

# The IMO system as source for legal transplants for a STM regime

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# Outline

- Challenge? (New space – new rules.)
- Suggestions for sustainable solutions? (Flexibility mechanisms!)
- Conclusion

# Space Traffic Management (STM) from the perspective of public international law

Current law (*de lege lata*): five international space treaties;  
focus on states; fragments of “traffic rules” (binding/non-binding)

Future law (*de lege ferenda*): comprehensive set of “traffic rules”/  
STM international legal regime

# Space Traffic Management

“... means the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference.”

*IAA Cosmic Study on STM, Paris, 2006, Contant/Lála/Schrogl (eds.)*

# “Legal transplants”

“... study general ideas underlying existing traffic regulation with view to apply them to traffic in [outer space].”

*Luboš Perek, Traffic Rules for Outer Space, 1983 (82-IISL-09)*

road traffic, **traffic at sea**, air traffic

# “IMO system“

- International Maritime Organization (IMO)
- UN specialized organization (ICAO, ITU, (...))
- IMO conventions (1974 SOLAS, 1973 MARPOL, 1972 COLREGS, (...))
- 2017 Polar Code

“Safe, secure and efficient shipping on clean oceans.“

*IMO slogan, [www.imo.org](http://www.imo.org)*

# IMO system as source for legal transplants for a STM regime?

## “Traffic rules“

- Traffic separation schemes
- Action to avoid collisions
- Rules for crossing situations
- Incidents involving harmful substances
- Methods for the prevention of oil pollution from ships operating in special areas
- Safety rules for passenger/cargo ships
- (...)

## “Procedures“

- Flexibility mechanisms (keeping conventions up to date)
- Fast evolving areas, example: 2017 “Polar Code”

How can there be **flexibility** without undermining basic principles/UNCLOS principles (stability)?

- IMO's relationship to UNCLOS
- Tacit acceptance procedure



# IMO's relationship to UNLCOS

## UNCLOS (1982)

- Law of the Sea
- “constitution of the oceans“
- “umbrella treaty“

FAO: fisheries

IHO: hydrographic services

IMO: shipping industry

(...)

## IMO

- Maritime Law
- UN specialized organization
- 1948 IMO constitution (IMO mandate)
- “general competent organization“ under UNCLOS

“Implications of UNCLOS for the IMO”, LEG/MISC.8, 30 January 2014

# Tacit acceptance procedure I

- “Framework convention-annex approach” (from today’s perspective)
- Flexibility mechanisms: amendment procedures
- Expressed consent (unanimous agreement/ratification; strict procedure)
- Silent consent (tacit agreement; simplified procedure)



Basic Principles

Technical Standards

## Tacit acceptance procedure II

- Adoption by an expert committee by a certain majority
- Communication process to contracting governments
- Acceptance process: amendment is “deemed accepted” after a set period of time, unless a specified number of contracting states reject the amendment by that date (“prohibitive quorum”)
- In case the amendment is deemed accepted, it enters into force on a specific deadline

## Summary (IMO system as source for legal transplants...)

1982 UNCLOS “constitution of the oceans”		1967 Outer Space Treaty “magna charta of space law”
shipping traffic		space traffic
IMO (1948)		?
IMO conventions:		
SOLAS	safety of life	?
MARPOL	prevention of pollution	?
COLREGS	collision avoidance	?
(...)		
Amendment procedures (tacit acceptance)	flexibility mechanisms	?

# Conclusion

- Flexibility mechanisms are vital for dynamic treaties
- Instruments in the toolbox of international treaty law are manifold
- Treaty parties (states) decide how difficult it will be to keep STM regime up to date
- Sustainable solutions wanted?

# Thanks.

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