

Week 1 — Introduction to Maritime Law

The ship • nationality • identification • ownership • collisions • pilotage

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Seminar Roadmap - What we will cover today

- Why maritime law matters to shipping managers
- How lawyers classify a ship and why classification matters
- Nationality, flag and registration
- How a ship is identified throughout its life
- How ship ownership is acquired and transferred
- Collision law: navigation rules, fault and liability
- Pilotage: who is responsible when a pilot is on board

Learning outcomes

- Explain the difference between public and private maritime law
- Identify the legal and commercial importance of ship nationality and registration
- Recognize the main identifiers used for ships
- Explain the basic legal structure of acquiring ship ownership
- Use the COLREGs to structure a simple collision analysis
- Distinguish the responsibilities of pilot, master, owner and harbour authority

I – What Is Maritime Law?

The Ship's Legal Status and Commercial Operation

What is maritime law?

Foundations

- The body of law governing ships, navigation, maritime commerce and legal relationships arising from ship operations
- It is not a completely self-contained legal system
- It draws on contract, tort, property, public law and international law
- Its distinctive feature is the commercial and physical environment of shipping

Why is There a Need for Maritime Law?

- Large areas of the seas (the High Seas) are not subject to the national jurisdiction of any State
- Ships are generally considered as subject to the jurisdiction of the flag State
 - Ships of different flag States do collide (even at the open sea)
- There are no emergency services at the high seas and no state has an obligation to provide them
- Pollution at sea may be very difficult to control
- Even if one knows the shipowner it is not easy to get him to court because he as well as the shipping company would most likely be at a foreign State
- National laws differ- consider cargo operations
- The risks are large

What Is Maritime Law About?

- Ship registration
- Flag State, Coastal State and Port State powers and obligations
- Safety and operational pollution from ships
- Shipbuilding, sale and purchase
- Operational liabilities of ships
- Contracts for hiring ships and carriage by sea
- Enforcement of maritime claims
- Marine insurance

Why Do We Have Specialized Maritime Law?

- Ships travel internationally in order to trade
- Trade contributes to the prosperity of states
- Radically different national rules may discourage shipping and trade
- Large parts of the oceans lie beyond national jurisdiction
- International shipping therefore requires internationally coordinated rules

The International Character of Maritime Law

- Questions arise over applicable law and jurisdiction
- Maritime law is characterised by international harmonisation
- Numerous international conventions regulate shipping
- Conventions promote safe and efficient commercial and physical operation of ships
- National maritime laws remain distinct in some respects

Special Features of Maritime Law

- Apportionment of liability in collision
- Systems of strict liability
- Shared liability through general average
- Voluntary assistance rewarded through salvage
- Extensive use of freedom of contract
- Practical contractual allocation of commercial risks

Why does maritime law matter commercially?

Commercial significance

- Ships are built, financed, sold, registered, chartered and insured
- They carry goods between international markets
- A single voyage can involve many contracts, regulators and jurisdictions
- Legal rules allocate operational risk and financial responsibility when things go wrong

Key Maritime Stakeholders

- Registered shipowner
- Flag State
- Bareboat / demise charterer
- Time charterer
- Voyage charterer
- Slot charterer
- Marine insurers
- International Maritime Organization (IMO)
- Classification societies

One ship — many legal relationships

The ship as a legal hub

- Owner ↔ bank: loan and mortgage
- Owner ↔ charterer: charterparty
- Carrier ↔ cargo interest: contract of carriage / bill of lading
- Owner ↔ insurer / P&I Club: risk transfer
- Ship ↔ flag State / port State: regulation and enforcement
- Ship ↔ third parties: collision, pollution, salvage and other liabilities

Public maritime law

- Regulates relationships between ships, States and the international community
- Examples: nationality, flag-State jurisdiction, safety regulation, pollution prevention, port-State control, navigation rights

Which State has authority to regulate or enforce?

Private maritime law

- Regulates relationships between private parties arising from shipping activity
- Examples: ownership, shipbuilding and sale, charterparties, carriage of goods, marine insurance, collision liability, salvage, mortgages and arrest

Who has rights, duties and financial responsibility?

Public and private law often overlap

Why the distinction is useful but not absolute

- COLREGs are international navigation rules, but breach can affect civil collision liability
- Nationality is a public-law relationship with the flag State, but registration may affect evidence of title and mortgages
- Safety regulation can influence contractual performance and insurance exposure
- Maritime law is best understood as interlocking regimes, not isolated boxes

THE ROLE OF THE LAW (PUBLIC AND PRIVATE MARITIME LAW)

THE NATURE OF THE LAW OF THE SEA AND MARITIME LAW

- The Law of the Sea is a **branch** of Public International Law (PIL).
- PIL: legal order that structures the horizontal relationships amongst States (and a few other subjects of international law).



THE NATURE OF THE LAW OF THE SEA & MARITIME LAW

PIL/Law of the Sea sources (Art. 38 of ICJ Statute):

- 1) Customary international law (CIL):** unwritten law resulting from a general and consistent practice of States that they follow from a sense of legal obligation.
- 2) International conventions:** binding written agreements concluded by States and other subjects of international law.
- 3) General principles of law** of the major legal systems of the world (e.g., *pacta sunt servanda*).
- 4) Judicial decisions** and 'the teachings of the most highly qualified publicists of the various nations' (no doctrine of precedent by judicial decisions are influential as subsidiary means for determination of international law rules (e.g., baselines).

THE NATURE OF THE LAW OF THE SEA AND MARITIME LAW

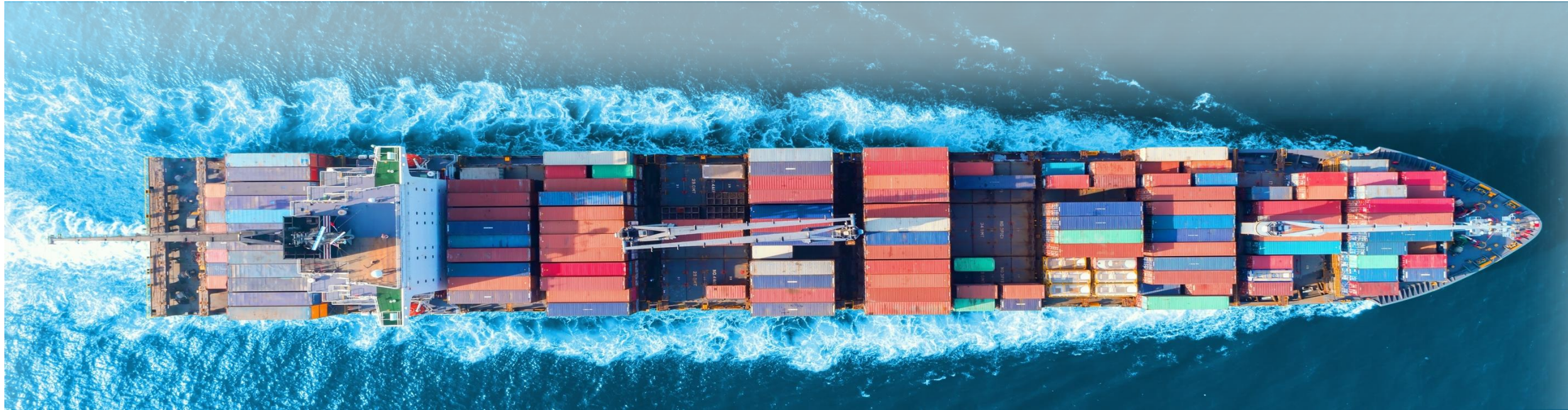


States' interests are the main engine of the Law of the Sea (but commercial and private actors shape those interest):

- **Early times: interests of communication, navigation and national security** (e.g., territorial sovereignty v. freedom of navigation).
- **From mid-20th century: interest in natural resources** (e.g., claims for exclusive jurisdiction to exploit natural resources).
- **Last quarter of 20th century: interest in scientific progress and the protection of the marine environment** (e.g., concept of common heritage of mankind).

THE NATURE OF THE LAW OF THE SEA AND MARITIME LAW

Maritime Law: a body of legal norms, domestic and international, on the relationships between private individuals and corporate bodies regarding maritime activities (e.g., maritime transport, maritime insurance, and the responsibilities of shipowners and other persons).



THE NATURE OF THE LAW OF THE SEA AND MARITIME LAW

International Law regards itself as superior to Domestic Law:

- **A State may not escape responsibility** for an internationally wrongful act on the basis that the same act is considered to be lawful under its internal domestic law.

The way in which a State regards PIL depends on that State's domestic legal system:

MONISM	DUALISM
National and international law form one single legal order in which international law is superior to and controls domestic law.	International law and domestic law exist separately and cannot purport to overrule each other.

THE 17 PARTS OF UNCLOS AND ITS ANNEXES

- UNCLOS known as the “**constitution for the oceans**”.
- Sets out the rules and principles governing a very wide range of ocean activities, from navigation to fishing, including marine scientific research and deep seabed mining.
- Provides rules for maritime delimitation and the settlement of disputes.
- **320 Articles** set out in **17 Parts** and **nine Annexes**.



“the greatest international legislative effort undertaken by the United Nations and probably the greatest ever undertaken in the annals of international law as a whole.”

Statement of Norway, 186th meeting, Official Records of the Third United Nations Conference on the Law of the Sea

THE 17 PARTS OF UNCLOS AND ITS ANNEXES



Part I: Introduction

Part II: Territorial Sea and Contiguous Zone

Part III: Straits used for International Navigation

Part IV: Archipelagic States

Part V: Exclusive Economic Zone

THE 17 PARTS OF UNCLOS AND ITS ANNEXES

Part VI: Continental Shelf

Part VII: High Seas

Part VIII: Regime of Islands

Part IX: Enclosed or Semi-Enclosed Seas

Part X: Right of Access of Land-Locked States to and from the Sea and Freedom of Transit

Part XI: The Area



THE 17 PARTS OF UNCLOS AND ITS ANNEXES



Part XII: Protection of the Marine Environment

Part XIII: Marine Scientific Research

Part XIV: Development and Transfer of Marine Technology

Part XV: Settlement of Disputes

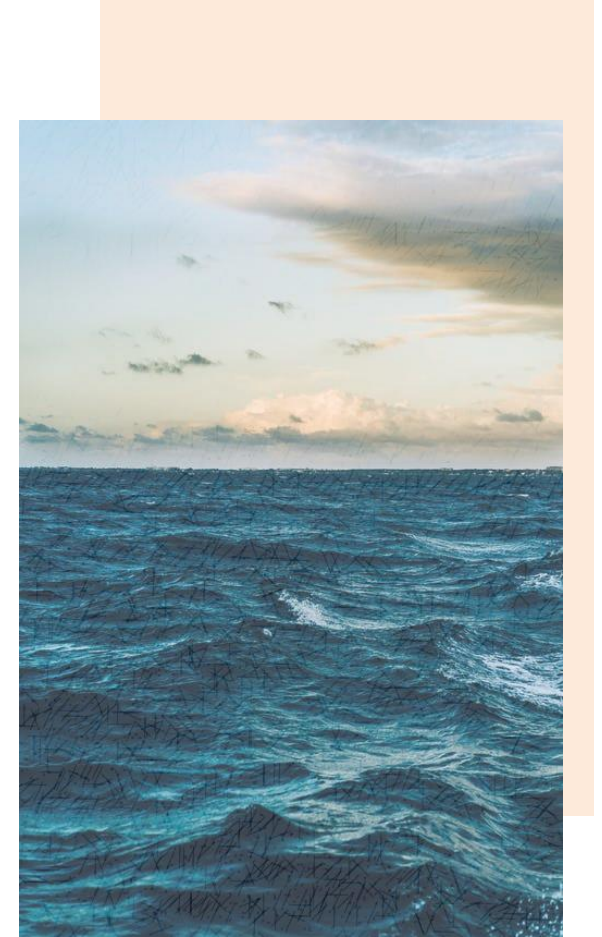
Part XVI: General Provisions

Part XVII: Final Provisions

7 Annexes: Highly migratory species, CLCS, dispute settlement, etc.

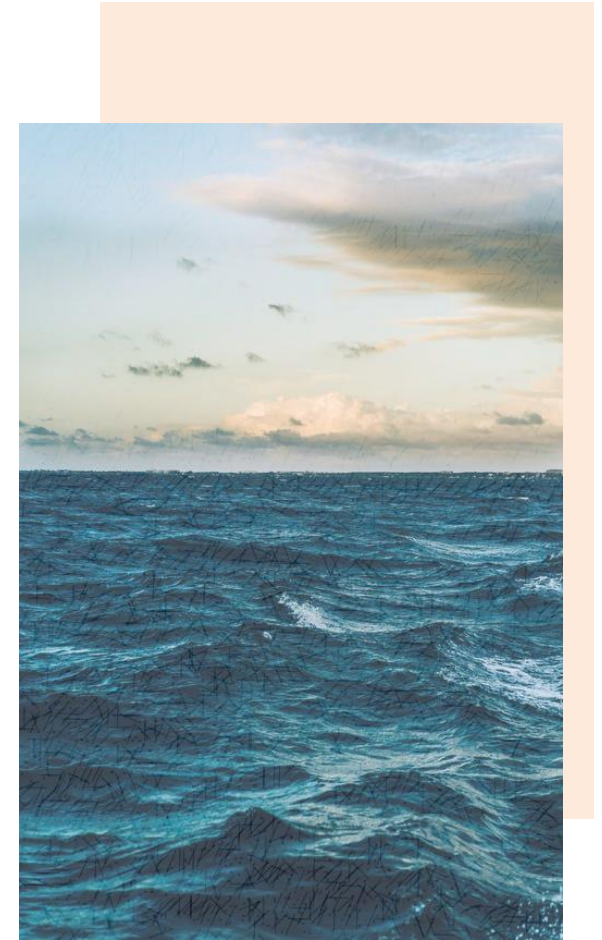
CRITICAL THOUGHT on UNCLOS

- UNCLOS is a remarkable legal achievement:
 - Reflects a delicate balance between competing interests in the use of oceans.
 - Provides a comprehensive framework for the entire international community.
 - Contains a wide legal framework for the protection and preservation of the marine environment and imposes a duty on all States to protect the oceans from pollution.
 - Promotes peaceful settlement of disputes.



A Small Step Into History – It all Begun in the Sea

- The History of Humanity shows that
- The Sea has played and continues to play a vital role
- Life started there
- Humans are related to the water (survival, expedition, etc)



I. In The Beginning...



“In the beginning God created heaven and the earth. And the earth was without form, and void; and darkness was upon the face of the deep. And the spirit of God moved upon the face of the waters...”

1534 Luther Bible



- *Earth formed around 4.540 billion years ago.*
- *Ocean emerges around 4.41 billion years ago.*
- *Forms around 70% of the world's surface.*

“The earliest known life forms on Earth are putative fossilized microorganisms, found in hydrothermal vent precipitates, that may have lived as early as 4.28 billion years ago, not long after the oceans formed 4.41 billion years ago, and not long after the formation of the Earth 4.54 billion years ago”

<https://en.wikipedia.org/wiki/Abiogenesis>



OCT 31ST 3,454,882,112 B.C.

*THE FIRST UNICELLULAR ORGANISM IN THE
PROMORDIAL SOUP WAS A QUITE A BIT BORED*



"Thanks Evolution"

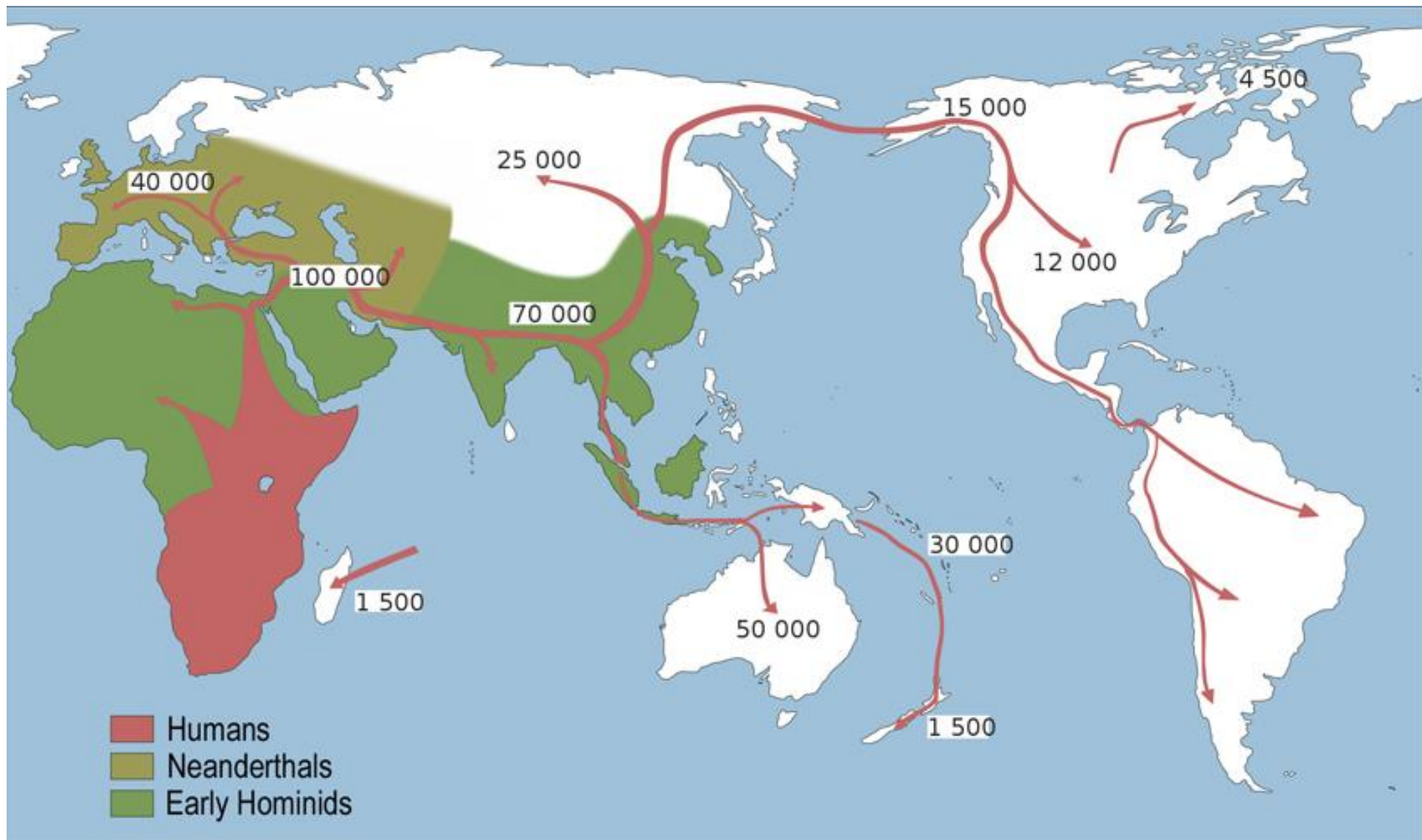
John Callahan



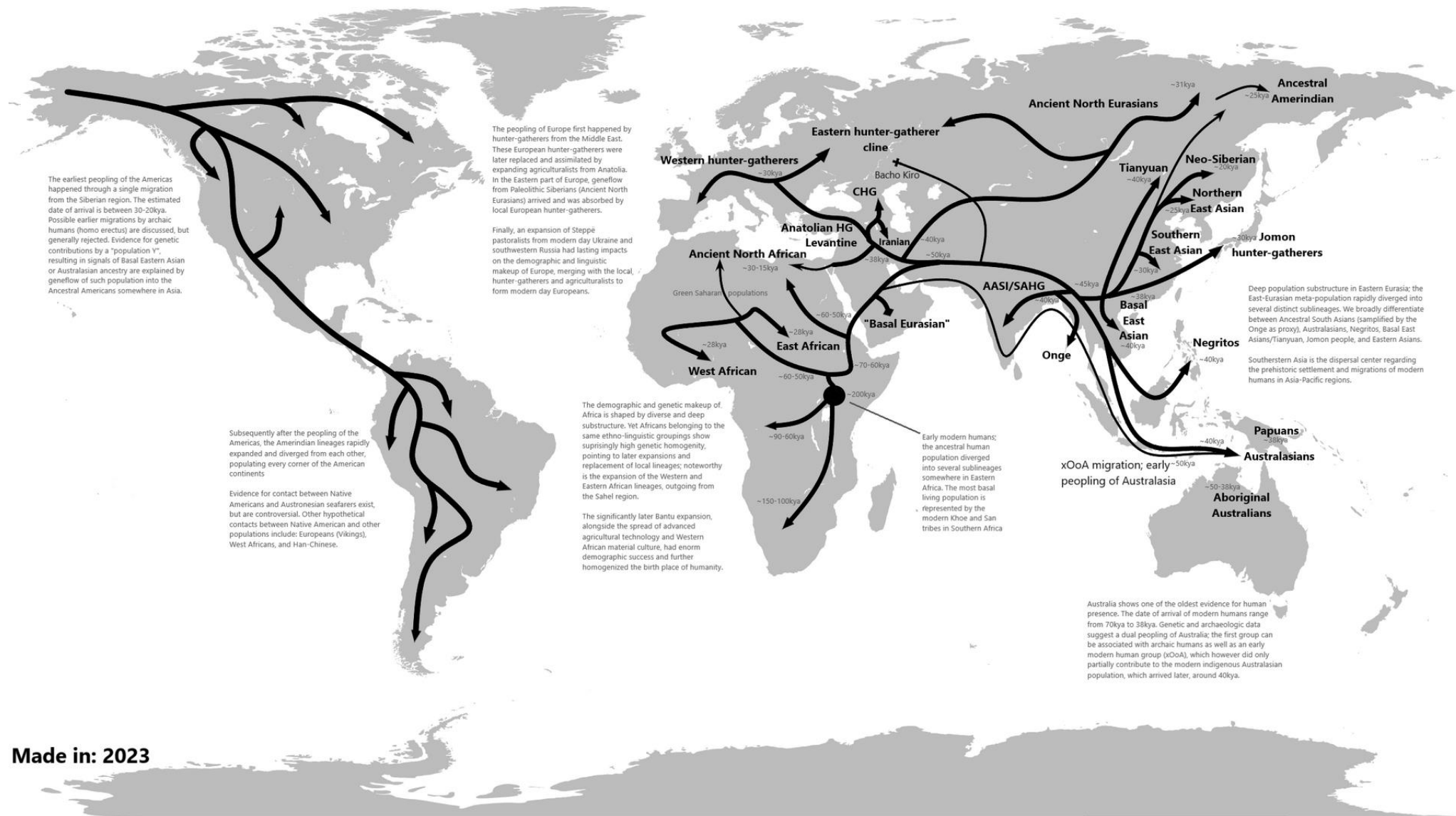
‘A broken shell fishhook found in East Timor provides evidence that humans were engaging in off-shore fishing much earlier than thought (scale is in millimetres).’

Humans were open ocean fishing around 42,000 years ago.

Nature.2011.9461



Source: <http://www.migrationheritage.nsw.gov.au/objects-through-time/essays/50000-years-before-present/index.html>



Made in: 2023

Source: [https://commons.wikimedia.org/wiki/File:Migration_routes_of_modern_humans_\(2023\).png](https://commons.wikimedia.org/wiki/File:Migration_routes_of_modern_humans_(2023).png)



The **Pesse canoe**, believed to be the world's oldest known boat, constructed between 8040BC and 7510 BC – discovered in 1955 during the construction of the Dutch A28 motorway

See: https://en.wikipedia.org/wiki/Pesse_canoe

Laws and Institutions: The Early Development of Maritime Laws and Courts



Lindos Acropolis – relief of a Rhodian ship, work of sculptor Pythokritos (180-170 BC)

- *The Rhodian Laws, a set of laws dated to 800 B.C. or 600 A.D. depending on the author, covering maritime commercial trade.*



Geographical Considerations!!!

How maps and geography changes (& borders) who exercises jurisdictional control?



The various 'commercial laws of nations'

- Consolato del Mare – 13th C
- Laws of Oleron – circa. 12th C
- Black Book of Admiralty (which incorporated the Laws of Oleron in the 1300s.
- Ordinances of the merchants and masters of Wisburg – 13th C
- Laws of the Hanseatic League - late 16th C
- Ordinance of Marine of Louis XIV, 1681 (the only set of 'laws' to postdate the emergence of modern public international law with the 1648 Treaty of Westphalia).

Oléron

Barcelona



Rhodes

Guillaume Sanson 1697

- Applied to resolve merchant disputes in:
 - Merchant city courts in Wisburg, London, Ipswich or Oleron, etc, the Court of Admiralty
 - Dealt with:
 - loss of ships and cargos to storms or foreign sovereigns
 - freight payable
 - rights of merchants in wartime
 - effect of restraint of princes on a voyage.



Merchant Adventurers' Hall, York, built in 1357, granted status of a Company of Merchant Adventurers in 1581 by Elizabeth I.

Vice Admiralty
Courts 1764



- Contained a mixture of what we would now characterise as public law and private law.
- E.g. Laws of Oleron regulated:
 - Food and wine rations for mariners
 - Contained navigation and pilotage rules
 - Made provision for when a merchant could abandon his voyage contract because a ship was “hindered by any lorde”.





The Development of Maritime Law (from Public International Law of the Sea, to Private Maritime Law)

Posthumous portrait of Christopher Columbus by Sebastiano del Piombo, 1519 (there are no known authentic portraits of Columbus)

Source:

https://en.wikipedia.org/wiki/Christopher_Columbus



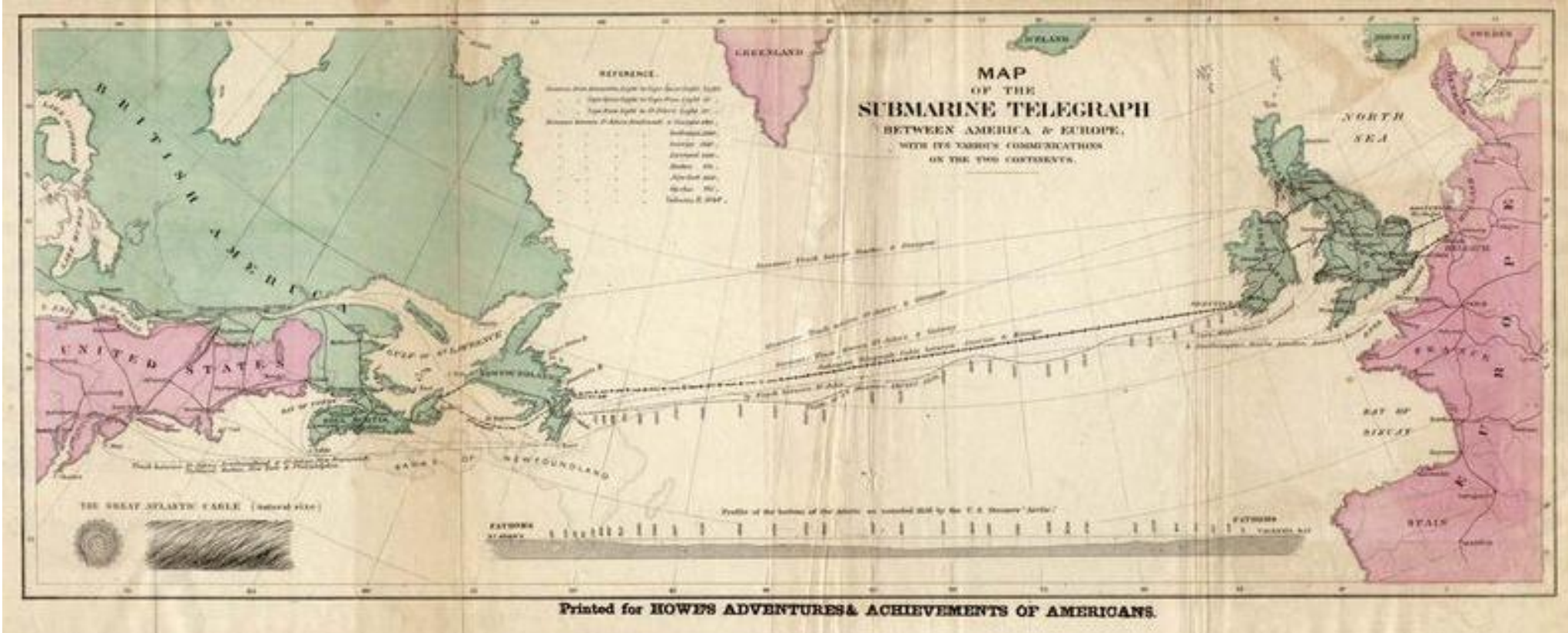
- Columbus discovers America in 1492 (Nb. Lief Erikson the Viking in 10/11th C).
- 1493 – Pope Alexander's Papal Bull donates all territories beyond 100 leagues to Spain – sovereignty over the sea?
- 1494 – treaty between Spain and Portugal allocating their 'shares'
- The English and Dutch complain.
- Hugo Grotius publishes *Mare Liberum* (Freedom of the Seas) in 1609, advocating principles of the freedom of the high seas over closed seas, except for a small band of water for security, fisheries and customs.
- The relationship between empire, colonisation, trade and the principle of freedom of the high seas.



- **What law applies to a vessel on the seas? Law of the flag.**



1858 Transatlantic Cable



Principle of freedom of the high seas applies to new technology.

Treaties, Contracts & Institutions: Law of the Sea and Maritime Law in the 19th and 20th C

- Pact of Paris 1856 – first multilateral treaty setting out rules on capture of enemy goods at sea.
- Wave of 19th codification at the Hague Conferences in 1899 and 1907, including treatment of enemy and neutral vessels and blockade.
- 1861 – New York Produce Exchange founded (which developed the NYPE Time Charterparty standard form contract in 1913).
- 1867 – First journal of international & comparative law established in Belgium by practising lawyers, with goal of observing ‘a new spirit, that taught nations and races to follow certain common principles not only in their mutual relations but their domestic legislation’.

- 1892 - London Court of Arbitration established, with the purpose of establishing a tribunal for the arbitration of domestic and trans-national commercial disputes arising within the City, by tribunals familiar with their businesses, not expensive law courts.
- 1905 - Hague Conference on Private International Law established to negotiate treaties on private international law.
- 1873 – Institut de Droit International established in Ghent and International Law Association (ILA) in Brussels.
- 1890 – ILA adopts first York/Antwerp Rules codifying the law of general average (but loses steam).
- 1897 - Comité Maritime International established, the first international non-governmental organization concerned exclusively with maritime law and related practices.

I · D · I
justitia et pax
INSTITUT DE DROIT INTERNATIONAL



- Brussels Diplomatic Conferences set up by Belgian Government and the CMI between 1905-1979, resulted in the following treaties:
 - Brussels Conventions on Collision and Salvage 1910
 - International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924
 - International Convention Relating to the Arrest of Sea-Going Ships 1952, and the
 - International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships (Brussels 1957).
- Following WWI (1914-1918) the League of Nations and the Permanent Court of International Justice are established.

- 1919 – International Chamber of Commerce (ICC) is established by a group of businessmen, self-titled ‘the Merchants of Peace’:
 - In 1923 it establishes the International Chamber of Arbitration.
 - It also develops standard form contracts – the Uniform Customs and Practice for Documentary Credits in 1933 and the Incoterms in 1936.
- First judgment delivered by the PCIJ in 1923, which concerns maritime transport and the rights of passage of international shipping through the Kiel Canal (*The S.S. Wimbledon*).
- Several efforts are made during this period to codify the public international law of the sea, but they fail.





INTERNATIONAL
MARITIME
ORGANIZATION



- IMO

The International Maritime Organisation

IMO History (some)



1948: UN Maritime Conference adopts Convention on the Inter-Governmental Maritime Consultative Organization (IMCO)



1958 Entry into force of Convention

1959 First Assembly of IMCO

1982 Name changed: IMO International Maritime Organisation

- Following the failure of the League of Nations and WWII (1939-1945) the United Nations is established in 1945.
- The International Maritime Organization (IMO) is established in 1948 as a specialised UN Agency. Its purpose is to:

‘provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships’. (Article 1(a), IMO Convention)

Its first task is to update the convention on the Safety of Life At Sea (SOLAS), which it does in 1960.





- Important IMO treaties:

- 1968 Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution
- International Convention on the Prevention of Pollution from Ships concluded in 1973 with a further Protocol in 1978 - MARPOL 73/78
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW)
- SOLAS
- See also Maritime Labour Convention, said to be the 4th pillar of the IMO, but concluded under the umbrella of the International Labour Organisation.
- See also the extensive list at <https://www.imo.org/en/about/Conventions/Pages/ListOfConventions.aspx>

PURPOSE OF IMO

- **Article 1(a) of the Convention**

To provide machinery for co-operation among Governments in the field of **governmental regulation and practices** relating to technical matters of all kinds affecting shipping engaged in international trade; to **encourage and facilitate the general adoption of the highest practicable standards** in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships

International Shipping: who develops the standards?

IMO General Method of Regulatory Control: the ship



International
Maritime
Organisation



Imposes Standards

Surveys the ship

Gives certificate



Checks certificate (ONLY)
Rare cases can intervene
Only fines allowed

“OLD” ships
normally get
certificate as
exempted - so
they can trade

- This method of control has been adopted in the LOSC 1982 but was sourced from the pre-existing MARPOL 1973/1978 and SOLAS 1914.
- A major concession to the shipping industry together with the grandfathering clauses

Marine casualties and the law evolution



Torrey Canyon, 1967 (source
<http://www.bbc.co.uk/news/uk-england-39223308>)



Pollution Liability in Shipping

Why a Special Pollution Liability Regime?

- Large spills can cause diffuse losses across property, fisheries, tourism, clean-up operations and the marine environment.
- Victims may face evidential difficulty if compensation depends on proving navigational or managerial fault.
- The liable ship may be foreign, mobile and owned through a complex corporate structure.
- Catastrophic losses may exceed the resources of a single shipowner.
- International conventions therefore combine liability rules with insurance and collective compensation mechanisms.

Marine Pollution — Public and Private Law Responses

- Public law focuses on prevention and enforcement: MARPOL regulation, intervention powers and criminal sanctions.
- Private law focuses on compensation through civil remedies.
- Marine pollution therefore operates through both preventive and compensatory legal techniques.
- International conventions coexist with national implementation and remedies.

The 'Disaster Reaction' Pattern

- Major casualties have repeatedly accelerated legal reform: Torrey Canyon (1967), Amoco Cadiz (1978), Exxon Valdez (1989), Braer (1993), Sea Empress (1996) and Prestige (2002).
- This history illustrates a recurring 'disaster reaction' syndrome in maritime regulation.
- Legislation has often developed incrementally after high-profile incidents rather than through a single comprehensive design.
- Industry initiatives and IMO treaty-making have both shaped the response.
- Critical question: does reactive law produce coherent prevention and compensation?

Recovery for Pollution Damage — Two Routes

- Traditional tort route: negligence and nuisance, subject to ordinary questions of fault, causation and limitation.
- Convention route: strict liability, limitation of liability, compulsory insurance and direct action against the insurer.
- The treaty model reduces the claimant's burden of proving fault.
- It also makes insurance and limitation part of the liability architecture rather than merely post-judgment issues.

Strict Liability or Fault-Based Liability?

- Strict liability removes the need to prove negligence in hazardous maritime activities.
- It internalises part of the economic cost of pollution even where due care has been exercised.
- It encourages operators to assess the scale and risk of their activity and to obtain adequate insurance.
- Practical advantage: potentially simpler litigation and more predictable compensation.
- Counterpoint: strict liability is usually balanced by statutory limitation and defined defences.

From Torrey Canyon to an International Compensation System

- The Torrey Canyon casualty exposed the limits of ordinary national remedies and prompted international action.
- Early voluntary industry schemes included TOVALOP and CRISTAL.
- The international response developed into the Civil Liability Convention and the Fund Convention.
- The modern architecture is deliberately layered: shipowner liability first, collective compensation where the first tier is insufficient.
- The policy objective is not merely to allocate fault — it is to make compensation realistically recoverable.

Marine casualties and the law evolution



Torrey Canyon, 1967 (source <http://www.bbc.co.uk/news/uk-england-39223308>)



The Core Convention Architecture

- CLC 1992 — tanker spills of persistent oil: liability is channelled principally to the registered shipowner.
- 1992 Fund Convention — a second compensation tier financed by qualifying oil receivers.
- 2003 Supplementary Fund Protocol — an optional third tier for participating States.
- BUNKER 2001 — pollution from bunker oil outside the CLC tanker regime.
- HNS 2010 — a two-tier model for hazardous and noxious substances; scheduled to enter into force in 2027.



Classification Societies



IACS (International Association of Classification Societies) members includes ABS (USA), BV (France), CCS (China), CRS (Croatia), DNV GL (Germany), IRS (India), KR (South Korea), LR (UK), PRS (Poland), RINA (Italy), RS (Russia)

The Role of Classification Societies

- Original role
 - To assess the condition of ships for insurance purposes
 - At intervals, to check the correct maintenance of ships by means of regular surveys & approval of repairs or modifications.
 - This is still done annually and every time there is damage on the ship
 - Uninsured ships can not operate in most jurisdictions
- Later development
 - To oversee the design & construction of ships
- New Role – as Recognised Organisations by Flag States
 - To act on behalf of Flag Administrations in the enforcement of International Conventions.

Liability of Classification Societies

- The shipowner can claim in contract
 - But normally, the contract limits liability to a multiple of the survey fee
- The relationship between recognised organisations and a flag state is regulated by IMO model agreements
 - These include limitation of liability
 - And an option for unlimited liability for loss of life and personal injury
- Third party liability
 - Depends on state

State Jurisdiction in Maritime Law

INTERNATIONAL LAW PRINCIPLES GOVERNING STATE JURISDICTION

- **State Jurisdiction:**
 - **“Power”, “authority” or “competence** under international law to regulate **people, property and circumstances.**
 - Stems from principles of (i) State sovereignty; (ii) Non-interference; and (iii) equality of States.
 - Needs a “sufficient connection” or “*Genuine Link*”.
 - 5 key principles: (i) territoriality; (ii) nationality; (iii) passive personality; (iv) protective principle; and (v) universality.

INTERNATIONAL LAW PRINCIPLES GOVERNING STATE JURISDICTION

- **Territoriality Principle:**

- A State has **jurisdiction** over conduct that occurs within its borders.
- Territory includes land but also:
 - Airspace;
 - Territorial sea;
 - for certain purposes, to the contiguous zone, the EEZ and the continental shelf; and
 - Ships and aircraft registered in the flag State.
- In principle, a State cannot regulate conduct outside its borders, *unless* another jurisdictional principle applies.

JURISDICTION IN MARITIME ZONES

- **Internal Waters:** Zone over which coastal State has **the most unrestricted** sovereign and jurisdictional powers (virtually the same as in land).

Merchant Vessels:

- In internal waters, flag State's jurisdiction and powers **generally give way** to those of the coastal State.
- Coastal States' powers and jurisdiction include boarding, conducting searches and investigating crimes aboard a vessel.

Sovereign Immune Vessels (SIVs):

- Flag State law retains primacy aboard the vessel.
- Coastal State's officials need **permission** from the flag State to go aboard.
- But SIVs require **diplomatic clearance** from the coastal State before they can enter that State's internal waters.

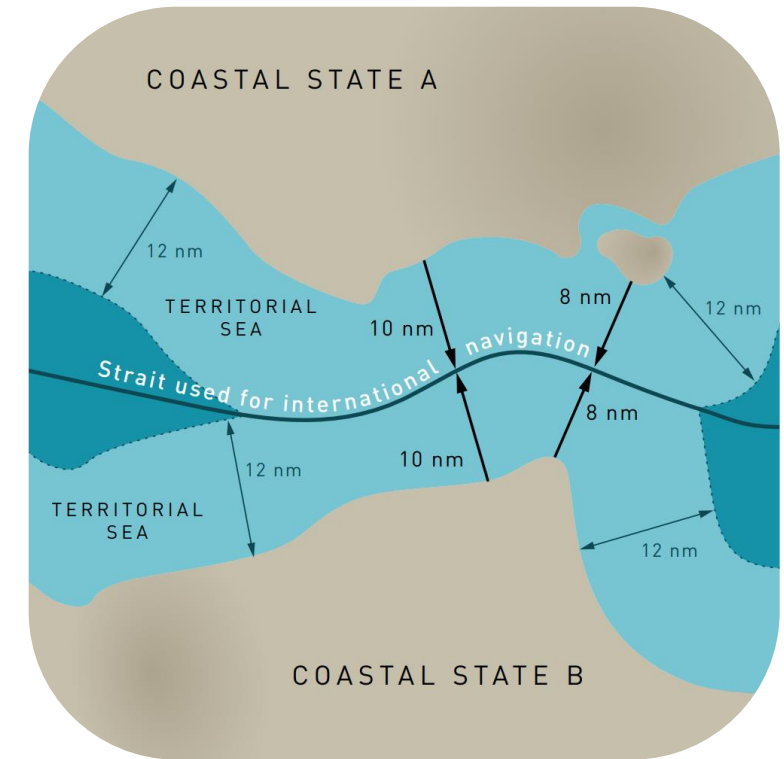
JURISDICTION IN MARITIME ZONES

■ Territorial Sea:

- States have virtually **full *prescriptive* jurisdiction** (e.g., UNCLOS Articles 22 and 23 re vessels carrying dangerous substances).
- They do **NOT** enjoy absolute *enforcement* jurisdiction over vessels and persons crossing these waters.

Right of Innocent Passage:

- Coastal State must not hamper a vessel's innocent passage.
- If vessel is engaged in non-innocent passage (e.g., intelligence collection, weapons exercises), coastal State may take action.



Source: United Nations' Office on Drugs and Crime, "[Maritime Crime: A Manual for Criminal Justice Practitioners](#)" (2017)

JURISDICTION IN MARITIME ZONES

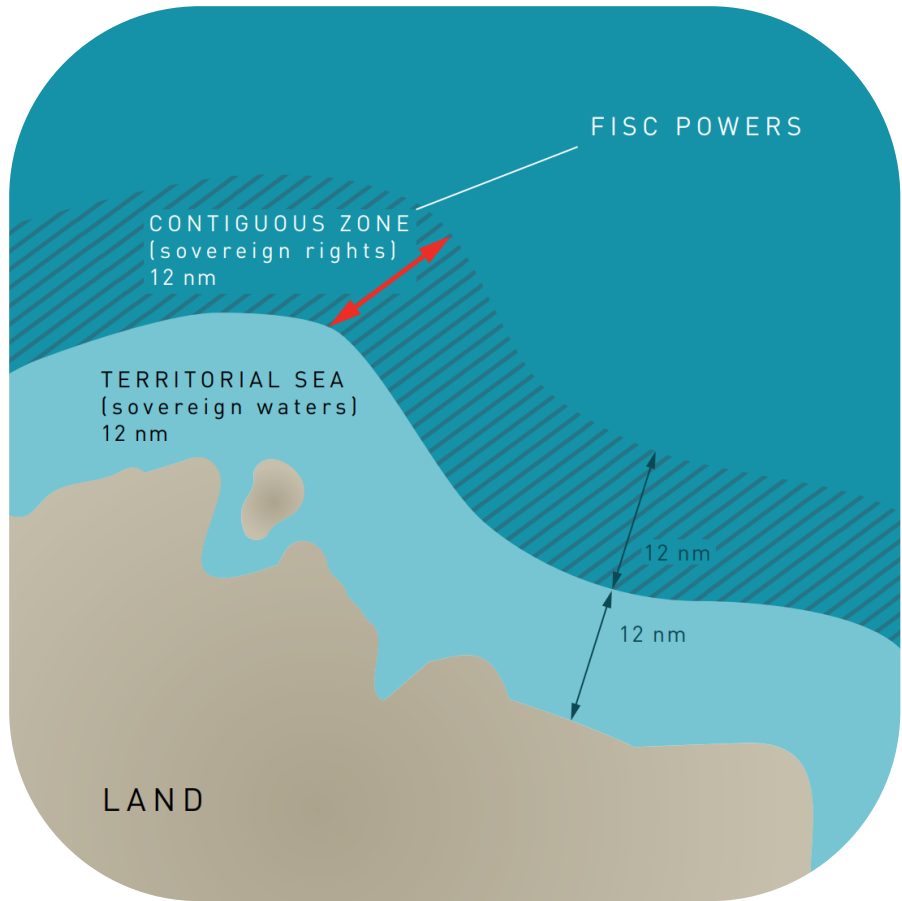
- **Non-sovereign vessels and right of innocent passage:**
 - Coastal State can take necessary steps in its territorial sea **to prevent non-innocent passage**.
 - These steps include initial maritime law enforcement such as approaching and boarding.
 - Coastal States can also exercise some **criminal** and **civil** jurisdiction over vessels engaged in **innocent passage**.



Criminal jurisdiction generally depends upon whether (i) act has an effect on coastal State, (ii) flag State representative or vessel's master requests assistance; (iii) concerns illicit traffic in drugs (UNCLOS Art. 27).

Civil jurisdiction is generally limited to obligations or liabilities incurred by the ship itself during its voyage in the Territorial Sea (UNCLOS Art. 28).

JURISDICTION IN MARITIME ZONES



Source: United Nations' Office on Drugs and Crime, "[Maritime Crime: A Manual for Criminal Justice Practitioners](#)" (2017)

- **In the Contiguous Zone**, a Coastal State can:
 1. **Prevent** infringement of its customs, fiscal, immigration or sanitary laws ("**FISC Laws**") within its territory or Territorial Sea (*e.g.*, stopping and boarding a vessel suspect of intending to breach these FISC laws); and
 2. **Punish** infringements of FISC laws previously committed in its territory or Territorial Sea (*e.g.*, pursuing and apprehending vessels that have violated one or more FISC laws).

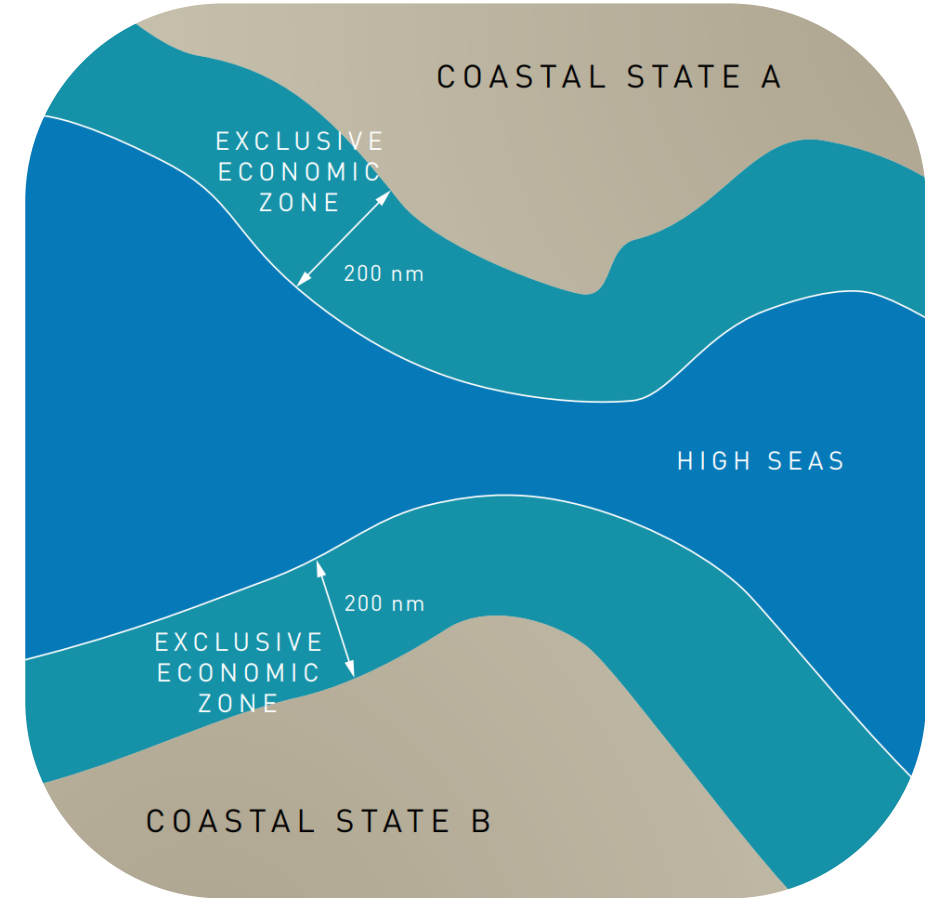
JURISDICTION IN MARITIME ZONES

Jurisdiction in the EEZ:

- Right to pass laws on matters related to living resources; enforcement in the EEZ must be limited to these matters. Otherwise, foreign ships in EEZ are subject to the exclusive jurisdiction of the flag State.
- Coastal State's rights include
- jurisdiction to explore and exploit natural resources in the continental shelf.

UNCLOS, Article 73(1):

*"The coastal State may in the exercise of its **sovereign rights** to explore, exploit, conserve and manage the living resources in the **exclusive economic zone**, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention".*



Source: United Nations' Office on Drugs and Crime, "[Maritime Crime: A Manual for Criminal Justice Practitioners](#)" (2017)

JURISDICTION IN MARITIME ZONES

Jurisdiction in the High Seas:

- No State may extend its jurisdiction over international waters.
- **BUT** an authority must be able to exercise control over vessels and persons sailing on the high seas.



Principle of **exclusive jurisdiction of the flag State**.

UNCLOS, Article 92:

"Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas".

The structure of international law

- **No legislating body.**
 - States are bound in two ways:
 - Customary International Law
 - Treaties they agree to:
 - Bilateral, multilateral
- **No doctrine of precedent**
 - Decisions of international courts and tribunals bind the parties to the dispute.
 - Can be used as evidence of what the law is but not as a source of the law.

High seas — the core idea

- UNCLOS Art. 87 makes the high seas open to all States
- Freedom of navigation is expressly protected
- The freedom is not absolute: due regard must be given to other States
- Other treaty rules and UNCLOS exceptions may qualify the freedom

Nationality of ships — Art. 91

- Each State fixes conditions for nationality and registration
- A ship has the nationality of the State whose flag it is entitled to fly
- The flag State issues documents evidencing that status
- UNCLOS also requires a “genuine link” between State and ship

One ship — one flag

- Art. 92: ships normally sail under one flag only
- Exclusive flag-State jurisdiction on the high seas follows from this status
- Changing flags during a voyage is tightly restricted
- Using multiple flags according to convenience can lead to assimilation to statelessness

Treaties versus Customary Int Law

- A treaties can be evidence of customary international law if:
 - Many States are parties
 - No practice inconsistent with the rule
- Between contracting states, a treaty modifies customary international law principles

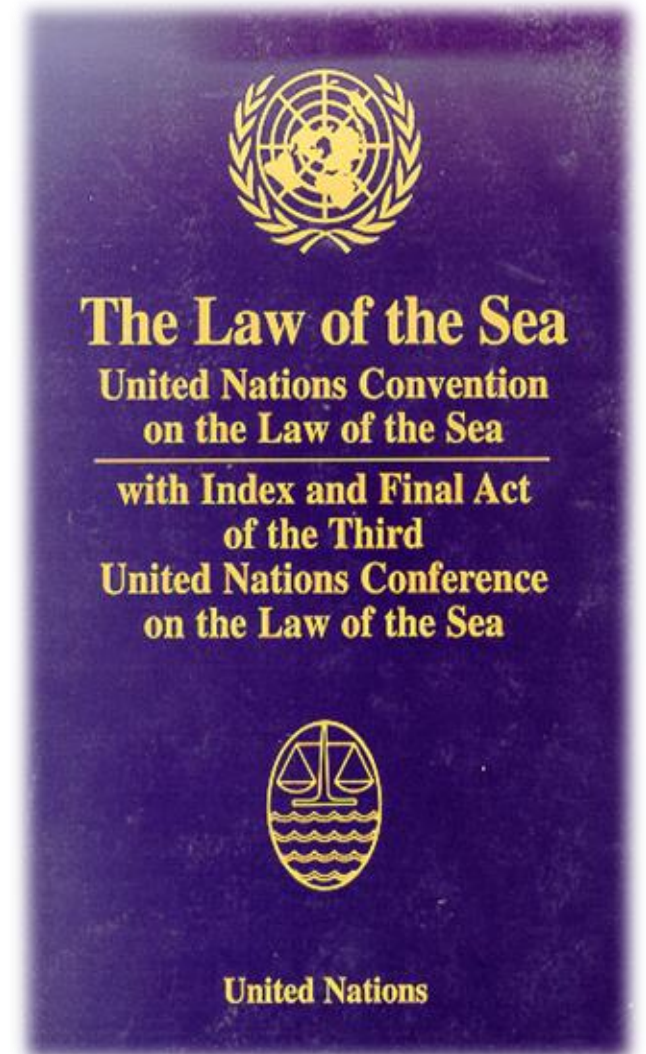
Historical division of the sea

- **Internal waters**
 - seaward of baseline of territorial sea
 - full sovereignty of coastal State
- **Territorial sea**
 - Uncertain distance (3 nm, 6nm, 200nm, how far the cannon reaches)
 - Sovereignty subject to right of innocent passage
- **High seas**
 - no jurisdiction of any State
 - freedom of navigation, fishing and other activities

Which states argued for larger territorial seas? Why?

The United Nations Convention on the Law of the Sea (UNCLOS, 1982)

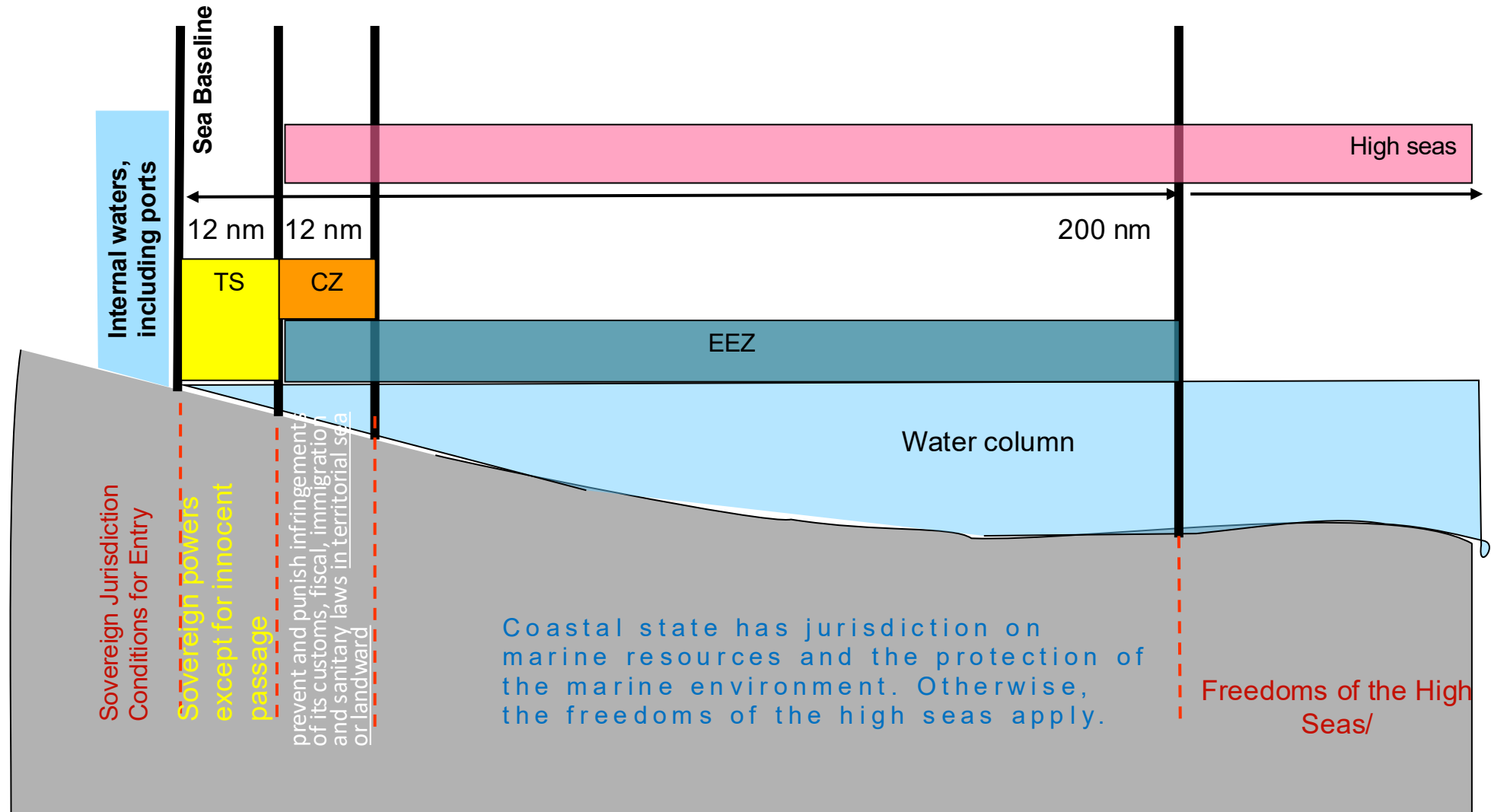
- An umbrella convention
 - without prejudice for any laws or rules which may previously exist
 - new parts and jurisdictional zones
 - Duties on state to develop further laws
- It has synergies with IMO instruments
 - refers to shipping laws (of which only some existed at the time of UNCLOS)
 - Refers to the “competent international organization” – the IMO for shipping purposes.
- A compromise between developing and “trading” states.



Jurisdictional zones under UNCLOS

- Internal waters
- Territorial sea (up to 12 nm)
- High seas
- Archipelagic waters
- Contiguous zone (up to 24 nm)
- Exclusive economic zone (EEZ max 200 nm)
- Continental shelf (min 200 nm)
- Seabed beyond national jurisdiction (International Seabed Authority)
- The Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) adopted on 19 June 2023

The zones in UNCLOS



The High Seas (Art.87)

1, The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

- 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

The High Seas

Art 90. Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Art. 91. Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92. Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

The genuine link

- “Article 91 leaves to each State exclusive jurisdiction over the granting of its nationality to ships. In this respect, article 91 codifies a well-established rule of general international law. Under this article, it is for Saint Vincent and the Grenadines to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. **These matters are regulated by a State in its domestic law.** Pursuant to article 91, paragraph 2, Saint Vincent and the Grenadines is under an obligation to issue to ships to which it has granted the right to fly its flag documents to that effect. The issue of such documents is regulated by domestic law. “
 - (M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, p. 10, at pp. 36–37, para. 63)

The “genuine link” — what it is NOT

- It is not a license for other States to invalidate a registration
- Registration conditions remain primarily a matter for the flag State
- The concept is directed at effective flag-State control
- The key practical question is whether the flag State performs its Art. 94 duties

Duties of the flag state (Art.94)

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular, every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
 - (a) the construction, equipment and seaworthiness of ships;
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
 - (c) the use of signals, the maintenance of communications and the prevention of collisions.

Art. 94

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Art. 94 — administrative duties

Maintain a register of ships

Assume jurisdiction over the ship, master, officers and crew

Exercise effective control in administrative, technical and social matters

Art. 94 — safety duties

Construction, equipment and seaworthiness

Manning, labor conditions and crew training

Signals, communications and collision prevention

Compliance with generally accepted international regulations and practices

Art. 94 — survey and competence

Ships must be surveyed before registration and at appropriate intervals

Navigational charts, publications and equipment must be appropriate

Master and officers must possess suitable qualifications

Crew numbers and competence must fit the ship and its machinery

Art. 94 — casualty investigation

The flag State must inquire into serious high-seas casualties involving its ships

The duty is triggered by serious injury/loss or serious damage to another State's ships/installations/environment

Relevant States are expected to cooperate

Collision jurisdiction — Art. 97

For a high-seas collision/navigation incident, penal or disciplinary proceedings are generally confined to the flag State or the accused person's State of nationality

Only the issuing State may withdraw a master's competence certificate in disciplinary matters

Arrest/detention for investigation is reserved to the flag State

Internal waters – including ports

- No general right to enter a foreign port
 - a customary exception for vessels in distress when life at risk
 - Coastal state can withhold access to the port OR can make it conditional
 - Art. 25(2) In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.
- “friendship commerce and navigation” treaties and some multilateral treaties accord right to enter ports, GATT Article V: freedom of transit
- When a ship is voluntarily in a port, it subjects itself to jurisdiction of coastal State.

Internal waters — legal character

- Waters landward of the baseline fall under coastal-State sovereignty
- The coastal State has maximum prescriptive and enforcement jurisdiction
- Foreign ships do not enjoy a general UNCLOS right of passage comparable to territorial-sea innocent passage
- Special situations may preserve passage where straight baselines newly enclose waters

Internal waters – including ports

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- “friendship commerce and navigation” treaties and some multilateral treaties accord right to enter ports, GATT Article V freedom of transit
- When a ship is voluntarily in a port, it subjects itself to jurisdiction of coastal State.

The Territorial Sea

UNCLOS Article 18:

innocent passage means continuous and expeditious navigation through the territorial sea to or from internal waters or port of coastal State, or traverse without entering internal waters – no stopping and anchoring except as incidental to ordinary navigation or necessary due to *force majeure*, distress or rendering assistance to persons, ships or aircraft in danger or distress

Duties of coastal State:

- Not hamper innocent passage (Article 24(1))
- Publicise any danger to navigation of which it knows (Article 24(2))
- Not levy toll for passage (Article 26(1))

But may suspend innocent passage for weapons exercises or other essential security reason on due advance publicity (Article 25(3)).

The Territorial Sea

- Article 17 Right of innocent passage
 - Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.
- Article 18 Meaning of passage
 - 1. Passage means navigation through the territorial sea for the purpose of:
 - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
 - 2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.
- Coastal state:
 - Not hamper innocent passage (Article 24(1))
 - Issue warnings for danger to navigation of which it knows (Article 24(2))
 - Not ask for payment for the passage (Article 26(1))
 - Can suspend innocent passage for weapons exercises or other essential security reason (Article 25(3)).

Non-innocent passage (art 19)

Passage not innocent IF vessel engages in:

- threat/use of force against coastal State's sovereignty/territorial integrity
 - exercise/practice of weapons of any kind
 - collection of information prejudicial to security of coastal State
 - any act of propaganda aimed at coastal State's defence or security
 - launching or taking on board of aircraft or military device
 - loading/unloading of any commodity, currency or person contrary to laws of coastal State
 - act of wilful and serious pollution
 - fishing activity
 - research or survey activities
 - interference with communications
 - any other activity not directly related to passage.
- Coastal State may prevent passage which is not innocent: UNCLOS Article 25(1).

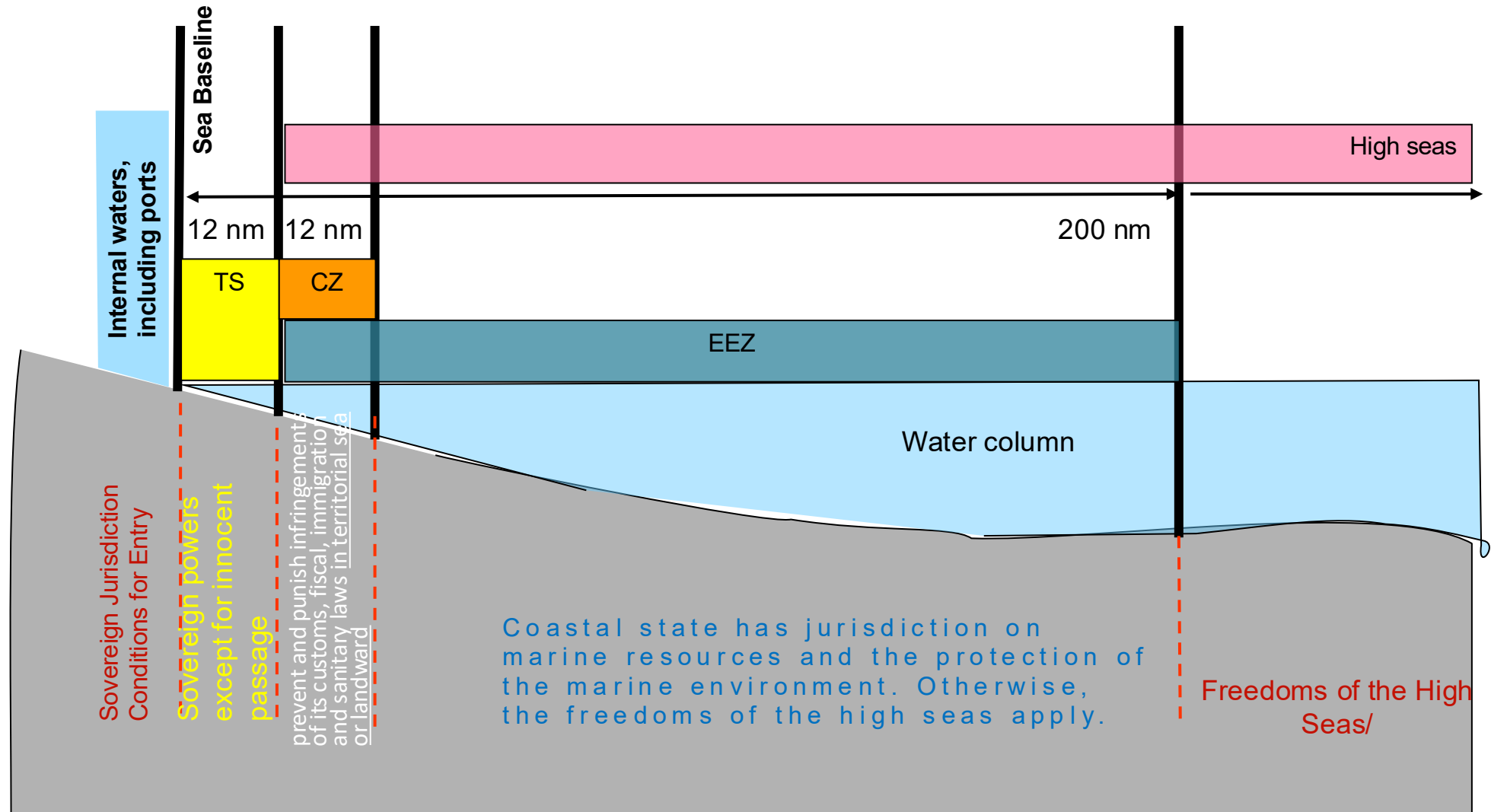
Laws of coastal state in the territorial sea (Art.21):

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
 - (a) the safety of navigation and the regulation of maritime traffic;
 - (b) the protection of navigational aids and facilities and other facilities or installations;
 - (c) the protection of cables and pipelines;
 - (d) the conservation of the living resources of the sea;
 - (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
 - (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
 - (g) marine scientific research and hydrographic surveys;
 - (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.
2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.
3. The coastal State shall give due publicity to all such laws and regulations.
4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Ports — no general right of entry

- A State may normally refuse a foreign ship access to its ports
- Customary law recognises an important distress/human-life exception
- Treaties may create additional access rights
- Because entry is voluntary, the port State can attach conditions to admission

The zones in UNCLOS



Port entry as regulatory leverage

The State can make access conditional on compliance with specified requirements

Art. 25(2) permits steps to prevent breach of admission conditions

This gives ports regulatory influence beyond the immediate act of berthing

Treaty obligations may constrain how conditions are framed

A ship voluntarily in port

Voluntary entry subjects the ship to the territorial jurisdiction of the port/coastal State

The State may board and inspect within the limits of applicable law

Port jurisdiction becomes particularly important for safety and pollution enforcement

Territorial sea — sovereignty qualified

- The coastal State may claim up to 12 nautical miles
- Its sovereignty extends to the territorial sea
- But all ships enjoy the right of innocent passage
- The legal problem is therefore one of balancing sovereignty and passage

The High Seas (Art.87)

- 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.
- 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Art. 18 — what counts as passage?

- Traversing the territorial sea without entering internal waters, or proceeding to/from them
- Passage must be continuous and expeditious
- Stopping/anchoring is allowed when incidental to ordinary navigation
- It is also allowed for force majeure, distress or rendering assistance

“Continuous and expeditious”

- The phrase prevents ships from lingering without navigational justification
- It does not mean an obligation to proceed at maximum speed
- Safety of navigation remains relevant
- Environmental regulation must be assessed against the obligation not to hamper passage

Art. 19 — when passage loses innocence

- Passage must not be prejudicial to the peace, good order or security of the coastal State
- Art. 19(2) identifies activities that make passage non-innocent
- Examples include weapons activity, intelligence gathering, fishing and serious wilful pollution
- Activities unrelated to passage can also remove innocence

The High Seas

Art 90. Every State, whether coastal or land-locked, has the right to sail **ships flying its flag** on the high seas.

Art. 91. Nationality of ships

1. Every State **shall fix the conditions for the grant of its nationality to ships**, for the registration of ships in its territory, and for the right to fly its flag. **Ships have the nationality of the State whose flag they are entitled to fly.** There must **exist a genuine link** between the State and the ship.

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2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Art. 21 — Coastal-State laws

- The coastal State may legislate on safety of navigation and maritime traffic
- It may protect navigational aids, cables, resources and the environment
- It may regulate customs, fiscal, immigration and sanitary matters
- Foreign ships on innocent passage must comply with valid Art. 21 laws

Art. 21(2) — the CDEM limitation

- Coastal-State laws generally may not impose unilateral design, construction, equipment or manning requirements on foreign ships
- Exception: rules giving effect to generally accepted international standards
- This protects international uniformity in ship technical standards

Art. 24 — coastal-State restraint

The coastal State must not hamper innocent passage

It must not impose requirements that practically deny or impair the right

It must not discriminate between foreign ships or cargoes

Known dangers to navigation must be publicised

Art. 25 — protecting the coastal State

The coastal State may take necessary steps to prevent passage that is not innocent

It may protect conditions attached to entry into internal waters or ports

Temporary suspension of innocent passage is possible for essential security reasons if properly publicised

Flag, coastal and port State — Distinction

- Flag State: authority based on the ship's nationality
- Coastal State: authority based on conduct within maritime zones
- Port State: authority arising when a foreign ship voluntarily enters port
- The same State can act in different capacities in the same case

Example — oil discharge in territorial sea

Step 1: identify the zone — territorial sea

Step 2: identify the rule — coastal pollution law / international standard

Step 3: ask whether passage remains innocent

Step 4: identify available inspection, proceedings and detention powers

Example — safety equipment in port

- A foreign ship voluntarily enters port
- Port sovereignty gives the State substantial inspection/enforcement power
- But unilateral CDEM standards raise questions of treaty compatibility and international uniformity
- Distinguish a condition of port entry from an attempt to regulate conduct on the high seas

Art. 94

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

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THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

- Piracy considered to be *the* original universal jurisdiction crime.
- UNCLOS regulates piracy in Articles 100 to 107 and 110.
- These Articles codify customary international law and are thus binding on all States.

THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

- 5 elements of UNCLOS definition of piracy:
 - “illegal acts of violence or detention, or any act of depredation”;
 - committed for “private ends”;
 - “by the crew or the passengers of a private ship or private aircraft”;
 - against another ship or aircraft
 - on the high seas or in a place outside the jurisdiction of any State.

UNCLOS, Article 101:

“Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

UNCLOS, Article 105:

"On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The Courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ship, aircraft or property, subject to the rights of third parties acting in good faith."

THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

Role of the UNSC and its Resolutions:

- The UNSC has adopted several resolutions dealing with Piracy Chapter VII of the UN Charter (e.g., resolutions **1816** (2008), **1846** (2008), **1851** (2008), **1897** (2009), **1918** (2010), **2246** (2015), **2316** (2016), **2383** (2017), **2500** (2019), **2608** (2021), **2634**(2022)).
- Most of these adopt concrete measures against piracy in the Gulf of Guinea or the Horn of Africa.

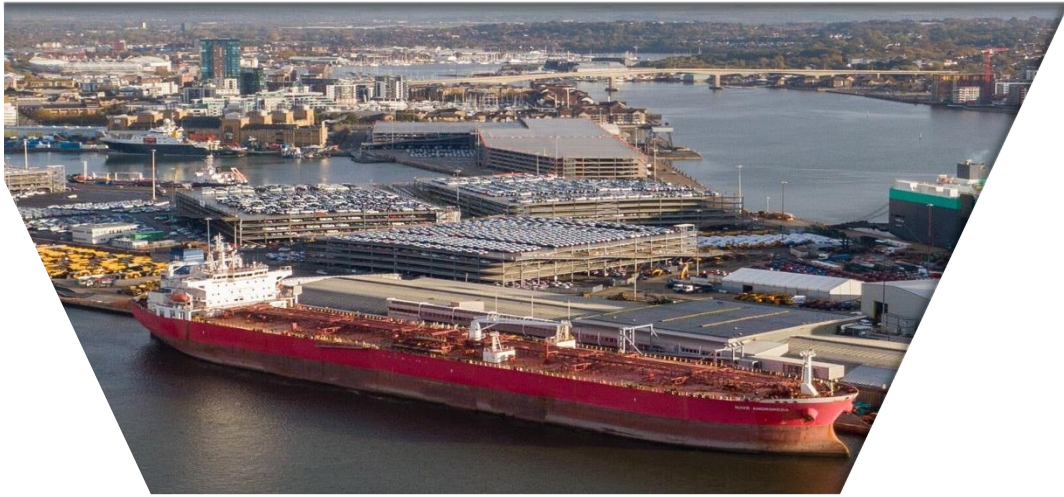
THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

■ IMO's Role in Countering Piracy:

- Has adopted non-binding resolutions creating structures to combat piracy.
- Has facilitated anti-piracy arrangements:
 - 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery (ReCAAP);
 - 2008 Sub-Regional Coast Guard Network for the West and Central African Regions (MOWCA);
 - 2009 Djibouti Code of Conduct Concerning the Repression of Piracy;
 - 2007 Singapore Statement; and
 - Code of Conduct concerning the repression of piracy, armed robbery against ships, and illicit maritime activity in west and central Africa.
- Has issued numerous recommendations and guidance.



THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW



- **National Legal Responses:**
 - Numerous States have criminalised piracy and set out procedures to prosecute pirates before their courts, including:
 - **In Africa:** Somalia, Kenya, Seychelles, Tanzania and Mauritius.
 - **In Europe:** Belgium, France, Italy, Germany, Spain and the Netherlands.
 - **In America:** USA, Mexico, Argentina and Chile.

The *Nave Andromeda* in Portsmouth after a hijacking attempt.

Source: [The New York Times/Getty Images](#)

THE COUNTER-PIRACY REGIME UNDER INTERNATIONAL LAW

- **Difficulties in prosecuting pirates include:**
 - Limited exercise of universal jurisdiction to prosecute pirates;
 - Challenges in evidence gathering;
 - Lack of judicial, trial and prison capacity; and
 - Potential human rights violations.

THE SHIPPING INDUSTRY'S RESPONSE TO PIRACY

- **Measures adopted by the shipping industry include:**
 - Developing of guidance by key industry actors;
 - Developing enhanced risk assessment and company planning systems;
 - Enhancing information sharing concerning typical pirate attacks;
 - Developing security-related training for masters and crewmembers; and
 - Adopting specific self-protection measures, including re the use of Private Maritime Security Companies (**PMSCs**)

SUPPRESSION OF UNLAWFUL ACTS AT SEA

- **Smuggling of Migrants:**

- Subject to different legal frameworks, namely the law of the sea and transnational criminal law.
- Can be defined as:

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

UNTOC Smuggling of Migrants Protocol, Art. 3(a).

- UNCLOS refers to “immigration” only with regard to the competence of the coastal State to prevent or suppress infringements of its immigration laws.
- Neither the smuggling of migrants nor human trafficking are contemplated by UNCLOS as specific grounds for the right to visit a foreign vessel.

SUPPRESSION OF UNLAWFUL ACTS AT SEA

■ Terrorism at Sea:

- Some claim may be fought on the
- basis of general international law
- (e.g., self-defence).
- If a ship has been brought under
- the control of terrorists with the aim of using it as a weapon, the flag State is under **an obligation to intervene**.
- Pursuant to UNSC Resolutions **1368** (2001) and **1373** (2001) major scale terrorist attacks can be considered as a **threat to international peace and security**.

“Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally: (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act [...]

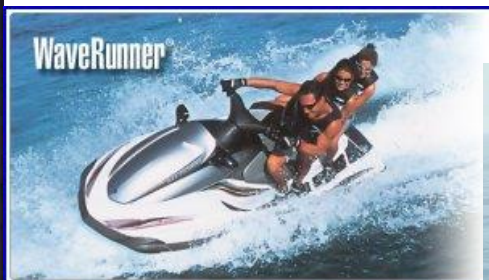
Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Art. 3*bis*.

II – The Ship as a Legal Object

Definition, Classification, Special Treatment / Status Quo

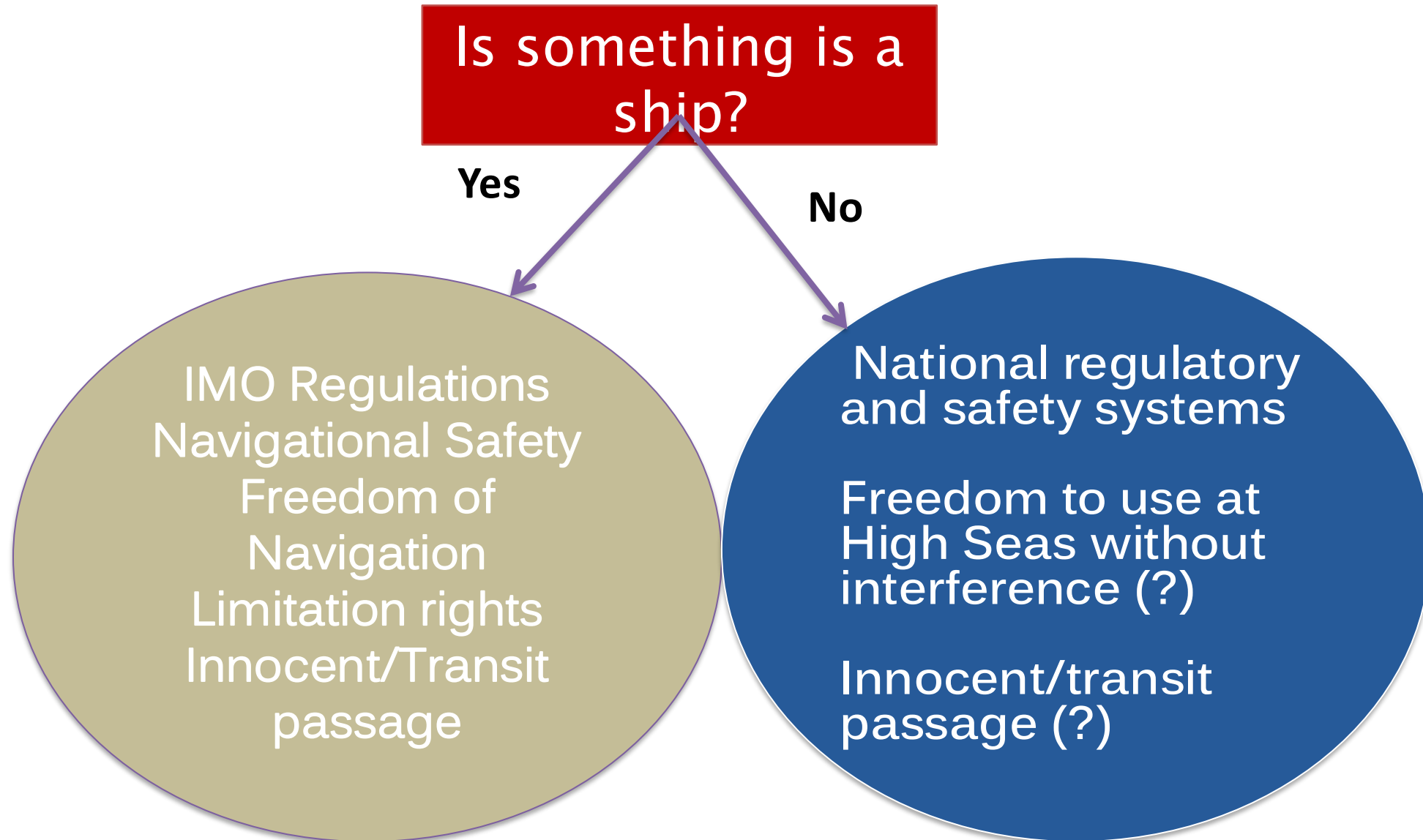


What is a ship?



Why does it matter?

Regulatory Framework Options



Where Can Maritime Craft Operate?

If a ship:

- Everywhere ships go and do whatever ships do
- It should comply with shipping legislation **including manning requirements**

If not a ship:

- Territorial Sea of deploying state
 - In the high seas and EEZ- but interference by other states possible
 - Territorial sea, international straits of other states could be a matter for the coastal state
- Access to foreign ports may not be available

Why the ship is the central concept

- A ship is simultaneously a physical object, transport asset and source of legal rights and liabilities
- It is individually identifiable and can move between jurisdictions
- It can be owned, sold, mortgaged, arrested and judicially sold
- Maritime law sometimes gives ships treatment unlike ordinary movable property

Is a ship a legal person?

- No: the vessel does not acquire legal personality merely because maritime law treats it as a distinct juridical object
- But the ship can be the object of proprietary rights and, in common-law admiralty procedure, an action *in rem*
- This helps explain why the vessel itself appears prominently in maritime claims

There is no single universal definition of “ship”

- The definition depends on the statute, convention or legal question being applied
- Different regimes define vessels differently because they pursue different purposes
- The correct question is: “Is this a ship for the purposes of this legal regime?”
- Classification can determine whether specialist rules on registration, mortgages, arrest or liability apply

Traditional Greek Private Law Approach

- Former Greek Code of Private Maritime Law: definition built around cumulative physical and functional criteria
- A vessel or hull
- Minimum net tonnage: traditionally at least 10 tons
- Self-propulsion: mechanical power or wind
- Intended movement at sea rather than merely inland waters

Ship or floating construction?

Classification problem

- Not every floating object is legally treated as a ship
- Barges, floating cranes, floating lights, offshore structures and other floating constructions may require separate classification
- Function and intended use matter more than superficial appearance
- The classification matters because not every rule applicable to ships automatically applies to floating structures

Greek law reform: Law 5020/2023

Current Greek law framework

- The new Greek Code of Private Maritime Law replaced the former Code and entered into force on 1 May 2023
- It modernises Greek private maritime law for contemporary maritime activity
- The approach to the ship is broader and more functional than the older rigid criteria
- Floating constructions are expressly addressed as a separate category

Why the legal definition matters

Practical consequences

- Ownership and transfer rules may depend on classification
- Registration requirements may depend on classification
- Mortgages, maritime privileges, arrest and enforcement can depend on the object being a ship
- Liability regimes may use their own definitions
- A classification issue can therefore change the legal outcome of a commercial dispute

The Ship as a Special Movable Asset

- A ship is movable property, but it is not treated like an ordinary chattel
- Ships are high-value, internationally mobile assets
- Reliable public records matter to buyers, banks and creditors
- Registration and maritime mortgages give the asset a property-law structure that resembles, in some respects, immovable property
(see also security – lien → ship arrest)

III – Nationality, Flag, Registration

How a ship is connected to a State

Ship nationality and the flag

Nationality

- Ships possess a nationality expressed through entitlement to fly a State's flag
- UNCLOS Article 91: each State fixes conditions for nationality, registration and the right to fly its flag
- The ship has the nationality of the State whose flag it is entitled to fly
- Article 91 also refers to a “genuine link” between State and ship

Why nationality matters

- It identifies the flag State
- It connects the vessel to a legal and regulatory system
- It affects safety and technical regulation, manning and administrative supervision
- It provides the principal jurisdictional link on the high seas
- It matters for enforcement of international maritime standards

One flag at a time

- UNCLOS Article 92: ships normally sail under the flag of one State only
- On the high seas, the flag State has the central jurisdictional role, subject to recognized exceptions
- A ship cannot simply switch flags for convenience during a voyage
- Using multiple flags according to convenience undermines the nationality system

Nationality is not ownership nationality

- The nationality of the shipowner is not necessarily the nationality of the ship
- A Greek-controlled vessel may fly the Liberian, Panamanian or Marshall Islands flag
- Building, ownership, registration and recycling can all occur in different States
- This geographical separation is a normal feature of modern shipping

The “genuine link”

Open registries

- UNCLOS requires a genuine link but does not precisely define its content
- The regulatory concern is whether the flag State can exercise effective jurisdiction and control
- Ownership, management, crew and commercial operation may all be located outside the flag State
- The legal debate is not solved simply by labelling an open registry a “flag of convenience”

Why choose an open registry?

- Taxation and registration costs
- Crewing flexibility
- Administrative efficiency and service quality
- Access to certification, finance and supporting services
- Commercial choice must still sit within international obligations of the flag State

Nationality and registration are related — but different

- Nationality = legal relationship between the ship and the State
- Registration = institutional mechanism recording the vessel and relevant information
- Registration is the practical route through which nationality is commonly evidenced
- Registration also has important private-law consequences

Registration has a dual role

- Public law: establishes the vessel's flag and relationship with the flag State
- Private law: records information relevant to ownership and financial security
- The register helps third parties identify the vessel and registered interests
- This is why registration matters to regulators, buyers, banks and creditors

Registration and evidence of ownership

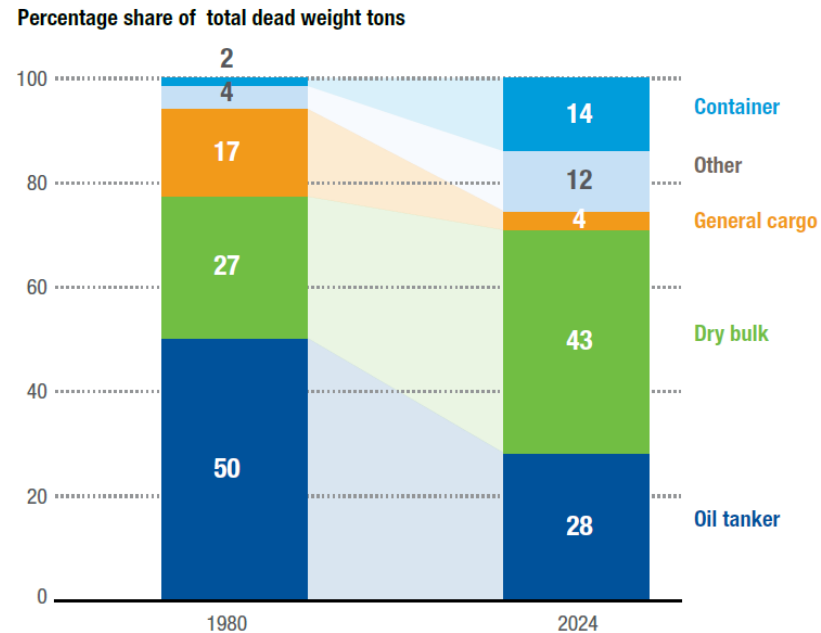
- Registration can provide strong evidence of ownership, but it is not necessarily conclusive title
- The ship register should not automatically be treated like an indefeasible land register

Maritime Trade around the World



Figure II. 3

The shares of various ship types in the world fleet capacity, 1980 and 2024

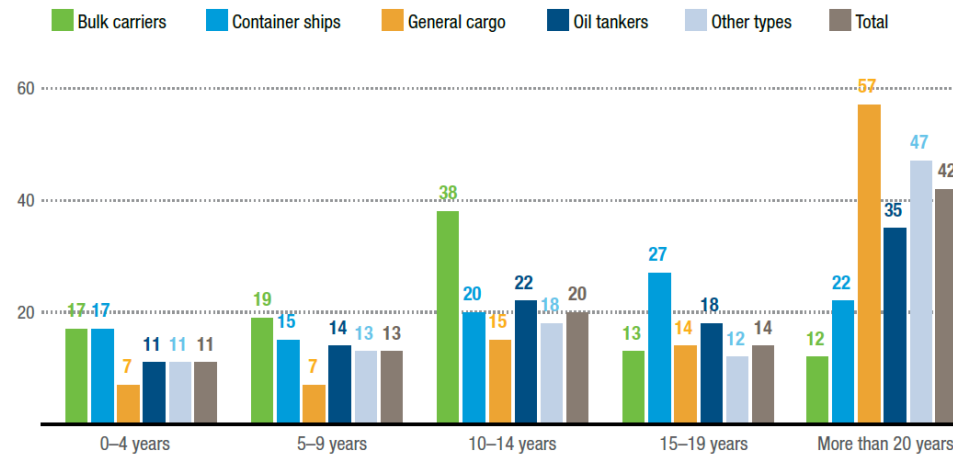


Source: UNCTAD calculations, based on data from table II.1 of this report and UNCTAD statistics.



Figure II. 5

Average age of world fleet, percentage number of vessels, 2024



Source: UNCTAD calculations, based on data provided by Clarkson's Research Services.
Note: Prorated seagoing vessels of 100 gross tons and above, as of 1 January 2024.

Deadweight is the difference in tones between the displacement of a ship in water of a specific gravity of 1.025 at the load waterline corresponding to the assigned summer freeboard and the lightweight of the ship."

UNCTAD Report on Maritime Trade 2024

A snapshot of the shipping industry

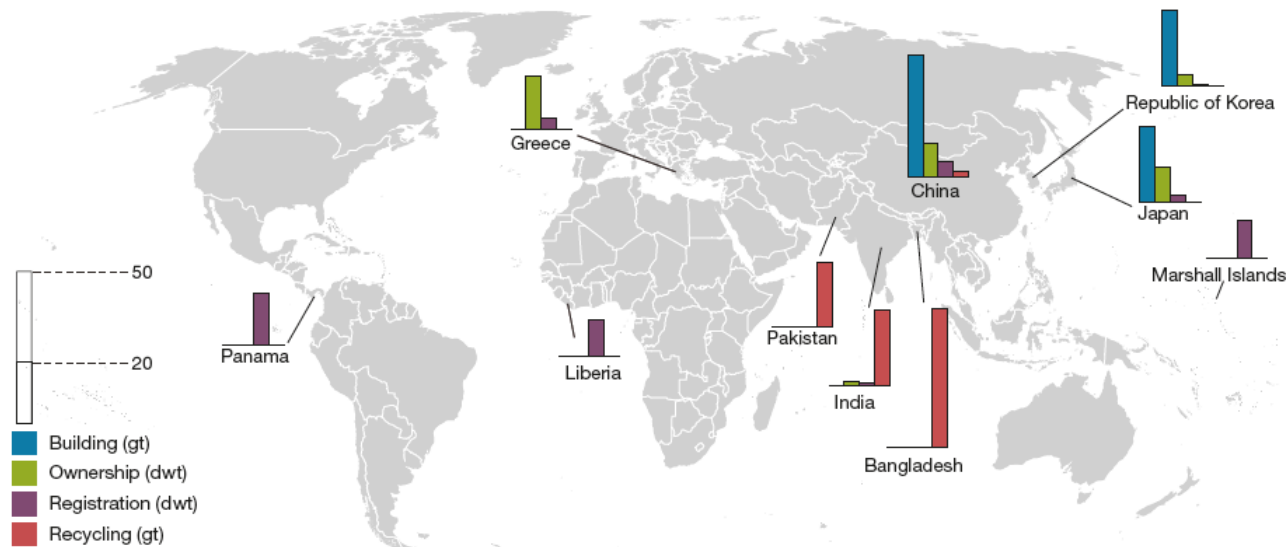


UNCTAD Handbook of Statistics 2020 - Maritime transport

Fact sheet #14: Merchant fleet

Map 1

Building, ownership, registration and recycling of ships, 2019
(Percentage of world total)



Sources: UNCTADstat (UNCTAD, 2020a); Clarksons Research.

Note: Top three countries in each segment are shown. Building and recycling are estimated deliveries and demolitions during 2019. Registration and ownership figures refer to the beginning of the year 2020.

Where are ships built?
Where are the owners?
Where are they registered?
Where are they recycled?

A Snapshot of the Shipping Industry

- A fundamental feature of the modern shipping industry: the four key functions—building, ownership, registration and recycling—are geographically separated.
- A ship can be built in one country, owned from another, registered in a third, trade globally, and finally be recycled somewhere else.

What the Map Shows

- The UNCTAD data are for 2019, with ownership and registration measured at the beginning of 2020.
- Only the leading countries in each category are shown.
- Shipbuilding: China, Republic of Korea, Japan — where vessels are physically constructed.
- Ship ownership: Greece, Japan, China — where companies with the principal commercial responsibility / beneficial ownership are based.
- Registration: Panama, Liberia, Marshall Islands — the flag State whose nationality and legal regime the vessel carries.
- Recycling: Bangladesh, India, Pakistan — where vessels are dismantled at the end of their commercial life.

Ship Registration – Dual Role

- Ship registration has both a public law and a private law role
- Public law: establishes the ship's nationality and relationship with the Flag State
- Private law: concerns ownership and financial security
- Registration gives the vessel the right to fly the relevant flag.
- It has consequences for navigation.
- It provides a basis for diplomatic and consular protection.
- Registration also performs private-law functions relating to ownership and financial security.
- Ship registration therefore has both public-law and private-law dimensions.

Why Choose an Open Registry?

- Owners may consider taxation.
- Registration costs may influence the choice.
- Crewing flexibility may be important.
- Administrative efficiency may matter.
- The quality of registry services may influence the decision.
- Modern competition between open registries also involves efficient administration, certification and supporting financial / logistical services.

Update (from 2019-2020)

- The slide produced originally uses 2019 data, but the underlying structural point remains very strong.
- Current UNCTAD data show that in 2026 Liberia, Panama and the Marshall Islands remain the three largest ship registers.
- The geography changes; the legal phenomenon does not.



Table II. 6

World fleet ownership by capacity in dead weight tons and flag of registration, as of 1 January 2024

Country or territory of ownership	Number of vessels			Dead weight tons			
	National flag	Foreign flag	Total	National flag	Foreign flag	Total	Foreign flag as a percentage of total
1 Greece	580	4 406	4 992	49 985 667	344 971 148	394 977 181	87.3
2 China	6 600	2 772	9 418	130 737 555	178 336 427	309 870 897	57.6
3 Japan	959	3 142	4 104	38 689 931	203 666 970	242 366 672	84.0
4 Singapore	1 350	1 445	2 824	67 827 285	78 156 951	146 047 319	53.5
5 Hong Kong, China	869	1 104	2 000	76 961 461	57 939 090	135 586 887	42.7
6 Republic of Korea	826	852	1 688	19 896 324	77 045 438	97 020 891	79.4
7 Germany	172	1 918	2 091	7 492 926	66 931 088	74 427 230	89.9
8 Taiwan Province of China	144	890	1 043	5 826 691	54 846 644	60 735 889	90.3
9 United Kingdom including Isle of Man	334	928	1 267	9 070 489	47 538 877	56 980 416	83.4
10 Norway	936	898	1 836	17 331 399	36 441 844	53 903 936	67.6
11 Bermuda	0	420	420	-	52 293 715	52 293 715	100.0
12 United Arab Emirates	130	1 291	1 427	596 404	50 624 996	51 247 355	98.8
13 United States including Puerto Rico	770	1 010	1 788	10 477 424	39 245 905	50 416 065	77.8
14 Türkiye	401	1 619	2 030	6 623 393	40 174 680	46 849 025	85.8
15 Switzerland	14	647	661	835 748	40 293 135	41 128 883	98.0
16 India	926	345	1 275	17 670 993	23 006 477	40 697 051	56.5
17 Denmark	399	373	772	20 313 094	18 447 451	38 760 545	47.6
18 Indonesia	2 398	132	2 540	28 277 194	3 430 913	31 980 209	10.7
19 Monaco	0	337	337	-	31 699 502	31 699 502	100.0
20 Cyprus	113	311	424	3 939 325	25 272 183	29 211 508	86.5
21 Belgium	81	211	292	7 038 164	17 182 252	24 220 416	70.9
22 Russian Federation	1 551	269	1 828	10 708 028	10 997 997	21 726 655	50.6
23 Islamic Republic of Iran	240	13	254	18 340 397	679 712	19 021 661	3.6
24 France	144	309	453	4 145 965	14 162 666	18 308 631	77.4
25 Kingdom of the Netherlands	650	536	1 186	5 437 806	12 600 744	18 038 550	69.9
26 Viet Nam	938	212	1 158	12 097 561	5 446 178	17 561 034	31.0
27 Saudi Arabia	176	122	300	14 023 679	2 555 698	16 583 171	15.4
28 Brazil	297	86	384	4 687 509	9 423 957	14 116 966	66.8
29 Italy	420	163	583	6 789 366	6 762 515	13 551 881	49.9
30 Malaysia	442	164	618	6 435 077	3 539 337	10 016 263	35.3
31 Canada	216	158	375	2 645 448	7 351 057	9 996 989	73.5
32 Nigeria	218	72	298	5 341 412	3 371 996	9 344 789	36.1
33 Oman	3	69	72	518	7 727 130	7 727 648	100.0
34 Qatar	47	88	135	608 178	7 006 679	7 614 857	92.0
35 Bangladesh	276	6	282	5 107 202	190 469	5 297 671	3.6
Top 35	23 620	27 318	51 155	615 959 613	1 579 361 821	2 199 328 358	71.8
World	26 692	30 135	58 173	650 553 871	1 650 129 315	2 334 036 650	70.7

Source: UNCTAD calculations, based on data provided by Clarksons Research Services.

Note: Propelled seagoing vessels of 1,000 gross tons and above, as of 1 January 2024. The totals include vessels for which the flag is unknown. Thus, the sum of national and foreign flags equals the total. Foreign flag as a percentage of total is calculated as share of vessels with known flag.

Which country has most ships?
Which country has the highest cargo carriage capacity?
Where are the ships registered?
How many ships are used internationally?

Who Owns the World Fleet?

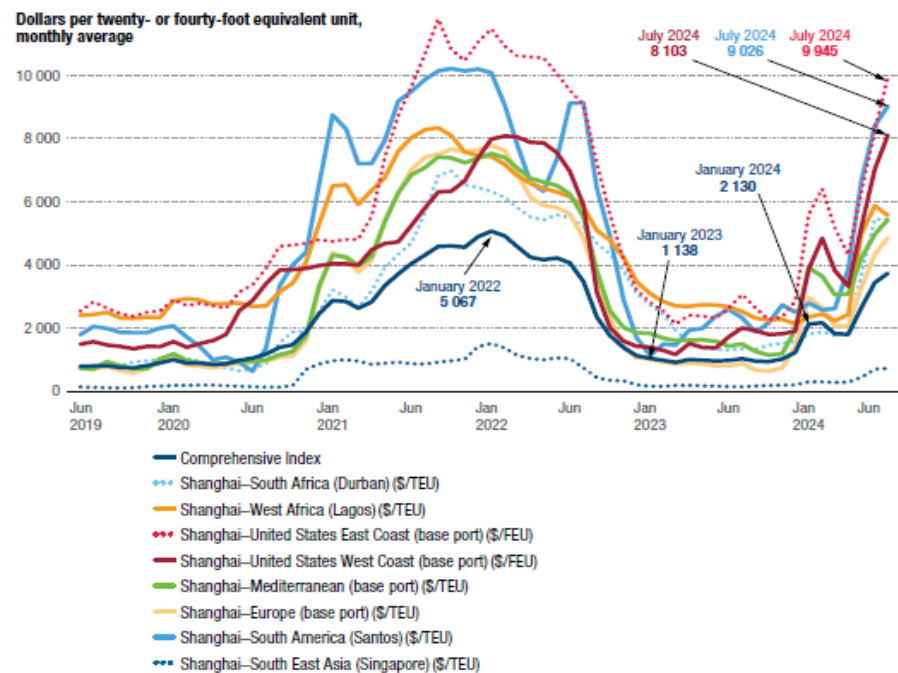
- Greece ranks first by carrying capacity: 394.98 million dwt
- Greek owners control 16.9% of world deadweight tonnage
- China ranks second: 309.87 million dwt — 13.3%
- Japan ranks third: 242.37 million dwt — 10.4%

Ownership ≠ Flag of Registration

- Most ships controlled by the leading shipowning nations are registered under foreign flags
- Greece: 87.3% of owned tonnage under foreign flags
- Japan: 84.0%
- Germany: 89.9%
- Republic of Korea: 79.4%
- United Kingdom: 83.4%
- This illustrates the separation between ship ownership and ship nationality
- The ship's nationality is determined by its flag of registration, not by the nationality of its beneficial owner



Figure III. 2
Shanghai Containerized Freight Index spot rates



Source: UNCTAD calculations, based on data from Clarksons Shipping Intelligence Network.

Panama: 4.3 million people

Liberia: 4.9 million people

Marshall Islands: 59.2 thousand people

UNCTAD Report on Maritime Trade 2023

Table 2.4 Leading flags of registration by dead weight tons, 2022

Rank	Flag of registration	Number of vessels	Share of world vessel total (percentage)	Dead weight tons (thousands dead weight tons)	Share of total world dead weight tons (percentage)	Average vessel size (dead weight tons)	Growth in dead weight tons 2022 to 2023
1	Liberia	4 821	4.6	378 346	16.6	78 479	12.7
2	Panama	8 174	7.8	365 096	16.1	44 666	4.2
3	Marshall Islands	4 180	4.0	299 170	13.2	71 572	3.2
4	Hong Kong, China	2 537	2.4	200 075	8.8	78 863	-3.7
5	Singapore	3 202	3.0	134 985	5.9	42 156	2.7
6	China	8 262	7.8	124 061	5.5	15 016	5.4
7	Malta	1 957	1.9	109 001	4.8	55 698	-5.0
8	Bahamas	1 274	1.2	72 674	3.2	57 044	-0.9
9	Greece	1 215	1.2	59 016	2.6	48 573	-4.3
10	Japan	5 229	5.0	41 726	1.8	7 980	4.2
11	Cyprus	1 005	1.0	31 164	1.4	31 009	-6.8
12	Indonesia	11 422	10.8	30 171	1.3	2 641	2.5
13	International Shipping Register of Madeira	729	0.7	26 850	1.2	36 832	3.7
14	Danish International Register of Shipping	590	0.6	25 259	1.1	42 811	-3.1
15	Norwegian International Ship Register	684	0.6	21 271	0.9	31 099	1.0
16	Islamic Republic of Iran	965	0.9	20 723	0.9	21 475	1.2
17	Isle of Man	269	0.3	20 109	0.9	74 755	-2.5
18	Republic of Korea	2 149	2.0	18 894	0.8	8 792	20.6
19	India	1 859	1.8	18 133	0.8	9 754	7.1
20	Saudi Arabia	433	0.4	13 406	0.6	30 961	-3.5
21	United States of America	3 531	3.4	12 586	0.6	3 564	0.9
22	Viet Nam	1 973	1.9	12 434	0.5	6 302	0.7
23	Russian Federation	2 910	2.8	11 270	0.5	3 873	3.0
24	United Kingdom excl. Channel Islands and Isle of Man	866	0.8	11 057	0.5	12 768	-2.5
25	Malaysia	1 750	1.7	9 406	0.4	5 375	2.0
26	Belgium	198	0.2	9 160	0.4	46 261	-6.3
27	Italy	1 276	1.2	9 121	0.4	7 148	-8.6
28	Germany	595	0.6	7 249	0.3	12 183	2.1
29	Cameroon	198	0.2	7 228	0.3	36 503	45.1
30	Bermuda	122	0.1	7 043	0.3	57 731	-10.7
31	Türkiye	1 170	1.1	6 651	0.3	5 684	8.5
32	Kingdom of the Netherlands	1 187	1.1	6 618	0.3	5 575	-0.6
33	Taiwan Province of China	465	0.4	6 445	0.3	13 859	-4.6
34	Antigua and Barbuda	614	0.6	6 347	0.3	10 336	2.0
35	Philippines	2 203	2.1	6 125	0.3	2 780	-5.7
Top 35		80 014	75.9	2 138 666	94.1	26 731	3.1
World total		105 395	100.0	2 272 772	100.0	21 564	3.2

Source: UNCTAD calculations, based on data from Clarksons Research, 2023.

Notes: Propelled seagoing merchant vessels of 100 GT and above, as of 1 January 2023. For a complete list of countries, see <http://stats.unctad.org/fleet>. Dead weight tons for some individual vessels have been estimated.

The World's Leading Flags of Registration

- The largest ship registers are not necessarily the largest ship owning countries.
- Liberia ranks first by deadweight tonnage: about 378 million dwt — 16.6% of world capacity.
- Panama follows with about 365 million dwt — 16.1%.
- Marshall Islands: about 299 million dwt — 13.2%.
- Hong Kong, China and Singapore are also among the leading registers.
- Together, Liberia, Panama and the Marshall Islands account for almost 46% of world deadweight tonnage.

Open Registries and Flags of Convenience

- Liberia, Panama and the Marshall Islands are major examples of open registries.
- Foreign shipowners may register vessels without a strong ownership connection to the Flag State.
- Owners may be attracted by taxation, registration costs, crewing rules and administrative efficiency.
- Registration gives the ship the nationality of the Flag State.
- The Flag State assumes responsibility for exercising jurisdiction and control over ships flying its flag.
- Key question: can the Flag State effectively regulate a very large internationally operated fleet?

Why Flag State Control Matters

- The Flag State is responsible for implementing international safety, environmental and labour standards.
- A very large register may contain vessels owned and operated throughout the world.
- Effective enforcement therefore depends on the quality of Flag State administration and supervision.
- Port State Control provides an additional layer of enforcement when foreign ships enter ports.

IV – Means of Identification of the Ship

How we know which vessel we are talking about

Why identification matters

- Ships trade internationally and may change owner, name and flag
- Contracts, insurance, mortgages, sanctions screening, casualty investigation and enforcement all require reliable identification
- A name alone is not enough because names can change and may be duplicated
- Identification therefore combines several markers

Traditional identifiers

- Ship's name
- Port of registry
- Flag / nationality
- Official number under the relevant national registration system
- Call sign
- Tonnage and technical particulars can also assist identification

The IMO Ship Identification Number

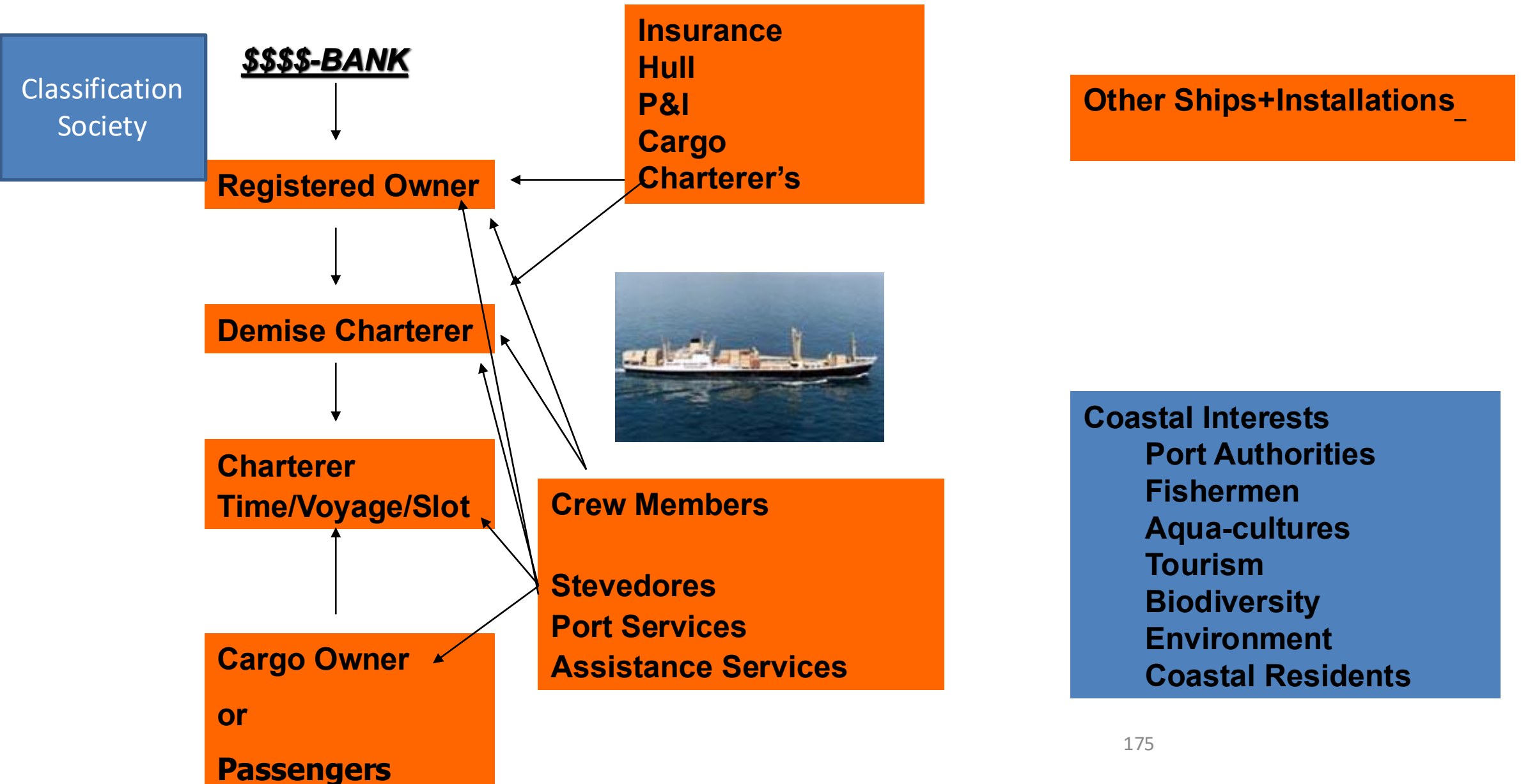
- Introduced as a permanent identifier for ships
- Format: “IMO” followed by seven digits
- Remains attached to the vessel despite changes of name, owner, flag or type
- Not reassigned to another ship
- Provides continuity across the vessel’s commercial and legal history

Why the IMO number is commercially valuable

- Reduces confusion when ships change names or flags
- Supports safety, pollution prevention and anti-fraud objectives
- Useful for chartering, insurance, compliance and casualty records
- Allows databases and counterparties to track the same physical vessel over time

The stakeholders of the shipping industry

The stakeholders of shipping business



Owners and bareboat/demise charterers

Registered Owner

“owner ” in relation to a registered or provisionally registered ship, means a person registered as owner

Demise Charterer

“demise charter” means a charter party by which a ship is chartered or let by demise and under which the **demise charterer has the possession of the ship and has control of all matters relating to the navigation and operation of the ship including employment of the master and crew;**

“demise charterer” means the charterer of a ship under a demise charter, and in relation to a registered or provisionally registered ship means a person registered as demise charterer under this Ordinance;

Charterers without possession of the ship

Time Charterers

- have the use of the ship with the crew over a period of time
- make money by finding opportunities for the ship
- pay "hire"
- take the risk for time lost during the voyage
- normally provide the fuel (bunkers)

Voyage Charterers

- have the use of the ship with the crew for a voyage
- make money by carrying cargo (could be sellers or buyers of goods or acting for them)
- pay "freight"
- take the risk for delays in loading or discharge

Slot Charterers

- have the use of part of the ship with the crew (for a period of time)
- make money by carrying cargo
- (normally) pay "hire"

Why Do Shipping Stakeholders Matter?

- Shipping is not simply a relationship between a shipowner and a ship.
- Many different actors finance, operate, use, insure, regulate and interact with the vessel.
- Each stakeholder has a different commercial or public interest and therefore different rights, duties and risks.
- Identifying the stakeholder matters because it helps determine: Who controls the ship? Who contracts with whom? Who bears the risk? Who may be liable when something goes wrong?
- Maritime law therefore regulates a network of contractual, tortious, proprietary and regulatory relationships.

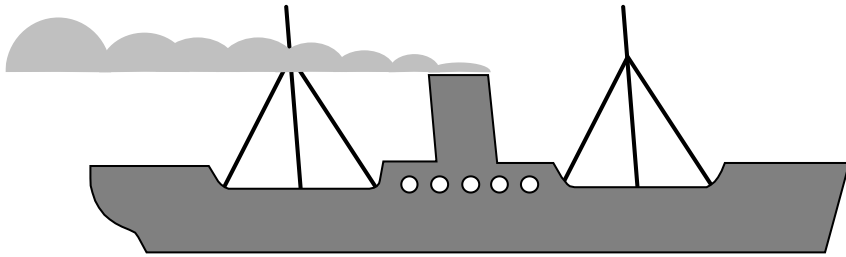
Commercial & Operational Stakeholders – Who Does What?

- Registered owner — legal owner of the vessel; registers the ship, finances or mortgages it, and normally bears responsibility for its operation unless control has been transferred.
- Demise / bareboat charterer — takes possession and operational control; normally employs the master and crew and may become responsible for liabilities arising from operation of the ship.
- Time charterer — hires the ship's commercial services for a period; directs its commercial employment but normally does not control navigation or the crew.
- Voyage charterer — hires carrying capacity for a particular voyage and pays freight; concerned principally with the commercial use of the vessel.

Commercial & Operational Stakeholders – Who Does What?

- Slot charterer — hires specified cargo space, usually container slots, rather than the whole ship.
- Cargo owner/passenger — purchases the transport service and has an interest in safe carriage and delivery.
- Crew, stevedores and port-service providers — physically operate, load, discharge and service the vessel; their acts may create operational liabilities.

Insurers



Damage to the ship
Damage to machinery or engine

Hull and Machinery Insurer

Damage to other ships
Damage to docks
Pollution damage
Cargo damage
Crew injuries

Protection and Indemnity Clubs

V – Acquisition of Ship Ownership

Title, Delivery, Registration, Due Diligence

Acquisition of Ship Ownership — Legal Classification

- Original acquisition: title arises independently of a previous owner's title
- Derivative acquisition: title passes from an existing owner to a successor
- Commercial sale is the principal example of derivative acquisition
- Other routes include → inheritance, gift, judicial sale and insolvency
- Distinguish → contractual agreement to sell from → legal transfer of title
- Applicable law and registration formalities determine when proprietary title passes

How can ship ownership be acquired?

- By contract: newbuilding or second-hand sale
- By gift or inheritance
- By court order or judicial sale
- By operation of insolvency law
- The exact legal route depends on the applicable property and registration regime

A ship is not an ordinary chattel

- Physical possession does not necessarily prove legal title
- High value and registration make documentary title especially important
- Purchasers must investigate title and encumbrances
- Ownership and registration are distinct concepts, even though registration is powerful evidence

Newbuilding acquisition

- Buyer contracts with a shipbuilder for construction of a new vessel
- Payments are commonly linked to construction milestones
- Title may pass according to the shipbuilding contract and applicable law
- At delivery, registration, financing and security arrangements become central
- Bank finance may be secured by mortgage, earnings and insurance assignments

Second-hand ship acquisition

- Buyer and seller enter a ship sale and purchase contract
- The vessel already exists and can be inspected
- Buyer must investigate title, mortgages and other encumbrances
- At completion: price is paid, title documents delivered, vessel delivered, old security discharged and new registration/security arranged

Registration when ownership changes

- A transfer may require statutory formalities and registration of the new ownership position
- A bill of sale is a central transfer document in many ship sale transactions
- Existing mortgages and encumbrances must be identified and, where agreed, discharged
- The buyer's nominated flag State may impose documentary requirements

What should a buyer check?

Due Diligence

- Identity of the vessel — especially IMO number
- Registered and beneficial ownership
- Existing mortgages, liens and encumbrances
- Class and statutory certificates
- Flag and registration status
- Insurance, operational records and contractual commitments
- Whether the seller can deliver clean title as promised

Why banks care about registration

- The vessel is a major financing asset
- The lender wants an enforceable mortgage and clear priority
- Registration makes security interests visible within the relevant registry system
- Changes of flag or ownership can affect the security package
- Finance, ownership, registration and insurance are therefore closely connected

The roles of ship registration

Public law character of registration :

- the right to fly the flag of the ship register;
- freedom of navigation on the high seas without interference from foreign ships;
- the entitlement to protection by the flag state's navy;
- the right to diplomatic protection and consular assistance;
- rights to operate in the territorial sea and the internal waters of the flag state (for example, fishing or marine research)
- protection under the rules of war when the flag state is in a state of war.

■ Private law character of registration

- Ownership
- Security of interests

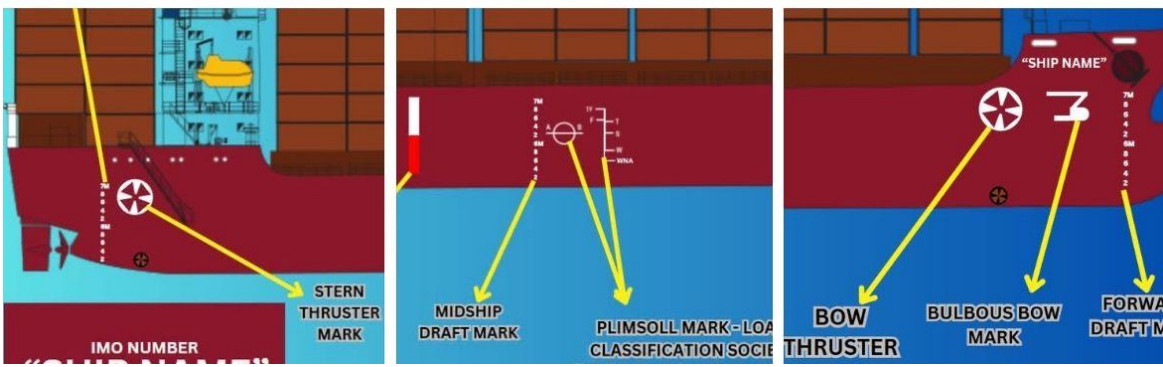
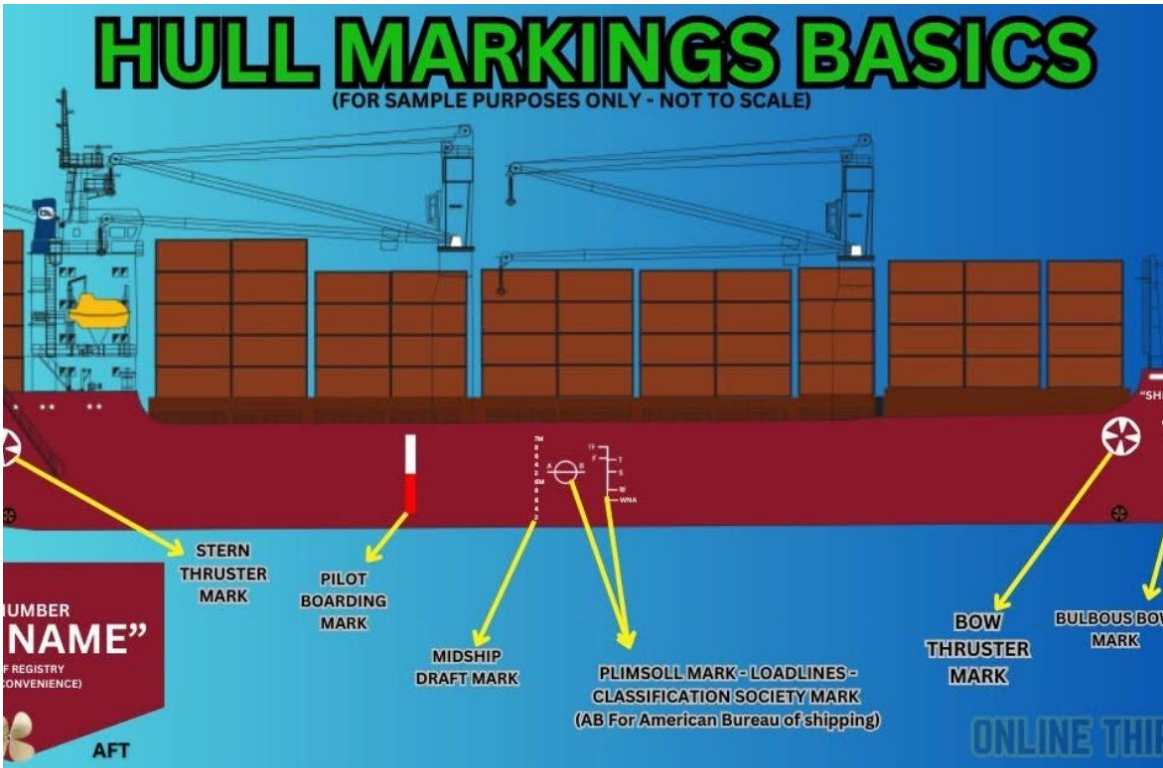
Ship Registration and Flag-State Competition

- Ship registration generates financial activity and income for Flag States
- States may compete to attract ships to their registers
- Incentives may include taxation benefits
- Confidentiality concerning ownership may also be attractive
- This competition contributed to the development of open registers/flags of convenience

The description of the ship

- Tonnage :
 - ship is to be surveyed and measured and tonnage certificate must be submitted to the registrar OR
 - Foreign tonnage certificate accepted
- Name of the ship
- Marking:
 - “Every ship shall, **before it is registered**, be marked permanently and conspicuously to the satisfaction of the Registrar”
 - Failure to comply is punishable (master, owner or demise charterer) by a fine
 - Alteration of marks by anyone is also punishable.

Markings on a ship



Registration is NOT a right! (s. 22)

- The registrar may ask for documents and if these are not furnished within ...X.....days registration may be denied
- The relevant authority:
 - may instruct the Registrar not to register a ship that poses safety or environmental threats
 - May exclude some types of ships from Registration if their control or type of employment poses difficulties.
- Dual registration is not allowed in some countries

The role of the registration certificate

- Navigation and trading
 - No party can retain the registration certificate for a claim
 - Only legally valid documents are to be used
 - Offences committed if acting otherwise
- The colours of the ship (the flags to be displayed)
- Must be displayed on entering or leaving any port (unless exempted)
 - Illegal to display the colours on a non-registered ship
 - False/inaccurate colours may be seized, and fines imposed

Closure of registration

- The registration may be closed when the ship is:
 - Destroyed
 - Sold
 - Failed to pay fees
 - The representative person failed to act
 - The ship ceases to be registrable
 - For example owner is not a qualified person
 - The demise charterparty has ended
- When the owner closes the registration it must obtain the written consent of all mortgagees

Maritime Profiles

- See the maritime profiles at:
- <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/004/index.html>

CHINA



Data Hub
Empowering development through data and statistics

MARITIME PROFILE: CHINA

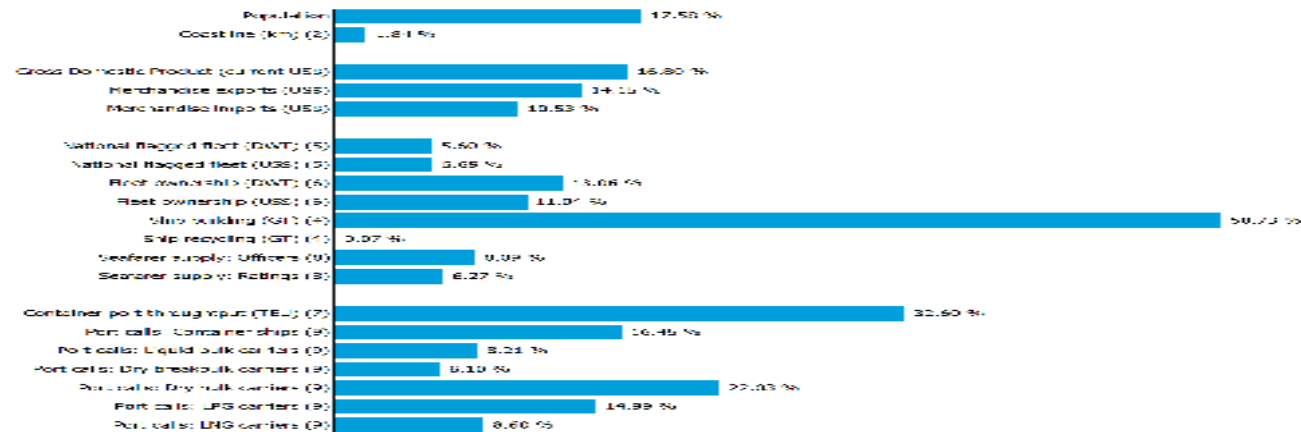
GENERAL INFORMATION FOR 2023



MARITIME KEY FIGURES FOR 2023



WORLD SHARES FOR 2023



CHINA — Maritime Profile

OWNERSHIP 294.9m DWT | FLAG 127.5m DWT | SHIPBUILDING 50.7% WORLD SHARE

- National flag: 9,222 ships / 127.5m DWT; Chinese-owned fleet: 294.9m DWT — ownership is more than twice the tonnage actually under the Chinese flag.
- Global weight: $\approx 13.1\%$ of world fleet ownership and $\approx 5.6\%$ of world flagged tonnage. China also accounts for $\approx 50.7\%$ of world shipbuilding.
- Ports are the outstanding strength: 279.8m TEU, $\approx 32.6\%$ of world container throughput; 263,460 port calls. Container ships spend a median 0.60 days in port.
- The national-flag fleet grew +5.8% in 2023, although transport-services exports fell sharply (-39.9%).
- China is simultaneously a major shipowner, flag State, shipbuilder and port State — a vertically integrated maritime power.

Greece



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MARITIME PROFILE: GREECE

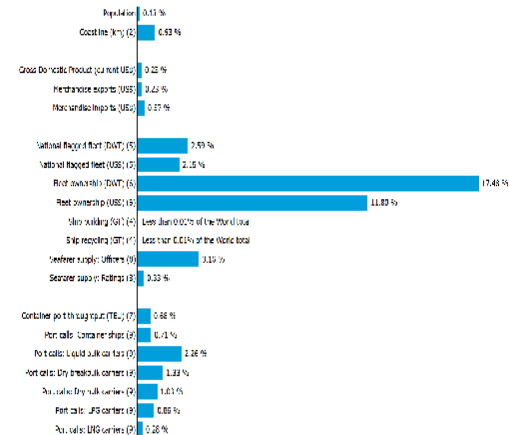
GENERAL INFORMATION FOR 2023



MARITIME KEY FIGURES FOR 2023



WORLD SHARES FOR 2023



GREECE — Maritime Profile

OWNERSHIP 394.7m DWT | FLAG 58.9m DWT | OWNERSHIP ≈17.5% OF WORLD FLEET

- Greek-owned fleet: 394.7m DWT — ≈17.5% of world fleet ownership, the strongest ownership position among these four profiles.
- But the Greek-flag fleet is only 58.9m DWT / 1,214 ships (≈2.6% of world flagged tonnage). Much Greek-controlled tonnage therefore sails under foreign flags.
- Fleet composition is heavily tanker/bulk oriented: 37.7m DWT oil tankers + 16.0m DWT bulk carriers under the national flag.
- Shipping remains economically important: transport services are 42.8% of Greek services exports, contributing to a US\$3.5bn surplus in 2023, despite an 8% fall in exports.
- Greece illustrates why maritime law must distinguish the shipowner's nationality/economic control from the vessel's flag and registry.

Liberia



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MARITIME PROFILE: LIBERIA

GENERAL INFORMATION FOR 2023



MARITIME KEY FIGURES FOR 2023



WORLD SHARES FOR 2023

Population	0.07 %	
Coastline (km) (2)	0.05 %	
Gross Domestic Product (current US\$)	Less than 0.00% of the World total	
Merchandise exports (US\$)	Less than 0.00% of the World total	
Merchandise imports (US\$)	Less than 0.00% of the World total	
National flagged fleet (DWT) (5)		11.76 %
National flagged fleet (US\$) (5)		11.76 %
Fleet ownership (DWT) (6)	0.03 %	
Fleet ownership (US\$) (6)	Less than 0.00% of the World total	
Ship building (4)	..	No value reported or collected
Ship recycling (4)	..	No value reported or collected
Seafarer supply: Officers (8)	Less than 0.00% of the World total	
Seafarer supply: Ratings (8)	0.06 %	
Container port throughput (TEU) (7)		No value reported or collected
Port calls: Container ships (9)		Not publishable
Port calls: Liquid bulk carriers (9)		Not publishable
Port calls: Dry bulk carriers (9)		Not publishable
Port calls: Dry bulk carriers (9)		Not publishable
Port calls: LPG carriers (9)		No value reported or collected
Port calls: LNG carriers (9)		No value reported or collected

LIBERIA — Maritime Profile

FLAG 378.3m DWT | OWNERSHIP 0.47m DWT | FLAG ≈16.6% OF WORLD TONNAGE

- Liberian flag: 4,820 ships / 378.3m DWT — ≈16.6% of world flagged tonnage, despite a population of only about 5.5 million.
- Liberian-owned fleet is only 0.47m DWT (≈0.02% of world ownership). The enormous gap between ownership and flag demonstrates Liberia's role as a major open international registry.
- The registered fleet has expanded dramatically: 83.6m DWT in 2005 → 378.3m DWT in 2023, with further growth of +12.7% in 2023.
- The flag attracts major internationally trading vessels: bulk carriers account for about 174.3m DWT, oil tankers 121.4m DWT and container ships 60.3m DWT.
- Liberia is therefore the clearest example of why FLAG ≠ OWNERSHIP: its maritime importance derives primarily from providing nationality and a regulatory/registration framework to foreign-owned ships.

Panama



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MARITIME PROFILE: PANAMA

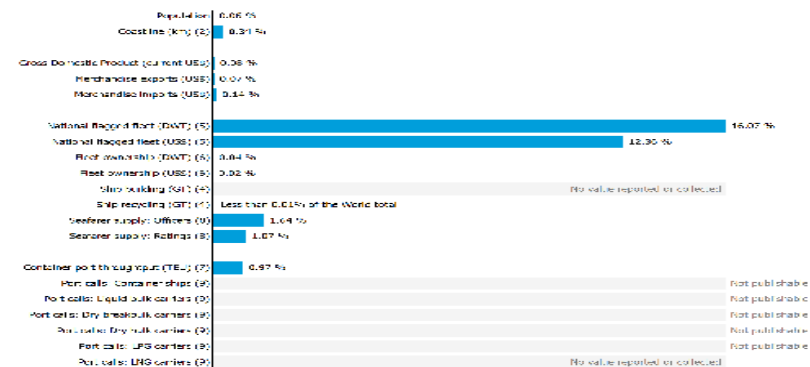
GENERAL INFORMATION FOR 2023



MARITIME KEY FIGURES FOR 2023



WORLD SHARES FOR 2023

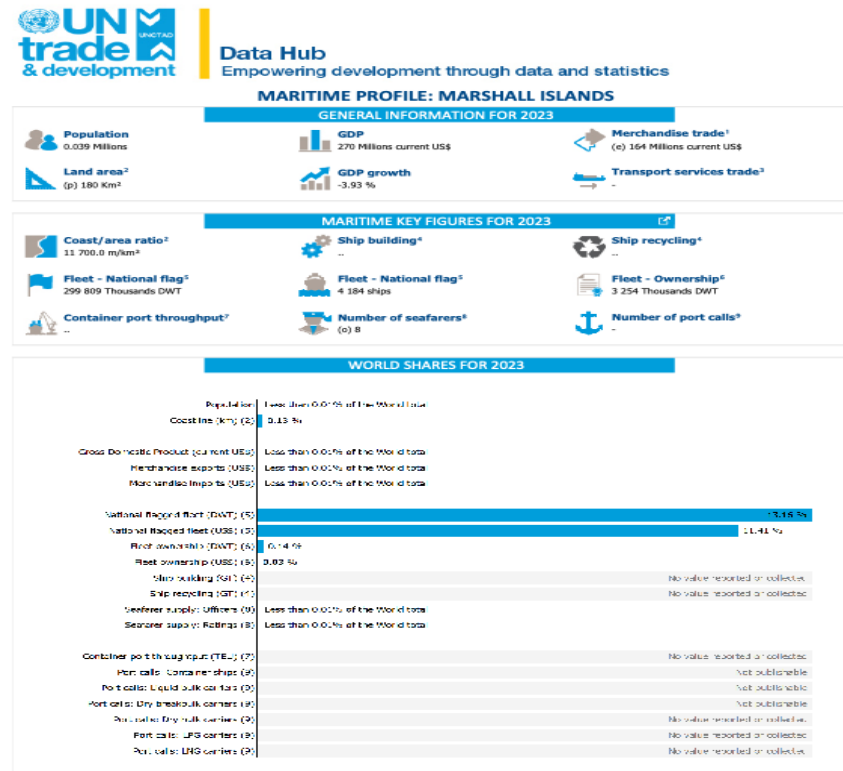


PANAMA — Maritime Profile

FLAG 366.0m DWT | OWNERSHIP 0.81m DWT | CONTAINER THROUGHPUT 8.32m TEU

- Panamanian flag: 8,198 ships / 366.0m DWT — about 16.1% of world flagged tonnage, making Panama one of the world's dominant ship registries.
- Panamanian-owned fleet is only 0.81m DWT ($\approx 0.04\%$ of world ownership). The huge flag–ownership gap shows the importance of Panama's open registry to foreign shipowners.
- The registered fleet remains very large and grew +4.3% in 2023. Bulk carriers dominate at about 200.7m DWT, followed by oil tankers (82.0m DWT) and container ships (42.7m DWT).
- Unlike a registry-only maritime state, Panama also has major physical shipping activity: container port throughput reached 8.32m TEU ($\approx 0.97\%$ of the world total).
- Transport-services exports reached US\$9.12bn in 2023 (+9.7%), producing a US\$6.30bn surplus — reflecting Panama's wider role as a global maritime, logistics and transit hub.

Marshall Islands



MARSHALL ISLANDS — Maritime Profile

FLAG 299.8m DWT | OWNERSHIP 3.25m DWT | POPULATION ≈39,000

- Marshall Islands flag: 4,184 ships / 299.8m DWT — about 13.16% of world flagged tonnage, despite a population of only about 39,000.
- Marshall Islands-owned fleet is only 3.25m DWT (≈0.14% of world ownership). The enormous flag–ownership gap is the clearest indication that this is a major open international registry.
- The registered fleet expanded rapidly: carrying capacity rose from 42.1m DWT in 2005 to 299.8m DWT in 2023, with further growth of +3.3% in 2023.
- Bulk carriers dominate the register at about 147.9m DWT, followed by oil tankers at 107.4m DWT; container ships account for a much smaller 13.0m DWT.
- Teaching point: the Marshall Islands demonstrates why ship nationality cannot be inferred from the owner's nationality or the State's economic size — registration is a separate legal and commercial choice.

Switzerland



Data Hub

Empowering development through data and statistics

MARITIME PROFILE: SWITZERLAND

GENERAL INFORMATION FOR 2023

Population 8.871 Millions	GDP 894 425 Millions current US\$	Merchandise trade¹ 785 596 Millions current US\$
Land area² (p) 39 516 Km ²	GDP growth 0.68 %	Transport services trade³ 361 340 Millions current US\$

MARITIME KEY FIGURES FOR 2023

Coast/area ratio² 0.000 m/km ²	Ship building⁴ ..	Ship recycling⁴ ..
Fleet - National flag⁵ 854 Thousands DWT	Fleet - National flag⁵ 18 ships	Fleet - Ownership⁶ 38 033 Thousands DWT
Container port throughput⁷ ..	Number of seafarers⁸ 1	Number of port calls⁹ -

WORLD SHARES FOR 2023

Population	0.11 %
Coastline (km) (2)	Less than 0.01% of the World total
Gross Domestic Product (current US\$)	0.84 %
Merchandise exports (US\$)	1.70 %
Merchandise imports (US\$)	1.51 %
National flagged fleet (DWT) (5)	0.04 %
National flagged fleet (US\$) (5)	0.02 %
Fleet ownership (DWT) (6)	1.68 %
Fleet ownership (US\$) (6)	2.60 %
Ship building (SAI) (4)	No value reported or collected
Ship recycling (DWT) (4)	No value reported or collected
Seafarer supply: Officers (8)	Less than 0.00% of the World total
Seafarer supply: Ratings (8)	Less than 0.01% of the World total
Container port throughput (TEU) (7)	No value reported or collected
Port calls: Container ships (9)	No value reported or collected
Port calls: Liquid bulk carriers (9)	Not publishable
Port calls: Dry bulk carriers (9)	Not publishable
Port calls: Dry bulk carriers (9)	No value reported or collected
Port calls: LPG carriers (9)	No value reported or collected
Port calls: LNG carriers (9)	No value reported or collected

SWITZERLAND — Maritime Profile

FLAG 0.85m DWT | OWNERSHIP 38.0m DWT | LANDLOCKED MARITIME POWER

- Switzerland is landlocked, yet Swiss interests own 38.03m DWT of shipping ($\approx 1.68\%$ of world ownership by DWT) — while only 18 ships / 0.85m DWT sail under the Swiss flag.
- The ownership–flag disparity is extreme: Swiss-owned tonnage is roughly 45 times the tonnage registered under the Swiss flag. This shows why maritime power cannot be measured by coastline or flag alone.
- The small national-flag fleet is overwhelmingly bulk-carrier capacity (835,700 DWT of 854,300 DWT total) and contracted by 8.2% in 2023.
- UNCTAD reports no container-port throughput or liner-connectivity data for Switzerland — unsurprising for a landlocked state — yet maritime ownership remains economically significant.
- Transport-services exports reached US\$20.96bn in 2023, but imports were US\$29.11bn, producing a negative transport-services balance of about US\$8.15bn.

VI – Collisions

What is a collision claim?

- Usually arises from negligent navigation causing loss or damage
- Physical contact is not always necessary: negligent navigation may cause wash damage, evasive collision or grounding
- Collision law combines navigation rules with ordinary principles of negligence and causation
- The key question is not simply “who hit whom?”

The collision analysis

- 1. What navigational duties applied?
- 2. What did each vessel actually do?
- 3. Was there a breach of the COLREGs or good seamanship?
- 4. Did the breach cause or contribute to the casualty?
- 5. If both were at fault, how should responsibility be apportioned?

Two sources of navigational duty

- Ordinary duty to exercise reasonable care and skill — good seamanship
- International Regulations for Preventing Collisions at Sea 1972 — COLREGs
- The two operate together
- Compliance with a rule does not remove the need to respond sensibly to danger and special circumstances

Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), 1972

COLREGs — what are they?

- International rules for preventing collisions at sea
- Adopted in 1972; entered into force in 1977
- They structure steering and sailing, lights and shapes, sound/light signals and other navigational matters
- They are operational safety rules and also an important framework for evaluating fault after a casualty

COLREGs 1972 — What Are They?

- Purpose — the principal international rules governing the conduct of vessels so as to prevent collisions at sea.
- Adopted on 20 October 1972 and entered into force on 15 July 1977; they replaced the 1960 Collision Regulations.
- Scope — the Rules apply to vessels on the high seas and waters connected with the high seas that are navigable by seagoing vessels.
- Core function — they create a common navigational language: how collision risk is assessed, which vessel must act, how manoeuvres are made and how vessel status and intentions are communicated.
- An important innovation was → formal recognition of traffic separation schemes, particularly through Rule 10.
- Legal significance — COLREG compliance is both a preventive safety obligation and a central benchmark when responsibility for a collision is assessed.

COLREGs — Structure of the Convention

- Part A: General — Rules 1–3: application, responsibility and definitions.
- Part B: Steering and Sailing Rules — Rules 4–19: conduct in any visibility; vessels in sight of one another; restricted visibility.
- Part C: Lights and Shapes — Rules 20–31: visual identification of vessels, their status and activities.
- Part D: Sound and Light Signals — Rules 32–37: manoeuvring, warning and distress-related signaling.
- Part E: Exemptions — Rule 38.
- Part F: Verification of Compliance — Rules 39–41, including compulsory audit of Contracting Parties.
- Four Annexes → contain technical requirements on lights and shapes, fishing signals, sound-signalling appliances and distress signals.

COLREGs — Core Collision-Avoidance Duties

- Rule 5 — Look-out: every vessel must maintain a proper look-out by sight, hearing and all available means appropriate to the circumstances.
- Rule 6 — Safe speed: speed must permit effective action to avoid collision and stopping within an appropriate distance; visibility, traffic, manoeuvrability and radar information are relevant.
- Rule 7 — Risk of collision: all available means must be used; if there is doubt, risk is deemed to exist; assumptions should not be based on scanty information.
- Rule 8 — Action to avoid collision: action should be positive, made in ample time and with due regard to good seamanship.
- Rules 13–17 allocate responsibilities in overtaking, head-on and crossing situations and distinguish give-way from stand-on vessels.
- Rule 19 provides a distinct framework for vessels not in sight of one another in restricted visibility.

COLREGs — Responsibility, Seamanship and Rule 2

- COLREGs → not a purely mechanical code: they combine prescriptive encounter rules with context-sensitive navigational duties.
- **Rule 2 makes clear** → the owner, master and crew remain responsible for neglect to comply with the Rules and for neglect of precautions required by the ordinary practice of seamen.
- **Special circumstances** → may require departure from the Rules where necessary to avoid immediate danger.
- A navigator therefore → cannot defend unsafe conduct merely by showing literal compliance with one isolated rule.
- Strength — flexibility enables the Rules to operate across very different vessels, waters, traffic densities and weather conditions.
- Weakness — concepts such as proper look-out, safe speed, ample time, safe distance and good seamanship necessarily leave room for interpretation.

COLREGs — Traffic Separation and Managed Navigation

- Rule 10 governs conduct in and near traffic separation schemes (TSS) adopted by IMO.
- TSS organise opposing streams of vessel traffic and reduce dangerous encounters in congested or geographically constrained waters.
- The first TSS was established in the Dover Strait in 1967; observance was initially voluntary and later made mandatory within the international framework.
- Vessels should proceed in the appropriate traffic lane and follow the general direction of traffic flow
- Crossing should normally be as nearly as practicable at right angles.
- COLREGs therefore → regulate not only bilateral ship-to-ship encounters but also the spatial organisation of maritime traffic.
- Routing improves predictability → BUT → it does not displace the continuing duties of look-out, safe speed, risk assessment and collision-avoidance action.

Rule 2 — Responsibility / Liability

- The COLREGs are not a mechanical checklist
- Responsibility remains for failure to comply with the Rules
- Ordinary precautions required by good seamanship still matter
- Special circumstances may require departure from the Rules where necessary to avoid immediate danger

Rule 5 — Proper look-out

- Every vessel must maintain a proper look-out by sight and hearing
- All available means appropriate to the circumstances should be used
- Modern bridge equipment assists but does not replace judgment

Rule 6 — Safe speed

- A vessel must proceed at a speed allowing effective action to avoid collision
- The vessel must be capable of stopping within an appropriate distance
- Safe speed is not a fixed number
- Visibility, traffic density, manoeuvrability, weather, draught and radar information can all matter

Rule 7 — Risk of collision

- Use all available means appropriate to determine whether risk exists
- Do not make assumptions on inadequate information
- Radar information must be used properly where available
- If there is doubt, treat the situation as a risk requiring attention

Rule 8 — Action to avoid collision

- Avoiding action should be positive
- It should be made in ample time
- It should be consistent with good seamanship
- Action should be readily apparent where circumstances allow

Rules 13–17 — encounter situations

- Rule 13: overtaking
- Rule 14: head-on
- Rule 15: crossing
- Rule 16: action by the give-way vessel
- Rule 17: action by the stand-on vessel

The stand-on vessel has no absolute “right of way”

- The stand-on vessel initially maintains course and speed under the rule structure
- But it must monitor the developing situation
- Rule 17 permits and, at the critical stage, requires action when the give-way vessel is not acting appropriately
- Collision avoidance remains the overriding operational objective

Rule 19 — restricted visibility

- Applies when vessels are not in sight of one another in or near restricted visibility
- Navigation must be adapted to the reduced information environment
- Radar, safe speed and early assessment of risk become especially important
- Do not apply visual encounter assumptions mechanically in fog

Breach of a COLREG is not the whole case

- A rule breach is highly relevant evidence of navigational fault
- But civil liability still requires causation
- The question is whether the fault caused or contributed to the collision or damage
- Collision law therefore links rule breach + fault + causation

When both vessels are at fault

- Modern collision law apportions liability according to the degree of fault where possible
- The analysis considers both blameworthiness and causative potency
- A serious fault creating immediate danger may carry greater responsibility than a minor contributing fault
- If degrees cannot be distinguished, equal apportionment may be used under the applicable regime

Collision Liability — Apportionment of Fault

- More than one vessel may contribute to a collision
- Liability is apportioned according to the degree of fault where this can be established
- Relevant considerations include both blameworthiness and causative contribution
- A serious navigational fault may carry greater responsibility than a minor contributing fault
- If different degrees of fault cannot be established, liability may be divided equally
- Therefore: breach → causation → apportionment

Collision Liability ≠ Limitation of Liability

- Liability → who is legally responsible for the collision?
- Apportionment → how divide liability where several vessels are at fault?
- Limitation → can the liable party cap its total financial exposure?
- A shipowner may therefore be liable but still entitled to limit liability
- LLMC 1976/1996 provides the principal international limitation framework

Who else may be relevant after a collision?

- Master and bridge team
- Shipowner and operator / ISM Company
- Pilot, where one is on board
- Technical managers and shore management
- Insurers and P&I Clubs
- Port / harbour authority
- Casualty investigators and flag / coastal State authorities

Tug and tow: why collision analysis can be harder

- The tug and tow may have contractual duties between themselves
- Those contractual arrangements do not automatically determine liability to an innocent third vessel
- A convoy can create special navigational risks because of its length and manoeuvrability
- Fault may need to be considered separately for tug, tow and third vessel

COLREGs — Critical Analysis: Flexibility and Uncertainty

- Deliberate flexibility — collision risk depends on vessel type, manoeuvrability, visibility, traffic and local circumstances, so the Rules use open-textured standards rather than fixed numerical thresholds.
- That flexibility has a cost: terms such as safe speed, risk of collision, early action, substantial alteration and good seamanship are not exhaustively quantified.
- Uniform rules therefore do not guarantee uniform application; navigators may interpret complex or multi-vessel encounters differently.
- Effective operation depends heavily on competence, bridge-team practice, situational awareness and consistent understanding of the Rules.
- The regulatory strength of COLREGs is their adaptability; their corresponding weakness is interpretive uncertainty.
- This becomes especially important where human judgment must be translated into automated decision-making.

VII – Towage and Pilotage

Towage — Nature of the Relationship

- Towage is primarily contractual → the tug is engaged to perform an agreed towage service.
- Ordinary principles of contract apply, subject to special maritime incidents of the tug–tow relationship.
- Distinguish towage from salvage → ordinary work within the towage contract remains towage.
- If danger arises and the tug performs services outside the scope of the original engagement, a salvage claim may arise.

Towage-who is liable?

- Depends on the contract:
 - Towage in port is usually under the UK Standard Conditions for Towage and Other Services (1986 or 2024)
 - All liability on the tow
 - Open ocean towage
 - TOWCON/TOWHIRE
 - knock-for-knock agreement

Towage- type of liability

- Contractual
- Allocation of liability is commercially allocated and not dependant on breach of the contract on several aspects

Towage-Commercial consequences

- Port towage : routine
 - Either shipowners or Charterers may arrange
- Ocean towage
 - Specialised operation, specialised insurance

Towage — Nature and Legal Basis

- Towage = services provided by a tug to assist another vessel or floating structure by pulling, pushing, manoeuvring, docking or escorting it.
- Port towage is usually short-term assistance for entering/leaving port or berthing; open-ocean towage may involve moving ships, barges or offshore structures over long distances.
- Legal basis — liability is normally contractual: the parties' rights, duties and allocation of risk are primarily determined by the towage contract.
- Standard terms are important — e.g. UK Standard Conditions for Towage and Other Services (2024) for port towage and BIMCO TOWCON / TOWHIRE for ocean towage.
- Towage ≠ salvage: ordinary towage assists a vessel not in marine peril; however, a towage operation may become salvage if the requirements for salvage are satisfied.
- Towage is principally a contractual service, but maritime law becomes important when questions of salvage, liability, limitation or arrest arise.

Towage — Allocation of Liability

- Port towage — standard contractual terms commonly transfer substantial risk to the tow/tow-owner, including liability arising from acts of the tug and its crew.
- Open-ocean towage — TOWCON/TOWHIRE commonly use a knock-for-knock allocation: each party bears specified loss/damage to its own property and personnel, irrespective of fault, subject to the contract.
- Party liable → primarily determined by the towage contract and its agreed risk-allocation clauses.
- Limitation — qualifying claims may be subject to limitation under the LLMC 1976/1996.
- Enforcement — towage claims fall within Admiralty jurisdiction and may support an action in rem / arrest where the statutory requirements are satisfied.
- Commercial rationale → contractual allocation provides predictability and allows the parties to insure their respective risks.
- Key distinction → ordinary towage = contract and agreed risk allocation | salvage = assistance to property in marine danger with a salvage reward regime.

Wreck removal-legal basis

- Safety of navigation : powers of port authorities
- Safety of navigation and environmental protection:
 - The 2007 Wreck Removal Convention

Wreck removal-policy issues

- Should wrecks be always removed?
- Who should pay for wreck removal?

Wreck removal-who is liable?

- Shipowner Cap 313
- For EEZ and the Wreck Removal Convention (not relevant to Hong Kong- why?)
 - Shipowner
 - Locate, mark and remove the wreck

Wreck removal - type of liability

- Statutory
- Wreck removal Convention: strict liability
- Contractual

Wreck removal -Ship arrest and limitation of liability

- Wreck are included but not wreck removal in particular
- Claimant may have an action *in rem* (*means arrest may be available available*)
- Liability is unlimited as a reservation under the LLMC 1976.

Wreck-Commercial consequences

- Shipowner
- Cargo owner
- Insurer
- Financier

Towage — Implied Obligations of Tug and Tow

- Tug: must be reasonably crewed, equipped and fitted for the contemplated service.
- Tug: must exercise reasonable care, skill and diligence in performing the towage.
- Tug must make adequate preparations: sufficient power, proper tow-lines and suitable towing arrangements.
- Unforeseen difficulties do not automatically discharge the tug from completing the service.
- Where the tow is interrupted, the tug may be required to persevere and attempt to rejoin/reconnect.
- Tow also has obligations: towworthiness, proper preparation and cooperation may be relevant to allocation of responsibility.

Towage — Collision and Liability

- Contract determines rights and liabilities between tug and tow, but does not determine liability owed to an innocent third vessel.
- Liability turns on navigational fault: which vessel had control, and whose act or omission caused the casualty?
- Tug and tow are not automatically treated as a single legal unit for liability.
- COLREGs and the ordinary duty of good seamanship apply to the towage operation.
- Fault may be apportioned where tug, tow and/or a third vessel contribute to the collision.

What is pilotage?

- Use of a specialist navigator with local knowledge to assist a vessel in difficult waters
- Common in ports, harbour approaches, rivers and confined channels
- The pilot may know local depths, currents, tides, traffic patterns, berthing arrangements and restrictions
- Pilotage is a risk-management mechanism — but it does not eliminate legal responsibility

Master and pilot — who is in charge?

- A pilot advises and participates directly in navigation
- The presence of a pilot does not simply remove the master's responsibility for the vessel
- Bridge team, master and pilot must cooperate and exchange information
- The legal allocation of responsibility depends on the applicable regime and the particular fault

Voluntary vs compulsory pilotage

- Voluntary pilotage: owner or master chooses to take a pilot
- Compulsory pilotage: legislation or harbour rules require an authorised pilot in a designated area
- In the UK, competent harbour authorities have regulatory functions under the Pilotage Act 1987
- Compulsory pilotage does not mean that all navigational liability shifts away from the shipowner

Liability of the pilot

- A pilot may be personally liable for negligent acts or omissions
- Statutory regimes may limit the pilot's civil exposure
- The commercial logic is obvious → one individual cannot realistically bear the full financial consequences of a major casualty
- The injured third party will usually look to the shipowner and liability insurance as the principal financial risk bearers

Shipowner liability for pilot error

- The fact that pilotage was compulsory is not automatically a complete defence for the shipowner
- The vessel remains the source of navigational risk to third parties
- The legal system therefore generally preserves exposure of the owner / vessel notwithstanding compulsory pilotage
- This supports practical compensation through shipowner insurance and P&I cover

Pilotage — Pilot, Master and Command

- A pilot provides specialist local navigational knowledge and directs navigation while on board.
- Pilotage does not ordinarily displace the master's ultimate command of the vessel.
- The master must cooperate with the pilot, but must monitor the vessel's navigation and intervene where safety requires.
- IMO bridge procedures emphasise an effective Master–Pilot information exchange and continuing bridge-team situational awareness.

Pilotage — Compulsory Pilotage and Shipowner Liability

- Pilotage may be compulsory in designated waters, but compulsory employment of a pilot does not necessarily transfer navigational risk away from the ship.
- Under English law, the shipowner may remain civilly liable for loss caused by a compulsory pilot's negligence.
- Merchant Shipping Act 1995, s 16: owner/master liability is not excluded merely because pilotage is compulsory.
- Possible separate liability of the pilot or pilotage authority depends on the applicable statutory and factual framework.
- Distinguish: compulsory use of a pilot $\neq$ compulsory obedience to an unsafe order.

VIII - From Identity and Ownership to Navigation and Liability

The life-cycle view of a ship

- Definition: does the object fall within the relevant maritime regime?
- Nationality: which State's flag does it carry?
- Registration: what public and private information is recorded?
- Identification: how is the same vessel tracked through changes?
- Ownership: who has title and how was it acquired?
- Operation: who navigates and manages the vessel?
- Casualty: who bears responsibility and can liability be limited?

Key distinctions to remember

- Public law ≠ private law — but they overlap
- Nationality ≠ owner nationality
- Nationality ≠ registration, although closely connected
- Registered owner ≠ necessarily beneficial owner
- Possession ≠ legal title
- COLREG breach ≠ automatic liability without causation
- Liability ≠ limitation
- Pilot on board ≠ master / owner automatically free from responsibility

First takeaway: documents matter

- Certificate of registry
- IMO number and vessel particulars
- Bill of sale / title documents
- Mortgage and discharge documents
- Class and statutory certificates
- Insurance and P&I documentation
- Pilotage records, bridge logs, VDR / AIS and casualty evidence after an incident

Second takeaway: ask “who controls what?”

- Who owns the asset?
- Who operates it?
- Who manages safety?
- Who navigates at the relevant moment?
- Which State regulates it?
- Who insured the risk?
- Who has financial security over the vessel?
- Maritime liability often follows the allocation of legal duties — not simply commercial influence

Reading and preparation

- Y. Baatz et al, Maritime Law, 3rd edn (2014)
- UNCLOS Articles 91–94 for nationality and flag-State duties
- COLREGs 1972 — focus on Rules 2, 5–8, 13–17 and 19

Overall questions

- Why is there no universal definition of a ship?
- What is the difference between nationality and registration?
- Why is the IMO number more stable than the ship's name?
- Why is delivery not always enough to prove ownership?
- Why does compulsory pilotage not automatically remove shipowner liability?

Week 1 Lecture / Seminar – Take Away Message

- The ship is both a commercial asset and the organising object of maritime law
- Its definition, nationality, registration, identity and ownership determine which legal rules / actors matter
- Collision and pilotage show how regulatory navigation rules become questions of private liability