. The *IMO Polar Code* has been implemented in regulations under both the *CSA, 2001* and the *AWPPA*. Penalties for pollution offences from ships range from prison terms to stiff fines, with higher fines for repeat offenders.

The *Wrecked, Abandoned and Hazardous Vessels Act (WAHVA)* has created rules to prevent ships from becoming wrecks and the abandonment of substandard vessels in ports. The Minister of Transport has the power to remove abandoned ships at the expense of the shipowner. The act also implements the *International Convention on Salvage* to provide incentive to salvors of ships in distress, thereby preventing or minimizing pollution of the marine environment.

Legislated offences

The second layer of maritime environment protection consists of the *Antarctic Environment Protection Act (AEPA)*, *Canadian Environmental Protection Act (CEPA)*, *Canadian Navigable Waters Act (CNWA)*, *Canada Wildlife Act*, *Fisheries Act*, *Migratory Birds Convention Act (MBCA)*, *National Marine Conservation Areas Act (NMCA)*, and *Oceans Act*.

The *Oceans Act*, *NMCA*, and *Canada Wildlife Act* provide for the establishment of marine protected areas, marine conservation areas, and marine wildlife areas that potentially interact with shipping. The acts provide for making regulations that include offences.

CEPA establishes offences for when there is dumping of prohibited substances from ships, the *Fisheries Act* when there is discharge of pollutants in fisheries habitats, and *MBCA* has effect when there is discharge of pollutants in areas where there are migratory birds. As in the case of other vessel-source pollution offences, the penalties include imprisonment and fines depending on the severity of the offence.

The *AEPA* establishes rules for the protection of Antarctic waters for Canadian ships and the *CNWA* addresses activities that adversely affect navigable waters in Canada, for example by creating obstacles to navigation.

Civil liability

Regimes within Canada's *Marine Liability Act* implement international conventions that establish civil liability to compensate the victims of accidental pollution from ships and the costs that were incurred in responding to spills. The act places the onus for compensation on the shipowner, albeit with limited liability, and requires that they maintain appropriate insurance cover. For large spills where the limit of the shipowner's liability does not cover all damage and loss, the International Oil Pollution Compensation Fund (IOPCF), as detailed in Part 3, serves as a second tier of compensation. In cases where even the use of this second tier is not enough (where a spill produces catastrophic damage and loss beyond what the shipowner's civil liability and IOPCF regimes cover), the Ship-Source Oil Pollution

Fund (SOPF) comes in as a third tier and is subject to unlimited liability. The SOPF also serves as a compensation fund of first resort, available to Canadian fishers, people engaged in aquaculture, and public authorities who are incurring prevention and clean-up costs. In this way they can access compensation on an administrative basis, instead of suing the shipowner, insurer and IOPCF. In turn, the SOPF takes over their claims against the latter in the Federal Court.

Sustainable development and decarbonization

The two acts discussed below pertain to all economic sectors and respect international obligations as they relate to shipping.

The *Federal Sustainable Development Act* sets out the legal framework for the Federal Sustainable Development Strategy to enable transparent sustainable development, accountability to Parliament, at the same time promoting coordination across all the federal government.

The *Canadian Net-Zero Emissions Accountability Act* sets out the legal framework for the adoption of national GHG emissions reductions targets with a view to achieving net-zero emissions in Canada by 2050. It is worth noting that while the international regulation of GHG emissions from international shipping is currently led by the IMO, the regulation of emissions from domestic shipping is a domestic matter and subject to national GHG reduction targets.

Maritime Security

The maritime security concerns in shipping include not only the security of ships and all those working on board or travelling as passengers, but also the security of port facilities and personnel. The *Marine Transportation Security Act (MTSA)* is the principal legislation concerning the security of the marine transportation system in Canada. The act applies to vessels and marine facilities in Canada, Canadian vessels outside of Canada, and marine installations and structures. It does not apply to naval facilities and vessels.

The *MTSA* allows the Minister of transport to formulate security measures and direct vessel movements in Canadian waters and even prohibit them from entering Canadian waters. Additionally, under the act, regulations can be made for a range of security-related matters such as unlawful interference with marine transportation, screening of vessels and their carriage, provision of restricted areas such as port facilities, and other matters to protect records and evidence.

The act's regulations implement the IMO's *International Ship and Port Facility Security Code*¹⁸² and provide comprehensive requirements for security procedures on vessels, cargo, and bunker handling, and in port facilities which are required to have marine security plans. Separate regulations also set out

¹⁸² *Marine Transportation Security Regulations*, SOR/2004-144.

a security regime for ferries,¹⁸³ which are required to have a security assessment and a security plan. Penalties include imprisonment and fines.

The *Criminal Code* also establishes offences against ships, fixed platforms, and international maritime navigation.

Maritime Workers

Maritime workers are protected mostly by federal law however there are instances where provincial law applies.

Federal law applies ILO and IMO standards. The *Canada Labour Code* sets out labour rights and standards for ships as safe workspaces and rules include work hours, wages, vacations, and occupational health and safety. The *Maritime Occupational Health and Safety Regulations*¹⁸⁴ set out detailed standards for Canadian ships, government-owned ships (non-naval) and for the loading and unloading of ships. Its numerous rules concern, among other, the design of structures and access, crew accommodation, sanitation, and medical care. Maritime occupational health and safety matters not addressed by the *Canada Labour Code* are regulated under the *CSA, 2001*. Examples are crew accommodation, fire safety and means of escape, and medical examination of seafarers.

The *CSA, 2001* further provides standards for the training of seafarers through the *Marine Personnel Regulations*¹⁸⁵ that implement the *STCW* rules concerning certification for masters, mates, engineers, and small vessel operators. The training covers personnel on a wide range of vessels. In addition to masters, officers and engineers, training standards also extend to supervisors, manager, maintenance personnel, and even cooks.

As with all workplace injuries, significant medical cost can be incurred by seafarers. In the event of death, bereaved family members may face economic hardship. The *Merchant Seamen Compensation Act (MSCA)* provides a scheme for the compensation of seafarers and requires employers to provide insurance cover. Seafarers injured in work-related accidents irrespective of location are entitled to health benefits, medical and hospitalization cover, and compensation for death and personal injury, including permanent disability.

Personnel working on fishing vessels are regulated also by complementary provincial legislation. Provincial law has traditionally included fishers in occupational health and safety and worker compensation schemes. Because these workers generally live in a province and work in the waters offshore a province, they are subject to provincial law rather than federal regulation. Hence, injured fishers and their dependents are entitled to provincial workers compensation rather than compensation under the *MSCA*. They cannot sue the employer under the *Marine Liability Act*.

¹⁸³ *Domestic Ferries Security Regulations*, SOR/2009-321.

¹⁸⁴ *Maritime Occupational Health and Safety Regulations*, SOR/2010-120.

¹⁸⁵ *Marine Personnel Regulations*, SOR/2007-115.

Maritime Public Health

Ships carry other health considerations for those on board, as well as for coastal communities. Crew members or passengers may become seriously ill or are injured, requiring medical evacuation, which is covered by occupation health and safety regulations. Other public health hazards can be the result of the release of aquatic organisms or pathogens in ballast waters or toxic substances from anti-fouling systems. These are addressed by regulations under the *CSA, 2001* as discussed earlier in the environmental context.

Infectious outbreaks on board ships are another public health concern. Outbreaks of the norovirus on cruise ships, for example, have caused significant risks on cruise ships. More recently, outbreaks of Covid-19 on ships have demonstrated the vulnerability of maritime trade to health concerns, not to mention the potential of ships to transmit epidemiological outbreaks to coastal communities when in port.

For the above reasons, shipping is captured by the *Quarantine Act*, which provides a framework for comprehensive measures to prevent the introduction and spread of communicable diseases. Historically, major ports had areas designated for the quarantining of ships, whereas today the Minister of Health has the power to designate spaces as quarantine areas. The *Quarantine Regulations*¹⁸⁶ specifically address maritime traffic and require the master to notify the quarantine officer at least 24 hours before port arrival if a crew member or passenger has died or fallen ill due to a suspected communicable disease.

Carriage of Goods and Passengers

Public and private law apply to the carriage of goods and passengers. The international movement of goods and passengers is facilitated by transportation policy under the *Canadian Transportation Act*. Domestic trade, also known as cabotage, is usually reserved for domestic fleets. In the case of Canada, the *Coasting Trade Act* has reserved domestic shipping and logistical support for remote communities to Canadian ships.

Safety aspects of the carriage of goods and passengers are addressed by several acts that implement international instruments:

- *CSA, 2001* and regulations under it address matters concerning passenger safety and the carriage of cargo and fumigation of holds.
- *Safe Containers Convention Act (SCCA)* establishes standards for containers so that cargo may be carried safely.

¹⁸⁶ *Quarantine Regulations*, CRC c 1368.

- *TDGA* and regulations¹⁸⁷ under it further complement these safety regulations by providing rules for the safe carriage of dangerous goods and incorporating the IMO's *International Maritime Dangerous Goods Code*.
- *MTSA* and regulations under it establish rules for security procedures for the handling of cargo to account and inspect cargo to ensure it has not been tampered with.

Cargo transportation and carriage of passengers is largely possible because of private law arrangements. Ships are operated for cargo and passenger carriage purposes not only by their owners and managers, but also by charterers who lease ships. Charterparties may be bareboat, which means the actual owner parts with possession and control of the ship in favour of the charterer, who will hire their own crew and may even reflag the ship. Time and voyage charters is a different approach that involves the ship being hired for a period or a voyage(s). With this latter approach, the owner usually remains in possession and control while the charterer directs the movements of the ship. In either case, charterparties are not regulated in Canada and contracting parties can contract freely, however many tend to use model industry forms such as those developed by the Baltic and International Maritime Council.

There is a distinct difference between contracts for the carriage of goods using bills of lading and contracts for the transportation of passengers.

The **carriage of goods** is generally based on standard terms set out in international conventions and incorporated in domestic law. Part 2 discussed the existence of multiple treaty regimes which run in parallel despite efforts to promote international uniformity. In view of this, Canada opted to referentially incorporate the *Hague-Visby Rules* under its *Marine Liability Act* and enacted the complementary *Bills of Lading Act* to enforce the bill. As such, a carrier must issue a bill of lading as evidence of the goods on board and as a negotiable document of title. The carrier is responsible for damage or loss to cargo, up to a stipulated limit of liability, and the goods may be sold even while the ship is at sea.

The contract for the **carriage of passengers** is governed by a different instrument, the *Athens Convention*. It is also implemented by the *Marine Liability Act* through referential incorporation. Like the *Hague-Visby Rules*, the terms of the *Athens Convention* form part of the standard contract for the provision of carriage. The contract is governed by a limited liability regime that favours the carrier and which cannot easily be removed. Limited liability enables carriers to obtain marine insurance at a reasonable rate.

Pilotage, Towage, and Salvage

Pilotage is an important service to ships due to the harbour pilot's local knowledge of navigational hazards and regulations to visiting ships that can ensure their safe navigation into port. The *Pilotage Act* regulates this service by dividing Canadian waters, except for Arctic waters, into pilotage regions under

¹⁸⁷ *Transportation of Dangerous Goods Regulations*, SOR/2001-286.

the responsibility of designated authorities that regulate the provision of pilotage and the training and disciplining of pilots. Pilotage in major federal ports is frequently mandatory and with the pilot being certified and licensed by the authority. When boarding a vessel, the pilot discusses a passage plan with the master or officer on watch and provides advice for the safe navigation. The pilot only has conduct, not command of a ship and the master has the authority to relieve the pilot of duties where the master believes the instructions provide pose safety risks for the ship or if the pilot is intoxicated.

Towage is not a regulated service and is provided based on standard forms. The service can be provided in situations where the ship does not have its own propulsion power (e.g., a barge), the ship has lost power, or the ship needs assistance to safely berth and unberth in port. In the Atlantic region, towage is frequently provided based on industry standard terms adopted by the Eastern Canadian Tug Owners' Association (ECTOA),¹⁸⁸ but there are other standard terms such as those developed by the British Columbia Tugboat Owners Association and the Baltic and International Maritime Council (BIMCO). The terms of the contract vary with the standard terms. For example, the ECTOA terms tend to favour the tug, whereas the BIMCO terms tend to balance the rights and responsibilities of the tug and tow.

Salvage is provided to ships whose safety, without such assistance, is at risk. This usually occurs in situations where a ship grounds, or suffers serious damage in a collision, or has a fire on board, or even if the ship is already sunk and needs to be refloated. Discussed earlier in Part 3, the *International Convention on Salvage* provides a framework for salvage, including how it is implemented in the *WAHVA*.

In Canada, salvage can be either common law salvage or contract salvage. In either case, the salvor's responsibility is to stabilize the condition of the vessel in need of assistance, take it to a place of safety, and redeliver it to the owner. One of the most well-known standard forms of salvage is Lloyd's Open Form of Salvage Agreement (No Cure-No Pay), as detailed in Part 3.

Recreational boating

Accidents in recreational boating happen all too often, despite efforts under the *CSA, 2001* to raise standards for the owning and operating of small vessels and craft. The *Small Vessel Regulations* require all persons operating small vessels to do so with due care and attention and with reasonable consideration for others. The *Competency of Operators of Pleasure Craft Regulations* place requirements on pleasure craft operators and renters who must have a Pleasure Craft Operator Card, a rental boat safety checklist, and proof of the successful completion of a boating safety course or other documentation pertaining to safety knowledge. The renter's duty is to ensure that no one operates the craft unless they are of the required age and are competent to operate craft.

¹⁸⁸ Eastern Canadian Tug Owners' Association. (2015). Standard Towing and Insuring Conditions. Retrieved from: <http://www.ectoa.ca/standard.html>

Victims of boating accidents have recourse under the *Marine Liability Act*. In addition to claims for property damage, dependants of the victim are entitled to sue the person causing the loss for compensation. This can extend to the loss of guidance, care, and companionship that a dependant could reasonably have expected to receive from the injured or deceased seafarer. However, under the act the defendant has a right to limit liability which cannot easily be removed.

Marine Insurance

Marine insurance plays a critical role in many aspects of shipping. Most ships are required to have valid insurance before setting out to sea. This is usually obtained through brokers who secure an underwriter to provide the desired cover. Different ships require different cover. For example, a tanker will require hull and machinery cover and protection and indemnity insurance against pollution liability. Cruise ships will similarly require dedicated cover for the carriage of passengers. The major marine insurance underwriters are not Canadian and are located around the world, with many being in London. Similarly, Protection & Indemnity Clubs are spread around the world with the largest providers based in Europe.

In the past there was debate on whether marine insurance should be governed by federal or provincial law. The controversy was resolved by the Supreme Court of Canada¹⁸⁹ in favour of the federal level, even though some provinces still retain marine insurance legislation. The *Marine Insurance Act* provides a framework for the provision of marine insurance cover in Canada and provides standard terms for such.

Marine insurance is a contract of indemnity, which means that the insured cannot profit from it. It simply covers actual losses caused by risks covered by the policy. The insurance will not cover losses caused by a ship which is not seaworthy. Hence, marine insurance has a direct interest and plays an important role in ensuring the safety of ships because the insurer can refuse indemnity if the loss is caused by a ship that has not been properly maintained, rather than by a risk under the policy which assumes the seaworthiness of the vessel.

Ports, Harbours, and Seaway

Ports

The enactment of the *Canada Marine Act* introduced a new law and policy for Canada's more than 550 port facilities in recognition of the major role they play in marine transportation and Canada's economy. In the interest of international uniformity, especially with respect to Canada's trading partners, the act looks to international practices and approaches for national port infrastructure and services. On the part of the ports, they must address the needs of users at a reasonable cost and ensure they operate at a high level of safety and environmental protection. Ports typically include diverse service providers, such as terminal operators, chandlers, bunker fuel suppliers, and others.

¹⁸⁹ *Zavarovalna Skupnost, (Insurance Community Triglav Ltd.) v Terrasses Jewellers Inc.*, 1 SCR 283 (1983). Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5323/index.do>

The act, as overseen by the Minister of Transport, provides for a high degree of port management autonomy to enable the infrastructure to be operated and services to be provided in a competitive commercial manner. And because ports serve as nodal points in transportation systems, the act promotes coordination and integration of marine activities with road, rail, and air transportation systems.

Of the 550 ports, the act created 18 port authorities and designated others as public ports. Port authorities, established as crown corporations and operating as agents of the federal government, are required to be financially self-sufficient. Port authorities are empowered to monitor the movement of ships in and out of port, establish practices and procedures for ships, require ships to have the capacity to use specified radio frequencies, and establish traffic control zones. Port authorities may also require information to be provided by ships for traffic management purposes and impose conditions for clearances.

Public ports of regional significance are established by the Governor in Council and may be federally or privately run. For ports that are not federal, TC still plays an overseeing role to ensure compliance with environmental and navigable waters regulations. Several regulations have been adopted under the act, including on natural and man-made harbours,¹⁹⁰ port authority management¹⁹¹ and operations,¹⁹² public ports,¹⁹³ St. Lawrence Seaway,¹⁹⁴ as well as for ports and the Jacques-Cartier and Champlain bridges.

Harbours

Small crafts harbours are under the control of the Minister of Fisheries and Oceans and are regulated under the *Fishing and Recreations Harbours Act* and regulations¹⁹⁵ under it. Fisheries and Oceans Canada owns approximately 750 fishing harbours, 570 of which are run by not-for-profit local harbour authorities. Additionally, over 1,100 small recreational and fishing harbours are divested mostly to local municipalities. The Minister controls and administers selected harbours with respect to their use, management, maintenance, and collection of charges for use.

Seaway

The St. Lawrence Seaway Management Corporation manages 13 out of the 15 seaway locks and is an integral part of the national transportation infrastructure. The corporation was established under the *Canada Marine Act* as the successor of the former St. Lawrence Seaway Authority and is overseen by the Minister of Transport. The *Canada Marine Act* provides for the commercial operation of the seaway, its

¹⁹⁰ *Natural and Man-made Harbour Navigation and Use Regulations*, SOR/2005-73.

¹⁹¹ *Port Authorities Management Regulations*, SOR/99-101.

¹⁹² *Port Authorities Operations Regulations*, SOR/2000-55.

¹⁹³ *Public Ports and Public Port Facilities Regulations*, SOR/2001-154.

¹⁹⁴ *Seaway Property Regulations*, SOR/2003-105.

¹⁹⁵ *Fishing and Recreational Harbours Regulations*, SOR/78-767.

protection, and the protection of the rights of adjacent communities. In doing so, it encourages cooperative arrangements with the United States.

4.4 Conclusion

In comparison to the international level, Canada's governance of shipping is more complex. The principal most complicating factor is Canada's federal system, which in contrast to a unitary system, has multiple levels of government. This results in more complex rules on the division of powers and the relationship between different levels of decision-making.

Figure 4-4 brings together Canada's complex institutional framework. At the international level, Canada is a member of the IMO and all other IGOs relevant in maritime governance. The cluster of blue spheres represent the federal government, which is constitutionally responsible for navigation and shipping matters. TC represents Canada in the IMO and cooperates with other departments in their respective interface with other IGOs on matters relating to shipping. DFO and CCG play complementary roles. The smaller blue spheres represent the various federal institutions discussed earlier. Constitutional complexity is exacerbated by the sheer size of the country and the diversity of marine regions. Departments and agencies tend to have regional sub-structures to enable them to reach all marine regions in the country.

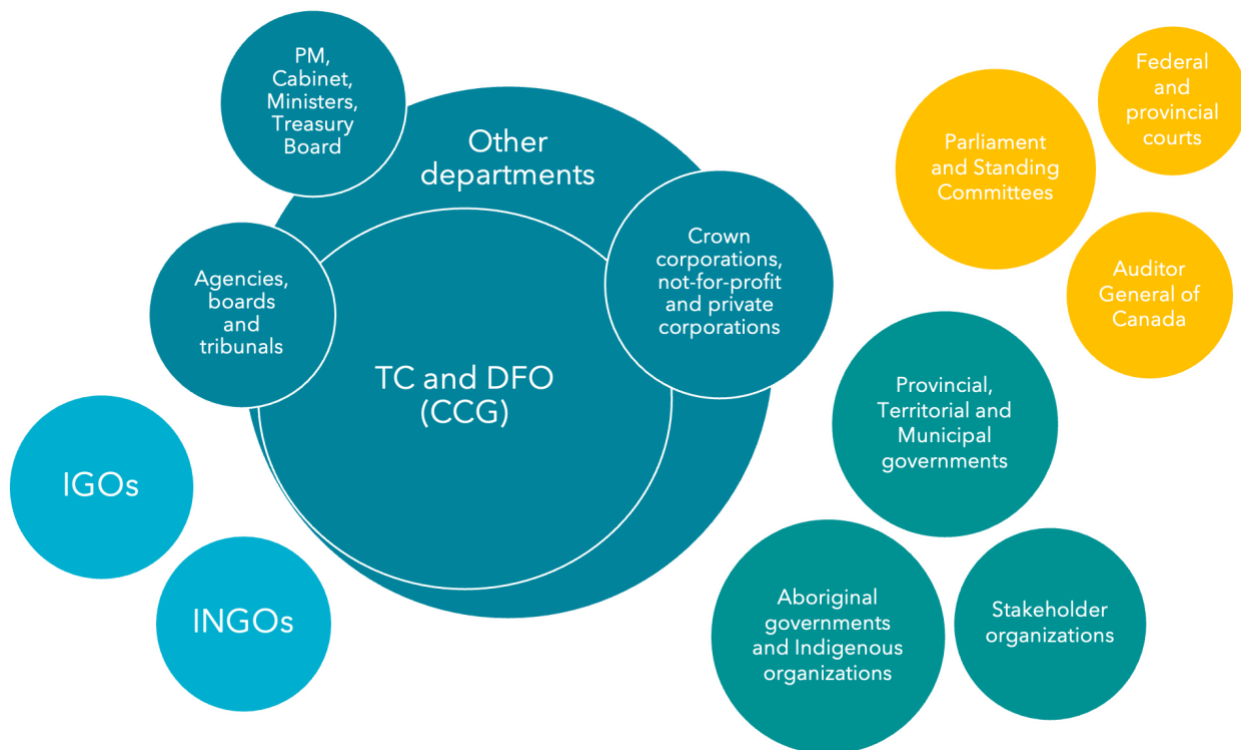


Figure 4-4. Canada's Maritime Institutional Complexity

The next cluster of institutions in Figure 4-4 are separate from the federal government and relate to it at arm's length. While navigation and shipping are clearly federal matters, the powers allocated to the provinces and territories may at times overlap or interact with federal prerogatives. Cooperative federalism demands that rather than pursuing conflictual relationships, the various levels of government should seek complementarities and coordinate the exercise of their powers when appropriate. This is the case in various maritime governance matters, such as occupational health and safety of certain classes of maritime workers and recreational boating.

Aboriginal governments and Indigenous organizations, as representatives of rights holders, also play vital roles in Canada's constitutional system and therefore have a further consequential role in maritime governance with respect to issues that affect Indigenous rights. There are very few states in the world where Aboriginal government and Indigenous organizations play such a role, as is evident in Canadian Arctic and Northwest Pacific waters. Stakeholder organizations represent a wide variety of private and public interests and tend to engage actively in the governance of shipping. Several organizations are subsidiaries or are members of INGOs, further evidencing the continuum of international and domestic interests in shipping. As many of these are regulated organizations, their relationship to regulators has at times raised concerns over the risk of regulatory capture.

Finally, the activities of the federal government are overseen by structures that reflect the separation of powers in our constitution and therefore are at arm's length from the executive. Parliament and its Standing Committees ensure accountability of the government to elected representatives. The Auditor General provides further oversight with respect to public spending and governmental performance. The courts are the ultimate independent safety valves in addressing legal conflicts in both the public and private spheres.