

UK Legal Obligations on International Shipping

How the UK is in breach of its international obligations to reduce the climate impact of international shipping by waiting for the International Maritime Organization to act.

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A study by



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About Opportunity Green

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics and policy. Opportunity Green helps countries, civil society and business access the solutions that reduce emissions and bring enormous opportunities for economic development, improved health and increased democracy. At Opportunity Green we believe lawyers are obligated to analyse the existing legal systems and regulations to stop climate change. We use legal innovation to forge new pathways on climate action or where that is not possible, find pathways within the present legal structure to facilitate the legislation needed to slash carbon pollution.

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1. Executive Summary

The UK is considering the regulation of emissions from domestic shipping but has not proposed any regulation of international shipping. The UK has stated emphatically this is because international shipping is regulated by the International Maritime Organization (IMO). However, the UK is under a legal obligation to keep emissions to the temperature limits agreed in the Paris Agreement and as the UK Climate Change Committee pointed out, this cannot be done without tackling international shipping. Waiting for the IMO to act therefore inevitably violates the UK's obligations under the Paris Agreement. International law requires the UK to take action on international emissions, and the existing domestic regulatory framework provides the necessary powers to do so.

The primary obligation for Paris Agreement signatories is to ensure temperatures stay well below 2°C and to pursue efforts to limit the increase to 1.5°C, by reducing economy-wide emissions - including all maritime emissions. By regulating only domestic shipping emissions, the UK is breaching that obligation.

This report draws on analysis of international law to detail the UK's obligation to act on greenhouse gases (GHGs) from the international maritime sector, outside the IMO framework. It finds that, provided a number of important legal and enforcement considerations are respected and built into the design of any policy measure, there are numerous avenues through which the UK could take national action. Therefore, if the UK regulation of international shipping emissions is enacted in accordance with the principles of non-discrimination, good faith and non-abuse of right, and designed in ways that minimise impact on the right of innocent passage and freedom of high seas and respects the sovereignty of other countries, the measure will be in accordance with international law. A clear example of this is the UK's monitoring, reporting and verification regulation which requires ships to report on the emissions from their entire journey to a UK port which has been in place without legal challenge for a number of years.

If the IMO enacts regulations in line with the Paris Agreement, the UK would be relieved of its obligation as the required result would have been achieved. But the UK cannot simply wait for ambitious IMO regulation to appear. Indeed, the UK has not yet even acknowledged its responsibility, nor set out how the UK sees the IMO acting to achieve the required reduction in emissions from international shipping.

1 Introduction

The UK is considering adding domestic shipping into its emissions trading system (UK ETS) but has made no proposal on how it will tackle emissions from international shipping, a far greater problem. The UK is under an obligation to meet its legally binding targets under the Paris Agreement and without tackling international shipping the temperature limits of the Paris Agreement cannot be met. The Paris Agreement calls for “economy-wide absolute emission reduction” in Article 4(4), in furtherance of meeting the goals set out in Article 2, which include: “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.

According to the most recent official UK emissions data, domestic shipping is responsible for 5% of the UK’s domestic transport GHG emissions, or 5.2Mt of CO₂ emissions, while international shipping represents 6.0Mt CO₂ (at 2020 levels and including 50% of operational emissions on all journeys to and from the UK). This represents a decrease of 17.8% from the 2019 level due to the impact of the pandemic on international transport.^{1,2} In 2019 the difference was even greater: 5.9 Mt of CO₂ for domestic shipping, and 7.3 Mt of CO₂ for international shipping.³

This report considers the combined obligations of the UK’s Climate Change Act (via the addition of shipping into the UK’s Carbon Budgets), the Paris Agreement and the UN Convention on the Law of the Sea (UNCLOS). It looks at the interaction of these with regulations on the emissions of GHGs agreed at the IMO, and what obligations these regulations place on the UK government in terms of tackling the emissions of international shipping, as well as domestic.

2 Current UK Policy

The UK consulted on the regulation of domestic maritime emissions in July 2022 but did not consult on any policies that could reduce international emissions. The consultation stated: “*international maritime emissions are out of scope for this consultation, since they are regulated by the International Maritime Organization*”.⁴ This is misleading. While the IMO has the non-exclusive authority to regulate international shipping emissions, it has not yet done so in any meaningful way. The UK, along with almost every other country in the world⁵ has committed in the Paris Agreement to keeping the temperature rise from climate change to a maximum of 2°C and pursuing a temperature rise of only 1.5°C as stated above. The regulations to tackle shipping emissions currently agreed in the IMO are only consistent with a 3°C pathway or worse.⁶

¹ Department for Business, Energy and Industrial Strategy (2022) *Final UK greenhouse gas emissions national statistics: 1990 to 2020*. [online] Available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2020> [Accessed 5 Aug. 2022].

² UK Domestic Maritime Decarbonisation Consultation: Plotting the Course to Zero, UK Department for Transport, July 2022, pg 5 and 30.

³ BEIS (2022) *Final UK greenhouse gas emissions national statistics: 1990 to 2020*. Available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2020> [Accessed 5 Aug. 2022].

⁴ UK Domestic Maritime Decarbonisation Consultation: Plotting the Course to Zero, UK Department for Transport, July 2022, pg 5 and 30.

⁵ Only four countries have not ratified the Paris Agreement: Iran, Libya, Yemen and Eritrea.

⁶ Wittles, J. and Shankleman, J. (2021). *Bloomberg - UN’s Guterres Blasts Shipping, Aviation Climate Targets as Too Lax* [online] [www.bloomberg.com](https://www.bloomberg.com/news/articles/2021-10-14/un-leader-blasts-shipping-aviation-climate-targets-as-too-lax). Available at: <https://www.bloomberg.com/news/articles/2021-10-14/un-leader-blasts-shipping-aviation-climate-targets-as-too-lax> [Accessed 10 Jan. 2022]. See also Carbon

The legal obligation to reduce emissions from international shipping falls directly on the UK and not on the IMO. The UK is a signatory to the Paris Agreement, while the IMO is not. Therefore, the UK made a policy choice not to consult on the potential regulation of international emissions, rather than a legal choice, as was portrayed in the consultation paper.

This decision by the UK to evade its legal responsibility to reduce emissions from international shipping is all the more remarkable because the EU is in the process of enacting legislation that will apply to international shipping on the basis of all ships that journey to or from the EU. The inclusion of shipping in the EU ETS⁷ and the FuelEU Maritime Regulation⁸ (as the main regulations) is at the time of writing still going through the EU legislative process. During this process, the EU has considered the legality of including international shipping in its ETS and found that there is no legal block.⁹ The legal analysis that the European Commission relies on is the same analysis considered in this paper to conclude that the UK has an obligation to act on international emissions. However, that assessment did not look at the Paris Agreement obligations so while it concluded there was no block to the EU acting, it was not a full analysis considering whether the EU *must* act to reduce emissions from international shipping.

By law, international shipping emissions will be included in the UK's Carbon Budgets from 2033, so the UK will be obliged to reduce emissions from international shipping from that date as part of its domestic law under the Climate Change Act which established the Budgets. It could be argued (although the UK has not) that by including international shipping in the 6th Carbon Budget, the UK is addressing its obligation to reduce emissions from international shipping in line with the Paris Agreement. However, this is not the case as even with the inclusion of international shipping, the 6th Budget does not begin for another decade (2033), and the Intergovernmental Panel on Climate Change has made clear that if the Paris Agreement temperature targets are to be met, action in the current decade is crucial.¹⁰ Further, even with the addition of the emissions from 2033, there is no proposal for how any reductions will be achieved.

The Climate Change Committee (the independent committee established under the Climate Change Act to advise the government on its obligations under the Act, and to report on progress towards meeting those obligations) recommended to the UK Parliament in June 2022 to look very carefully at accounting for international emissions in stating that the UK should:

“Build upon the proposals for the UK Emissions Trading Scheme and the UK MRV regulations to explore options for an activity-based measure of UK shipping emissions. This should

Tracker's analysis of the international shipping sector, available at:
<https://climateactiontracker.org/sectors/shipping/>

⁷ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, Brussels, 14.7.2021 COM(2021) 551 final 2021/0211 (COD).

⁸ Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC, Brussels, 14.7.2021 COM(2021) 562 final 2021/0210 (COD).

⁹ See European Commission, Directorate-General for Climate Action, Budaragina, M., Paroussos, L., Kwon, H., et al., *Study on EU ETS for maritime transport and possible alternative options of combinations to reduce greenhouse gas emissions: final report*, Publications Office of the European Union, 2021, <https://data.europa.eu/doi/10.2834/27271>.

¹⁰ Intergovernmental Panel on Climate Change, Sixth Assessment Report, 2022.

include exploring the benefits of changing the emissions accounting approach for international shipping, to ensure that a fair share of emissions for voyages to and from the UK are captured within the UK's inventory even if vessels refuel in other jurisdictions.”¹¹

The UK states that it is proposing not to regulate international shipping because the IMO does so.¹² Importantly the UK does not set out how IMO regulation is meeting the UK's obligations under the Paris Agreement. The UK did commit in the G7 Climate and Environment Communique to seek to increase ambition on international shipping decarbonisation and has supported a goal of zero emissions shipping by 2050 in submissions to the IMO.¹³ However, the UK has not supported any concrete policies that would lead to zero emissions shipping by 2050 in the IMO.

The UK's Climate Change Committee has stated clearly that emissions from international shipping and aviation “must be addressed if the temperature goal of the Paris Agreement is to be met.”¹⁴ Further, in its analysis of the requirement on parties to pursue the “highest possible ambition” under the Paris Agreement¹⁵, the CCC stated that this means aiming for zero emissions by 2050.¹⁶ However, the IMO has agreed only to reduce emissions from international shipping by at least 50% by 2050. The CCC states that this is not enough, and “increased ambition will therefore be required for shipping, along with a set of tangible policies to deliver that ambition.”¹⁷ Therefore, even on the UK's stated policy of waiting for the IMO to act, the IMO does not even have an agreement to reach the level of reductions required, nor indeed, any policies to achieve them.

3 Non-CO₂ emissions

Shipping's climate impact is currently mostly from CO₂ emissions¹⁸ but as a sector it also emits methane, black carbon and nitrogen oxide (NO_x), all of which have significant climate impacts. While the UK has only consulted on regulating CO₂ emissions from domestic shipping, the legal obligation is to achieve the temperature goals of the Paris Agreement which requires action on all emissions, not just CO₂. The analysis below demonstrates that the UK's existing domestic framework can already facilitate such action.

4 Legislative choice

The UK has a wide variety of policy options available to it to reduce emissions from international shipping. As a sovereign state, the UK can impose any regulations it sees fit as long as these are not prohibited by another piece of legislation. Options include an emissions charge or levy; inclusion in an emissions trading system; fuel or emissions standards; imposing a mandatory operational or design efficiency standard; differentiated harbour dues and mandating slow steaming or imposing speed limits. The rest of this section and the next set out where or how there could be potential conflicts, though the risk of these is minimal.

¹¹ 2022 Progress Report to Parliament, Climate Change Committee, June 2022.

¹² UK Domestic Maritime Decarbonisation Consultation: Plotting the Course to Zero, UK Department for Transport, July 2022, pg 5 and 30.

¹³ MEPC 77/7/27 Reduction of GHG Emissions From Ships - Comments on document MEPC 77/7/3, Kiribati et al.

¹⁴ Letter: Advice on the UK's 2030 Nationally Determined Contribution (NDC) (CCC, December 2020).

¹⁵ Paris Agreement, Article 4.3.

¹⁶ Letter: International aviation and shipping and net zero (CCC, September 2019).

¹⁷ Net Zero – The UK's contribution to stopping global warming (CCC, May 2019).

¹⁸ Fourth IMO GHG Study, 2020.

If a policy choice is made to add international, along with domestic, emissions to the UK ETS, then it is possible to do so via an amendment to the Statutory Instrument establishing the UK ETS (the Greenhouse Gas Emissions Trading Scheme Order 2020). It is important to note that for any other policy option a new legislative act would be required. The UK ETS may be amended via a statutory instrument rather than primary legislation because the Climate Change Act gave the government powers to establish emission trading schemes so that no further primary legislation was required; Article 44 states:

*“(1) The relevant national authority may make provision by regulations for trading schemes relating to greenhouse gas emissions.
(2) A “trading scheme” is a scheme that operates by—
(a) limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or
(b) encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere.”¹⁹*

The UK MRV²⁰ legislation is focused on international journeys. It was originally enacted to bring the EU MRV Regulation into effect in the UK but was modified under the EU Withdrawal Act 2018 due to the UK’s exit from the European Union. It could be amended to include an obligation on ships to do more than simply monitor their emissions; for example, to include reference to the relevant parts of the UK ETS. It is worth noting that to include shipping in the UK ETS, the better option would be to amend the UK ETS per the above, as it would sit within the wider framework setting out emission registries and other such architecture that is required for a trading scheme. Similarly at the EU level, shipping was added to the ETS Directive rather than via an amendment to the EU MRV Regulation. Moreover, as stated above, while adding shipping to the UK ETS (or indeed, establishing an entirely new trading scheme) could be done without the need for primary legislation due to the powers granted under the Climate Change Act, any other policy option would require new legislation.

5 Legal challenges

If the UK were to enact legislation that regulated international shipping, it is possible that it could be challenged. However, there are very few grounds upon which such a claim could be brought, and it would be extremely unlikely to succeed. The main question on any potential for litigation would rest with how the final legislation is designed. As there is currently no draft legislation it is impossible to fully assess the potential for challenge. But if the legislation is designed so that it applies to ships stopping in a UK port, does not discriminate arbitrarily between ships on any basis, and is published clearly in advance of taking effect, there is little upon which the legislation could be challenged. The UK can require foreign ships that stop in UK ports to comply with UK law, as they have been doing with the UK MRV for a number of years without challenge. This is on the basis of port State jurisdiction, which is described in detail below. Adding a charge, emissions credit or fuel requirement to that legislation (or via an entirely separate piece of legislation) would not fundamentally change the legal principle that ships stopping in UK ports must comply with any UK legislation in place.

¹⁹ Section 44(1) of the Climate Change Act 2008 provides the power for the UK to establish trading schemes relating to greenhouse gas emissions and the Greenhouse Gas Emissions Trading Scheme Order 2020. S.I. 2020/1265 established the UK ETS.

²⁰ Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and the Port State Control (Amendment) Regulations 2017 (SI 2017/825) as retained under the EU (Withdrawal) Act 2018 with amendments to make it operable in the non-EU context.

Much more likely than a challenge to legislation to reduce emissions would be a challenge on the lack of regulation to reduce emissions. UNCLOS and the Paris Agreement have been ratified by the UK, which therefore has obligations under those agreements. While neither UNCLOS nor the Paris Agreement have been enacted into domestic legislation in the UK, they do have indirect effect²¹ and courts will interpret any domestic legislation in line with treaty obligations where possible. UK government therefore retains the obligation under UNCLOS to protect the marine environment, and the Paris Agreement obligation to limit temperature rise.

The rest of paper sets out the international legal regime which requires the UK to ensure that its emissions from international shipping decrease.

6 The Paris Agreement

The Paris Agreement obliges countries to reduce emissions in line with the temperature goal of well below 2°C and to aim for only 1.5°C. This is a positive obligation to achieve the temperature goal,²² and includes the emissions from the maritime sector, placing an obligation on countries to act nationally or regionally to reduce these emissions.²³ As outlined above, there are no regulations from the International Maritime Organization that reduce these emissions in line with the Paris Agreement, and while countries can (and should) continue to push for ambitious action in the IMO, they cannot simply wait for the IMO to act if they are to meet their international obligations.²⁴

The UN Convention on the Law of the Sea (UNCLOS) Article 192 imposes the positive requirement that: “States have the obligation to protect and preserve the marine environment.”²⁵ UNCLOS also calls on states to cooperate regionally, directly or through competent international organisations, in formulating and elaborating international rules and standards and recommending practices and procedures consistent with UNCLOS for the protection and preservation of the marine environment.²⁶ UNCLOS looks to generally accepted international rules and standards as the level of protection required. For climate, the Paris Agreement, ratified by all but four countries, is the internationally accepted standard and therefore UNCLOS imposes a duty on state parties to reduce emissions from international shipping in line with the temperature goals of the Paris Agreement.²⁷

²¹ Lord Bingham of Cornhill, in his maiden speech in the House of Lords, set out this and five further ways in which treaties can have indirect effect in the UK: HL Deb 3 July 1996 c1465 ff.

²² As the UK Climate Change Committee has pointed out, it is impossible to reach this temperature goal without reducing emissions from international shipping (and also aviation).

²³ Cornerstone Barristers (2021). *In the Matter of the UN Framework Convention on Climate Change and in the matter of the Paris Agreement Re: Inclusion of emissions from international aviation and shipping in Nationally Determined Contributions*. [online] Available at: <https://www.transportenvironment.org/wp-content/uploads/2021/10/Re-Aviation-Shipping-NDC-UPDATED-Legal-Advice-Final-3-5-21-corr-1.pdf> [Accessed 7 Jan. 2022].

²⁴ For a full analysis of the legislation see O’Leary, A. (2022), *Freedom to Regulate the High Seas*, Transport and Environment. Available at: <https://www.transportenvironment.org/discover/freedom-to-regulate-the-high-seas/>.

²⁵ UNCLOS, Article 192.

²⁶ UNCLOS Article 211(2).

²⁷ For a full discussion of this point see: Boyle, A. (2020) “*Protecting the Marine Environment from Climate Change: The LOSC Part XII Regime*,” in Johansen, E., Busch, S. V., and Jakobsen, I. U. (eds) *The Law of the Sea and Climate Change: Solutions and Constraints*. Cambridge: Cambridge University Press, pp. 81–103. doi: 10.1017/9781108907118.005.

The IMO is the specialised agency for international shipping and has attempted to regulate emissions therefrom, with the EEDI, EEXI, CII, DCS and SEEMP²⁸ having been agreed. However, it is not enough to simply say that the IMO has acted. The cumulative effect of IMO measures does not put the shipping sector on a pathway consistent with the Paris Agreement.²⁹ Signatories to the Paris Agreement and/or UNCLOS, per the above, must ensure that the temperature targets of the Paris Agreement are met; while the IMO may have acted, it has not acted sufficiently to relieve those signatories of their obligations under international law. In the absence of global regulation that meets this standard from the IMO (or other source), the obligation falls upon individual states to regulate.

7 The Law of the Sea (UNCLOS)

There is an international obligation to act on all Paris Agreement signatories, if no adequate action is taken at IMO level to reduce emissions in line with the Paris temperature goals. Where that action is in accordance with international law, there can be no legal objection to any country or region acting. There are a number of different options that the UK could pursue: legislation as a port; flag, and coastal State. The port State option is the most attractive.

Countries have nearly unlimited sovereign jurisdiction over their ports and thus can impose a very broad range of conditions on the entry of vessels into their ports pursuant to UNCLOS.³⁰ UNCLOS provides no automatic right of entry into foreign ports. Once vessels voluntarily enter the port of a state party, they are thereby agreeing to submit to the conditions of entry to that port, and this can extend to where these conditions have extraterritorial consequences. The only limit to the jurisdiction that states can exercise over foreign-flagged ships in their ports are that any regulations should be imposed in accordance with the general principles of non-discrimination, good faith and non-abuse of right as set out in Article 211(3):

“States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry

²⁸ These are the Energy Efficiency Design Index, the Energy Efficiency Design Index for Existing Ships, the Carbon Intensity Indicator, the Data Collection System and the Ship Energy Efficiency Management Plan.

²⁹ Comer, B. (2021). *Zero-emission shipping and the Paris Agreement: Why the IMO needs to pick a zero date and set interim targets in its revised GHG strategy* | International Council on Clean Transportation. [online] Theicct.org. Available at: <https://theicct.org/blog/staff/marine-shipping-imo-ghg-targets-global-sept21> [Accessed 7 Jan. 2022]. See also Wittles, J. and Shankleman, J. (2021). *Bloomberg - UN's Guterres Blasts Shipping, Aviation Climate Targets as Too Lax* [online] www.bloomberg.com. Available at: <https://www.bloomberg.com/news/articles/2021-10-14/un-leader-blasts-shipping-aviation-climate-targets-as-too-lax> [Accessed 10 Jan. 2022].

³⁰ UNCLOS Article 211(3).

requirements of that State. This Article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of Article 25, paragraph 2."

Countries can regulate pollution from ships flagged in their countries without any restriction (UNCLOS, Article 211(2)). However, if the UK chose only this route it would not cover a large proportion of emissions (with the UK representing 0.5% of the world trading fleet by deadweight tonnage at the end of 2021)³¹, while it could create a perverse incentive for UK flagged ships to change their flag to another country. Thus, this paper will only assess the extent to which countries can regulate pollution as a coastal or port State.

The UK, acting in its coastal State capacity, can impose regulations to reduce GHG emissions from vessels, including foreign vessels in its territorial waters, if those regulations do not impose any new Construction, Design, Equipment or Manning standards. This, however, only applies to the 12-mile zone around the coastline (the territorial sea), and in the Exclusive Economic Zone (EEZ) the country is restricted to internationally recognised standards, thus it is not the most attractive basis upon which to regulate.

8 Extraterritorial Effect

It is important to note that several countries and regions have already enacted maritime regulations which have extraterritorial effect, using their ability to impose regulations on ships that voluntarily enter their ports, such as the EU and China's³² respective rules on monitoring and reporting CO₂ emissions. If the UK wishes to impose a new GHG policy with extraterritorial effect, it should be enacted by imposing liability as a condition of entry to port. For any measure covering emissions from the entire journey, enforcement should occur in port or in connection with port services for it to be in line with port State control.³³ In those cases, the fact that the measure would cover the emissions for the whole travel length would only be an expression of the polluter pays and proportionality principles. International law requires that any such measure have both a sufficient link with the enacting country and respect the sovereignty of third party countries. The former would be guaranteed by the territoriality principle and latter would be respected in the sense that the measure would not preclude any third party country from imposing a similar system.³⁴ Any entry of a port is voluntary and by voluntarily entering, the ship voluntarily submits to that port's rules and regulations. This is true of any product regulation - any country can set standards on any product entering their territory, and the exporting country can either meet those standards or simply choose not to export to that country. In this case, the ship in question would either be obligated to abide by the UK's port entry rules or not dock in that port.

Prescriptive jurisdiction to enact measures with extraterritorial effect is available under general international law where there is "*substantial and genuine connection between the subject-matter of jurisdiction, and the territorial base and reasonable interests of the jurisdiction sought to be exercised.*"³⁵ This means that international law allows states to enact measures that have extra-

³¹ Department for Transport (2022). *Shipping fleet statistics: 2021*. [online] Available at: <https://www.gov.uk/government/statistics/shipping-fleet-statistics-2021/shipping-fleet-statistics-2021--2> [Accessed 5 Aug. 2022].

³² Lloyd's Register (2017). China Regulation on Data Collection for Energy Consumption of Ships. [online] Lr.org. Available at: <https://info.lr.org/l/12702/2019-01-29/6w71k6> [Accessed 28 Jan. 2022].

³³ UNCLOS Articles 25(2) and 194.

³⁴ Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea*, Martinus Nijhoff Publishers, 2008 at 213.

territorial effect where there is a substantial and genuine connection between the State regulation and the reasonableness of the regulation.³⁶ Every country has an obligation under the Paris Agreement to reduce economy-wide emissions, which include emissions from the maritime sector and taking responsibility for the emissions from journeys to or from their ports is reasonable in the circumstances of climate change.

If the UK enacts stringent GHG regulations, they could very easily have extraterritorial effect by, for example, regulating all the emissions (including those on the high seas) on any journey that ends in a UK port. The non-discrimination principle of international law – in that the measure should apply equally to all ships entering into a UK port, rather than discriminating on the basis of flag - as well as environmental considerations, justify a measure covering emissions from the entirety of a ship's journey. There are also sound practical reasons, particularly regarding attribution, that support the chosen measure covering emissions from the whole trip.

9 Port Enforcement

The main restrictions upon the imposition of conditions of entry to port is that they must not violate the principles of non-discrimination, good faith and non-abuse of right.³⁷ Port States have the right to take all necessary measures to ensure that any vessel entering their ports complies with their regulations, including monetary penalties, refusal of access, and even extending to actions taken outside the port, such as inspections.³⁸ This means that any UK regulation that is enacted on the basis of ships entering UK ports will be in line with international law. Where a measure is non-discriminatory it will not fall foul of the World Trade Organization Rules, and such a measure would be in line with UNCLOS and thus acceptable to the UNCLOS Tribunal.³⁹

Therefore, if the UK regulation of international shipping emissions is enacted in accordance with the principles of non-discrimination, good faith and non-abuse of right, and designed in ways that minimise impact on the right of innocent passage and freedom of high seas⁴⁰ and respects the sovereignty of other countries, the measure will be in accordance with international law. A clear example of this is the UK's monitoring, reporting and verification regulation which requires ships to report on the emissions from their entire journey to a UK port.

This means that the UK has many policy options which can be used to regulate GHG emissions from vessels to ensure they meet their obligations under the Paris Agreement. However, this briefing confines itself largely to legal issues and does not take a position on the optimum policy solution. Suffice to say that whatever mitigation option is chosen, it must drive emissions cuts in line with the temperature obligations of the Paris Agreement if it is to meet the requirements of international law.

10 Conclusion

³⁵ Ringbom, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008 at 365.

³⁶ For a full discussion see ClientEarth, *the Legal Implications of EU action on GHG Emissions from the International Maritime Sector* (2011).

³⁷ UNCLOS Article 211(3).

³⁸ UNCLOS Article 218(1) and (2).

³⁹ For a full analysis of the legislation see O'Leary, A. (2022), *Freedom to Regulate the High Seas*, Transport and Environment. Available at: <https://www.transportenvironment.org/discover/freedom-to-regulate-the-high-seas/>.

⁴⁰ UNCLOS Article 89.

This paper has analysed international and domestic UK law with regard to emissions from international shipping. It has concluded that the Paris Agreement and UNCLOS place a positive obligation on the UK to reduce maritime emissions. If the IMO enacts regulations that drive the required emissions reductions, then the UK would have no further obligation to act. But in the absence of action from the IMO in line with the Paris Agreement, that obligation is still with the signatory state – the UK. UNCLOS gives states virtually unlimited sovereign jurisdiction over their ports and any manner of conditions can be imposed on the entry of vessels to ports. Once vessels voluntarily enter the port of a Member State, they are thereby agreeing to submit to the conditions of entry to that port, even where these conditions have extraterritorial effect. If the regulation of shipping emissions is designed to be consistent with the principles of non-discrimination, good faith and non-abuse of right, it will not impact on any other countries' sovereignty and can be lawfully imposed.

Where the UK regulation of international GHG emissions is designed using port State control, it would be in line with UNCLOS and thus acceptable before the Tribunal for the Law of the Sea. The risk of successful legal challenge would therefore be very low. Regulating international shipping emissions outside of IMO regulation does not violate international law; on the contrary, not enacting regulations to reduce international shipping emissions in line with the Paris Agreement violates international law and must be remedied immediately.

This briefing in no way aims to undermine momentum or the desirability of a global solution to maritime emissions adopted under the auspices of the IMO. While a global agreement in line with the Paris Agreement would be desirable, the IMO has yet to reach an agreement on specific measures that meet the ambition of the Paris Agreement and deliberations proceed slowly. The UK has an obligation under the Paris Agreement to reduce shipping emissions, and concrete policy options must be put in place now. Waiting indefinitely for the IMO to act is not in line with the legal obligations discussed in this paper.