

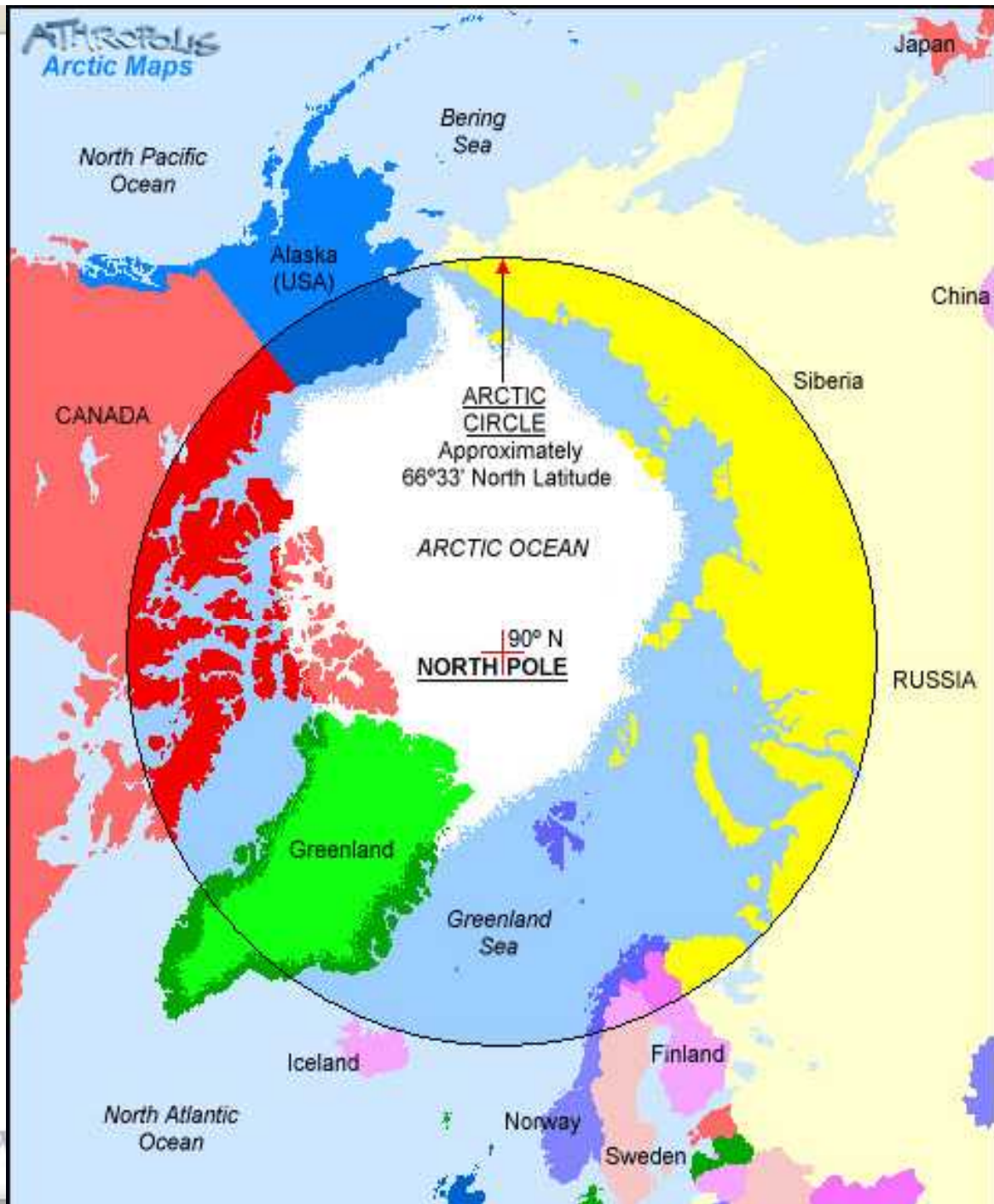
Global Commons and the Law of the Sea
22-23 June 2015

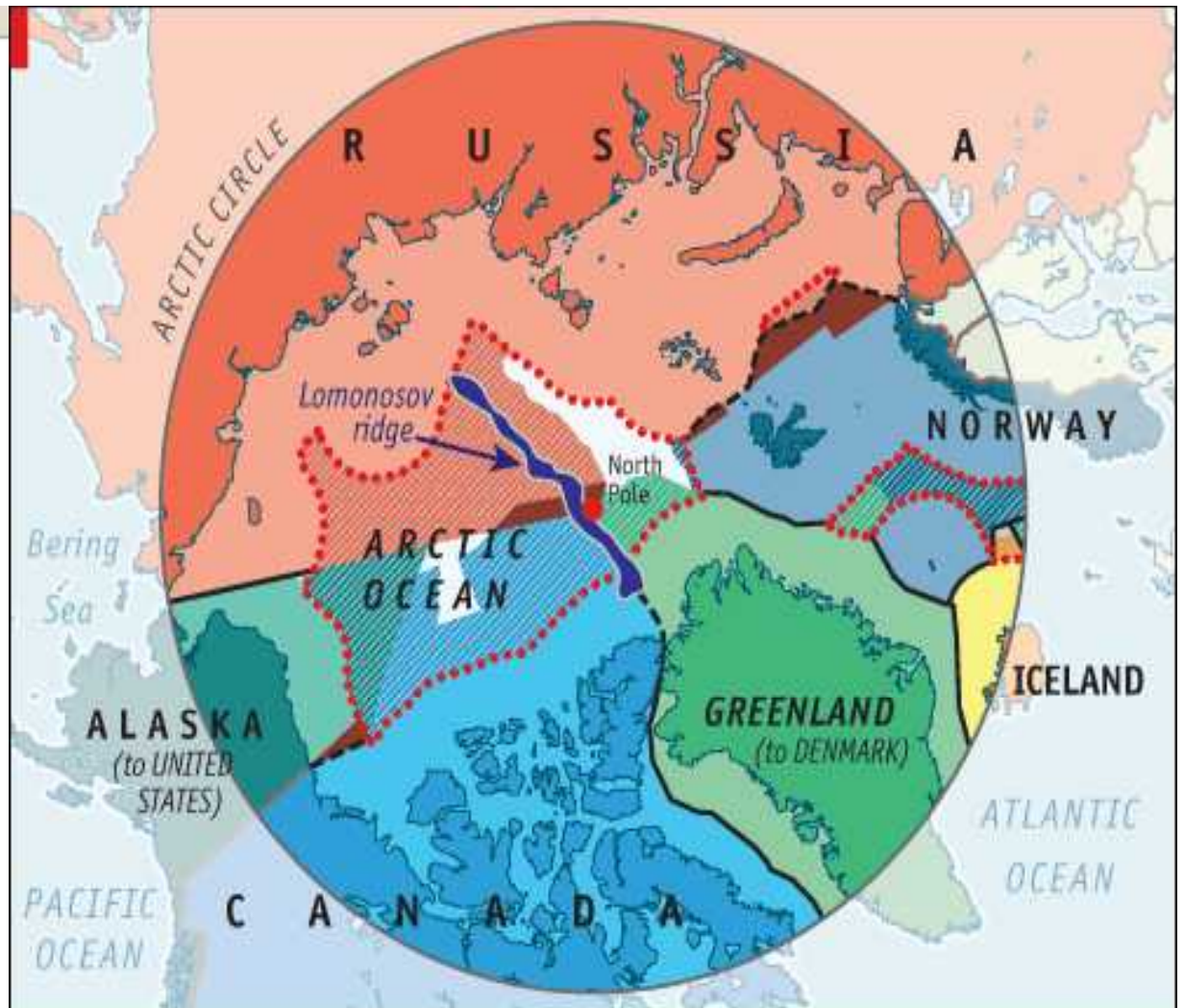
**The Development of the Polar Code
& Challenges to Its Implementation**

Robert Beckman & Zhen Sun

Overview

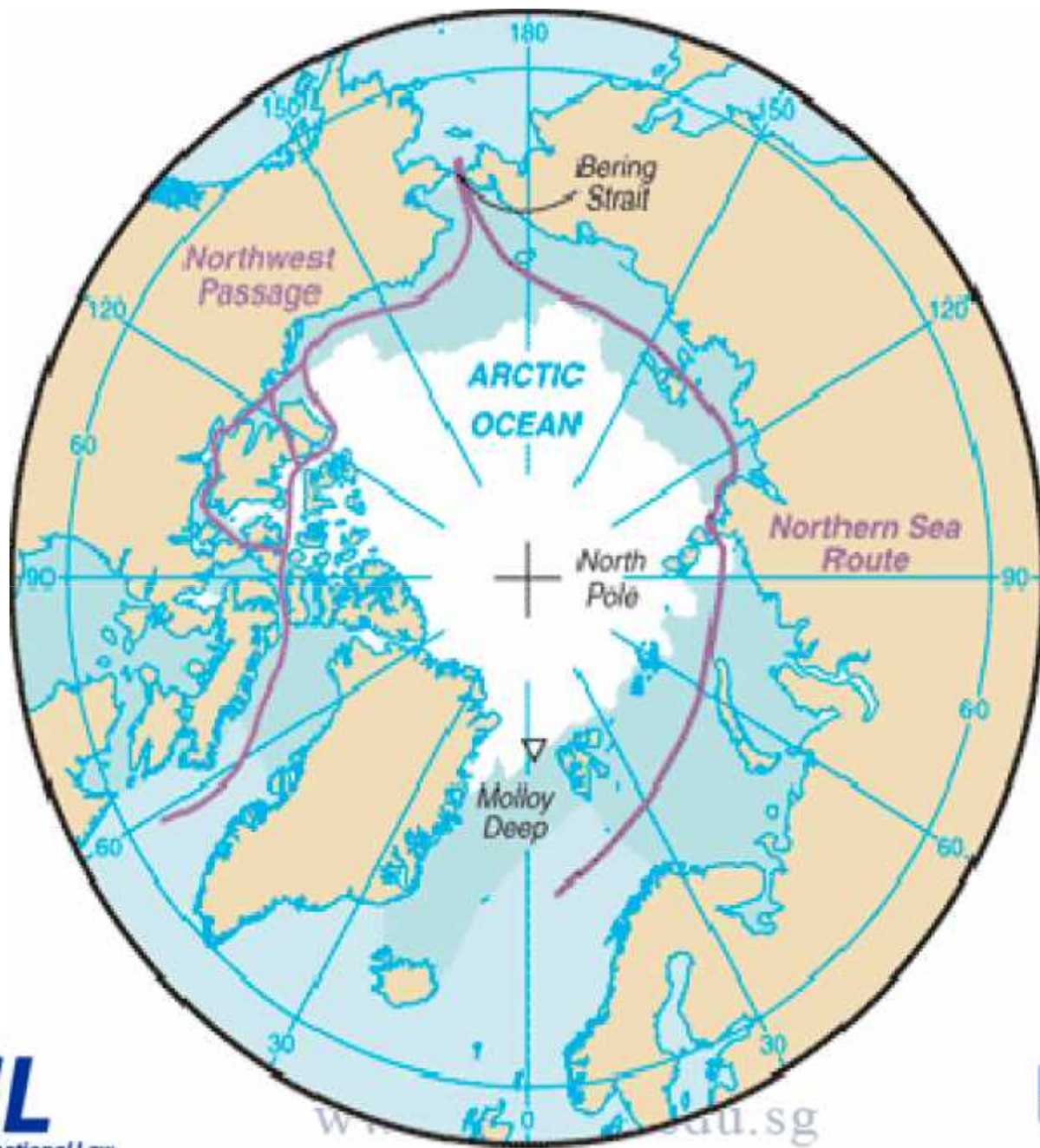
- **Maps of Arctic & UNCLOS Article 234**
- **IMO and UNCLOS**
- **Development of the Polar Code**
- **Implementation & Further Development**
- **Polar Code and Article 234**





Territories and claims within the Arctic Circle





UNCLOS Article 234. Ice-Covered Areas

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

UNCLOS Article 234 Ice-Covered Areas

- Such laws and regulations shall have **due regard** to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

IMO and UNCLOS

- **The United Nations Convention on the Law of the Sea**
 - Constitution for the Oceans
 - Framework Convention
- **The International Maritime Organization**
 - United Nations Specialized Agency
 - Responsible for the Safety and Security of Shipping and the Prevention of Marine Pollution by Ships

IMO's Mandate under UNCLOS

- IMO has a mandate under UNCLOS as a global legislative entity to adopt international rules and standards on the basis of many of its provisions.
- UNCLOS Articles 22(3)(a), 41(4)&(5), 53(9), 60(3)&(5), 211(1)-(3)&(5)&(6)(a), 217(1)(4)&(7), 218(1), 220(7), 223, 297(1)(c) refer to “**Competent International Organization**” – **maritime safety and efficiency of navigation**;
- Articles 197-202, 204-205, 207(4), 208(5), 210(4), 212(3), 213-214, 216(1), 222, 262, “**Competent International Organizations**” – **prevention and control of marine pollution**;

IMO's Mandate under UNCLOS

- UNCLOS Articles 21(2)&(4), 39(2), 41(3), 53(8), 60(3)&(5)-(6), 94(4)(c)&(5), 211(2)&(5)&(6)(c), 216(1)(a) refer to “**Generally Accepted International Rules, Standards, Regulations**” – technical matters of all kinds affecting international shipping:
 - Design, construction, manning or equipment
 - Safety of navigation and prevention of collisions at sea
 - Prevention, reduction and control of pollution from ships

Structure of IMO

- **Assembly** – highest governing body; all member States; biennial meeting;
- **Council** – executive organ; elected by the Assembly
- **Five Main Committees** – MSC, MEPC, LEG, TC, FAL
- **A Number of Sub-Committees** – CCC, HTW, III, NCSR, PPR, SDC, SSE

Main IMO Conventions

- 1. International Convention on Safety of Life at Sea, 1974 (SOLAS)**
 - 162 Parties, 98.60 % of world tonnage
- 2. International Convention for the Prevention of Pollution from Ships 1973, as modified by the 1978 Protocol (MARPOL 73/78)**
 - 153 Parties, 98.52 % of world tonnage
- 3. Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)**
 - 159 Parties, 98.55 % of world tonnage

IMO Conventions & UNCLOS

- **Article 94. Duties of the Flag State**

- Each State is required to take such measures as is necessary to ensure that ships flying its flag observe the applicable international regulations concerning safety at sea, and the reduction and control of pollution from ships

- **Article 211(2) Pollution from Vessels**

- States shall adopt laws & regulations for vessels flying their flag and such laws shall at least have the same effect as that of the generally accepted international rules and standards established by the competent international organization

Development of the Polar Code

- 2002 Guidelines for Ships Operating in Arctic Ice-Covered Waters
- 2006 Enhanced Contingency Planning Guidance for Passenger Ships Operating in Areas Remote from SAR Facilities
- 2007 Guidelines on Voyage Planning for Passenger Ships Operating in Remote Areas
- 2009 Guidelines for Ships Operating in Polar Waters

Progress on a Mandatory Polar Code

- 2009 MSC DE Sub-Committee high-priority work program on “Development of a mandatory code for ships operating in polar waters”
- **International Code for Ships Operating in Polar Waters**
- Making the Polar Code mandatory through amendments to SOLAS regulations and MARPOL Annexes, and/or other IMO instruments

Tacit Acceptance Procedure

- **SOLAS Article VIII Amendments**
- “An amendment to the Annex other than Chapter I shall be **deemed to have been accepted**. ...
- BUT
- If ... either more than one-third of CGs, or CGs that combined merchant fleets of which constitute not less than fifty per cent of the world’s merchant fleet, ... object to the amendment, it **shall be deemed not to have been accepted**.”

Tacit Acceptance Procedure

- **MARPOL Article XVI Amendments**
- “an amendment to an Annex to the Convention **shall be deemed to have been accepted** ... **unless** the appropriate body, at the time of its adoption, determines that the amendment shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Parties, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world’s merchant fleet.”

Tacit Acceptance Procedure

	Committee Meeting	Interval	Committee Meeting	Interval	Entry into force
SOLAS Article VIII Amendments to Regulations except Chapter I	MSC 93 approved for circulation new Chapter XIV May 2014	Minimum 6 months	MSC 94 adopted Nov. 2014	Minimum one year	Deemed accepted 1 July 2016 EIF 1 January 2017
MARPOL Article 16 Amendments to Annexes I, II, IV, V	MEPC 67 approved for circulation October 2014	Minimum 6 months	MEPC 68 adopted May 2015	Minimum 10 months	Deemed accepted 1 July 2016 EIF 1 January 2017
STCW Article XII Amendments to Annex	MSC 95 approved for circulation June 2015	Minimum 6 months	MSC 96 adoption May 2016	Minimum one year	Dates to be set at MSC 96 DA 01/01/2017 (T) EIF 01/01/2018 (T)

Geographic Scope of Polar Code

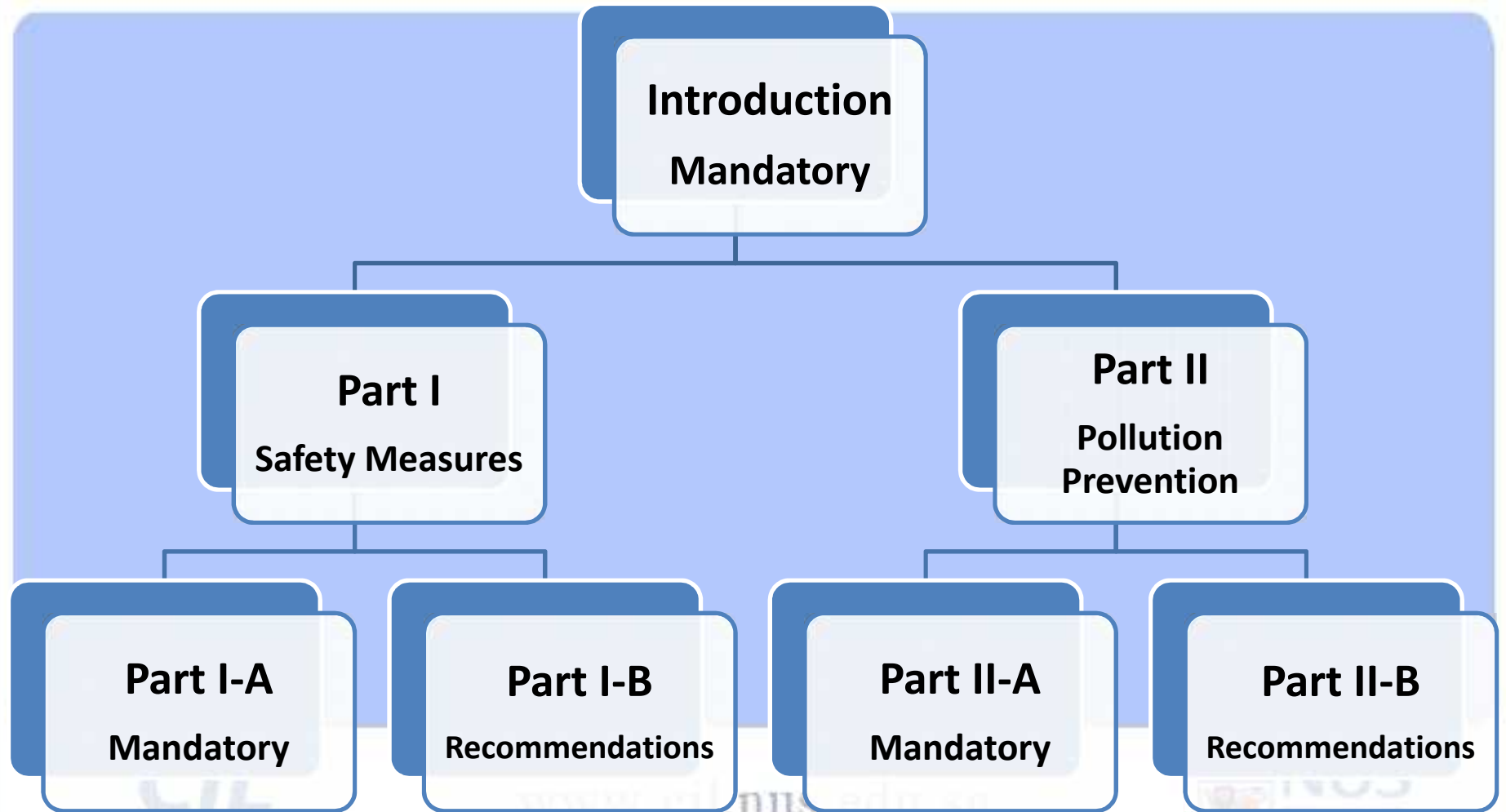


Source: MEPC 67/20, Annex 10, p. 5, not reflecting the modifications in MSC 94/WP.7, Annex 1, p. 3

Application of Polar Code

- New SOLAS Chapter XIV Regulation 2/1:
- To ships operating in polar waters, certified – i.e. >500 gt whether or not on international voyages (MSC 93/22 para.10.20)
- But no “express” inclusion of SOLAS vessels on domestic voyages as required by SOLAS Regulations I/1(a) and I/3(a)
- Not applicable to ships entitled to sovereign immunity
- Encouraged to act in a manner, so far as reasonable and practicable, with Polar Code (XIV reg. 2/4)

Structure of the Polar Code



WHAT DOES THE POLAR CODE MEAN FOR SHIP SAFETY?

EQUIPMENT



WINDOWS ON BRIDGE
Means to clear melted ice, freezing rain, snow, mist, spray and condensation



LIFEBOATS
All lifeboats to be partially or totally enclosed type



CLOTHING I
Adequate thermal protection for all persons on board



CLOTHING II
On passenger ships, an immersion suit or a thermal protective aid for each person on board



ICE REMOVAL
Special equipment for ice removal: such as electrical and pneumatic devices, special tools such as axes or wooden clubs



FIRE SAFETY
Extinguishing equipment operable in cold temperatures; protect from ice; suitable for persons wearing bulky and cumbersome cold weather gear

DESIGN & CONSTRUCTION



SHIP CATEGORIES
Three categories of ship which may operate in Polar Waters, based on:
A) medium first-year ice
B) thin first-year ice
C) open waters/ice conditions less severe than A and B



INTACT STABILITY
Sufficient stability in intact condition when subject to ice accretion and the stability calculations must take into account the icing allowance



MATERIALS
Ships intended to operate in low air temperature must be constructed with materials suitable for operation at the ships polar service temperature



STRUCTURE
In ice strengthened ships, the structure of the ship must be able to resist both global and local structural loads

OPERATIONS & MANNING



NAVIGATION
Receive information about ice conditions



CERTIFICATE & MANUAL
Required to have on board a Polar Ship Certificate and the ship's Polar Water Operational Manual



TRAINING
Masters, chief mates and officers in charge of a navigational watch must have completed appropriate basic training (for open-water operations), and advanced training for other waters, including ice

BACKGROUND INFO

THE INTERNATIONAL CODE FOR SHIPS OPERATING IN POLAR WATERS WAS ADOPTED NOVEMBER 2014 BY THE IMO MARITIME SAFETY COMMITTEE

IT APPLIES TO SHIPS OPERATING IN ARCTIC AND ANTARCTIC WATERS

THE AIM IS TO PROVIDE FOR SAFE SHIP OPERATION AND THE PROTECTION OF THE POLAR ENVIRONMENT BY ADDRESSING RISKS PRESENT IN POLAR WATERS AND NOT ADEQUATELY MITIGATED BY OTHER INSTRUMENTS

Further Developments of the Polar Code

- Second phase:
 - Non-SOLAS/MARPOL Ships
 - Government or military ships
 - STCW
 - Environment-related requirements
- Other measures applicable to Arctic shipping
 - Routing and reporting systems, VTS
 - Marine protected areas
 - Anti-fouling
 - Ballast water controls

Unresolved Issue: Relationship between Polar Code & National Laws of Canada and Russia

- Nothing in Polar Code shall prejudice rights and obligations of States under international law (XIV reg. 2/5)
- Does this exempt Canada's AWPPA and Russia's NSR regulations from Polar Code ?
 - Canadian and Russian flag vessels on domestic voyages (most of current traffic)?
 - Foreign flag ships using NWP/NSR?