

**PROPOSAL OF A CONCEPTUAL FRAMEWORK FOR A NEW MARITIME
ADMINISTRATION IN THE REPUBLIC OF HAITI**

by

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A photograph of a white book cover resting on a light-colored wooden desk. To the left of the book is a pair of dark-rimmed glasses. To the right is a small green plant with long, narrow leaves. The book cover has black text centered on it.

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ABSTRACT

As one of the least developed countries in the world, and the least developed in the western hemisphere, the Republic of Haiti historically ails of countless lapses of organisation at many levels of its governance. The maritime administration is no exception. Responsibilities of maritime authorities, acting either as flag, coastal or port State administrations are established through legal instruments of the International Maritime Organization, notably the United Nations Convention on the Law of the Sea (UNCLOS), The *IMO Instruments Implementation (III) Code* [A.1070(28)], and the *IMO Member State Audit Scheme (IMSAS)* [A.1067(28)]. This project report takes as a purpose to propose a new framework for a maritime administration in Haiti which would ensure compliance with these instruments and other international conventions. A study of scholar proposed models of organisation of maritime administrations is performed and challenges on the road of a new maritime administration model for Haiti are also analysed.

Key words: Maritime administration; Republic of Haiti; SEMANAH; APN; Haitian coast guard

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Pierre Rossini Jacques

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List of Symbols, Nomenclature and Abbreviations

AGD: *Administration Générale des Douanes* [General Customs Administration]

AFS: International Convention on the Control of Harmful Anti-Fouling Systems

APN: *Autorité Portuaire Nationale* (National Port Authority)

CIA: Central Intelligence Agency

CLCS: Commission on the Limits of the Continental Shelf

CMoU: Caribbean Memorandum of Understanding

CMP: Country maritime profiles

CNM: *Centre National de Météorologie* [National Meteorology Centre]

COLREG: Convention on the International Regulations for preventing Collisions at sea

DEA: Drug Enforcement Agency

DIEH: *Direction de l'Immigration et de l'Émigration d'Haïti* [Directorate of Immigration
and Emigration of Haiti]

ECS: Extended continental shelf

EEZ: Exclusive economic zone

EU: European Union

FAD'H: *Forces Armées d'Haïti* (French, Haitian armed forces)

FAO: Food and Agriculture Organisation

FSI: IMO Commission on Flag State Implementation

GDP: Gross domestic product

GISIS: Global integrated shipping information system

IFM: *Institut de Formation Maritime* (French, Institute of maritime training)

III Code: IMO Instruments Implementation Code

IHO: International Hydrographic Organisation

IMF: International Monetary Fund

IMO: International Maritime Organization

IMSAS: IMO member States audit scheme

IOC: International Oceanographic Commission

ITCP: Integrated technical cooperation programme

LL: International convention on Load Lines

MARAD: Maritime administration

MARNDR: *Ministère de l'Agriculture, des Ressources Naturelles et du Développement*

Rural [Ministry of Agriculture, Natural Resources and Rural Development]

MARPOL: International convention for the prevention of pollution from ships

MdE: *Ministère de l'Environnement* [Ministry of Environment]

MEF: *Ministère de l'Economie et des Finances* [Ministry of Economy and Finances]

MICT: *Ministère de l'Intérieur et des Collectivités Territoriales* [Ministry of Interior and Territorial Communities]

MINUSTAH: *Mission de stabilisation des Nations Unies en Haiti* (French, UN stabilization mission in Haiti)

MJSP: *Ministère de la Justice et de la Sécurité Publique* [Ministry of Justice and Public Security]

MoU: Memorandum of Understanding

MRCC: Maritime rescue coordination centre

MSPP: *Ministère de la Santé Publique et de la Population* [Ministry of Public Health and Population]

MTPTC: *Ministère des Travaux Publics, Transports et Communications* [Ministry of Public Works, Transportation and Communication]

OPRC: Oil Pollution Response Coordination

PSC: Port State Control

PSCO: Port state control officer

RO: Recognised organisation, most of the times classification societies

SAR: Search and rescue

SEMANAH: *Service Maritime et de Navigation d'Haiti* [Maritime and Navigation Service of Haiti]

SHOH: *Service d'Hydrographie et d'oceanographie d'Haiti* [Haitian Hydrography and Oceanography Service]

SHOM: *Service d'Hydrographie et d'Océanographie de la Marine* [Naval Hydrography and Oceanography Service] (France)

SOLAS: International Convention on the Safety of Life at Sea

STCW: International Convention on the Standards of Training, Certification and Watchkeeping for seafarers

UKHO: United Kingdom Hydrographic Office

UN: United Nations

UNCLOS: United Nations Convention on the Law of the Sea

UNEP: United Nations Environmental Programme

UNESCO: United Nations Education, Science and Culture Organisation

UNHCR: United Nations High Commissioner for Refugees

UNICEF: United Nations Children's Emergency Fund

USAID: United States Agency for International Development

USD: United States dollars

VIMSAS: Voluntary IMO member States audit scheme

VTS: Vessel Traffic Services

WMO: World Meteorological Organisation

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Appendix I.-*Accord entre la République d’Haïti et la République de Cuba sur la delimitation de la frontière maritime entre la deux nations* [Agreement between the Republic of Haiti and the Republic of Cuba on the delimitation of the maritime boundary between the two nations]

Appendix II.-*Acuerdo sobre la delimitación de las áreas marinas y submarinas entre la República de Colombia y la República de Haiti* [Agreement on the delimitation of the marine and submarine areas between the Republic of Colombia and the Republic of Haiti; *Liévano-Brutus Treaty*]

Appendix III.-Leg by leg analysis of the Haitian territorial sea and normal baselines as per U.S. State Department *Limits of the Seas report* (1973)

Proposal of a conceptual framework for a new maritime administration in the Republic of
Haiti

Chapter 1.- Introduction and Background

1.1.-The Republic of Haiti: Generalities

Located in the Caribbean Sea at the heart of the Americas, the Republic of Haiti occupies the western third of the island of *Hispaniola*, the portion of land conceded to France by Spain through the Treaty of Ryswick in 1697, which would become an independent republic in 1804. With a surface of 27 750 square Kilometres, Haiti boasts a coastline totaling 1771 km lying on the complete length of its northern, western and southern frontiers (CIA, 2017). Its only land border on its eastern side with the Dominican Republic represents, with a length of 376 km, only 21.2% of its total geographical boundaries (CIA, 2017).

Haiti is separated from Cuba by the 80 km wide *Windward Passage* on its northwestern end, and from Jamaica on the southwest by the *Jamaica Channel*. The country also counts insular adjacent territories, namely the island of *La Gonâve* (West), *Ile de la Tortue* [Turtle Island] north, *Ile-à-Vache* [Cow Island], *Grande* and *Petite Cayemite* [Greater and Lesser *Cayemite* Is.] south. Thirty (30) nautical miles (nm) at large of its southwestern end, lies the island of *La Navase* [Navassa Is.], a 5.2 Km² rocky island in litigation with the United States (CIA, 2017). The geographic situation of Haiti is shown in figures 1.1 and 1.2.



Figures 1.1 & 1.2.-Haiti in the Caribbean (World Atlas, 2016)

Due to its location, the country boasts a tropical, semiarid climate, with a mostly rough and mountainous territory. It is also located in the middle of the hurricane belt of the Caribbean, exposed to subsequent flooding between June and October. Moreover, the island of *Hispaniola* is geologically located in proximity of the North-East Caribbean plate boundary, namely on the *Enriquillo* fault system which makes it prone to large earthquakes (Bakun, Flores and Brink, 2012). The latest earthquake on January 12th, 2010 with a reported magnitude of 7.0, caused up to 300 000 tragic life losses as well as economic and humanitarian catastrophe from which the country still struggles to recover (CIA, 2017).

Environmental issues are unfortunately not only caused by natural phenomena. Anthropogenic environmental degradation is one of the most critical concerns of the country. With only 3.6% of forest coverage remaining (CIA, 2017), Haiti ails a widespread deforestation which, added to its mountainous nature, has led to flooding, accelerated soil erosion as well as subsequent decline in agricultural productivity. Proximity of the mountains to the coasts results in deposition of eroded soils on the neighbouring seabed.

Along with overfishing, this phenomenon has given rise to loss of marine biodiversity and damages to coral reefs (USAID, 2016). The extent of environmental degradation in Haiti as compared to the neighbouring Dominican Republic has been captured in the now famous satellite image from the *NASA Goddard Space flight Centre*, the boundary between the two countries being readily recognizable by the limits between thriving forests on the Dominican Republic side, as opposed to dry, eroded mountains on the Haitian side (Figure 1.3) (Kekesi, 2002).



Figure 1.3.-Satellite picture of the Haitian-Dominican border. Thriving forests on the Dominican Republic (right) side, in sharp contrast with the eroded Haitian side (left) (Kekesi, 2002)

As of 2016, Haiti's population was estimated to 10.848 million inhabitants, raising its population density to 393.6 inhabitants per square Kilometer (Department of Economic, 2016). The official languages are French and *Kreyol* [Creole], the language born from mixture of French with dialects spoken by the African slaves brought to the island in the times of the colony.¹

¹ Among the tribes abducted mostly from Western Africa (today's Senegal and Guinea), we find, namely: the *Aradas*, the *Yoloffs*, *Bambaras*, *Mandingos*, *Dahomeys*, *Congos*, *Fouls* and *Peuls*. On this topic, see Bellegarde (1885/2004).

Haiti is a very centralized country, with its capital city *Port-au-Prince*, both economic and political center of the country, accounting for nearly 2.4 million inhabitants (Department of Economic, 2016). As of 2014, 34.6% of the population was aged less than 15 years old while only 7.4% men and 6.4% women were over 60 years old; a staggering 60% of the population was aged between 15 and 60 years old with an annual population growth rate of 1.4% (Department of Economic, 2015).

Education is established among the constitutional rights of every Haitian, and primary education is compulsory (Constitution, 1987). The lack of resources has resulted however in limited number of schools built, and subsequent lapses in schooling. Over the 2008-2012 period, literacy rate was estimated to 74.4% of males, and 70.5% of females between 15 and 24 years old (UNICEF, 2013). Secondary school net participation on the same period reached 21.6% among male and 29.1% among female youth. As of 2012, digital penetration rate, or the size of the population with access to digital technology was estimated to 59.4% for mobile phones, and only 10.9% for internet (UNICEF, 2013).

Labour conditions and distribution reflect the aforementioned education figures. As of 2010, agriculture occupied 38.1% of the population; 11.5% were employed in industry and 50.4% in services. For the same year, unemployment was estimated at 40.8% and more than two thirds of the labour force did not have a formal job (CIA, 2016).

In 2014, the country's gross domestic product (GDP) was estimated to 8 599 million current USD by the United Nations (UN), with a GDP growth rate of 2.8%. Its

GDP per capita, the lowest of the continent, was then estimated to 813.4 USD (World Economic, 2016). For the same year, the International Monetary Fund (IMF) calculated a GDP per capita of 832.6 USD, (IMF, 2015). The World Bank's figure totaled 810 USD per inhabitant in 2015 (World Bank, 2017). One common ground of all the measurements however, is that regardless of the sponsoring institution or method used, Haiti represented the country with the lowest GDP in the Americas, with 61.7% of its population living below the poverty line as of the UNICEF 2007-2011 survey report (At a glance, 2013). Haiti ranks 192 out of 217 on the basis of GDP as computed by the World Bank (World Bank, 2017).

1.2.-The struggle for governance

1.2.1.-General outlook on Haitian history

On January 1st, 2004, Haiti celebrated the bicentenary of its independence. In 1804, at the conclusion of the first and only successful slave revolt in known history, Haiti became the first independent country ruled by leaders of African descent, an equally unprecedented feat to which the country often owes its appellation of the *first black republic* (Bellegarde, 1885/2004).

Haiti's independence was not met with the most favourable international environment. By 1804, World economic and military powers were represented by European metropolises at the cusp of their height: France, the British Empire, Spain, Portugal, Germany etc. concentrated under their domination most of the known world territory. In America, only the United States of America existed as an independent

country but were still a young, less than three decades old federation, ruled by former British colons on an economy still based on slavery (Pauyo, 2011). As a consequence, the young republic met with generalized international ostracism, unable to establish commercial relations either with any of the significant economies, or with their colonies which extended nearly to the rest of the world. They chose to asphyxiate the young republic, fearing that its revolution would spread to all the remaining colonies where imperialism was the norm (Pauyo, 2011). The equivalent of what is known today as an international embargo only tapered gradually, each of the powers establishing relations with Haiti in their own timing. Great Britain traded with then separated *Royaume du Nord*², whereas relations with France could only be established in 1834 after acceptance from Haiti to pay an indemnity of 150 million *Francs-or*³ to the French cultivators dispossessed in the independence process. This debt was finally paid off more than a century later, in 1947. United States only abolished slavery in 1862 and started trading with the neighbouring country (Bellegarde, 1885/2004).

Challenges to development of Haiti did not only take roots in international isolation. Haiti has been, since its foundation, torn with internal battles. The independence followed three hundred years of slave trade of black Africans by French colons, and in the process, the birth of a mixed class of inhabitants born from colons and slaves: the *mulâtres*⁴. Even though the intermingling of slaves and owners was not

² As early as 1806, the new country was already divided into two rival territories: the *Royaume du Nord* [North Kingdom] ruled by Henry Christophe (King Henry 1st) and the *République de l'Ouest* [West Republic] ruled by Alexandre Pétion (Bellegarde, 1953)

³ [Gold francs] or [Germinal Francs]. Post-revolutionary French currency installed by 1803. The Haitian debt was reduced to 60 million *Francs-or* in 1838 by Phillippe Ist of France and would to this day be estimated to USD 21 Billion (Heinl, Heinl and Heinl, 2005)

⁴ [mulattoes]

encouraged, a mulatto resulting therefrom was born free, most often rich from his colon parent's heritage, educated in France and would become a slave owner. The colony was based on a strict division between racial and social strata of white colons, mulattoes (rich, educated but still considered inferior), and overwhelmingly black, uneducated, slaves. If the feat of independence was achieved by blacks and mulattoes uniting against the French, this mental division remained thereafter and was at the root of numerous power struggles (Bellegarde, 1885/2004).

Pauyo (2011) asserts that after its independence, Haiti started on a wrong standing altogether. In spite of an *Acte de l'indépendance*⁵ where the young nation vowed solemnly to boast a freedom anointed by the blood of the people of the island (Bellegarde, 1885/2004)⁶, the country fell prey of divided leadership. In the years following its independence, Haiti engaged in a series of erroneous policies: arson of the means of production (sugar plantations), assassination of the remaining French, partisan-based distribution of land (Pauyo, 2011). The subsequent was an endless history of political instability based on colour, ideology or latent personal rivalry. The country has been republic, kingdom, life presidency, empire, American dominion (1915-1934), dictatorship and stumbling democracy. As of this day, the track record of this history is catastrophic, and has been appraised majestically by Pauyo (2011, p.10):

⁵ [Declaration of independence]

⁶ Since late 19th century, historians had lost track of the original of the Declaration of independence of Haiti until it was found in 2010 by Julia Gaffield, a Canadian doctorate student from Duke University (North Carolina). Ms. Gaffield re-discovered the long lost *Act* in the National Archives of the United Kingdom in London. On this topic, see Gaffield (2014)

[Haiti] has endlessly oscillated between tyranny and anarchy. It has used of 29 constitutions, 43 heads of State, 7 of which have remained in power more than ten years; 9 have been proclaimed president for life, 26 have been either assassinated or constrained to exile. Add to these figures the 103 cases of either coups or civil wars, armed revolts or chronic social uprising registered in only two centuries of history.

The detailed history of the Haitian people is by itself a broad topic of study. Today, having been since 1994 under presence of various United Nations military missions, whether the country may be classified as a failed State depends on subjective interpretations, a discussion which is, by itself, beyond the scope of this work. Many analyses prefer to use the term *weakened State*, citing as reasons that the weakness of institutions, poor figures in education, environmental degradation and poor economic models have not yet reached an irretrievable level (Pauyo, 2011).

1.2.2.-History of Maritime Affairs

Development of maritime affairs at the dawn of the Haitian Republic was not followed by a model of organisation and institutionalisation. Being subject to the menace of the powerful Napoleonic France to retake its once most prosperous sugar colony, Haiti

engaged as a defence priority in strategic construction of a network of fortresses in order to cater for national protection (Pauyo, 2011).⁷

The first documented mention of maritime interaction of the new country -then already divided into two enemy States- occurred in 1809 in the Kingdom of the North led by King Henry Ist. It involved the purchase of a former French frigate, the *Felicité*, captured by British warships while sailing from then colony of Guadeloupe. The ship was renamed *Amethyste*, after the first daughter of the King, Princess *Françoise Amethyste* (Heinl, Heinl and Heinl, 2005). This purchase, however, was not followed by an organisation effort, the vessel shifting by turns into hands of the North Kingdom or the rival West Republic (Heinl et al., 2005)

In spite early refusal of European powers to recognize Haiti's independence, maritime traffic of their vessels, or presence thereof on the coasts of the island were not uncommon. Reciprocally, Bellegarde (1885/2004) relates without any further precision, the use of Haitian merchant ships plying the ports of Philadelphia in the United States as well as the Thames in England, with cargoes of coffee, cotton, cocoa and sugar advertising the products of the new republic. Those vessels (the *Coureur* and the *Conquérant*) he further reports, were manned by totally indigenous crews.

Efforts directed towards the navy were more frequent throughout the country's history. Short of giving rise to an effort of structuring a proper naval defence, the numerous rivalries put in evidence the preponderance of foreign navy fleets in internal

⁷ Among the fortresses built after independence, the *Citadelle Laferriere* or *Citadel Sans-Souci* built by Henry Christophe then King Henry Ist, still stands, and entered UNESCO's list of cultural heritage of mankind in 1982 (UNESCO, 1992/2017).

waters and affairs. Heint et al. (2005) mention for instance the use of British and American navy ships by Pétion, then President of the West Republic, as logistic support in his fight against the Kingdom of the North.⁸ Foreign vessels also served repeatedly for the transportation of presidents and their suite when constrained to exile.⁹ By 1843, Haiti's first steamboat and five merchant coasters saw frequent service in moving presidential detachments about the country to show enemies that the president's reach was long (Heint et al., 2005).

Naval rivalries on Haitian coasts reached their peak after recognition of the independence of Haiti by the United States in 1862 which favoured purchase of old navy ships by both Haitian government and insurgents alike.¹⁰ However, the showcase of these naval opportunities for the purpose of fuelling internal conflicts did not give rise to a successful effort of organisation. Testimony of this overall naval weakness is given by the repeated episodes of foreign navies blockading the capital Port-au-Prince in order to enforce their ultimata. Episodes of this kind started with French blockade in 1825 and the imposition of the 150 million *Francs-or* indemnity. They continued with Spanish blockade and imposition of indemnity to deter Haitian interference in their Dominican colony in 1861. Other nationally unpleasant episodes involved German vessels blockading the capital Port-au-Prince to force debt-collecting on behalf of German merchants then numerous in Haiti (*Batsch* affair), or imposing readmission of a deported

⁸ Great Britain adopted a policy of support to the new francophobe republic, in line with the rivalry between the two European powers (Heint et al., 2005)

⁹ *HMS Scylla* evacuated Boyer and family to Jamaica in 1843. Riviere Hérard took the same destination on a British vessel in 1844, and Soulouque in a French boat in 1859

¹⁰ Haitian internal naval conflicts multiplied in the second half of 19th century, facilitated by access to decommissioned American navy ships. They included blockade of insurgent cities (The *Alexandre Pétion*, former *USS Galatea*), multi-vessel fleet action (involving former *USS Maratanza*), and even explosion of presidential palace by *Terreur*, former *USS Pequot*, under command of a former American navy as their gunnery officer (Heint et al., 2005).

German-Haitian citizen in 1897 (*Luders* affair). In both cases, German conditions included military salutes to the German flag and even the substitution of a white flag for the Haitian flag on the mast of the national palace (Bellegarde, 1885/2004). In 1902, foreign navy presence was again made evident in the sinking of the Haitian flagship *Crête-à-Pierrot* by the vessel's own admiral -Hammerton Killick- when he refused to surrender to the German warship *SMS Panther*. The main naval base of the Haitian coast guard carries his name up to this date.



Figure 1.4.-The entire enlisted personnel of the Haitian Navy ca. 1881. New York Public Library

The precarious conditions of the Haitian navy were depicted by Alverson (1920) on the photograph shown in figure 1.4. By the start of 20th century, conditions were not improved, as witnesses the *San Francisco Call* article on the Haitian navy -one converted American yacht- abandoned at *League Island* and deserted by its crew and admiral due to chronic lack of food and non-receipt of several months backpay (Haitian navy, 1912). These events closely preceded a series of internal crises which gave rise to the U.S. occupation from 1915 to 1934. Under this state of affairs, the *Garde Côtière Haitienne*¹¹

¹¹ [Haitian coast guard]

was born in 1930, a version of which still exists to date. The study of the structure, work and challenges of this institution, as well as other bodies forming the contemporary maritime administration of Haiti will be furthered in chapter 3.

1.2.3.-Contemporary maritime outlook

March 6th 1948 marked the signature of the United Nations Convention on the International Maritime Organization, founding instrument of then *Intergovernmental Maritime Consultative Organisation (IMCO)* which would become the International Maritime Organisation (IMO) in 1982. Though Haiti was not a founding member of this organisation, the country acceded as early as 1953 to this treaty (UNTC, 2016). As of this day, from the nearly sixty (60) conventions and protocols signed under auspices of the IMO, Haiti has acceded to six; namely, besides the aforementioned 1948 Convention: Safety of Life at Sea convention (SOLAS) 1974, Load Lines convention 1966, Tonnage Convention 1969, Standards of Training Certification and Watchkeeping (STCW) 1978 and the London Convention on Dumping of Wastes and other Matter, 1972 (Status, 2016). Additionally, Haiti signed the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, which it ratified in 1996. Haiti is also a member of the International Oceanographic Commission (IOC), and the World Meteorological Organization (WMO); entry to the International Hydrographic organization (IHO) has been approved and awaits deposition of legal instruments (IHO, 2016).

1.2.3.1.-Coastal Policy

The establishment of Haiti's maritime claims precede the *United Nations Convention on the Law of the Sea* (UNCLOS). Since late 1880s, the young republic determined a territorial sea of 3 nm, only suitable for naval protection at a time when *mare liberum* was the predominant doctrine of international maritime relations (Heinl et al., 2005).

The maritime boundaries currently in force were unilaterally established short of a century later by then dictator Jean-Claude Duvalier in 1972 and 1977 (*Décret*, 1977). The maritime boundaries then established consist of:

- a *territorial sea* of 12 nm, the breadth of which is measured from the low water line over which the State claims sovereignty, including over the seabed and subsoil thereof (*Décret*, 1977, art. 1, 3)¹²
- a *contiguous zone* of 12 nm of breadth from the outer limits of the territorial sea over which the State claims jurisdiction with regard to the protection of its fiscal and customs interests and its security , as provided by pertinent international law (*Décret*, 1977, art. 4)¹³
- an *Exclusive Economic Zone (EEZ)* extending to 200 nm from the same baselines as the territorial sea over which the State exercises sovereign rights with regard with exploration, exploitation, conservation and management of natural resources; jurisdiction on the establishment of artificial islands, jurisdictional authority with

¹² The 12 nm breadth of the territorial was first established in the decree of April 6th 1972 by Duvalier (*Décret*, 1977)

¹³ This last claim on matters of "security" is contested by the United States

regard with exploration and exploitation of the EEZ for the production of energy and scientific research, over the conservation of the marine environment and any other rights and obligations as may be established under Haitian law (*Décret*, 1977, art. 5)

- a *continental platform* consisting of the seabed and subsoil of submarine regions adjacent to the coast but located outside the territorial sea, extending to the point where the depth of the superjacent waters allows exploitation of the natural resources of such regions (*Décret*, 1977, art. 8). Over these resources, the State of Haiti claimed sovereign and exclusive rights with regard to exploration and exploitation (*Décret*, 1977, art. 9)

An overview of the limits of the Haitian territorial sea, as established in these decrees is shown in figure 1.5, the same image which accompanied the 1972 maritime claims (Straight baselines, 1973).

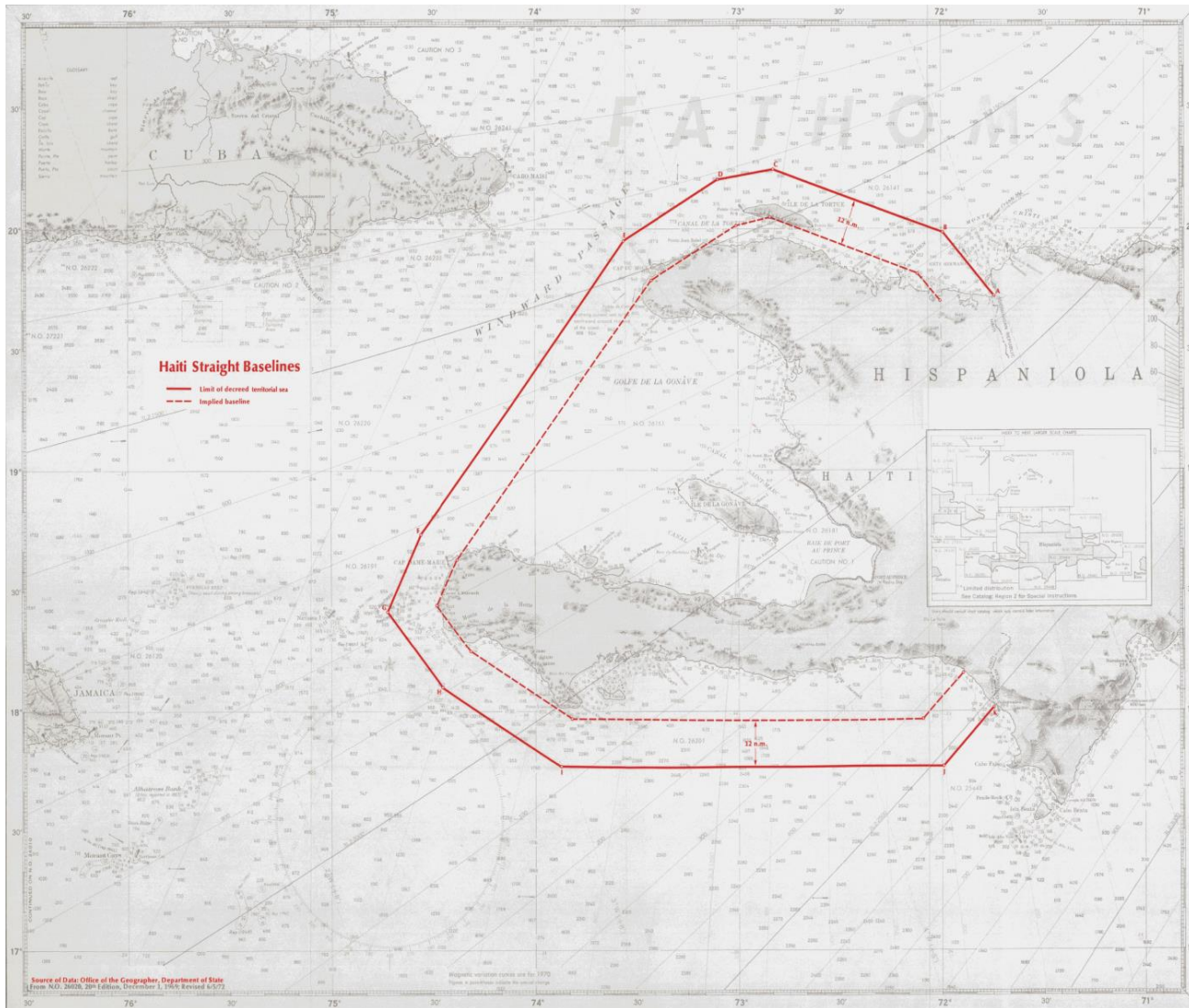


Figure 1.5.-Haiti's claimed territorial sea and straight baselines, as per Jean-Claude Duvalier's decree of April 6th, 1972 (Straight baselines, 1973)

The maritime boundaries and jurisdiction of Haiti, claimed since the 1972 decree, are challenged by the United States of America on two aspects. First in 1973, the U.S. State Department issued a protest on the inaccuracy of the baselines used in the establishment of the territorial sea and the fact that the claims were presented on a “very small-scale map and not from a reasonably scaled nautical chart” (Straight baselines, 1973, p.5). Nearly two decades later, another protest was issued by the U.S. Embassy in Port-au-Prince, challenging the claim of jurisdiction of Haiti on matters of security in time of peace in the contiguous zone. The United States protest alleges that the Haitian claim is inconsistent with international law and would restrict the exercise of the high seas freedoms of navigation and overflight beyond the territorial sea (Roach & Smith, 2005).¹⁴

The unilateral maritime claims of the Republic of Haiti also prompted agreements with two of its maritime neighbours, namely the Republic of Cuba and the Republic of Colombia.

The first agreement followed the April 1977 decree, and was signed in Cuba’s capital *La Havana* on October 27th of the same year. The maritime boundary then determined consisted of a set of 50 segments dividing the *Windward Channel* and totaling a length of 170 nm, limited by 51 vertices given by their latitudes and longitudes (*Accord*, 1977). The agreement, including the complete set of coordinates, is shown in Appendix I.

¹⁴ Diplomatic note of the U.S. Embassy in Port-au-Prince, August 1st, 1989 (Roach and Smith, 2005)

The second agreement was signed between Haiti and the Republic of Colombia on February 17th 1978, and entered into force on February 16th, 1979. It established the maritime boundaries of the two countries as one segment, determined by the geodetic coordinates of its vertices (Figure 1.6); it is commonly recognised as the *Liévano-Brutus* treaty, from the names of the plenipotentiaries of the two countries by whom it was signed (*Acuerdo*, 1978). The full content of this treaty as well as the coordinates of the maritime border are presented in Appendix II.

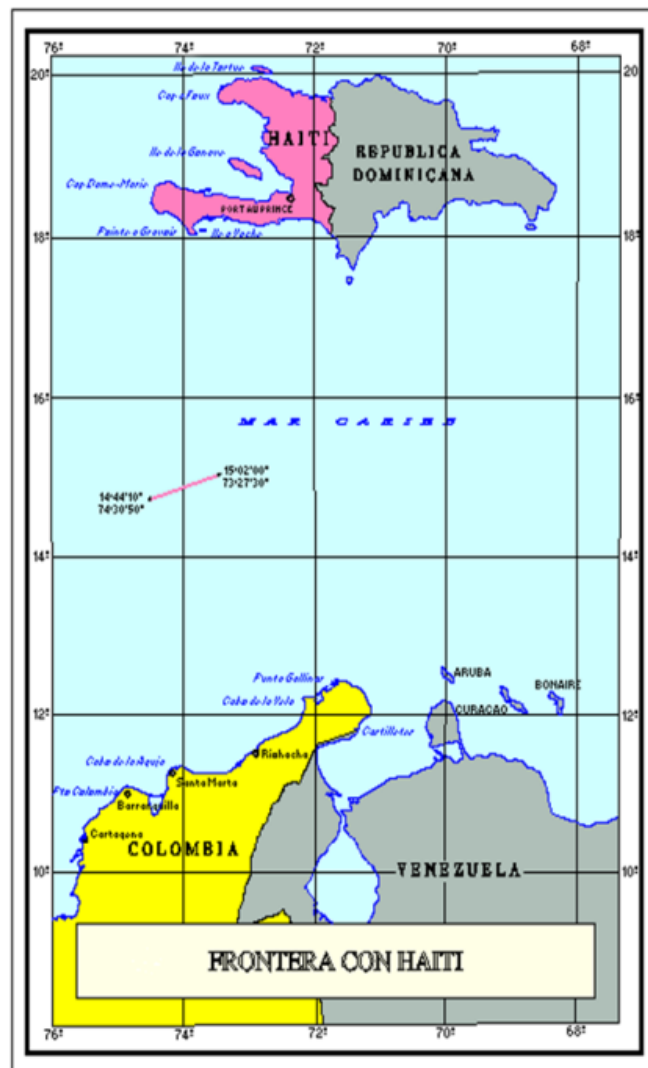


Figure 1.6.-Maritime boundary between Haiti and the Republic of Colombia as per the Liévano-Brutus Treaty (*Acuerdo*, 1978)

In spite of the existence of these international treaties, enforcement of sovereignty or jurisdiction in Haitian territorial seas, contiguous zone or EEZ presents numerous lapses. If in 1930, under American occupation, the country was provided with a coast guard trained *inter alia* for the purposes of marine border surveillance (Heinl, et al., 2005), this force was later dissolved in 1994 following political turmoil.¹⁵

As of this day, numerous violations of Haitian territorial waters, notably by foreign fishing vessels, are reported with impotence by local fishermen. This situation was acknowledged by the *United Nations Environment Programme* (UNEP), stating as a main environmental issue between Haiti and the Dominican Republic, the transboundary illegal fishing, either by Haitian fishermen in Dominican waters or vice versa (UNEP, 2013). The *UN Stabilization Mission in Haiti* (MINUSTAH), military presence since 1994, also took notice of this fact in a 2009 report and meeting with local Haitian and Dominican authorities (*Autorités*, 2009). Moreover, this mission also proposed as a palliative to the issue, the training of the corps of national police members in transboundary issues, and the participation of the MINUSTAH mission in maritime border patrol surveillance missions (*Autorités*, 2009).

Other issues are also commonly reported in relation to the surveillance or lack thereof in Haitian territorial waters, an important one being drug trafficking by foreign pirate boats. The U.S. Drug Enforcement Administration (DEA) established that nearly nine percent of the cocaine destined to the United States, transited through Haiti and

¹⁵ The *Haitian Coast Guard* was dissolved at the same time as the *Forces Armées d'Haiti, FAD'H* [Haitian Armed Forces] in 1994 by then President Jean-Bertrand Aristide who returned on power after an exile by these military forces. The dissolution of the army, in order to avoid future events of the same kind, was one of the first measures taken by the constitutional president upon his return on power (Heinl et al., 2005)

Dominican Republic, primarily through go-fast boats (Marshall, 2001). As a palliative to the squalid surveillance by Haitian authorities, an agreement was signed in 1997 between Haitian government and the United States regarding authorization to the DEA and U.S. vessels to track drug traffickers within Haitian air and water spaces (*Trafic*, 2000).

The status, structure and operation of the Haitian coast guard will be studied in depth in Chapter 3.

1.2.3.2.-Maritime Safety and Security

On April 9th, 2015, a laden unregistered sailboat sank at large of *Port Margot* on the north coast of Haiti with a toll of 16 dead and 20 missing. The survivors were rescued by fishermen in the surroundings (*Haiti-Sécurité*, 2015). The casualty, attributed to the overload of people, is neither the first nor the least taking place in Haitian territorial waters, and offers hints of the state maritime safety in the Country. In fact, back in 1993, the sinking of the 150 feet ferry *Neptune*, with only 285 survivors out of 2,000 believed aboard¹⁶ would amount to a death toll higher than the *Titanic*. No accident investigation has been carried out, whereas public opinion attributed the accident to overload of passengers, livestock and cargo alike (Freed, 1993).

As it will be developed in chapter 3, matters of marine safety and security, including maintenance of marine safety infrastructure, fall under responsibility of the *Service Maritime et de Navigation d'Haiti*, SEMANAH.¹⁷ The country's lighthouses, in

¹⁶ Reports on this figure differ significantly. *Agence France Presse* (AFP) makes mention for instance of 276 dead and 800 missing. Discrepancies are likely attributed to lack of State oversight and frequently inaccurate tallies of passengers (*Nouveau drame*, 1997)

¹⁷ [Maritime and Navigation Service of Haiti]

the reported number of 14, most of which were built under U.S. occupation, were recently object of extensive maintenance initiatives from this institution, given their compromising conditions (*Liste*, 2016). Even though mention is made of 802 registered vessels, most are handcrafted fishing boats on which no regular safety oversight regarding construction, equipment, cargo and passenger transportation is carried out (*Le commerce*, 2015).

In matters of vessel inspections related to port State control (PSC), the country also lags behind. If it disposes of an effective of less than 80 vessel inspectors (*Haiti-Transport maritime*, 2015), the most recent training workshop imparted thereto was dedicated to basic shipping terminology, including ship parts, structure and compartments (*Haiti-Transport maritime*, 2015). The institution was visited in 2015 by Mr. Dwight Gardiner, IMO ambassador for Antigua and Barbuda and president of the *Caribbean Memorandum of Understanding* (CMoU), partly as an incentive for Haiti to join the regional safety initiative. Communications with Mrs. Jodi Barrows, secretary general of this organisation, revealed the following on the status of Haiti in this regional safety agreement (Barrows J., personal communication, 2016, June 24):

Currently, Haiti is an observer State of the CMoU. The CMoU Secretariat has met with the maritime authority of Haiti (SEMNAH) about becoming an actual participating member State but Haiti has not made any formal intention to becoming a member at this time

On the aspect of *search and rescue* (SAR), Haiti disposes of a registered marine rescue coordination centre (MRCC) held by SEMANAH in conjunction with the Haitian coast guard (Search, n.d.), which are ailing of significant lack of budget and working material (*Le commerce*, 2015). The episode of the sinking of the *Fierté Gonavienne* in 1997 puts in evidence the numerous lapses in efficiency or sheer inexistence of services which are as of present, only palliated by presence of U.N. missions:

At least 49 people died and some 200 to 300 are missing in the sinking of a vessel occurred at large of the port of *Montrouis* (...). Eight policemen went on the spot, and the inhabitants called for intervention of the coast guard and the national police (...). They received help from three Canadian divers, members of the U.N. mission in Haiti. Two U.N. helicopters equipped with inflatable rafts were also in place. An H-60 class helicopter from the U.S. Coast Guard was also sent, as well as an effective of nearly fifteen Pakistani U.N. soldiers accompanied with doctors

(*Nouveau drame*, 1997, para. 5)

The ship had sunk 200 metres from the port of *Montrouis*.

1.2.3.3.-Marine Environment Protection

In marine environment pollution prevention matters, Haiti is signatory member of the 1972 London Convention on the prevention of dumping of wastes and other matters; the country has neither signed its 1996 Protocol nor is party to MARPOL 73/78 (Status, 2017).

As explained earlier, environmental issues have reached critical conditions in Haiti and do not spare the marine environment. The UNEP study of the country's coastal and ocean areas has established that marine environment protection falls under responsibilities of two ministries, namely the *Ministere de l'Environnement*¹⁸ and the *Ministere de l'Agriculture, des Ressources Nautrelles et du developpement Rural* (MARNDR).¹⁹ Additionally, *Autorité Portuaire Nationale* (APN),²⁰ the body responsible for the management of all the public ports countrywide, strives to eliminate oil and unlawful ballast discharges in ports (UNEP, 1997).

Intervention of other ministries in marine environmental affairs is not uncommon, as is illustrated by the *Khian Sea* dumping of Philadelphia incinerator ash on the beaches of the Haitian city of *Gonaives* in 1988 (Greenpeace, 1988). In this episode, after the Haitian government, then a military *de facto* regime, accepted dumping of the ashes described by an inbound vessel as *topsoil fertilizer*, and soon realized it was indeed toxic

¹⁸ [Ministry of Environment]

¹⁹ [Ministry of Agriculture, Natural Resources and Rural Development]

²⁰ [National Port Authority]

ashes, only an injunction from the minister of commerce ordering the vessel to reload the toxic garbage succeeded in deterring the operation (Fiorillo & Spikol, 2001).²¹

Extensive study of Haiti's marine environmental issues by itself constitutes a topic well beyond the scope of this work. The working and governance structure of the APN will be analyzed in chapter 3.

1.2.3.4.-Seafarer training and certification

In September 2015, a discussion forum was held under initiative of SEMANAH to promote the establishment of a school of maritime training in Haiti (*Vers la mise*, 2015). The *Institut de Formation Maritime*²² would train navigators, marine biologists, marine engineers and cooks, as stated by Eric Prevost Jr., director of the SEMANAH (*Vers la mise*, 2015). This project has not yet seen the day.

Haiti does not count to date with a marine training institution, maritime school or seafarer training center whatsoever. As stated by the then vice-director of the APN (Elien R., personal communication, October 18, 2014), pilots in the port of Port-au-Prince are often sent to the United States to receive appropriate training. They do not consist of personnel with sailing experience, as general practice would dictate. Occasionally, employees of the administrative bodies participate in conferences or seminars related to

²¹ Under pressure to get rid of growing garbage volumes in the city of Philadelphia (USA) in 1986, then mayor Wilson Goode signed a \$6M agreement with contractor *Paolino and Sons* which in turn chartered the *Khian Sea*, a barge operated by *Amalgamated Shipping Corp.*, based in the Bahamas. The vessel, loaded with 14,000 tonnes of incinerator ash, was deterred in its attempts to unload the ashes in Bahamas, Bermuda, Dominican Republic, Honduras, Guinea-Bissau and the Netherlands Antilles. Contract was finally signed with the Haitian government, represented by Jean-Claude Paul, a corrupt leader of the presidential guard, authorizing dumping of the wastes on the coast of Gonaives under the label '*topsoil fertilizer*'. The government turned around the next day, after 4000 tonnes of trash were already unloaded. The ship left in the middle of the night, avoiding compliance with an injunction of then Minister of Commerce Mario Celestin to have her reload the garbage. Works to bury the ashes in another dump site were only completed in 2000, after causing serious health concerns to Haitian workers involved (Fiorillo & Spikol, 2001)

²² [Maritime Training Institute]

different maritime and hydrographic topics -as shown by the *Train for Trade* port management training- maritime law specializations at the World Maritime University and hydrography trainings to select staff (SEMANAHA intensified, 2015). However, no maritime education takes place in the country. The final report of an IHO exploratory mission in Haiti in 2008 offers a conclusive statement about this situation:

Education in Haiti does not have a maritime element. Indeed the University in Haiti does not offer any option for its students to follow maritime disciplines, despite the maritime situation of the country. This constitutes a major limitation and until this situation is changed Haiti will be dependent on external expertise

(Technical visit, 2008, p.14)

1.3.-Motivation, methodology and structure of this work

The previous look at Haiti and its maritime administration leads to the overbearing conclusion that the Republic of Haiti accumulates, both in its history and actuality, numerous shortcomings in matters of maritime affairs, whether in ocean and coastal policy, maritime safety and security, marine environment protection or training and certification of marine workforce.

Institutions do exist, which are at least in their vision, dedicated to the maritime sector of the country, namely SEMANAHA, APN and the Haitian coast guard. However,

the lapses brought up after a brief study point to the fact that these institutions suffer multiple challenges including, among other possible factors, their internal organisation and governance structure.

The International Maritime Organisation, as the worldwide authority governing maritime affairs, counts in its mission programmes to come in help to national governments struggling with the organisation of a competent maritime administration. This programme, deeply rooted in the need for enabling compliance to international maritime instruments, is the *Integrated Technical Cooperation Programme*, which in several tenets, may provide useful guidance for this endeavour.

The present work aims at providing recommendations on structural changes which may have to take place in order to bridge the gap between the maritime administration of Haiti as it is today, and a new model of maritime administration, based on IMO instruments and built in a structure which enables the State to face its numerous challenges. Maritime issues cannot be tackled without a strong and well-structured maritime authority in charge of safety, security, environmental and training aspects of maritime development. This work will explore the functions of a maritime administration as described by IMO instruments, be it the *UN Convention on the Law of the Sea*, the *IMO Instruments Implementation Code (III Code)*, or the *IMO Member States Audit Scheme*, IMSAS. The study of those instruments will be the object of chapter 2.

Chapter 3 will delve into the internal organisation of each of the three bodies of Haitian maritime administration, in order to understand in each case, their actual

operation and management. It will be essentially based on primary information gathering, interviews and conversations with relevant representatives of each institution.

Chapter 4 will establish a comparison between models of maritime administrations and the maritime *status quo* in the Republic of Haiti, in order to articulate proposals aimed at bridging the existing gap. It will serve as the basis to elaborate proposals for a functional, competent and efficient maritime administration, capable of facing the maritime challenges existing today and those likely to arise in the future. These proposals will be laid out in chapter 5.

Chapter 2.-Requirements and Models for Maritime Administrations

Through this chapter, IMO provisions on maritime administrations introduced in three maritime instruments are studied, namely the United Nations Convention on the Law of the Sea (UNCLOS), the IMO Instrument Implementation Code (III Code) and the IMO member State audit scheme (IMSAS). Additional IMO sanctioned programmes directed to maritime administrations are considered. These include the ITCP programme, the Global Integrated Shipping Information System (GISIS) as well as its operational platform tool, the country maritime profiles (CMP). Models of maritime administrations as studied by scholars are also introduced.

2.1.-Background on maritime administrations

2.1.1.-The need for strong maritime administrations: IMO, member States and the compliance issue

Upon its foundation in 1948, IMO was entrusted with the mission of encouraging and facilitating among nations the adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships (1948 Convention, 1948). Throughout the exercise of this mission, and through its general assembly of member States, IMO has sanctioned more than fifty (50) conventions and eight hundred (800) codes and regulations (Mansoorian, 2010).

If a thorough and permanently evolving work has been achieved in setting the standards in numerous maritime issues, the record has not been similar when it comes to the compliance therewith. IMO's mission as stated above does not include any direct power on the enforcement of the agreed standards, and has to rely for their application, on the effectiveness and commitment of its member States, each within their own jurisdiction. Member States are ultimately responsible for implementing legislations regarding the adopted conventions, and enforcing them on the ships flying their flags and the foreign vessels plying their ports (Hubbard and Hoppe, 2001). It comes from the precedent that a maritime administration responds broadly to two (2) key functions: first is that of establishing policies, enacting legislations and rules in order to implement international standards of which the State has become party; second to this policing function is the enforcement of these same policies among all actors of its maritime industry. Hubbard and Hoppe (2001) stress on the importance of these two functions because of the diversity of a maritime administration's clients, and the international influence of its roles and responsibilities. IMO itself recognizes that a paramount condition of the effectiveness of an instrument, further than the enactment of appropriate legislation, is its implementation and enforcement by a member State (III Code, 2013). In spite this overarching need for strong, well-structured maritime administrations, member States worldwide differ significantly in material and human resources, let alone political will, in order to implement and enforce policies. Barchue (2005) asserted that IMO treaties provide administrations latitude both to delegate authority to recognized organisations (RO), and set their own standards whenever allowed to do so to their

satisfaction. As a result, member State implementations vary depending on level of delegation of authority, degree of implementation and enforcement, as well as use of loose enforcement as a source of economic competitive advantage.

2.1.2.-The IMO Member States Audit Scheme (IMSAS) and the Integrated Technical Cooperation Programme (ITCP)

IMO has adopted several initiatives in order to respond to the aforementioned compliance and implementation gap among maritime administrations. The instauration in the 1990's of the *Commission on Flag State implementation* (FSI) was a first step in this direction. IMO has also adopted various instruments, all aimed at encouraging voluntary implementation by providing useful guidance to member States. Such instruments included the *Interim Guidelines to Assist Flag States* [Resolution A.740(18)], the *Self-assessment of Flag State Performance* [Resolution A.881(21)], as well as the *Guidelines to Assist Flag States in the Implementation of IMO Instruments* [resolution A.847(20)], which constitutes the precedent to the *Framework and Procedures for the Voluntary IMO Member State Audit Scheme*, VIMSAS, [Resolution A.974(24)] adopted on December 1st, 2005 (Mansoorian, 2010). As of January 1st 2016, the audit scheme became mandatory, under the title *IMO Member State Audit scheme*, or *IMSAS* through resolution A.1067(28) (IMO member, 2016).

The IMSAS, adopted in conjunction with the *Code on implementation of IMO mandatory instruments* [Resolution A.1070(28)]²³, vies to promote the “consistent and effective implementation of IMO instruments and thus contribute to the enhancement of global and individual member State performance” (Framework, 2013, art. 4.1). Its objective is to apply an auditing process to member State administrations, in order to determine to what extent they are implementing and enforcing the applicable IMO instruments. It does so by assessing several aspects of implementation, namely (Framework, 2013, art. 5.1):

- compliance with the (complementary) III Code
- enactment of legislation as appropriate to implement the IMO instruments
- administration and enforcement of applicable laws and regulations
- mechanisms of control of the delegation of authority of the member State to a *recognized organisation (RO)*
- member State’s control, monitoring and feedback of its own certification process, or as delegated to ROs

Audits are based on a number of principles (Framework, 2013, art. 5 & 6):

- Sovereignty and universality: audits are to be carried out on a positive and constructive basis. In line with a vision of capacity-building, the IMSAS was adopted in order to allow administrations to learn and share from mutual experiences

²³ It succeeded to resolutions A.1054(27) in 2013 which itself had replaced resolution A.996(25) in 2011. It is also known as the IMO Instruments Implementation (III) Code (Transition, 2014)

- Consistency, fairness, objectivity and timeliness: that audits should be pragmatic, fair, and carried out with an agreed timeframe
- Transparency and disclosure: audit interim and final reports only available the audited member State, which may choose to make them available to other parties in order to share findings and subsequent actions
- Co-operation of the member State with the auditing
- Continual improvement: encourage follow-up actions from audited member State in order to improve implementation of instruments

The scope of the IMSAS embraces a total of six (6) aspects necessary for contracting governments to give full effect to IMO provisions (III Code, 2013, art. 6).

These instruments are related to the areas of:

1. Safety of Life at Sea;
2. prevention of Pollution from Ships;
3. Standards of Training, certification and Watchkeeping for Seafarers;
4. Load Lines;
5. Tonnage measurement of Ships
6. Regulations for preventing Collisions at Sea

The application of an audit program and the sharing of its learnings among maritime administrations are consistent with another initiative of IMO in order to foster compliance and implementation. The *Integrated Technical Co-operation Program* (ITCP), deeply rooted in the philosophy of IMO, is a tool to provide assistance to

developing States in the process of adopting international standards. Whereas the IMSAS vie for monitoring the performance of member States, the ITCP addresses the lack of means some member States may face in order to raise their maritime standards. As mentioned earlier, differences in implementation often take roots in the lack of material, financial or human capacity of developing countries.

Technical cooperation is present in the provisions of most major IMO conventions. Part XIV of UNCLOS for instance is dedicated to the Development and transfer of marine technology (UNCLOS, 1982). Promotion of technical co-operation for training of scientific personnel, supply of equipment, and encouragement of research is also the object of article 17 of the MARPOL Convention (MARPOL, 1973) and of Resolution 11 of the STCW Convention recognizing that, in some cases, there may be limited facilities for obtaining required experience and providing training programmes, especially in developing countries (STCW 78/95, Res. 11).

IMO's Integrated Technical Cooperation Programme (ITCP), though it existed since the 1960's, was comprehensively reformed by IMO's *Technical Cooperation Committee* in the 1990's to its actual form (Integrated, 2016). It is designed to assist governments which lack the technical knowledge and resources that are needed to operate a shipping industry safely and efficiently (Technical, 2016). As its mission statement, the programme aims at improving developing countries' ability to comply with international rules and standards relating to maritime safety, and the prevention and control of marine

pollution with focus on technical assistance programmes that dwell on human development and institutional capacity-building (Technical, 2016).

As a tool for determining the areas of needs of respective countries, IMO promoted an initiative of establishing *country maritime profiles* (CMP) which are required to be completed by all member States. As an extension of this programme, the *Global Integrated Shipping Information System* (GISIS) database allows member States to complete their own profile, as data is analysed in order to determine the needs for technical cooperation (Technical, 2016).

Additionally to providing a window of participation of each maritime administration in the assessment of its needs, the GISIS is also used in order to give due publicity to the audit reports of member States audits. The system, on that aspect, serves both tenets of IMO's implementation strategy, which are the monitoring of maritime administration performance through the IMSAS, and the provision of assistance through the ITCP program. Both programs represent, seen in this perspective, two faces of the same coin, as expressed by the references to technical cooperation and capacity building in the statements of scope and objectives of the IMSAS itself (Framework, 2013).

The requirements established through the IMSAS and the related III Code provide a suitable framework to analyse the rights and obligations of maritime administrations. Whether acting as flag, coastal or port States, expectations on maritime administrations are present in various IMO instruments, but especially in a broad manner through

UNCLOS. The next sections will be dedicated to the cross analysis of said provisions, as established in UNCLOS, the III Code and through the IMSAS.

2.2.-Maritime administration as coastal State

The description of the rights and duties of a maritime administration acting as coastal State permeate by their importance the entire development of the UNCLOS convention. Privileges and obligations are developed in parts II to VI as descriptions of the attributions of the coastal State in the territorial sea, contiguous zone, EEZ and continental shelf. Further requirements emerge for the protection and preservation of the marine environment (Part XII), marine scientific research (Part XIII) and development and transfer of marine technology (Part XIV).

2.2.1.-Regimes of the territorial sea and contiguous zone

In an adjacent belt of sea of a breadth of no more than 12 nm from the normal (or archipelagic) baselines²⁴ named the territorial sea (UNCLOS, art 2.1), a coastal State boasts rights of sovereignty which also extend to the airspace thereover as well as its seabed and subsoil (UNCLOS, art. 2.2).

Concomitant to the prerogative of sovereignty over the territorial sea, lies the obligation to give due publicity to the limits thereof. Therefore, publicity to those charts, or in their stead, a list of geographical coordinates of points which form the vertices of the territorial sea is to be deposited to the secretary General of the United Nations

²⁴ The baselines from which the territorial sea is measured are defined as the low-water line along the coast, as marked on large scale charts recognized by the State (art. 5)

(UNCLOS, art. 16). It is also the duty of the coastal State to give due publicity to any dangers of navigation of which it has knowledge in its territorial sea (UNCLOS, art. 24.2)

The rights of sovereignty of coastal States are only counterbalanced by the rights of ships of all States to effectuate passage in territorial waters, whether for transiting without entering, or calling to or from a port in internal waters, as long as such passage is not prejudicial to the peace, good order or security of the coastal State (UNCLOS, art. 18/19). This right known as *innocent passage* may not be hampered by the coastal State (UNCLOS, art 24). However, the coastal State boasts the right to take measures to prevent passage which is not innocent, take necessary steps to prevent a breach of admission conditions of a foreign vessel in its internal waters, or even temporarily suspend innocent passage in specific areas when necessary for its security, after due publicity is given thereto (UNCLOS, art 25).

Among other jurisdictions of the coastal State, figure the right to regulate innocent passage by establishment of traffic separation schemes, and by means of laws and regulations related inter alia to (UNCLOS, art. 21/22):

- a) The safety of navigation and the regulation of maritime traffic;
- b) The protection of navigational aids and facilities and other facilities and installations;
- c) The protection of cables and pipelines;
- d) 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 the infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

This last attribution is the only one which the coastal State still boasts in its contiguous zone, which may extend up to 24 nm from the same baselines as the territorial sea (UNCLOS, art 33).

The III Code provides a more detailed description of the responsibilities under safety of navigation, which include, inter alia (III Code, art. 48):

- Radiocommunication services;
- meteorological services and warnings;
- search and rescue services;
- hydrographic services;
- ship's routeing;
- ship reporting systems;
- vessel traffic services;
- aids to navigation.

The set of powers attributed to the coastal State are supported by its authority to carry out an arrest or investigation on a vessel proceeding from its internal waters (UNCLOS, art. 27.2). Except under certain circumstances, this criminal jurisdiction is not extended to crimes committed onboard any vessel carrying out a passage without entering internal waters (UNCLOS, art. 27).

A similar rule is applied on the civil jurisdiction of the coastal State which boasts the right to intervene only on vessels lying in its territorial sea or passing through after leaving its internal waters (UNCLOS, art. 28.3), but not on a vessel passing only through the territorial sea without entering internal waters. Exception is made in this case for proceedings on obligations and liabilities incurred by the ship itself.

In the case where the infringement have been carried out by a foreign warship or government-vessel operated for non-commercial purposes, both of which boast rights of immunity (UNCLOS, art. 32), the coastal State may require those vessels leave its territorial State, with responsibility for any loss or damage to be bore by the flag State of the delinquent vessel (UNCLOS, art. 30/31)

2.2.2.-Exclusive Economic Zone (EEZ)

In the belt of sea known as the Exclusive Economic Zone, which may extend up to 200 nm from the same baselines as the territorial sea, the coastal State boasts of sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living, of the waters superjacent to the seabed, and of the seabed and its subsoil including activities such as the production of

energy from the water, currents and winds (UNCLOS, art. 56). In exchange, all States enjoy, within the EEZ of any coastal State, the rights of navigation and overflight, the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to those freedoms (UNCLOS, art. 57)

The coastal State controls fisheries activities in its EEZ. It boasts the authority to regulate in matters of allowable catch of living resources while still promoting the optimum utilization thereof (UNCLOS, art. 61). It also legislates matters of licensing of fishermen, fishing vessels and equipment, seasons and areas of fishing, species, sizes, ages and quotas of fish that may be caught. The coastal State holds regulating powers on fisheries programmes, joint ventures, transfers of technology as well as training, including the placing of trainees and observers on fishing vessels (UNCLOS, art. 62.4). The regulating powers of the coastal State in the EEZ are consolidated by its powers of enforcement of its legislations, which include boarding, inspection, arrest and judicial proceedings necessary to ensure compliance (UNCLOS, art. 73).

Besides the exploitation of living and non-living resources, the coastal State also holds the control on the establishment of artificial islands, installations and structures (UNCLOS, art. 56). Where the exploitation of resources overlaps the EEZ of neighbouring countries, coastal States may celebrate agreements with other neighbouring States, either directly or through appropriate sub-regional organizations, on measures necessary to coordinate and ensure the conservation and development of fish stocks (UNCLOS, art. 63), as well as agreements with neighbouring States with opposite or

adjacent coasts as to the delimitation of their EEZ in accordance with international law (UNCLOS, art. 74). Similarly to the territorial sea, due publicity is to be given to the EEZ limits, either by appropriate nautical charts or lists of coordinates, which are to be deposited to the Secretary of United Nations (UNCLOS, art.75).

2.2.3.-The Continental Shelf

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea, throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm (from the same baselines as the territorial sea) if the continental margin does not extend up to that distance (UNCLOS, art. 76).

The position of the edge of the continental margin depends on the geology of the coastal area, and may give the coastal State right to an *extended continental shelf* (ECS), one that exceeds 200 nm in breadth. However, in no case shall this ECS extend to more than 350 nm from the same baselines as the territorial sea or 100 nm from the 2.500m isobath (UNCLOS, art. 76.5).

Similarly to within the EEZ, the coastal State enjoys in the continental shelf, sovereign rights for the purpose of exploring and exploiting its natural resources, which do not depend on occupation or on any express proclamation (UNCLOS, art. 77); its jurisdiction extends to the establishment of artificial islands, installations or structures on the continental shelf (UNCLOS, art. 79), and holds the exclusive right to authorize and regulate drilling on continental shelf for all purposes (UNCLOS, art. 80).

It's the obligation of a coastal State to give due publicity to the outer limits of its continental shelf either by lines on charts of appropriate scales, or by lists of vertices with their coordinates and respective geodetic datum; they shall be deposited to the Secretary General of the United Nations, or, in the case of outer limits, of the international Seabed Authority in Kingston, Jamaica (UNCLOS, art. 84). Claims of an ECS are to be submitted to the recommendations of the Commission on the Limits of the Continental Shelf (CLCS), and the coastal State carries the burden of proving that the geological structure of its coastline endows it with such privilege (UNCLOS, art. 76.8).

2.2.4.-Implementation, Enforcement and Evaluation

Coastal States should take all necessary measures to ensure their observance of international rules when exercising their rights and obligations as exposed above (III Code, art. 49). On the implementation aspect, the III Code stresses on the control and performance aspect of execution. It establishes coastal State's obligation to implement policies and guidance to assist implementation, as well as assign responsibilities for the purpose of updating and revising said policies (III Code, art. 46/47).

In order to monitor performance, and identify problem areas, coastal States must also provide the allocation of statistical data (III Code, 50.1) and periodically evaluate their performance in discharging their obligations under the adopted conventions (III Code, art. 51)

2.3.-Maritime Administration as Flag State

2.3.1.-UNCLOS requirements for flag States

As a flag State, a maritime administration registers vessels in a maritime registry, grants to ships its nationality and hence the right to fly its flag (UNCLOS, art. 91). The flag State determines the conditions to which is subjected the registry and granting of its nationality to ships.

As highlighted by Hubbard and Hoppe (2001), the flag State must develop regulations, standards and procedures for the maritime industry, in pro of safety and environmental protection prevention with due regard to international maritime conventions. Its specific duties and jurisdiction are detailed in article 94 of UNCLOS and include *inter alia*:

- a) Survey of the construction, equipment and seaworthiness of ships;
- b) The manning of ships, labour conditions and the training of crews;
- c) The use of signals, the maintenance of communications and the prevention of collisions;
- d) survey of ships before registration and thereafter at appropriate intervals;
- e) proper certification of masters, officers and crew in seamanship, navigation, engineering and marine communications;
- f) proper manning in respect of the type, size, machinery and equipment of ships;

In the events of marine casualty and accidents in the high seas, the flag State is responsible of holding the appropriate inquiries and cooperate with any other concerned State to this effect (UNCLOS, art 94.7). However, penal jurisdiction in an incident on the high seas involving penal or disciplinary responsibility onboard may only be carried out by the flag State or the State of which the person is a national. No arrest or detention may be ordered by any other State than the flag State (UNCLOS, Art. 97).

On the implementation aspect, flag States are responsible for issuance of national legislation and guidance, as well as assignment of responsibilities to update and revise adopted policies (III Code, art. 15).

As developed earlier in this section, flag States have a preeminent role in accident investigation and casualties of ships flying their flags, and ensuring that those ships comply with all adopted standards (III Code, art. 23). This attribution implies the provision of sufficient trained personnel to carry out those investigations (III Code, art. 24.3) as well as surveys on the seaworthiness of ships flying their flag (III Code, art. 22) and crews certified under their authority (III Code, art. 16.3).

Similarly to a coastal State, a flag State is required to develop and implement a control and monitoring programme in order to provide for prompt and thorough casualty investigation, collection of statistical data as well as timely response to deficiencies and pollution incidents as reported by the coastal State (III Code, art. 23).

Also, a flag State should on a periodic basis, evaluate its performance in the implementation of administrative processes, an evaluation which may be carried out taking into account criteria such as port State control detention rates (of national flagged

ships), flag State inspection results, casualty statistics, annual loss statistics etc. (III Code, art. 42)

2.3.2.-Regulating the power to delegate

Among the prerogatives of a flag State, and the administrative mechanisms it has to set in place in order to discharge its obligations, figures the possibility of delegation of authority to recognized organizations (ROs) (III Code, art. 18). ROs, which in majority are *classification societies*, may be authorized to act on behalf of a maritime administration in the conduction of surveys, inspections, issue of certificates and documents, marking of ships and other statutory work (III Code, art. 18). However, this delegation of authority should be exercised in accordance with relevant IMO instruments.²⁵

Administrations delegating authorities must ensure the RO has technical, managerial and research capabilities, and require records be maintained in order to facilitate analysis. A formal agreement must be concluded between the administration and the RO, and include specific guidelines on follow-up actions to the results of surveys. All actions must be based on the administration's national legislation which is to be made available to the RO. The flag State must also establish an oversight programme to ensure its ROs are fully meeting the obligations contracted on its behalf (III Code, art. 18).

²⁵ Related IMO instruments include the *Guidelines for the authorization of organizations acting on behalf of the administration* [IMO resolution A.739(18)] and the *Specifications on the survey and certification functions of recognized organizations acting on behalf of the administration* [IMO Resolution A.789(19)]

2.4.-Maritime Administration as Port State

2.4.1.-Background of port State controls (PSC)

The attributions of an administration acting as a port State takes root in the prerogatives of a coastal State to establish and enforce the conditions to which access to its internal waters or its ports of call are subject, as established in article 25.2 of UNCLOS. Indeed, this article states that in the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships is subject. The III Code emphasizes that the roles and responsibilities of port States stem from a combination of international treaties, conventions, national laws, as well as bilateral and multilateral agreements (III Code, art. 53)

As seen previously, compliance of ships to international conventions falls under the responsibility of flag States. The provisions of UNCLOS do not provide however, safeguards against underperforming or negligent practices from flag States themselves. As a result, vessels operating below international standards, of which shipowners take advantage of specific flag State's habits of cutting corners, have prompted some countries to instate an additional layer of compliance through the port State controls. Port State controls (PSC) play therefore an integral role in the achievement of maritime safety, security, environmental protection and pollution prevention (III Code, art. 53).

The first comprehensive port State control initiative took place following the massive oil spill from the grounding of the Liberian flagged tanker *Amoco Cadiz* at large

of the coasts of Brittany (France) in 1978 (Paris MoU, 2017). The resulting need to submit foreign vessels calling to national ports to additional safety inspections gave birth to the *Paris Memorandum of Understanding on port State controls* or *Paris MoU*. In a MoU/port State control scheme, surveys are carried out regularly on foreign vessels, and results thereof communicated between member States. As a consequence, sub-standard ships rejected in a member country are not allowed entry to other member State's ports of call, creating commercial pressure for compliance. As of this day, regional agreements on port State controls have spun in all continents. Nine (9) Memoranda of Understanding are in effect worldwide:

- Paris MoU: Europe and North Atlantic
- Tokyo MoU: Asia and the Pacific
- Latin America MoU (*Viña del Mar* Agreement)
- Abuja MoU: West and Central Africa
- Black Sea MoU: Black Sea region
- Mediterranean MoU
- Riyadh MoU: Persian Gulf
- Caribbean MoU (CMoU)
- Indian Ocean MoU

2.4.2.-Requirements for port States

As a port State, the maritime administration ensures that foreign vessels have relevant certificates required under international conventions and that the condition of the ship is in conformity with these certificates. A ship found with critical defects or deficiencies may be detained and not allowed to sail until they are corrected, all on sound knowledge of all factors, to avoid undue delays of vessels (Hubbard and Hoppe, 2001)

Port State control programmes are consistent with the IMO procedures for port State controls, 2011 [Resolution A.1052(27)]²⁶, and in their exercise, must treat non-party countries no more favourably than IMO member-States, ensuring that PSCs worldwide serve as pressure tool for standardization. The PSC must be carried out by qualified PSC officers (PSCO) with no conflicts of interest with the port, the ship or ROs acting on a flag State's behalf (III Code, art. 62)

Similarly to coastal and flag States, a maritime administration when acting as a port State should be submitted to a periodic evaluation of its performance in accordance with mandatory IMO instruments (III Code, art. 63).

²⁶ The 2011 IMO *Procedures for port State controls* was preceded by IMO Resolutions A.787(19) *Procedures for Port State Control* as amended by resolution A.882(21)

2.5.-Maritime Administration: Structure, Transdisciplinarity and Institutional Cooperation

Once established the rights and duties of a maritime administration acting as coastal, flag or port State, it matters to determine how an institution or group of institutions acting in cooperation with each other, may be structured in order to respond to these requirements.

Plaza (2008) concluded in a study of maritime administrations in the EU and the Mediterranean, that there is not a single model of maritime administration infrastructure and that this one depends on several factors, including number and type of vessels registered, number of commercial ports, length of coastline, international conventions adopted and availability of technical expertise.

This section addresses the topic of maritime administration structure. It will expose at the start the Hubbard and Hoppe (2001) description of the place a maritime administration may occupy in a government structure. This description will be followed by various proposed maritime administration models.

2.5.1.-Status of a maritime administration within government

Hubbard and Hoppe (2001) established that there exist several options for fitting a maritime administration within a government. Each option entails its advantages and disadvantages, which have to be taken into account in order to establish the most effective and efficient organization for regulation and enforcement purposes.

These options are, respectively:

- Project unit or division within a ministry: the administration is not autonomous but instead is placed within a ministry of which it receives personnel and budget support. Decision process expected to be slow and possibly cumbersome
- Department of a ministry: an agency which is placed within a ministry from which it receives support, but has autonomy over its budget. Decision-making process still expected to be slow
- Statutory administration: an autonomous institution, controlled by a board of directors, who set policies and procedures. Though it is part of a ministry and reports to a minister. May be supported by the government, or self-supporting, and not limited by public conditions of employment. Decision-making is facilitated, though it loses some support from the ministry due to its increased autonomy
- Executive agency: although part of the government, an executive agency is established as a business and operates under the country's Corporation's Act. It is self-sustaining, and has no support from the government

Plaza (2008) favours the concentration of policy and regulatory functions within a single maritime administrative body, instead of a structure where policy is formulated by a ministry (of transportation, in most cases) with a maritime administration playing the role of an executive body. Uniting the functions in a single institution has the effect of

enhancing the role of the maritime administration as a single point of contact for regional and international maritime issues, at the time it expedites the decision-making process.

Budget and revenue generation of a maritime administration is derived from fees charged for the conduct of examinations, inspections and surveys of ships as well as registrations fees of ships. Initial port State controls cannot be charged (a duty of the port State), though charges may be levied on follow-up surveys in order to assess corrective actions. It is also recommended that early in stages (short and medium term development) a maritime administration is supported by appropriations, until new sources of revenue are identified and structured (Hubbard and Hoppe, 2001).

2.5.2.-Maritime administration models

Structure of a maritime administration ensues from the country's national maritime legislation or shipping Act. Functions and roles have been categorized as follows (Hubbard and Hoppe, 2001):

- a) Safety and certification: generally responsible of inspection and survey of ships, handling and stowage of cargoes, cargo handling gear, certification of ships, marine pollution prevention, wreck, salvage, training and certification of seafarers
- b) Registration and research: registration of ships and seafarers, as well as research for the purpose of formulation of sound policies for maritime development

- c) Legal affairs: national maritime legislation, international maritime conventions, harmonization of convention with legislations, regulations
- d) Support services: day to day administration and needs of the administration, budgets, financial and personal matters

The preceding considerations may be represented as follows in the Hubbard and Hoppe (2001) maritime administration model:

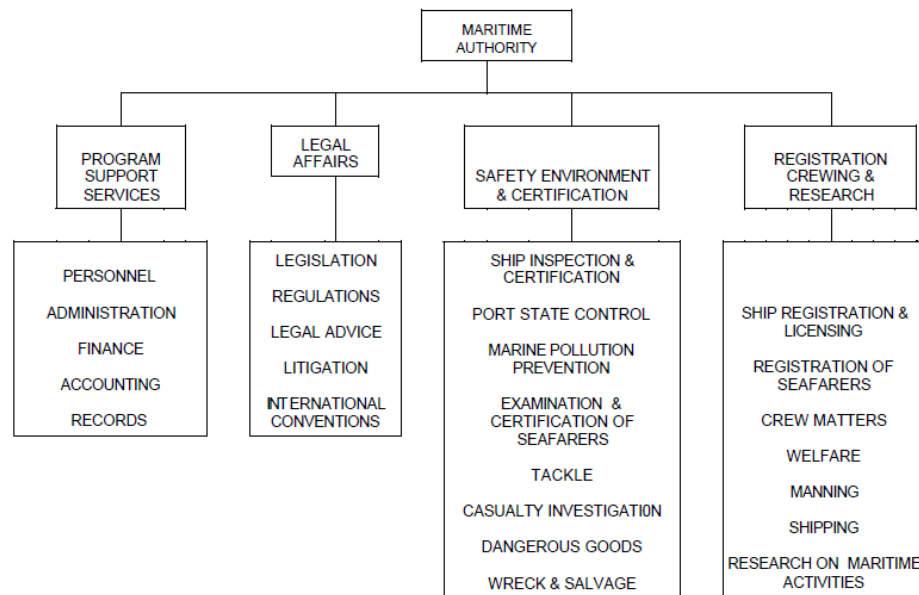


Plate 2.1-Basic structure of a maritime administration (Hubbard and Hoppe, 2001)

The Hubbard and Hoppe (2001) model applies the requirements of IMSAS in terms of elaboration of policy based on international conventions (legal affairs department), registry of ships and their crew (registration and crewing), port State and flag State enforcement (Safety, environment and certification department). One key feature of this model also remains a department of research on maritime activities, which would collect statistical data for interpretation as required by the IMSAS. Even though it

includes a marine pollution prevention department, this model does not cover other requirements set out to coastal States, especially search and rescue.

Plaza (2008) determined a model taking into account the three vertices of maritime administration requirements, namely coastal, flag and port State authorities. Those three departments constitute the basic cell of a maritime administration, which may then be run either as a department of a ministry, or an autonomous body responding to a minister.

The basic MARAD structure determined by Plaza (2008) is shown in plate 2.2:

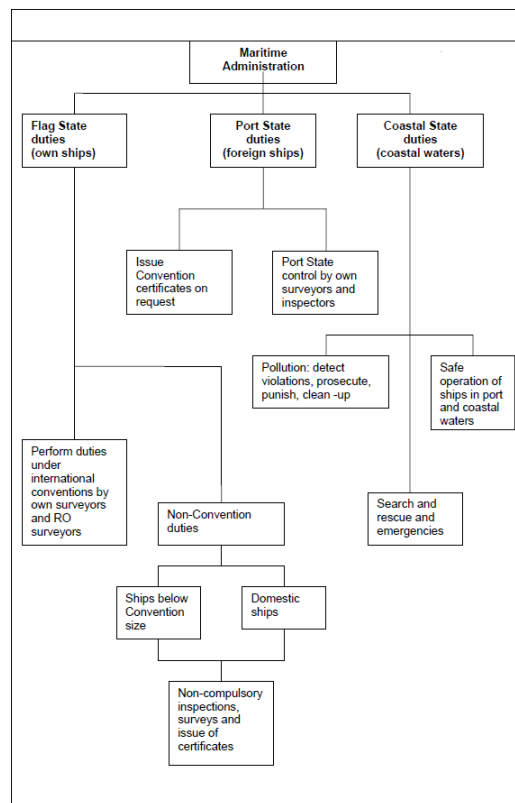


Plate 2.2.-Simplified model of maritime administration, by Plaza (2008)

The Plaza (2008) basic maritime administration cell puts in evidence the three separate tenets of a maritime administration. By including the four-department model of Hubbard and Hoppe (2001), it gives rise to two distinct and more detailed structures of maritime administrations, a first model being a department of a ministry, and the second and autonomous maritime administration responding to a ministry. Those models are shown in plates 2.3 and 2.4.

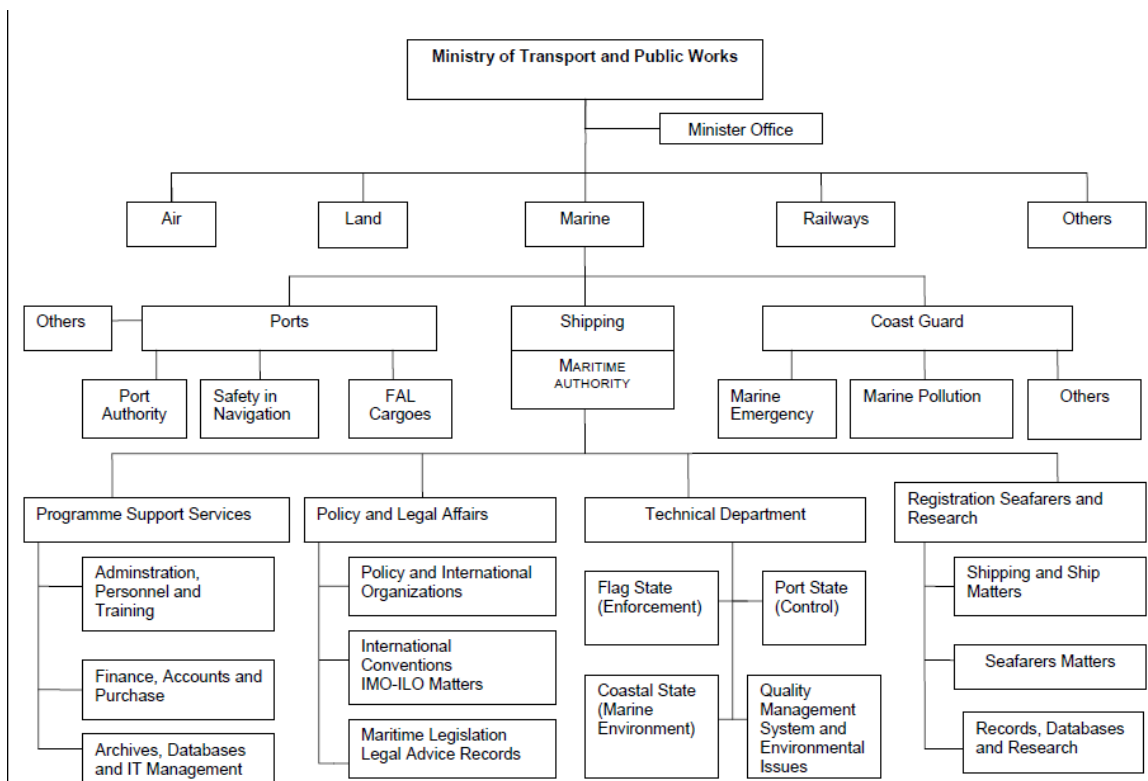


Plate 2.3.-Maritime administration as a department within a ministry, by Plaza (2008)

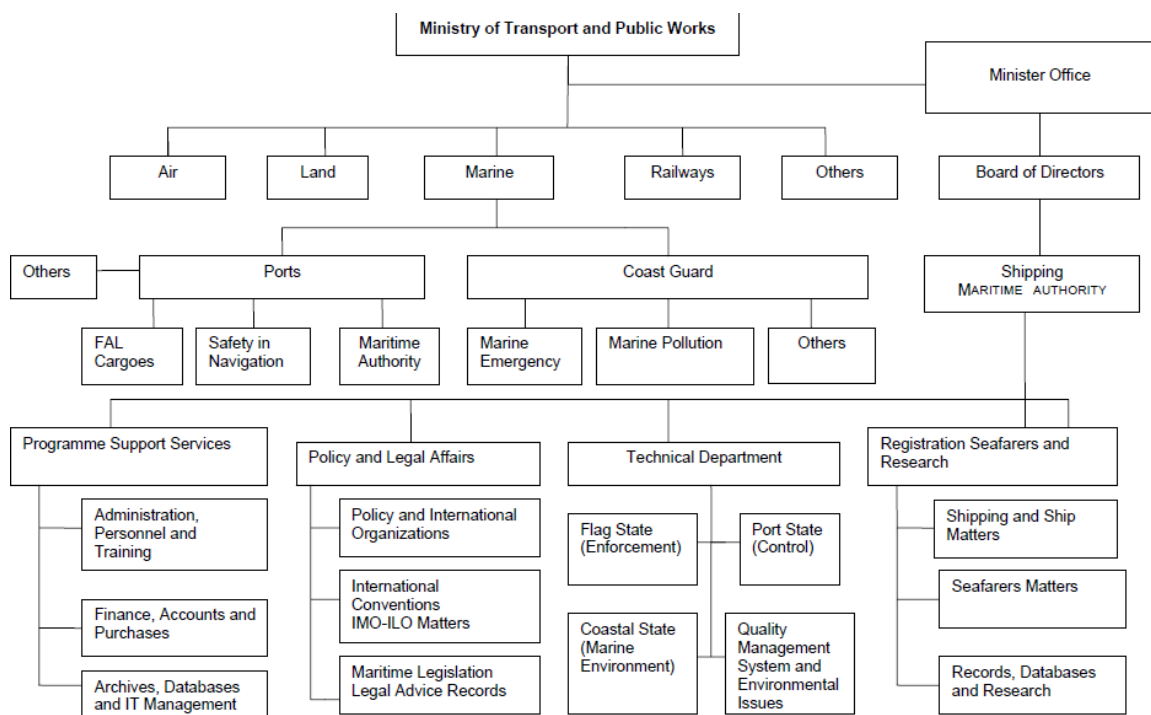


Plate 2.4.-Maritime administration as an autonomous body responsible to the minister (Plaza, 2008)

These models have the merit, besides including the four departments (support, policy/legal, technical and registry), also to include in separate institutions the coastal State activities (search and rescue/pollution prevention and control), as well as ports administration.

It is also important to observe that the different roles of maritime administrations appeal to various aspects which in general are handled by different ministries. Environmental, legal (depending additionally of the legislative power of the country: senate, congress etc.), commercial (port management), defence: coast guard, search and rescue. This situation gives rise either to a maritime administration scattered into agencies depending each of a ministry, or a unique body of maritime administration working in cooperation with each of the concerned ministries. In the latter case, clear

guidelines are to be agreed upon in order to provide a framework for cooperation and limitation of powers of each ministry (Mansoorian, 2010). The need for cooperation becomes even more significant when considering the fact that not all States have at their disposal the pool of trained professionals to carry out all the functions of a maritime administration. Alternatively, some functions may be outsourced to third parties, the recognized organizations, which may be chosen to carry out specific functions on behalf of the administration.

Seen under this perspective, operating a maritime administration necessarily leads to an interdisciplinary exercise which requires close cooperation between government agencies, private third parties as well as international organisations.

Once established the basis of the nature, structure, rights and obligations of a maritime administration as it is called to be, the next chapter will be dedicated to the study of the maritime administration as it is today in the Republic of Haiti.

Chapter 3.-Status quo of the Maritime Administration of the Republic of Haiti

3.1.-Maritime institutions of Haiti

Chapter 1 dealt with the generalities of the Republic of Haiti as a country, and presented an overview of contemporary maritime affairs. It established that if historically maritime activity has existed –and even sporadically thrived- or was repeatedly used for belligerent purposes in the insular republic, an effort of organisation has not taken place on a consistent basis. As will be seen in this chapter, the actual maritime institutions are result of relatively recent efforts and political events. These institutions are namely: APN SEMANAH, and the Haitian coast guard. Analysing these maritime institutions through their organisational structure, their recent history and accomplishments is the purpose of the present chapter.

3.1.1-The National Port Authority (APN)

The APN is the institution in charge of the exploitation, management, safety and security of all international and domestic ports of the country. Haiti boasts of two international ports (Port au prince and Cap-Haitien) as well as seventeen (17) domestic trade ports. The headquarters of the APN are located in the port of Port-au-Prince (*Autorité*, 2016).

The development of the APN is closely related to that of the port of Port-au-Prince, since policies have generally tended to a centralization of the port authority and the management of all national ports have been conferred to the office in Port-au-Prince.

Historically, in 1906, under presidency of Pierre Nord Alexis, an eager defender of U.S. interests in the Caribbean, the management of the port was conferred to a joint Haitian-American corporation for a lease of fifty years. Under this management, the construction of the first jetties took place in 1911. At the completion of the lease, in 1956, the administration of the port was conferred to the State bank, known as the *Banque Nationale de la République d’Haïti*.²⁷ During the seventies, three decrees of then dictator Jean-Claude Duvalier gave this institution its actual status. The decree of June 18th, 1973 created the then *Administration du port de Port-au-Prince*,²⁸ granting thereto the status of autonomous institution with management capabilities on the other ports of the country. In 1978, this institution was renamed *Autorité Portuaire Nationale* (APN), and placed under sponsorship of the Ministry of Finances. Finally, the decree of March 15th, 1985 granted to APN the control and operation of all ports of the country (*Autorité*, 2016).

Administratively, the APN comprises a general direction and eight (8) directorates. Its organisational chart is shown in plate 3.1.

²⁷ [National Bank of the Republic of Haiti] ancestor of the contemporary *Banque de la République d’Haïti*, BRH.

²⁸ [Port Administration of Port-au-Prince]

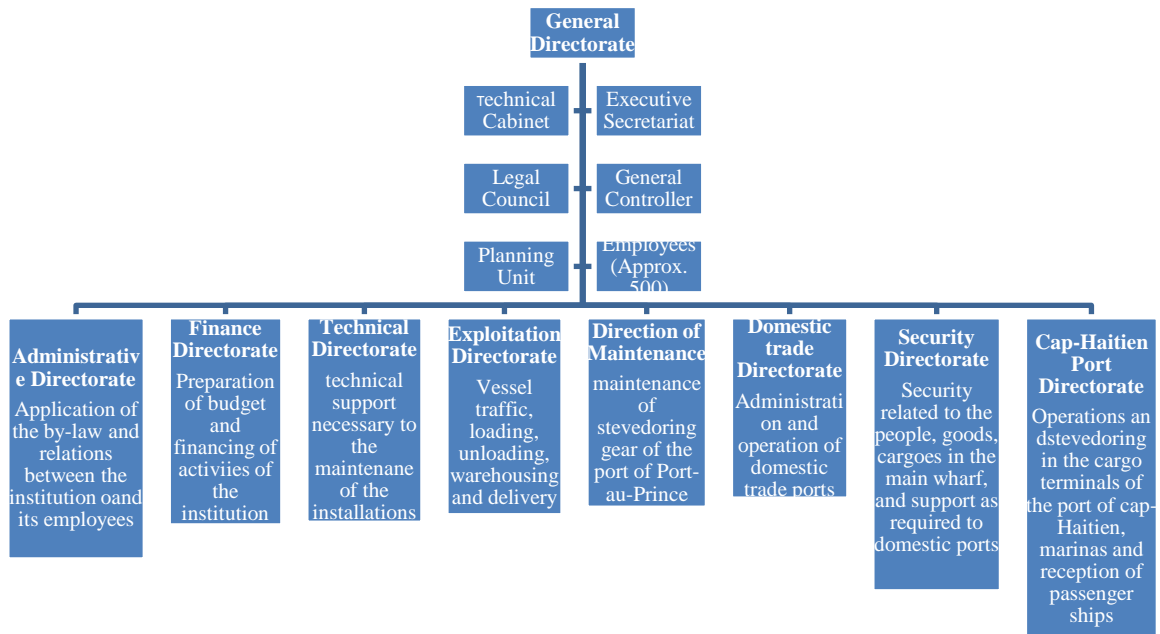


Plate 3.1.-Organisational chart of the APN (Autorité, 2016)

3.1.2.-The National Maritime and Navigation Service (SEMANAH)

SEMANAH is the institution of which attributions are most closely related to those of a maritime administration in Haiti. It is the only one out of the three maritime institutions vested with the authority to issue regulations and by-laws, some of which after submission to the country's parliament.

Created by decree of then dictator Jean-Claude Duvalier on March 5th, 1982,

SEMANAH is endowed with the following attributions (*Décret*, 1982):

- create projects of Laws relating to the merchant marine;
- organise maritime safety services;
- register vessels and carry out their periodic inspections;

- supervise the construction of vessels to be registered in the Republic of Haiti;
- carry out surveillance of the operation of vessels in Haitian waters with the help of the Haitian coast guard;
- carry out port State control inspections of vessels calling to Haitian ports;
- install and manage of marine aids to navigation;
- levy of charges and tariffs applicable to domestic trade;
- promote maritime affairs nationwide.

By virtue of article 5 of the organic law of the *Ministere des Travaux Publics, Transports et Communications*²⁹ SEMANAH is placed under sponsorship of this ministry. Hence it does not boast of the statute of an autonomous institution, but instead acts through and administration council integrated by a group of ministers, namely (Semanah, 2012):

- Minister of public works, president
- Minister of Economy and Finance, member
- Minister of Foreign Affairs and Cults, Member
- Minister of interior and territorial communities, Member
- Minister of commerce and industry, member
- Director general of the Semanah, Secretary of Council

²⁹ [Ministry of public works, transportation and communications]. This founding organic law was published in the Official Journal, *Le Moniteur*, on April 20th, 1987

3.1.2.1.-Organisational Chart of SEMANAH

SEMANAH consists of a general directorate assisted by five sectorial directorates, in an organisational structure shown in plate 3.2 (Semanah, 2012):

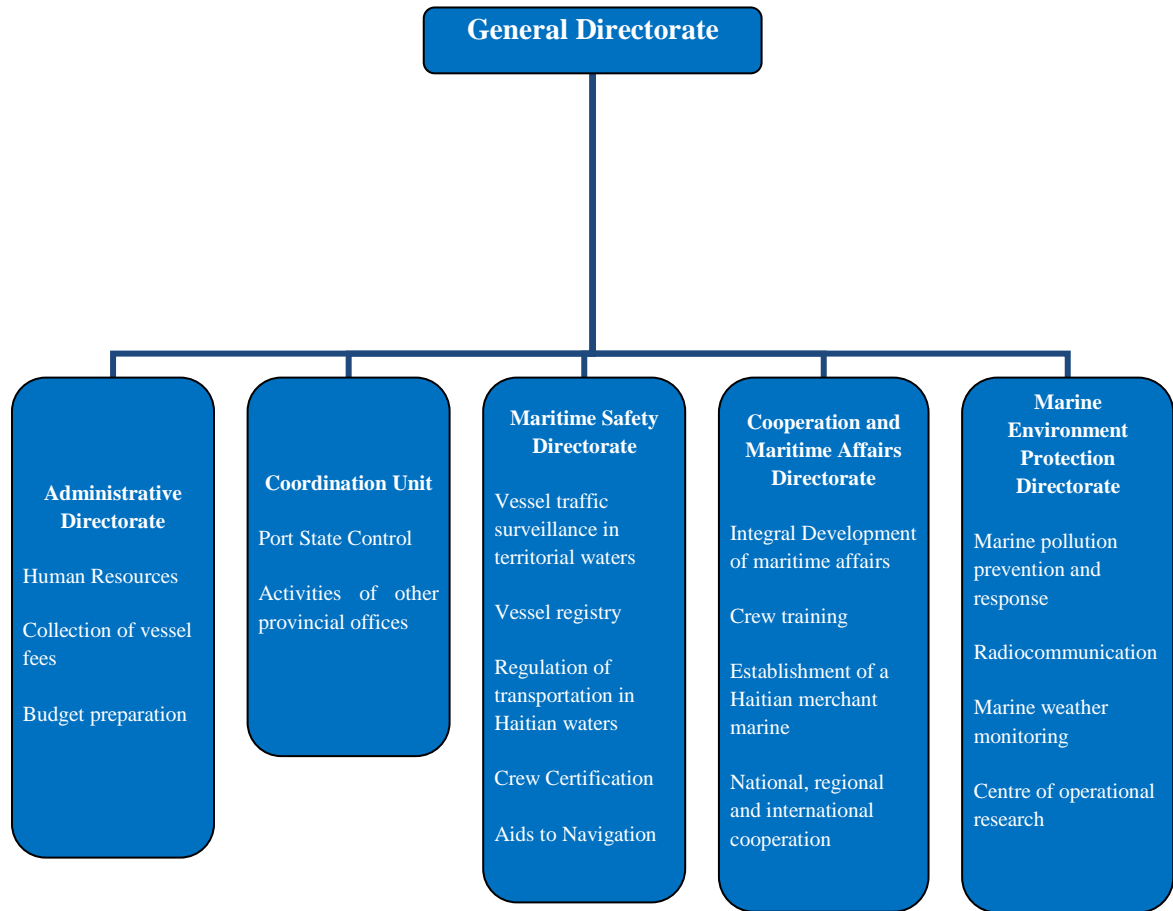


Plate 3.2: Organic chart of SEMANAH (Semanah, 2012)

3.1.2.2.-Services and functions of SEMANAH

As indicated on their website, SEMANAH provides a set of services in relation to the aforementioned legal functions. These services are described as follows (Liste, 2016):

- flag State inspections: commissioning inspections for foreign flagged vessels willing to engage in domestic trade, annual and special inspections, registration of ships, vessel traffic services, control of foreign vessels calling at national ports;
- crew certification and labour conditions: oversight on certification of trained crew, labour contracts between crew and employers as well as labour conditions onboard;
- management of aids to navigation: planning, financing, construction and maintenance of aids to navigation including lighthouses, buoys, racons, range and landing lights, radiocommunications, broadcast of marine weather bulletins;
- seafarer support and training: setup of basic seamanship as well as marine emergency duties courses;
- youth sensitization to seagoing job market: through campaigns directed towards secondary schools;
- information sharing on the maritime sector: to individual as well as institutional researchers;
- equivalence of foreign seafarer certificates: in order to allow foreign-trained professionals to practice under Haitian law;
- information sharing on national and international maritime legislation: make available to all concerned parties, the conventions and regulations as well as amendments thereto, to which the country has become party;
- water Ballast pollution management: water quality analysis, monitoring of foreign vessel ballast activities;

- hydrocarbon pollution prevention and response: water quality analysis near ports and electric centrals;
- control of the quality of waters used for leisure: water quality analysis on beaches, marinas etc.;
- hydrographic soundings;
- rescue of vessels, crew and passengers in distress: in coordination with other national and international institutions, such as Haitian coast guard, Civil protection directorate and the Red Cross;
- port clearance: port clearance to compliant vessels;
- vessel inspections: as requested by conventions, owners or charterers;
- port State control: aimed at reducing the number of sub-standard vessels calling at national ports;
- sensitization of seafarers and passengers on the safety measures to be taken when going at sea, including donning instructions of lifejackets.

3.1.3.-The Haitian coast guard

*Garde-Côtes d'Haïti*³⁰, previously known as *Marine Haitienne*³¹ represents the oldest of the maritime institutions of the country and as such, has witnessed numerous changes in its structure, jurisdiction and authority, concurrent with the country's frequent political and institutional turmoil.

³⁰ [Haitian coast guard]

³¹ [Haitian Navy]

In the early 1930's, with the U.S. troops preparing their retreat from the occupation of Haitian territory and a smooth transition of power to local authorities, the *Gendarmerie d'Haiti*³² was endowed with a marine division. This arm, as conceived by the U.S. occupants, was not intended as a navy, but instead a coast guard, though it was endowed with military training and operated vessels with limited naval capabilities (Heinl et al. 2005).

One of the most notable episodes of the recent history of the coast guard was the 1970 mutiny against then dictator François Duvalier. On April 21st, 1970, the coast guard rebelled against the regime and directed three warships against the national palace which was exposed to marine attacks in the bay of Port-au-Prince (Heinl et al., 2005). Even though the rebellion was controlled by a U.S.-Haitian joint action, Duvalier renamed the coast guard *Marine Haitienne*, placing it under control of the still loyal *Forces Armées d'Haiti, FAD'H*³³ in order to exert tighter control. By the end of the 1980s, this body counted an effective of 45 officers and 280 conscripts operating from the naval base of Bizoton still in existence today.

Similarly to the remaining of the Haitian armed forces, the next notable episode of the Haitian navy occurred in 1994, during the invasion of Haiti by the United Nations military coalition to bring back from exile democratically-elected president Jean-Bertrand Aristide. Following the international intervention and a presidential decree, the Haitian armed forces were dissolved and their effective partly transferred to a national police

³² [Haitian army]

³³ [Haitian Armed Forces]

force, the *Police National d'Haïti, PNH*.³⁴ It took until July 16th, 1996 for the former Haitian navy to be reinstated -this time not as a military force, but a division of the national police- and renamed *Corps des Garde-Cotes d'Haïti*.³⁵ This status and name are the ones known as of this day. Thereafter, the terminology Haitian coast guard will be used to refer to this institution (Heinl et al., 2005)

Operationally, the Haitian coast guard headquarter is located at *Bizoton*, in the naval base *Amiral Killick*³⁶, also occupied by regiments of the UN Mission. Three other naval bases are located in *Cap-Haitien*, *Jacmel* and *Cayes*, the latter built with direct cooperation of the Canadian government and opened for operations in 2013 (*Pour mieux*, 2013).

³⁴ [National Police of Haiti]

³⁵ [Corps of Haitian coast guards]

³⁶ Named after Admiral Hammerton Killick who sacrificed himself and sank his vessel (the *Crete-a-Pierrot*) in 1908 instead of surrendering to the German warship *SMS Panther* (§1.2.2).

Chapter 4.-Compliance Issues in Contemporary Haitian Maritime Administration

Once it has been laid out the theory of a maritime administration at the light of relevant IMO instruments (Chapter 2), and studied in detail the three main maritime institutions of the Republic of Haiti (Chapter 3), a cross-study is paramount in order to determine the level of compliance of the Haitian maritime administration to the standards to which it is called to comply.

The present chapter will establish, for each function of the Haitian maritime administration as a coastal State, a flag State and a port State, the discrepancies of this administration with the proposed standards.

4.1.-Haitian Maritime Administration as Coastal State

4.1.1.-Legal lapses

As it was stated by SEMANAH director Eric Prevost Jr., Haiti does not dispose to date of a maritime law. Reference to an eventual *Code maritime haïtien*³⁷ only reverts to a project of law, not yet submitted to legislative bodies of the country (*Le commerce*, 2015). Maritime decisions since the creation of the SEMANAH have taken place by institutional decrees, and since its founding by the presidential decree of 1982 mentioned in chapter 1, no further legal groundwork has been accomplished.

In the speech presented at the 33rd anniversary of the institution, the director pointed among its special needs, those of reinforcing the legal framework of the maritime

³⁷ [Haitian maritime Code]

sector by submitting the project of a Haitian maritime and navigation code to the parliament, of which involvement is necessary to ratify important international conventions (*Le commerce*, 2015). Whether it is attributable to SEMANAH or to the lack of political will of legislative bodies, the absence of a maritime legal framework affects the exercise of the authority in all tenets of maritime administration. The lapses as a coastal State are observed in the definition of Haiti's maritime zones, as well as the duty of this State to provide due publicity to all relevant information within those zones.

4.1.1.1.-Definition of maritime zones

As it was seen in chapter 1, definition of Haitian maritime zones took place through the Duvalier decrees of 1972 and 1977, which preceded in time the maritime zones established through UNCLOS. In their wording, the Haitian maritime zones so established coincide with those adopted through UNCLOS: a 12 nm territorial sea, a 24 nm broad contiguous zone and a 200 nm EEZ and continental platform. However, discrepancies arise in two main aspects: the definition of the normal baseline from which the breadth of the zones is measured, as well as the jurisdiction of Haitian State on the contiguous zone.

4.1.1.1.1-Are Haiti's claimed maritime baselines arbitrary?

In the 1977 decree, the normal baseline is described as the low-water line, or the corresponding straight baselines of the adjacent islands (Decree, 1977). This definition did not provide any further precision on the measurement of the corresponding straight baselines. It lacks the precision of article 5 of UNCLOS, which describes the normal

baselines as the low-water line along the coast, as marked on the large-scale charts officially recognized by the coastal State (UNCLOS, art. 5). The straight baselines are defined in UNCLOS as resulting from the method of joining appropriate points where the coastline is deeply indented or cut into (UNCLOS, art 7). However, the same article also precises that the baseline must not depart to any appreciable extent from the general direction of the coast (UNCLOS, art. 7.3). In the case of bays, UNCLOS article 10 establishes two cases, when the distance between the low-water marks of the entrances of the bay measures less than 24 nm or not. In the first case, a closing may be drawn from the two low-water marks; otherwise, a 24 nm straight baseline is to be drawn within the bay, so as to enclose the maximum area of water (UNCLOS, art.11).

Some key observations are paramount when the preceding considerations are put in comparison to the normal baselines appearing on the sketch which accompanied the 1972 decree (Fig. 1.5, §1.2.3.1).

The territorial sea, as appearing on the sketch, consists of a set of eleven (11) vertices A-B-C-D-E-F-G-H-I-J-K giving rise to ten (10) straight legs AB, BC, CD, DE, EF, FG, GH, HI, IJ, JK. Parallel to the established territorial sea limits, a set of dotted lines represents the corresponding baselines. The U.S. State Department study on Haitian maritime claims established that the dotted line, inner limit of the territorial sea which by convention should be the low-water line or a straight baseline, was constructed from the territorial sea polygon and located 12 nm landward (Straight baselines, 1973). Hence, the claimed normal baselines of Haiti do not match normal or straight baselines as defined in

UNCLOS. There is no documented report of hydrographic studies carried out in establishing these baselines. In fact, following the U.S. State Department observations, it appears that the claimed territorial sea limits were used for establishing the baselines, and not the opposite, as would be dictated by international law and common practice.

Additional discrepancies arise when studying each leg, a study which was carried out and published by the U.S. State Department (Straight baselines, 1973). Detailed leg by leg analysis of the Haitian baseline and territorial sea by the U.S. State Department is presented in appendix III.

4.1.1.1.2.-Jurisdiction on the contiguous zone

As seen in chapter 1 (§ 1.2.3.1), the 1977 decree established a contiguous zone of 12 nm from the outer limits of the territorial sea, over which the State claims jurisdiction with regard to the protection of its fiscal and customs interests and its security, as provided by pertinent international law (*Décret*, 1977). This claim was followed by a protest from the United States alleging that the Haitian claim was inconsistent with international law and would restrict the exercise of the high seas freedoms of navigation and overflight beyond the territorial sea in times of peace (Roach & Smith, 2005).

Haiti's signature of UNCLOS took place in 1996, which signifies acceptance by the Caribbean country of the convention's provisions on the contiguous zone: namely 12 nm over which the coastal State may exercise control to prevent infringement of its customs, fiscal, immigration and sanitary laws within its territory and territorial sea [UNCLOS, art. 33.1(a)]. However, due partly to the lack of a general maritime legislation

in the country, there has been no effort to integrate these provisions to Haiti's legislative framework, or to repeal the decrees of 1972 and 1977. To this date, the definition of Haiti's maritime zones and its jurisdiction thereover remain in a state of ambiguity.

4.1.1.2.-Due publicity

One recurrent obligation made to coastal States through UNCLOS is the duty to provide due publicity to any measures taken in regulating the use of their maritime zones. This obligation is established *inter alia* for the following:

- the baseline used for measuring the breadth of the territorial sea (UNCLOS, art. 16);
- laws and regulations relating to the innocent passage in its territorial sea (UNCLOS, art. 21) or any measures taken to prevent passage that is not innocent (UNCLOS, art. 25);
- sea lanes and traffic separation schemes adopted in the territorial sea (UNCLOS, art 22);
- any danger to navigation of which it has knowledge, within its territorial sea (UNCLOS, art 24);

Coastal States boast the choice to give publicity to maritime baselines either by use of large-scale officially recognised nautical charts or by publishing the list of geographical coordinates of the vertices of said baseline and specifying the geodetic datum used, a copy of which shall be deposited with the Secretary-General of the United Nations (UNCLOS, art. 16).

No list of geographical coordinates was deposited by the coastal State of Haiti alongside its claimed baselines and territorial sea. Only the image shown in figure 1.5 accompanied the 1972 decree in the form of a small-scale map (1:5,000,000) over which the limits shown may have been plotted directly and not on a reasonably scaled chart (Straight baselines, 1973). Hence this observation, which was part of the U.S. protest against excessive maritime claims of Haiti, represents not only a bilateral disagreement, but most importantly a non-compliance by the state of Haiti of the UNCLOS provisions on due publicity.

Were there in existence at the time of publication of the decrees, larger scale charts suitable for due publicity of the baselines and territorial sea limits of Haiti? Were there, after 1972, other charts which have been published which would offer larger scale views of the Haitian coastline? Two charts, both published by the United Kingdom Hydrographic Office (UKHO) provide a positive answer. The chart characteristics are shown in table 4.1 and chart scale views in figures 4.1 and 4.2.

Table 4.1: Large scale charts of the Haitian coastline (UKHO, 2015)

Chart Number	Name	Specifications
BA 486	Jamaica and the Pedro Bank	<ul style="list-style-type: none"> - Published: Dec 20th, 1866 - Size: 1079x637 (mm) - Scale: 1/831,000
BA 3935	Windward Passage and Southern approaches	<ul style="list-style-type: none"> - Published: Dec 30th, 1999 - Size: 1100x750 (mm) - Scale: 1/400,000

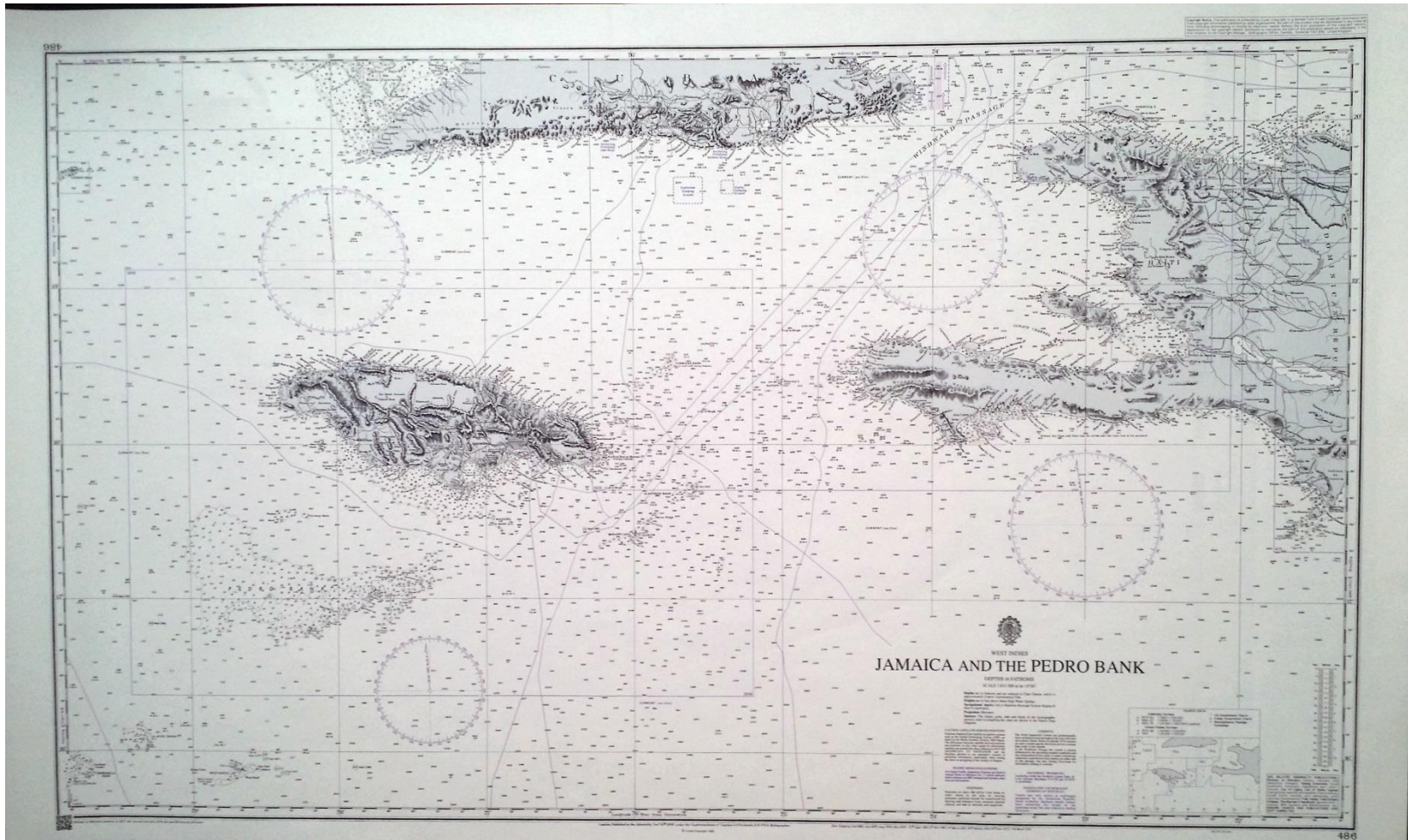


Figure 4.1.-UKHO Chart BA 486: Jamaica and the Pedro Bank



Figure 4.2.-UKHO Chart BA 3935: Windward Passage and Southern Approaches

4.1.2.-Operational lapses

Responsibilities as a coastal State also cover numerous operational aspects which to date are not being met by Haitian maritime authorities.

UNCLOS establishes the right of the coastal State to adopt laws and regulations in the territorial sea concerning the safety of navigation and regulation of maritime traffic, protection of marine navigational aids, cables and pipelines, prevention of infringement of its environment and fisheries laws as well as infringement of its customs, fiscal, immigration and sanitary laws (UNCLOS, art. 21). Such laws and regulations also include the establishment of *traffic separation schemes* (TSS) regarding the safety of navigation (UNCLOS, art. 22), to which the coastal State shall also give due publicity (UNCLOS, art. 21).

Analysis of recent reports sheds an insight on the operational performance and dispositions of the Haitian coastal State in implementing these provisions.

4.1.2.1.-Maritime drug trafficking prevention

As seen in chapter 1 (§1.2.3.1), by 2000 it was estimated that 9% of the cocaine destined for the United States transited Haiti and the Dominican Republic. The preferred methods were non-commercial maritime methods, primarily go-fast boats as a consequence of the country's lack of resources, political will and law enforcement infrastructure needed to respond adequately (Marshall, 2001). As recently as 2013, the national police -parent institution of the coast guard- inaugurated a Canada funded

maritime base at *Les Cayes*. However the U.S. State Department 2015 report on international narcotics control strategy (INCSR) reports in the following terms the law-enforcement capabilities of the Haitian coast guard in preventing marine drug trafficking:

The Haitian Coast Guard (HCG) is responsible for securing the country's maritime borders and has an effective strength of 134 officers, with operating bases in Cap Haitien (North region), Killick (Port-au-Prince), and Les Cayes (South). The force has a total of 20 maritime vessels, but only eight are currently operational. Operational capacity of the entire fleet remains extremely low due to insufficient funding, management deficiencies, and an inability to refuel and maintain the vessels in a reliable manner. These issues have prevented the HCG from serving as an effective deterrent force to maritime drug trafficking.

(Bureau, 2016, para. 6)

4.1.2.2.-Illegal migration surveillance: the boat people phenomenon

Haiti's shortcomings in maritime surveillance are also prominent in the phenomenon of boat people or Haitians seeking asylum in the United States (or other Caribbean Islands, such as Cuba) by boat without proper travel documents, if any at all. In most cases, the asylum seekers eager to leave precarious social, economic or political situations in the country take small, rustic, overladen boats improper for open-sea

navigation, which have resulted since the 1970s in countless sinking and loss of life. A picture of a Haitian overladen boat intercepted at large of Turks and Caicos is shown in figure 4.3.



Figure 4.3.-Haitian migrants intercepted at large of Turks and Caicos (Dobbs, 2011)

The phenomenon, which falls within the field of human rights and migration, transcends the scope of this study. Nevertheless, a look at the numbers of Haitian migrants who have eluded Haitian coast guard surveillance is meaningful. Plate 4.1 presents in thousands, the number of Haitian interdictions by the U.S. Coast Guard on a period spanning from 1982 to 2011 (Wasem, 2011). They do not include those who have indeed been admitted to the United States, or those who have sadly perished at sea in the attempt and whose toll can only be conjectured.

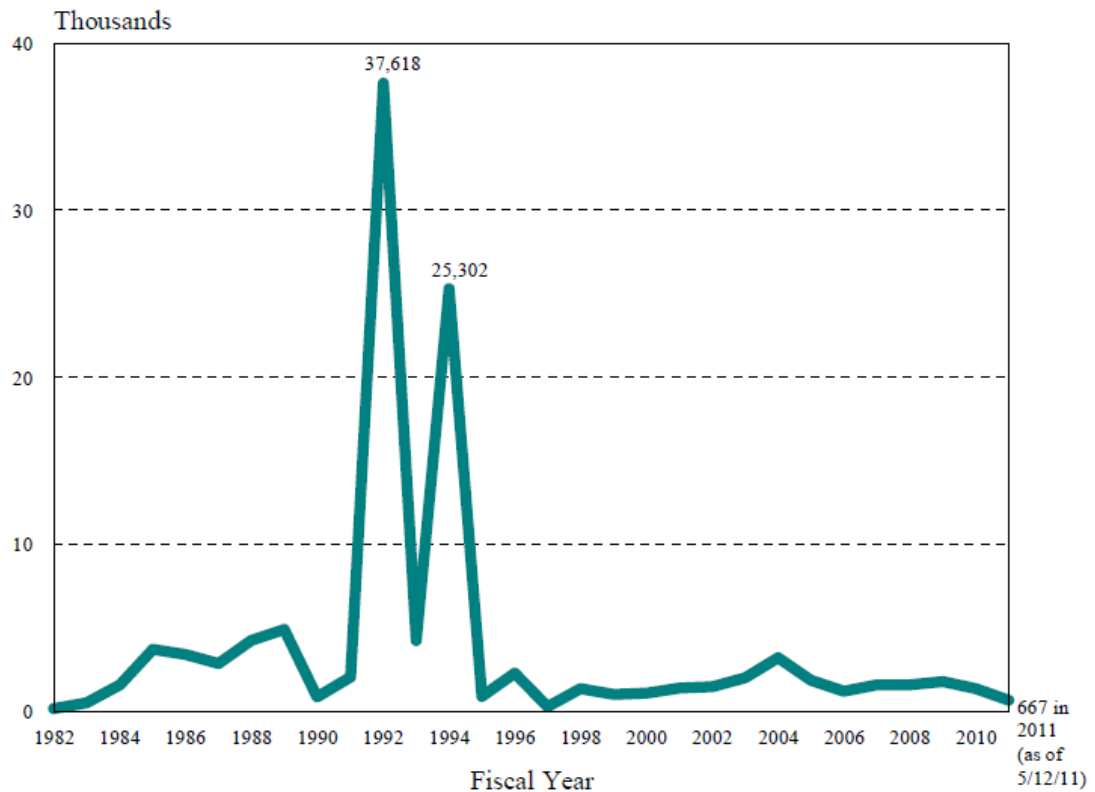


Plate 4.1: Haitian migrants' interdictions by the U.S. Coast Guard (1982-2011) (Wasem, 2011)

As seen in the previous section, with the scarce effective of patrol boats at the disposal of the Haitian coast guard, no regular migration patrol takes place in the territorial sea or the contiguous zone, let alone interception of illegal migrants and unsafe embarkations.

4.1.2.3.-Vessel Traffic Services (VTS) and search & rescue (SAR)

As shown in plate 3.2 (§3.1.2.1, p. 59), the maritime safety directorate of the SEMANAH is in charge of the maritime traffic surveillance in territorial waters, as stipulated in UNCLOS (art. 21). However, no technical and administrative means are in place which would ensure an effective surveillance by radar, radiocommunications or

patrol boats, of vessels entering, exiting or transiting Haitian internal waters and territorial sea. In the exercise of its coastal State duties, SEMANAH is ideally assisted by the Haitian coast guard, which is often described as its *armed hand*, even though the coast guard itself is a division of the Haitian national police (*Le SEMANAH*, 2015). Moreover, as seen in the previous section, the precarious material means, including patrol boats, at the disposal of the Haitian coast guard, do not allow effective surveillance of the coast line, let alone effective routine control of the traffic.

4.2.-Haitian maritime administration as flag State

As studied in chapter 2, the flag State broadly carries responsibilities in:

- Registration of ships, including their initial and periodic surveys (UNCLOS, art 94, III Code art. 22);
- Investigation of maritime incidents (UNCLOS 94.7, III Code, art 23 & 24.3);
- Training and certification of crew, as well as compliance with IMO and ILO related Conventions (UNCLOS, art 94/ III Code art. 16);
- Issuance of national legislation and guidance, including the assignment of responsibilities and monitoring of adopted policies (III Code, art. 15);

SEMANAH, which bears the responsibilities incumbent to a flag State, counts in its organisational structure, departments responding to some of the mentioned functions.

In SEMANAH's organisational structure (plate 3.2, §3.1.2.1), whereas the functions of vessel registry, regulation of marine transportation and crew certification fall under responsibility of the Maritime Safety Directorate, those of crew training as well as national, regional and international cooperation fall under the banner of the Cooperation and Maritime Affairs Directorate. A cross comparison of the mentioned structure with established duties of a flag State raise the following observations.

4.2.1.-Initial and periodic survey of ships

As of 2012, there were reportedly 802 vessels registered under SEMANAH (SEMANAH, 2012). However, no data is available of any conventional cargo or passenger vessel flying the Haitian flag. There is no indication of whether the registry only accounts for artisanal hand carved wood vessels which are commonly used by Haitian fishermen. Nor are have any procedures been documented for a vessel to register under Haitian flag.

Concomitant to the existence of a maritime registry is the duty to provide qualified surveyors in order to carry out required surveys: initial surveys on construction, equipment and seaworthiness of vessels before these are authorized to fly the Haitian flag and subsequent surveys at appropriate intervals (UNCLOS, art. 94.4.3). There is no indication, since no conventional Haitian flagged vessel is known, of the surveys carried out, even though steps have been taken to initiate a corps of vessel inspectors (Haiti-Transport, 2015). Published information on the latest training of this corps of inspectors - which dealt with basic ship nomenclature- suggests that qualified surveyors, fully

conversant with topics of ship construction and equipment, navigation, engineering, maritime legislation and international conventions are not to this day available. Additionally, the basic training carried out in 2015 was directed to potential port State control inspectors, and not flag inspectors.

Consistent with the suggested lack of flag State inspectors is the observation that whereas a port State control department is included in the SEMANAH's Coordination Unit, no flag State inspectorate is found in the organisational structure of the institution.

4.2.2.-Maritime accident investigation

The previous analysis on the shortcomings of the Haitian administration in matters of maritime inspections leads to another meaningful aspect of the duties of a flag State as are marine accidents investigation. This obligation is explicit in UNCLOS (art. 94.7) on incident of navigation on the high seas involving ships flying a State's flag and causing loss of life or serious injury to nationals of another State, damage to their ship installations or to the environment.

As seen in chapter 2 (§2.3.1) The III Code also sustains the preeminent role of the flag States in accident investigation involving ships flying their flag, and enforcement of shipping standards aboard these ships (III Code, art 23). Along with the surveys on seaworthiness of ships flying their flag and crews certified under their authority, the duties of investigation of marine incidents is a key role of flag State administrations.

Examination of the structure of the SEMANAH also shows the lack of a department in charge of marine accident investigation, or a marine casualty inspectorate.

As seen earlier (§1.2.3.2), marine accidents involving fishing boats and handcrafted sail boats are common in Haitian waters, with tolls of tens to thousands of lives every time. Even though accounts from survivors provide insights on the events, no systematic inquiry process has been known to take place, nor does SEMANAH count of a body of inspectors trained for this task. A statement from the seating SEMANAH director provides a good insight on the known shortcomings of the institution when it comes to marine incidents inquiries, even in territorial waters:

The institution is present only in 43 out of the 75 coastal cities of the country, with an effective of only two or three agents per office. With the incapacity of surveying compliance of the vessels with standards of construction, transportation of passengers and cargo, those vessels often sink (...). Seafarers take advantage of the absence of SEMANAH in certain areas to overload their boats, most of which are sailboats.

(Le SEMANAH, 2015, para. 2)

The conclusion drawn from these considerations is that the institution does not dispose of a marine accident investigation department, or a group of qualified surveyors to carry out this function. Even though efforts are produced and marine safety bulletins broadcast when necessary, no enforcement capabilities are in place in order to prevent non-compliant vessels to leave port.

The lack of qualified human resources to carry out key functions of a flag State also lead to the next topic: the limited participation of Haiti in IMO programs aimed at

capacity-building in maritime administrations through international cooperation: namely the IMSAS and the ITCP programs.

4.2.3.-IMSAS and ITCP participation

There is, to this date, no registered country maritime profile for the Republic of Haiti in the GISIS program. Additionally, no participation to the VIMSAS program was reported (GISIS, 2016). However, since the audit scheme has become compulsory with the IMSAS, it is expected that Haitian authorities take effective action to allow international audit of the authority structure, and take advantage of resulting observations (non-conformities) as a tool for improvement.

As seen in chapter 2 (§2.1.2), even before the IMSAS, there existed the Integrated Technical Cooperation Programme (ITCP), put in place in order to come in assistance to the many developing countries in building up human and institutional capacity for uniform and full compliance with IMO mandated instruments (Integrated, 2016). Also, it was indicated that the technical cooperation involved would take place based on three strategic priorities, namely ratification of maritime rules, institutional capacity-building as well as human resource development (Integrated, 2016).

As it has been revealed in the current analysis of the maritime status quo in Haiti, this country faces numerous needs of development of its maritime sector, which fall within the strategic priorities of the ITCP. Therefore valuable help may be available to this country through the ITCP programme.

In its 2014 annual report on the ITCP, the Technical Cooperation Committee indicated that emphasis was set on support for national and regional maritime

development bodies particularly through need assessment exercises and regional meetings for heads of maritime administrations (Annual report, 2015).

In 2014, 213 activities were delivered by the ITCP out of a total of 289 planned, with 24 being advisory and needs assessment missions, and 107 being national and regional training courses (Annual report, 2015). Other activities, including model maritime legislation, training packages, meetings of head maritime administrations, conferences and others, accounted for the remaining 82 activities (Annual report, 2015).

In Latin America and the Caribbean, eleven regional training events took place which focused on implementation of the oil pollution response coordination (OPRC), as well as MARPOL annexes I and V and the development of contingency plans.

Participation of the Republic of Haiti was registered in two of the global programmes and one regional programme (Annual report, 2015).

4.2.4.-Monitoring and Statistical data

Similarly to a coastal State, a flag State administration is required to develop and implement a control and monitoring programme in order to respond to casualty investigation, provision of statistical data, as well as timely response to ship deficiencies and pollution incidents (III Code, art. 23).

At the time of writing, no known programme of SEMANAH or the coast guard is in place in order to monitor performance and increase response to future marine casualties.

4.3.-Haitian Maritime Administration as Port State

As mentioned in chapter 1, Haiti is not party to the Caribbean MoU, the regional agreement on port State controls.

A port State control division exists however in the organisational structure of SEMANAH (§ 3.1.2.1) under the Coordination Unit, together with the provincial affairs division. However no reports have been accessed of PSC inspections carried out on foreign vessels calling at Haitian ports such as Port-au-Prince or Cap-Haitien.

Concomitant to port State control duties is that of providing a body of fully trained surveyors. As stated in chapter 1, the body of 80 PSC officers of the institution are yet to receive proper training and experience (*Haiti-Transport maritime*, 2015), more importantly so when they bear the duty of avoiding undue delays to vessels in carrying out their operations.

At the time of writing, no initiative is known from Haitian authorities to accede to the Caribbean MoU (§1.2.3.2), even though recent visits from the regional organisation president, Mr. Dwight Gardiner were aimed at raising awareness on the importance and potential benefits of the organisation to Haitian maritime authorities (*Visite*, 2016).

4.4.-Summary of chapter 4

A parallel between the actual status quo of the institutions playing key roles of a maritime administration in Haiti, and the requirements for maritime administrations acting whether as coastal, flag or port State through IMO instruments, reveals the discrepancies of the Haitian maritime administration summarized as follows:

As a coastal State:

- even though there has been a first intent to define Haiti's maritime zones, some discrepancies remain between the unilaterally defined zones and the provisions of UNCLOS. Haiti still claims rights of oversight of security in its contiguous zone, which is not contained in UNCLOS, and has been protested by the United States;
- no hydrographic studies were used to determine the normal baseline of Haiti. The resulting claimed territorial sea exceeds in some parts the 12 nm limits established by UNCLOS;
- bilateral agreements exist between Haiti and Cuba as well as Colombia on their common maritime boundaries, but not so with Jamaica, with which Haiti shares the Jamaica channel;
- coastal State jurisdiction of Haiti is incumbent to SEMANAH, assisted by the Haitian coast Guard. However, the Haitian coast guard itself is a division of Haiti's national police;
- lack of budget, trained personnel and equipment severely affect the performance of Haiti's coastal State in its duties of surveillance, civil and criminal jurisdictions onboard vessels calling to its ports or its internal waters, a lack of surveillance which has allowed traffic of drugs from South America to the United States;
- no system of vessel traffic surveillance is in place;
- search and rescue duties are severely affected by the lack of budget, material and trained personnel. The responsibilities are shared between SEMANAH as leader and Haitian coast guard as assisting institution. These duties are helped by the

United States Coast Guard, which also carries out surveillance for drug trafficking and illegal immigration (boat people) from Haiti to Florida;

As a flag State:

- the responsibilities of a flag State fall under jurisdiction of SEMANAH;
- the institution holds a registry of Haitian vessels, which consist mostly of handcarved wooden fishing boats and sailboats;
- SEMANAH is responsible of carrying out inspections on safety construction, equipment and manning on Haitian vessels. However performance has been poor, and numerous marine casualties take place every year;
- there is no systematic investigation and record keeping of marine accidents; SEMANAH does not boast a body of trained inspectors for this purpose;
- SEMANAH is in charge of training and certification of Haitian seafarers. There is no maritime training institution in the country, though a project exists to open one in the near future;
- there is to date no maritime law in Haiti. SEMANAH regulates marine activities through decrees and warnings in virtue of its founding presidential decree of 1985;
- there is no record-keeping, and no performance monitoring system of the flag State activities of SEMANAH;

- SEMANAH is in charge of maintenance of aids to navigation (lights, ranges and buoys), as well as marine communications, activities typically incumbent to the coastal State branch of maritime administration;
- no Recognised Organisation has been delegated in tasks of the flag State of Haiti
- Haiti has not been part of the Voluntary IMO Member State Audit Scheme. No report on the country appear in IMO's GISIS;

As a port State:

- port State control is a division of SEMANAH, which boasts of a body of nearly 80 inspectors, who have received only basic training;
- Haiti is not party to the Caribbean MoU nor any other regional initiative for targeting sub-standard vessels;
- at the time of writing, no intention has been manifested by the State of Haiti to be part of the regional initiative;
- similarly to coastal and flag State branches, no system of record keeping and performance monitoring for future improvements exists for port State duties.

Chapter 5.-Proposed Conceptual Framework of a Haitian Maritime Administration

The comparative analysis carried out in chapter 4 shed light on the situation of the Haitian maritime administration in matters of compliance with IMO-sanctioned standards as laid out in UNCLOS, the Implementation (III) Code and the IMSAS. It exposed how the country's lack of a framework maritime legislation and failure to ratify core maritime conventions condition generalized shortcomings in the execution of key functions of a maritime administration, either as a coastal, port or flag State. Once conducted this analysis, it is possible to conceive what measures or actions ought to be taken in order to make a Haitian maritime administration more compliant to said standards. These measures are reflective of the lapses analysed in chapter 4, and based on the ideal conceptual maritime administrations models laid out in chapter 2.

Since the proposed measures cover all three key aspects of the maritime administration, their application would be possible only through substantial institutional actions in different spheres of government, whether parliament, ministries or specialized institutions. As such, they constitute a proposal of a conceptual framework through which the Haitian maritime administration would become more compliant to IMO's standards. Laying out these proposals is the purpose of the present chapter.

5.1.-Proposals for a coastal State

5.1.1.-A plea for the autonomy of the Haitian coast guard

At the time of writing, the Haitian coast guard is a division of the national police. Its predecessor *-Marine Haitienne-*, the navy division of then military forces (*FAD'H*) was dissolved with its parent institution in 1994 by presidential decree, even though the armed forces of Haiti still boast of constitutional existence. Besides the fact that some training and support activities of the coast guard are provided by a division of the United Nations *MINUSTAH*, today's coast guard is often described as the armed hand of the SEMANAH which is not an autonomous institution but a specialized agency capped by an administration council of six ministers or their deputies.

As seen before when analysing the status of institutions within government (§2.5.1), a maritime administration acting as a division within a ministry often leads to cumbersome administrative processes and a slow decision-making (Hubbard and Hoppe, 2001). In the case of the Haitian coast guard, the branch of a national police at the service of a third-party non-autonomous government agency which is in turn placed under supervision of an international mission, decision-making arguably falls in a field of uncertainty. With access to internal information being scarce, only the present prevailing conditions serve as a beacon for hinting at the performance of this system. Unfortunately the record is not flattering: only a few boats donated by international partners, incapacity to provide for maintenance or even fuel for proper patrolling, virtual absence in the surveillance of drug trafficking and illegal migration, absence of deterrent to foreign

fishing vessels and local overfishing, near to absent search and rescue response to local maritime accidents and marine casualty (§4.1).

The preceding assessment suggests that Haiti's coast guard ails at the core of a governance problem, with the absence of legal, institutional and operational frameworks as well as an ill-defined mission and decision-making process.

It is to be observed that during their evolution, the maritime forces of Haiti have gone by turns from a military navy under the indigenous army, to a coast guard after the American occupation, then again to a naval force (under Duvalier), before arriving to their actual status as a specialised agency of the national police (§3.1.3). In no time during its history has Haiti boasted simultaneously a naval force in charge of preserving the country's maritime sovereignty in times of war, and a coast guard responsible of application of country's internal laws and the safety of navigation. As long as an institution was vested with maritime force, it was always dedicated either to one function (navy or coast guard), or to the exercise of both at the same time, leading to frequent episodes of military intervention in civil maritime affairs.

At a time when the country reopened the debate on whether or not to resuscitate the Haitian armed forces (*Retour*, 2014), it is paramount to advocate for the Haitian coast guard not to be taken over by the eventual new forces, but instead to retain their core function as a coast guard, or the warrant of country's laws in its maritime jurisdiction.

In terms of its place within government, it is proposed that the coast guard be upgraded to a statutory administration, in the sense of Hubbard and Hoppe (§2.5.1). At

most, it should respond to one ministry, not a division within government responding to one or several ministries as is the actual SEMANAH. In this instance, it is proposed that the Haitian coast guard be part of the *Ministère des Travaux Publics, Transports et Communications* (MTPTC).³⁸

At last, the coast guard should be given jurisdiction to provide support where needed to different ministries while preserving its own autonomy. As seen in chapter 2, functions of a maritime administration are often multi-disciplinary (§2.5), calling to capacities of different ministries. The ministry of finance for instance, in enforcing customs affairs may have recourse to a coast guard. So does the ministry of environment in ensuring preservation of the marine environment, or the ministry of agriculture and natural resources in deterring illegal fishing and overfishing. Of course, the coast guard should also be the first responder in matters of search and rescue.

Autonomy of the coast guard from the national police, non-assimilation to any navy force, autonomy from the SEMANAH and cooperation with key ministries are the base of a new concept of Haitian coast guard, in charge of coastal state duties of the Haitian maritime administration. The following sections will delve into the details of the different functions to be taken over by a new and autonomous Haitian coast guard.

³⁸ [Ministry of Public Works, Transportation and Communication]

5.1.2.-Proposed functions of the Haitian coast guard

5.1.2.1.-Safety of navigation

The banner of safety of navigation comprises an array of functions ranging from construction standards, equipment operation, management of vessels and the routes they're navigating to the emergency response arrangements available both onboard and ashore. SOLAS, under its chapter V, comprises under this topic the navigational warnings, weather services and warnings, search and rescue services, hydrographic services, ship's routing, reporting systems and vessel traffic services, establishment and operation of aids to navigation among others (SOLAS, 2004). In a new conceptual framework of maritime administration, all the mentioned safety of navigation functions incumbent to the coastal State are assigned to an autonomous Haitian coast guard organised in consequence. The following section introduces additional details on each function.

5.1.2.1.1.-VTS and reporting

The establishment of vessel traffic services is pursuant to chapter V/8 of SOLAS and is also contained in the III Code as one of the responsibilities of a coastal State. The VTS is defined as a service implemented by a competent authority designed to improve the safety and efficiency of vessel traffic and to protect environment (Guidelines, 1997). The services covered by a VTS system include (Guidelines, 1997):

- information service: broadcast of information regarding identity and intentions of traffic, waterway conditions, weather, hazards, or any other factor that may influence a vessel's transit;
- navigational assistance service: especially important in difficult navigational or meteorological circumstances, or in case of defects and deficiencies, as requested by transiting vessels;
- traffic organization service: operational management of traffic and the forward planning of vessel movements to prevent congestion and dangerous situations.

Moreover, operation of a VTS is based on communication with participating vessels based on the standards developed by the IMO.³⁹

5.1.2.1.2.-Establishment and maintenance of Aids to navigation

As mentioned earlier in our study, Haiti at the time of writing disposes of a set of 14 lighthouses, most of which were installed before 1934 under U.S. occupation (SEMANAH, 2016). The maintenance of all navigational aids is to this date assigned to SEMANAH.

In an attempt to assign well defined institutional responsibilities of a coastal State, it is recommended to transfer responsibility of the maintenance of navigational aids to the Haitian coast guard. Navigational aids, which for the moment are limited to the mentioned lighthouses, are also called to include at some point of development: range lights, buoys and beacons, the last two of which are accessible only through service boats

³⁹ In reference to the IMO Standard Marine Communication Phrases SMCP

in possession of the coast guard -when in service. Therefore, transferring maintenance of navigational aids to the coast guard would have the benefit of unifying under a single institution, different aspects of a same highly technical task; this measure would also release SEMANAH resources for other maritime matters more akin to a flag State. This proposal will be developed further in this chapter.

When it comes to building new navigational aids, it is proposed that the coast guard share expertise with related ministries (Ministry of Public works, transportation and communication), and play a proactive role in proposing future developments based on navigation, traffic and hydrographic data at its disposal.

5.1.2.1.3.-Weather services

The Republic of Haiti is a member of the *World Meteorology Organisation* since 1951 (WMO, 2016) and as such disposes of services of weather forecast. To date, marine weather forecasts are published daily on the website of the *Centre National de Meteorologie* (CNM),⁴⁰ and relayed to mariners by SEMANAH via public radio and announcement on its website.

It is advisable that the responsibility of monitoring and broadcasting marine weather be assigned to the Haitian coast guard working in close cooperation with the CNM. This proposal comes in line with a positioning of the coast guard as the reference institution for all matters of safety of navigation in Haitian waters.

⁴⁰ [National Centre for meteorology], a specialized agency of the Ministry of Agriculture, Natural Resources and Rural Development (MARNDR)

5.1.2.1.4.-SAR

As of this day, search and rescue operations are carried out jointly by SEMANAH and the coast guard, the former acting as a MRCC and therefore the operations leader. The coast guard only holds a secondary role in search and rescue, acting under command of the SEMANAH.

It is recommended that full leadership of the SAR operations be granted to the coast guard, at the time it is progressively endowed with material, financial and human capabilities to hold this responsibility. This measure would be accompanied by the transfer to the coast guard of all existing material resources at the disposal of SEMANAH for SAR purposes, as well as emergency response plans where they exist. Being already the operator of nautical equipment, the coast guard would only see its responsibility and capabilities increase, whereas SEMANAH would remain more focused on flag State matters, including accident investigation. This proposal goes hand in hand with the previous proposals of delegating to the coast guard both the vessel traffic services and the marine weather broadcast. As the key institution ensuring the safety of navigation, the coast guard is called to monitor via radars and marine communications capabilities the activities of vessels in national waters, and provide them required services, including weather forecasts and first response in emergency situations. A single-institution solution would additionally improve decision-making and response capabilities of Haiti as a coastal State, whereas cooperation –and not subordination- to other ministries would

ensure more thorough response to different situations. Institutional cooperation of the coast guard with other ministries is developed further in this chapter (§5.1.2.3).

5.1.2.2.-Pollution prevention, response and the pending accession to MARPOL

Similar to the proposal on search and rescue is that of preventing, monitoring and providing response to marine pollution. To date, pollution prevention and response is an attribution of SEMANAH, which in case of marine incident works in cooperation with the coast guard for the use of its nautical equipment. It is advised that pollution prevention, response coordination as well as any existing marine pollution response plans be transferred to the coast guard. Concomitant to its responsibilities in monitoring vessel traffic, the coast guard would be better positioned to provide fast and effective response to emergency situation by boasting centralized management and operational capabilities.

One must not lose sight of the multidimensional aspect of marine pollution prevention and response. Whereas the coast guard is the institution better placed to provide field response to pollution events, pollution prevention in territorial sea and internal waters also depends on vessels compliance to relevant international regulations, notably the *International Safety Management Code (ISM)* and MARPOL. Compliance with these IMO instruments itself depends on different levels of vessel inspections: Haitian vessels by the Haitian flag State, foreign vessels by their respective flag State, their respective classification society and by the Haitian State acting as port State. As mentioned before, steps have been taken to train surveyors at SEMANAH to act as port State control officers. In that aspect, even after granting autonomy to the coast guard,

cooperation ought to be needed between the two institutions to ensure more effective pollution prevention.

The creation of a corps of surveyors is not itself sufficient without a legal framework by which to abide. Haiti to this date is no signatory member of the MARPOL convention which constitutes a major limitation in ensuring proper compliance of national and foreign vessels to pollution prevention standards. The need for accession to MARPOL (and other international instruments) as well as cooperation with other government institutions in carrying out coastal State duties will be studied in the next section.

5.1.2.3.-Cooperation with related ministries

As established earlier in chapter 2 (§2.5), the responsibilities of a coastal State often touch a range of issues also incumbent to other institutions of a government. In immigration, environment, sanitary, fiscal and customs matters for instance, which are responsibilities of a coastal State in the contiguous zone, cooperation with corresponding ministries is essential. Table 5.1 matches a list of responsibilities of the coast guard with, in the case of Haiti, the ministries with which it is called to cooperate:

Table 5.1.-Haitian coast guard institutional cooperation framework

Topic	Concurrent institution	Note
Customs	General Customs Administration (AGD) ⁴¹	Specialized agency of the Ministry of Economy and Finances (MEF), ⁴² , web: http://www.douane.gouv.ht/
Drug enforcement	General customs administration (Haiti), DEA (USA)	
Immigration and “ <i>boat people</i> ” phenomena	Directorate of Immigration and Emigration of Haiti (DIEH) ⁴³	Specialized agency of the Ministry of interior and territorial communities, ⁴⁴ web: https://www.facebook.com/Direction-de-Immigration-et-de-Emigration-dHaiti-172931019532576/
Fiscal matters	Ministry of Economy and Finances	Web: http://www.mef.gouv.ht/
Sanitary matters	Ministry of Public Health and Population	Web: http://mspp.gouv.ht/newsite/

⁴¹ *Administration Générale des Douanes*

⁴² *Ministere de l'Economie et des Finances (MEF)*

⁴³ *Direction de l'Immigration et de l'Emigration d'Haiti*

⁴⁴ *Ministere de l'Intérieur et des Collectivités Territoriales*

	(MSPP) ⁴⁵	
Oversight on fisheries	Ministry of Agriculture, Natural Resources and Rural Development (MARNDR) ⁴⁶	Web: https://agriculture.gouv.ht/
Foreign vessel illegal fishing	Ministry of Interior and Territorial Communities	Web: https://www.facebook.com/Minist%C3%A8re-de-lnt%C3%A9rieur-et-des-Collectivit%C3%A9s-Territoriales-117314498415720/
Construction and installation of aids to navigation	Ministry of Public Works, Transportation and Communication (MTPTC) ⁴⁷	Proposed parent ministry for the coast guard, web: https://www.mtptc.gouv.ht/
Vessel traffic services	Ministry of Public Works, Transportation and Communication Ministry of Interior and Territorial Communities	

⁴⁵ *Ministere de la Santé Publique et de la Population*

⁴⁶ *Ministere de l'Agriculture, des ressources Naturelles et du Développement Rural*

⁴⁷ *Ministere des Travaux Publics, Transports et Communications*

Marine pollution prevention and control	Ministry of Environment ⁴⁸	https://unfccc.int/resource/ccsites/haiti/
Civil and criminal jurisdiction onboard ships	Ministry of Justice and Public Security ⁴⁹	Web: http://www.mjsp.gouv.ht/presentation.htm
Vessel inspections	SEMANAH	Web: http://semanah.com/
Marine weather bulletins	National Centre of Meteorology	Specialized agency of the MARNDR, web: http://www.meteo-haiti.gouv.ht/

⁴⁸ Ministère de l'Environnement

⁴⁹ Ministère de la Justice et de la Sécurité Publique

5.1.2.4.-Proposed organisational chart of the Haitian coast guard

The following organizational chart gathers the aforementioned proposals into a comprehensive structure. The main functions of the coast guard are assigned to five departments capped by a general administration.

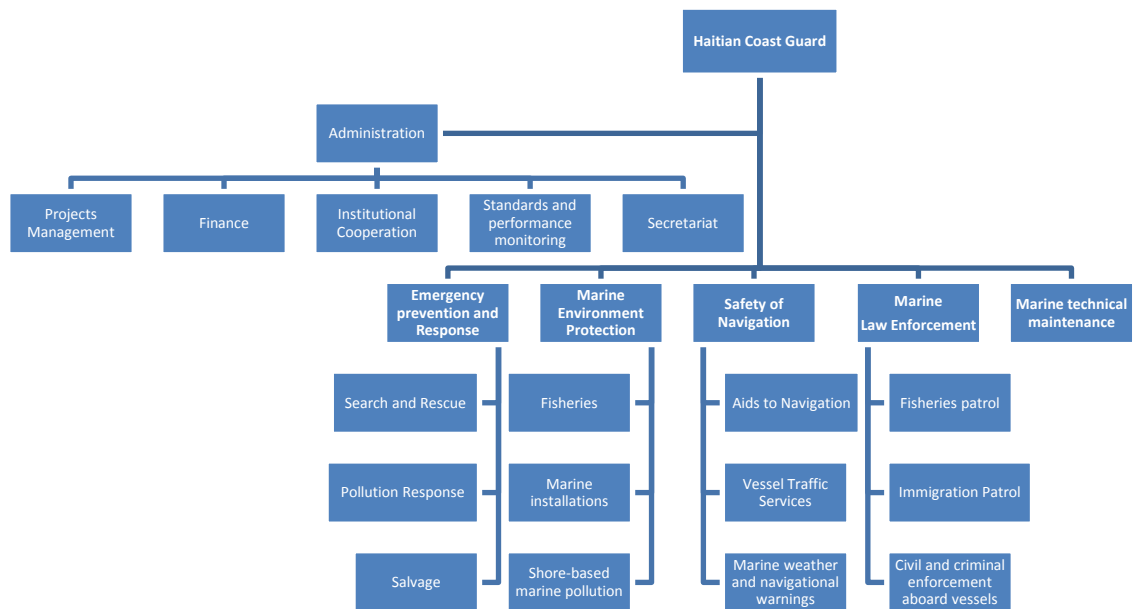


Plate 5.1.-Proposed organisational chart of the Haitian coast guard

An overview of the functions of each department is detailed below.

Administration: In charge of general management of the institution, including:

- Projects management: Coordination of development projects, including providing expertise in construction of new navigational aids;
- Finances: in charge of all financial matters related to the management of the coast guard, funding and allocation of resources

- Institutional cooperation: as developed in section 5.1.2.3;
- Standards and performance monitoring: collection of data, statistics and monitoring of performance as per subscribed agreements (§2.2.4);
- Secretariat: Institutional communication;

Emergency prevention and response: the unit of the coast guard trained and equipped to provide prompt and effective response to marine emergency situations, including but not limited to:

- Search and Rescue: specialised in SAR operations as per the SAR Convention to which Haiti is party;
- Marine pollution response: Trained units in response to marine spills or other related emergencies;
- Salvage: in cooperation with the VTS unit, provide fast and effective salvage coordination to vessels in need of assistance;

Marine environment protection: protection of fisheries, prevention of marine pollution, whether vessel-based, as contemplated in the London Convention and protocol, or source-based;

Safety of Navigation: The operational department of the Coast guard in charge of main duties related to safe navigation in Haitian waterways. In charge of:

- Aids to navigation: maintenance of buoys, racons, range lights, lighthouses and any other aids to navigation (§ 5.1.2.1.1);

- Vessel Traffic services: a service as described in § 5.1.2.1.2 providing traffic surveillance and coordination in Haitian waters as well as first assistance to vessels in need. In pro of this function, the VTS division of the Haitian coast guard will work in close cooperation with the emergency prevention and response department as seen on the same chart;
- Marine weather and navigational warnings: the service to be transferred from SEMANAH to the coast guard (§5.1.2.1.3), for which latter will work in close cooperation with the National Centre of Meteorology. Other partnerships to be considered include the U.S. National Oceanic and Atmospheric Agency NOAA, of which insight and expertise may be a valuable addition to the Haitian coast guard.

Marine law enforcement: Consists of all the patrol units responsible for covering the Haitian coasts to prevent infringements of national legislation, be them in fisheries (UNCLOS, art. 73), customs, fiscal, sanitary or immigration purposes (UNCLOS, art. 33). This branch of the coast guard is called to work in close cooperation with all ministries who so require, including the Customs administration, Ministry of Health, General Migration directorate or ministry of finances. Also, this branch would carry out any pursuit upon civil or criminal jurisdiction, as provided in UNCLOS [art 27(2)/28(3)/111].

Additionally a technical maintenance unit is instrumental to keeping the coast guard fleet operational in order to allow effective completion of other functions.

5.2.-Proposals for a flag State

5.2.1.-SEMANAHA as flag State administration

This section is dedicated to the proposals of a framework for a more efficient flag State administration. As seen in SEMANAHA's organisational chart and description (§3.1.2.1, § 3.1.2.2), conventionally accepted flag State duties are assigned to this institution in virtue of its 1985 founding decree. However, so are coastal and port State duties.

In the previous section, the core of the proposals for a coastal State was based on the assignment of its related duties to the Haitian coast guard, which would also boast autonomy from SEMANAHA, national police and other ministries. As a consequence, many of the duties presently assigned to SEMANAHA's main directorates would no longer figure in this institution's functions. Such assignments include for instance: vessel traffic surveillance in territorial waters, radio communication, marine weather monitoring, as well as search and rescue, which would fall thereafter under authority of the coast guard.

Since main operational tasks are displaced to the coast guard, the bulk of the proposals which will be developed in this chapter aim at construing SEMANAHA as a regulatory body of a maritime administration. As such, the duties of a flag State are incumbent to SEMANAHA, which will also cooperate with other institutions for the development of policy and regulatory measures. Details on those measures are provided below.

5.2.2.-Institutionalising a Haitian registry of vessels

At the time of writing, vessel registry is one of many tasks of the maritime safety directorate of SEMANAH. As mentioned before, the institution's website makes mention of 802 registered vessels, no further information being available as of types, dimensions, or tonnage. Mentions by SEMANAH suggest that such Haitian flagged vessels consist mostly of handcarved fishing canoes and sailboats, with exception of a few known engine-propelled vessels dedicated to home trade. Most vessels, as mentioned by SEMANAH'S seating director, Eric Prevost Jr., capitalize on SEMANAH's regulatory and field absence to operate in sub-standard and often perilous conditions (§4.2.2). The regulatory absence is due to the fact that SEMANAH is paralysed by the absence of maritime legislation (SEMANAH, 2012) in the country. The administration disposes of very few maritime directives for the safety of navigation, which do not boast to date the status of regulations. The field absence, on its side, is due to the lack of trained marine surveyors to enforce regulations which are yet to be created.

As a proposal, a Haitian Registry of vessels should be institutionalised, formalised as a specialised department of SEMANAH, independent of the Marine Safety Directorate. As a vessel registry, this department ought to dispose of a legal framework, granting it authority to issue and revoke certificates of registry to vessels.

As to the nature of the registry, whether it should be only a national or an open registry, one must consider both the actual economic precariousness of the country while keeping doors open to future developments. Handcarved wooden boats are the basis of

the livelihood of numerous families of artisanal fishermen in the country. With these vessels forming the bulk of the listing of today's Haitian registry, developments in SEMANAH should support this sector, while providing means for improving their safety standards. Moreover, any reform or developments in the country's institutions should work *in pro* of future economic development. In this aspect, a Haitian registry should consider opening to foreign owned vessels as an opportunity of growth. Growth in this sense is construed not only as the window of economic opportunity that foreign-owned vessel registration represents, but also the pressure to compliance to international instruments that opening to international markets entails.

Based on the previous considerations, the proposed framework of a Haitian administration consists of an institutionalised maritime registry reporting to SEMANAH. The maritime registry itself is dual, in the sense it unites two different brackets:

- a Haitian national ship registry: in charge of regulating and enforcing standards in Haitian owned vessels, including but not limited to handcrafted wooden boats;
- a Haitian international registry: open to registering foreign-owned vessels - whether commercial or leisure- under Haitian flag and granting them adequate privileges in Haitian waters as an incentive. This branch would figure not only as an opportunity of economic growth but also as a means of pushing higher shipping standards in the industry.

The creation of a Haitian register of vessels goes hand in hand with the adoption and enforcement of international conventions as will be advocated further in this chapter.

5.2.3.-Public/private partnership for marine training and certification

One aspect closely linked to the creation of a Haitian maritime registry is the policing of marine training and certification.

Haiti is signatory member of STCW 78, yet no system of certification with international standards is in place. The country does not boast any maritime training institution. This project at the time of writing is being considered by SEMANAH under the name *Institut de Formation Maritime*.⁵⁰

It is important to observe that in Haiti, both tasks of training and certification of seafarers are assigned to SEMANAH. Since the creation of this institution however, no effort has proven successful in fulfilling this task. Recently, initiatives to visit high school institutions in order to raise interest and awareness of youth in maritime careers have shown commitment of SEMANAH to this function (*Visite d'une délégation*, 2016). But the reality remains that to this date, a young Haitian willing to pursue any level of maritime training (IMO basic training, marine officer or manager career) does not dispose of any means to do so in his/her home country.

A proposal on this aspect is based on concentrating SEMANAH's responsibilities only at the policing and enforcement levels. Just as the education system in the country where public and private schools already coexist, opening maritime schools should not be assigned to a government agency but instead should be open to both public and private initiative. An example in Haiti includes medical schools, some of which are State-run

⁵⁰ [Maritime Training Institute]

whereas others are private. As a consequence, SEMANAH would only retain authority to dictate and enforce standards as well as to issue certification once training has been assessed to its satisfaction.

This approach is not new, and has already proven successful in well-established maritime countries. In Canada for instance, marine training is carried out by mostly provincial-funded institutions while Transport Canada's role as a regulating body is limited to sanctioning training by marine certification (Transport Canada, 2014). In the Philippines, marine training is ensured by both private and public colleges, while marine certification is issued by a governing body, the Maritime Industry Authority (MARINA) only after national board exams are applied (Maritime Industry, 2016). Many examples could be raised of public/private partnerships for marine training, while certification remains under sole authority of the maritime governing body.

Public/private partnerships also require developing standards and vetting procedures for maritime schools and maritime trainers. This authority would also be held by SEMANAH as main maritime governing body of the country in cooperation with other ministries such as the ministry of education or the ministry of foreign affairs, given that assistance of foreign specialists for this process is likely to be required.

5.2.4.-Marine accident investigation: the need for a corps of trained surveyors

One of the key functions of a maritime administration whether acting as a coastal, flag or port State is its responsibility in the survey of vessels. The different contexts in

which these surveys take place determine the kind and scope of survey being applied, and is sanctioned by appropriate IMO instruments.

Even though the recent effort of training surveyors shows awareness of the duties of the administration, it does not provide a framework on the role, functions, required training and assignments of these surveyors.

Lack of maritime resources may make the training of professionals a long and costly task, due to the absence of national maritime training institutions. As a consequence, it is to be expected that training of marine surveyors requires either cooperation of foreign specialists, or creation of programs of studies abroad for aspiring surveyors. In any case, a corps of trained surveyors is required in order to carry out inspections on behalf of the flag State, port State or coastal State including in cases of accident investigations occurring in national waters.

5.2.5.-International cooperation

From the analysis carried out in chapter 4, many of the shortcomings of the Haitian maritime administration come from lack of participation in international cooperation programmes: international maritime conventions, bilateral agreements or lack thereof, abstention from regional initiatives or IMO funded programmes of maritime cooperation.

Improving the standards of a Haitian maritime administration requires beforehand an effort to integrate core maritime conventions. The IMSAS and III Code established, as

seen in chapter 2, a list of (six) core areas on the basis of which maritime administrations are to be evaluated, namely (§2.1.2):

- Safety of Life at sea (SOLAS 74/78, its protocol of 1988 and agreement of 1996);
- Prevention of marine pollution [MARPOL73/78 and its protocol of 1997, London Convention (LC 72) and its Protocol LP 96];
- Standards of training, certification and Watchkeeping (STCW78/95);
- Load Lines (LL 66 and its protocol of 1988);
- Tonnage measurement of ships (Tonnage 69);
- Regulations for preventing collisions at sea (COLREGS 72);

Out of the related instruments, Haiti's status is the following:

- adopted SOLAS 74, but not its protocols, of 78, 88, or the SOLAS agreement of 1996;
- not signatory to any of the six annexes of MARPOL;
- signatory of STCW 78, but not the 1995 protocol;
- signatory of the Load Lines convention of 1966, but not the 1988 protocol;
- signatory of the Tonnage convention;
- non-signatory of the COLREGS 72 Convention;

Deciding to which protocol of the adopted conventions Haiti should strive to adhere is beyond the scope of this work. However, essential conventions such as COLREGs and MARPOL, especially its core annexes I and II, have not been adopted by Haiti at all. Even though it is recommended that efforts are taken to adopt latest

protocols, it is a paramount that Haiti's lawmakers and its maritime administration take steps to adopt MARPOL (at least annexes I and II) as well as COLREGs.

It is also recommended that international cooperation be one main division of SEMANAH, as the maritime institution in charge of flag State duties. However, adoption of international conventions exceeds the scope of this institution and requires involvement of higher levels of government, including lawmakers and department of foreign relations. SEMANAH, as the leader in maritime regulation in the country may well play a proactive role in proposing these adoptions as well as plans for their enforcement.

International relations of a maritime administration are not limited to adoption of these international conventions. Other aspects of international cooperation such as technical cooperation are crucial to a maritime administration development, let alone from a developing country. Initiatives such as elaboration of maritime frameworks for ship registries, training and certification of seafarers and maritime law will certainly require cooperation with foreign specialists and/or training of future Haitian specialists abroad. In any case, both aspects of international cooperation are provided for through the ITCP program, a program to which Haiti's participation to date has been limited at best (§4.2.3). It is advised that the maritime administration takes full benefit of the IMO technical cooperation programme. In order to do so, proper assessment of the country's technical needs is to be carried out, which can be accomplished by participating to the country maritime profile program, and made available to the IMO and the public through

the GISIS system. No participation of Haiti to any of the initiatives has been registered to date. Furthermore, this participation will prove essential when Haiti's maritime authority has to comply with the IMO member State audit scheme (IMSAS) which has become mandatory since 2016. Gathering of relevant maritime information as well as compliance to those standards should be assigned to SEMANAH and catered for by its international cooperation department.

A study on the need of international cooperation of Haiti in the maritime industry would not be complete without tackling the need for entering regional agreements such as the Caribbean MoU. This aspect will be dealt with further in the port State control proposals.

5.2.6.-Record keeping and performance monitoring

One recurring aspect in IMO instruments related to maritime administrations deals with record-keeping and performance monitoring arrangements. Such requirements include control and monitoring programmes in order to respond to casualty investigation, provide for statistical data and timely response to ship deficiencies and pollution incidents (III Code, art. 23), the purpose of the statistical data being the conduct of trend analysis in order to identify problem areas and achieve steady improvement.

SEMANAH disposes of a Secretariat to which the tasks of statistical data and trend analysis may be assigned. As indicated by the III Code (art. 23), data relating to pollution incidents in port or in the country's maritime zones may be provided to said Secretariat by the port State or the coastal State -represented primarily by the coast

Guard- which, based on this proposal, would be responsible for monitoring and providing first response to marine incidents (§5.1.2.2).

Additionally, SEMANAH may at will refer to institutional cooperation with the existing government agency dedicated to the gathering and analysis of statistical data.⁵¹

5.3.-Proposals for a port State

As seen in chapter 4, even though isolated basic training initiatives have taken place for an effective of 80 port State surveyors, no formal structure of a port State control has been put in place. The country is not party to the Caribbean MoU nor has manifested to date its intention to join the regional agreement in spite recent visits from its Secretary General Mr. Dwight Gardiner (§4.3).

The proposal at this point focuses on strengthening the institution of port State control of the Haitian administration by taking positive steps to integrate the Caribbean MoU. At this time, port State control duties already figure in SEMANAH's organisational chart under the Coordination Unit, along with oversight on provincial offices. Similarly to the proposal presented for the Haitian maritime registry (§5.2.2), it is recommended that port State control be upgraded to a department on its own, even when maintaining its affiliation to SEMANAH. As proposed by the IMO procedures for port

⁵¹ The *Institut Haitien de Statistique et d'Informatique* IHSI [Haitian Institute for Statistics and Computer Sciences] is the government agency dedicated to gathering and studying statistical data regarding economics, demographics and government operation. Institutional cooperation may be considered in order to keep track and analyse maritime incidents, and indicate areas of improvement (IHSI, 2016)

State control (Procedures, 2011), a port State control department would be in charge *inter alia* of training and certification of port State control officers ((PSCO) in accordance with articles 1.8, 1.9 of the IMO procedures, carrying out port State control inspections (Procedures, chapter 2) as well as taking further necessary actions, including detention and release of vessels, communication with vessel's captains and flag States of vessels detained (procedures, chapter 3). A port state control department should also implement all additional guidelines of its corresponding MoU once the country integrates the regional agreement.

One crucial aspect not to be overlooked is the dependence of proper port State control implementation with adoption of relevant maritime conventions and creation of a maritime legislation framework. The procedures for port State controls apply to ships falling under the provisions of specific international conventions most of which which -to the exception of the AFS⁵² - coincide with the six core aspects required to a maritime administration by the III Code (§2.1.2). Unfortunately, pending accession of Haiti to MARPOL constitutes a substantial obstacle to proper implementation of port State control procedures (§5.2.5). As a consequence, effective development of port State controls carries as pre-requisite, the fulfillment of tasks at higher levels of government, through legislative powers and foreign affairs ministry. The paramount need for governmental involvement is the object of section 5.5.

⁵² International Convention on the control of Harmful Anti-Fouling Systems on Ships (AFS). Inversely, the III Code requires compliance to the COLREGs, whereas this code is not explicitly included among the core instruments of port State controls as laid out in article 1.2 of the Procedures for port State controls. However, "clear grounds" for thorough port State control inspections also include "receipt of a report or complaint containing information that the ship appears to be substandard"(Procedure, 2.4.2.9), which can be triggered by another vessel observing improper navigation of a vessel in relation the required Collision Regulations.

5.4.-Proposed organisational chart of SEMANAH

Since both port State and flag State responsibilities are incumbent to SEMANAH, the following chart gathers proposals from sections 5.2 and 5.3 and proposes a maritime administration model based on that of Plaza (2008) (§2.5.2).

This model of maritime administration gathers the regulatory and enforcement functions of a flag and port State under three departments, namely: Policy and legal affairs, Flag State administration and Port State administration. A secretary general in charge of overall management of the institution caps the three divisions.

Policy and legal affairs: This department is in charge of policing and regulating the maritime industry, and as such holds responsibility in implementation of international conventions under IMO and ILO.

Flag State administration: Body in charge of flag State duties of a maritime administration. Under the Flag State authority are placed the following divisions:

- Haitian register of vessels: as proposed in section 5.2.2, a Haitian register of vessels with two brackets, one national and one international open registry is placed under the flag State administration;
- Vessel inspection and enforcement: Responsible of all flag State inspections as contained in UNCLOS article 94, whether as initial, periodic or occasional inspections. This department also holds responsibility in relations with recognised

organisations, which as per the III Code (art 18) may fulfill inspection functions on behalf of the flag State (§2.3.2);

- **Marine training and certification:** as proposed in section 5.2.3, the function of SEMANAH in maritime education involves dictating and enforcing maritime training standards in accordance with relevant international conventions. Maritime training is to be dispensed through maritime institutions which may be public, private or a combination of both. In the proposed diagram, the *training standards enforcement* division takes charge of granting training licenses to schools and trainers in accordance with the proposed standards. Crew certification division issues marine licenses to trained personnel, whereas marine surveyors unit oversees the certification of port and flag State surveyors alike.

Port State Administration: The division of SEMANAH in charge of port State related duties, including port State control inspections, as well as vessel entrance and clearance permits after the administration has satisfied itself of vessel's compliance to all relevant standards and fees.

Secretary General: The secretary General is in charge of overseeing the institutions overall operations. Responsible for national, regional, international or institutional cooperation, maritime affairs development, as well as the administration finances. The Records, archives and databases unit is proposed to take charge of all performance monitoring of the maritime administration as a whole. It is the unit also in

charge of information to the GISIS system and updating the country maritime profiles as required by the IMO.

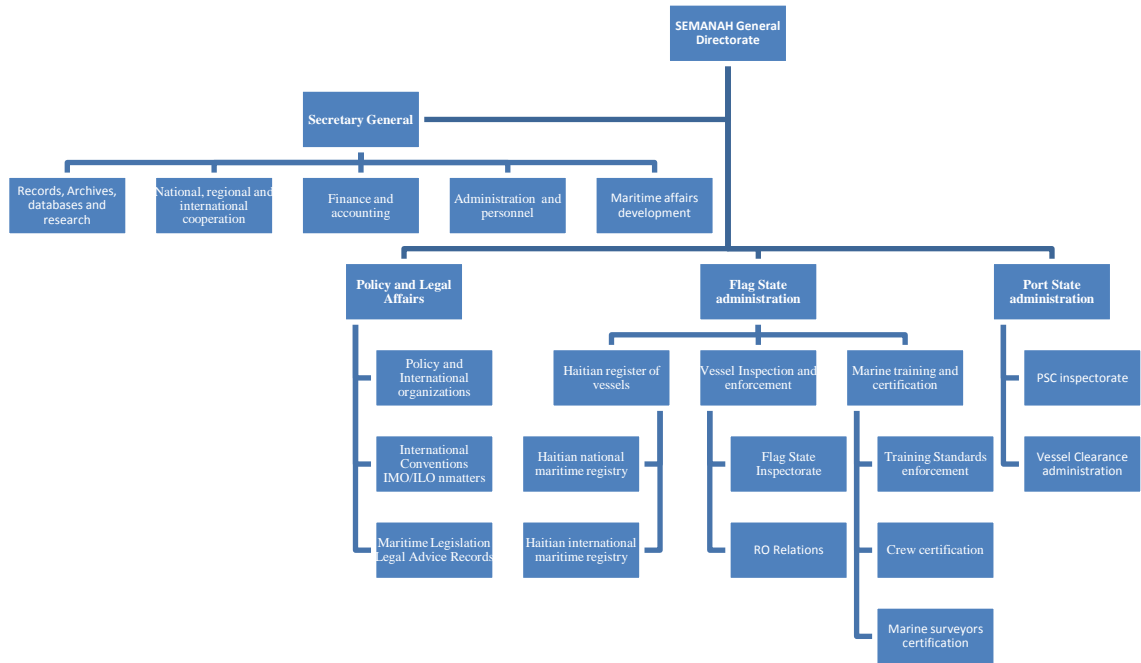


Plate 5.2: Proposed organisational chart of SEMANAH as flag and port State administration

5.5.-The critical need for government action

The previous sections laid out a set of proposals to be carried out at institutional level in order to make the Haitian maritime administration more compliant to relevant IMO instruments. Institutional changes, however, are powerless without the proper legal framework to support them, and in this aspect, the country lags behind. Governmental action is required *inter alia* to carry out the following obligations:

- Ratification of international conventions: as shown throughout our analysis, the country has not adopted to date some of IMO's core conventions or their

protocols. Such is the case for instance for MARPOL (non-signatory of any annex), SOLAS, STCW, the 1988 Protocol on the Load Lines convention or 1996 the protocol on the London Convention. Additionally, efforts to integrate the Caribbean MoU on port State controls should be developed with the collaboration of SEMANAH as the incumbent institution (§5.2.5)

- The need for a Haitian maritime legal framework: essential to cement accession to international conventions is their insertion to the country's legal instruments, a task incumbent to the lawmakers. This work is yet to be completed. In 1982, SEMANAH was created by presidential decree and the coast guard has been affiliated by turns to the armed forces, then to the national police. It is not exaggerated to advance that due to constant and ongoing political turmoil since the mid-eighties, lawmakers have never turned their attention to legal development of the maritime industry. SEMANAH counts, based on its own statements, a project of maritime law which has been years in the making. But political stability is paramount in order to have this piece of legislation completed and submitted to the lawmakers
- Establishment of a commission on maritime boundaries: a coast Guard with an institutional framework has no effect without definition of its jurisdiction. It has been shown (§4.1.1.1.1) that proper limitation of maritime zones of Haiti based on the UNCLOS convention provisions has not been carried out. The maritime boundaries as determined by the decrees of 1972 and 1977 contained unilateral provisions which do not comply with the standards established through UNCLOS.

Moreover, as established in the U.S. State Department's *Limits of the seas* and the chart accompanying 1977's definition of maritime zones, no proper hydrographic study was carried out to determine the country's normal baselines. The proper definition of the limits of Haiti's territorial sea, contiguous zone, EEZ and continental platform all depend on an adequate measurement of the normal baselines; not the opposite, as it has been done (§4.1.1.1.1.). The recommendation at this point is to appoint a hydrographic commission to carry out proper study of Haiti's low-water lines, a study to be used as starting point for new delimitation of maritime zones. Additionally, maritime border are yet to be defined between Haiti and Jamaica which share the Jamaica channel.

Unfortunately, Haiti does not dispose of sufficient personnel trained in hydrography in order to carry out these studies with local means. It is foreseeable that such a project may require support from international community. However, support in financing and personnel falls into the scope of the ITCP program, which would at least alleviate the financial burden associated to this task. It is suggested that Haiti explores the extent of support available from the ITCP program to help carry out this project. Additionally, international cooperation does not have to be limited to the ITCP. Haiti holds a long standing history of receiving cooperation from neighbouring developed countries, especially the United States of America. Cooperation has included the U.S. Coast guard support in search and rescue, as well as DEA support in drug trafficking prevention and control. It is advised that Haiti explores the extent of cooperation that may be

provided by international community in order to carry out the hydrographic study of its low-water lines. Development of this cooperation ought to be engaged from higher levels of government, especially foreign relations.

5.6.-The Need for a Haitian Hydrographic Office

In close connection with previous points is the need for the establishment of a Haitian Hydrographic office with the main mission of providing coastline surveys as well as issuance of charts and navigational products.

Recent initiatives have moved in this direction. In 2011, a hydrographic workshop directed to personnel of SEMANAH and the coast guard was held by the International Hydrographic Office (IHO) and other regional organisations (*SHOM*, n.d.). This workshop was intended as a first step towards the establishment of a Haitian Hydrographic and Oceanographic Service, *SHOH*,⁵³ a project which is yet to advance any further.

There are various options for the status of this institution within government:

- A hydrographic office as a division of SEMANAH: this option would have the advantage of affiliating the hydrographic office with the country's main maritime policing institution. Today, the few contacts between Haiti and the IHO have been established through SEMANAH (Technical visit, 2008). However, following the proposed model of maritime administration, a hydrographic office is called to work in conjunction with the coast guard in its attributions as a coastal State

⁵³ *Service d'Hydrographie et d'Océanographie d'Haïti* (Not yet established)

authority. Therefore placing a hydrographic office under SEMANAH would place additional burden on institutional cooperation.

- Hydrographic office as a division of the coast guard: this option would have the benefit of placing the hydrographic office as part of the institution with which it is called to collaborate.
- A hydrographic office affiliated with a ministry: this is to this point the privileged option, since a status of this kind already exists for the National Centre of Meteorology which is dependent on the ministry of agriculture, natural resources and rural development (MARNDR).

There is one additional similarity between the National Centre of Meteorology and an eventual hydrographic office when it comes to their status within government. The CNM is the primary institution in relation with an international organization of which Haiti is a party (i.e. the World Meteorology Organization). Similarly, a Haitian hydrographic office is called to be the main institution in relation with the IHO. As of 2016, entry of Haiti to the IHO has been approved and awaits deposition of legal instruments (IHO, 2016). This is one more task where involvement of higher levels of government is required for the improvement of the country's maritime standing.

Chapter 6.-Conclusion and final considerations

There is a reserve to be made on the assessment offered of the Haitian maritime administration, since requests of information from officials of SEMANAH, coast guard and APN have remained without answer. As a consequence, the assessment was carried out on the basis of available information on institutional websites, newspaper articles and other trustworthy sources offering insights on the response of the maritime administration to the numerous challenges it has had to face.

At the light of this study, Haiti has yet to organise a maritime administration compliant with international standards which are set out in UNCLOS and IMO instruments such as the III Code and the IMSAS. The ITCP, a cooperation programme targeting maritime administrations in developing countries, offers an array of opportunities for institutional and human capacity-building in order to foster compliance.

As a port State, coastal state and flag State, proposals were developed to make a Haitian maritime administration more compliant with these instruments. Guidance in proposing functional organisational structures were provided by models of maritime administrations as developed by Hubbard Hoppe (2001) as well as Plaza (2008).

6.1.-The proposed conceptual framework

As a coastal State, the proposed conceptual framework is based on making the coast guard an autonomous institution separated from SEMANAH and the national police to which it belongs today. The Haitian coast guard would respond to the Ministry of

Public Works, Transportation and Communication, and would cooperate with other ministries in related matters. It would be the referent in matters of coastal State duties of the country, including but not limited to:

- maritime safety and security, including vessel traffic services, management of aids to navigation, broadcast of weather and navigational notices as well as search and rescue;
- maritime pollution prevention and response;
- Support to other ministries in matters of fiscal, customs, sanitary and immigration interest, as well as protection of fisheries.

As a flag State:

- SEMANAH is to hold authority in all flag State administration matters
- a dual Haitian ship registry is proposed, consisting both of a national registry to flag vessels owned by Haitian shipowners, and a Haitian International registry, which would be open to register vessels of foreign shipowners willing to fly the Haitian flag
- SEMANAH is to establish and enforce policy in maritime training, whereas initiative to open maritime schools shall be open to public/private partnership. As the policy-maker, SEMANAH shall also hold responsibility in issuance of maritime certification to maritime schools, marine trainers and seafarers once their training and standards have been assessed to its satisfaction.

- maritime surveyors are to be trained and a body of marine inspectors created, with capacities to carry out flag and port State inspections, as well as marine accident investigations when the cases arise
- As the main marine policing institution, SEMANAH shall hold international cooperation with related institutions, including the International Maritime Organisation, the International Hydrographic Organisation, the World Meteorological Organisation, the Caribbean MoU and other maritime entities (foreign maritime administrations, foreign maritime support institutions such as NOAA (U.S.), SHOM (France) etc.). Within the framework of this international cooperation, participation to the ITCP should be enhanced in order to support human and institutional capacity-building for the maritime administration
- SEMANAH shall hold a proactive role in pushing for adoption of international conventions by Haitian lawmakers, and insertion of these within Haitian law. Adoption of paramount international conventions including MARPOL, COLREGs, and important amendments and protocols (Load Lines 88, LP 96, STCW 95) is essential for compliance with IMO related instruments and improvement of the Haitian maritime administration standing altogether
- SEMANAH shall keep records and hold periodical performance monitoring in order to assess areas of improvement, update the country maritime profile and participate to the IMO GISIS system

As a port State:

- SEMANAH shall be the institution in charge of port State administration
- Haiti should strive to integrate the Caribbean MoU in order to comply with regional standards of port State controls
- Efforts should be made to train port State control officers with help of the ITCP programme in order to enforce the standards agreed to.

6.2.-Final Considerations

One essential aspect highlighted when laying out the above framework is the necessary involvement of higher levels of government in order to carry out the proposed measures. Structuring a new maritime administration requires adoption of international conventions, reformulation of related national legal instruments, and integration of international maritime conventions to the Haitian legislative framework.

A maritime administration reform such as the one proposed also requires additional studies on key aspects of its implementation. If this work proposed a conceptual framework, further studies are necessary on other substantial aspects, including detailed institutional frameworks, feasibility studies and funding of the maritime administration entities as well as precise plans for international cooperation. Moreover, the proposals developed here do not include measures to improve the port system, which is likely to require its own set of reforms, some of which are already underway (*La réforme*, 2017).

In addition to the further necessary studies, one fundamental aspect is the political climate necessary to carry out such extensive reforms. The study of the introductory

chapters merely brushed the history of a country plagued by more periods of political turmoil than internal peace. Since the country upended the Duvalier dictatorship in 1987, a general trend to democracy has had to struggle against military coups, constitutional amendments and contested elections. In such a climate, no profound legislative or executive groundwork has been achieved, not in the general government, much less in the maritime administration. At the time of writing, a new democratic president has taken oath in the previous weeks, after a political gap of more than a year awaiting the second turn of elections which took place late 2015. Haiti's political contemporary history is the ongoing struggle of the will for stability and democracy against a system of political, social and economic divisions which have paralysed the country's development for its two centuries of existence. Replacing a tradition of anarchy and instability by the rule of law will not be an overnight feat. A key to better governance, however, is the creation of strong institutions founded and functioning on well-defined legal and institutional frameworks.

We hope that this work brings a contribution to the necessary conversation that has to take place for a more compliant maritime administration, more stable governance, and a more prosperous country.

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Appendix I

Accord entre la République de Cuba et la République d'Haïti sur la délimitation des frontières maritimes entre les deux nations, 1977

[Agreement between the Republic of Cuba and the Republic of Haiti on the delimitation
of maritime boundaries between the two nations, 1977]

(See next page)

DECRET

JEAN-CLAUDE DUVALIER
Président à Vie de la République

Vu les articles 90 et 93 de la Constitution;

Vu l'Accord sur la délimitation des frontières maritimes entre la République de Cuba et la République d'Haïti signé à la Havane, capitale de Cuba le 27 octobre 1977;

Vu le Décret de la Chambre Législative en date du 21 août 1977 suspendant les garanties prévues aux articles 17, 18, 19, 20, 25, 31, 34, 48, 70, 71, 72, 93 (dernier alinéa), 95, 112, 113, 122 (2ème. alinéa) : 125 (2ème alinéa) 150, 151, 155, 193 et 198 de la Constitution et accordant pleins Pouvoirs au Chef du Pouvoir Exécutif, pour Lui permettre de prendre jusqu'au deuxième lundi d'Avril 1978 par Décrets ayant force de Lois, toutes les mesures qu'il jugera nécessaires à la sauvegarde de l'intégrité du Territoire National et de la Souveraineté de l'Etat, à la consolidation de l'Ordre et de la Paix, au maintien de la stabilité économique et financière de la Nation, à l'approfondissement du bien-être des populations rurales et urbaines, à la défense des intérêts généraux de la République;

Considérant qu'il convient de sanctionner l'Accord ci-dessus mentionné.

Sur le rapport des Secrétaires d'Etat des Affaires Etrangères et des Cultes, de l'Intérieur et de la Défense Nationale, de l'Agriculture, des Ressources Naturelles et du Développement Rural;

Et après délibération en Conseil des Secrétaires d'Etat;

DECRETE :

Article 1er.— Est et demeure sanctionné pour sortir son plein et entier effet, l'Accord sur la Délimitation des frontières maritimes entre la République de Cuba et la République d'Haïti signé à la Havane, Capitale de Cuba, le 27 octobre 1977.

Article 2.— Le présent Décret abroge toutes Lois ou dispositions de Lois, tous Décrets ou dispositions de Décrets, tous Décrets-Lois ou dispositions de Décrets-Lois qui lui sont contraires et sera imprimé, publié et exécuté à la diligence des Secrétaires d'Etat des Affaires Etrangères et des Cultes, de l'Intérieur et de la Défense Nationale, de l'Agriculture, des Ressources Naturelles et du Développement Rural, chacun en ce qui le concerne.

Donné au Palais National, à Port-au-Prince, le 4 Novembre 1977, An 174ème de l'Indépendance.

Jean-Claude DUVALIER

Par le Président

Le Secrétaire d'Etat des Affaires Etrangères et des Cultes :
Edner BRUTUS

Le Secrétaire d'Etat de l'Intérieur et de la Défense Nationale :
Me. Aurélien G. JEANTY

*Le Secrétaire d'Etat de l'Agriculture, des Ressources Naturelles :
et du Développement Rural :* Edouard BERROUET

Le Secrétaire d'Etat des Finances et des Affaires Economiques :
Emanuel BROS

Le Secrétaire d'Etat de la Co-ordination et de l'Information :
Pierre GOUSSE

Le Secrétaire d'Etat de la Justice : Michel FIEVRE

Le Secrétaire d'Etat du Commerce et de l'Industrie :
Albert CHARLOT

*Le Secrétaire d'Etat des Travaux Publics, des Transports
et Communications :* Pierre SAINT-COME

Le Secrétaire d'Etat de l'Education Nationale :
Dr. Raoul PIERRE-LOUIS

Le Secrétaire d'Etat des Affaires Sociales : Achille SALVANT

Le Secrétaire d'Etat de la Santé Publique et de la Population :
Dr. Willu VERRIER

Le Secrétaire d'Etat sans Portefeuille : Henri F. BAYARD

A C C O R D

ENTRE LA REPUBLIQUE D'HAÏTI ET LA REPUBLIQUE DE CUBA SUR LA DELIMITATION DES FRONTIERES MARITIMES ENTRE LES DEUX ETATS

Le Gouvernement de la République d'Haïti et le Gouverne-
ment de la République de Cuba;

Réitérant leur attachement au principe de la négociation com-
me moyen de résoudre les problèmes internationaux;

Compte tenu des récents développements dans le domaine du
Droit de la Mer;

Considérant l'établissement de la Zone Maritime Economique
Exclusive d'Haïti et de la Zone Economique de Cuba;

Considérant également que leur devoir est d'assurer pour leur
peuple les ressources naturelles, renouvelables et non renouve-
lables, qui se trouvent dans les aires marines et sous-marines,
soumises à leurs droits, juridiction et souveraineté respectifs;

Reconnaissant que la coopération entre les Etats et tout parti-
culièrement entre les Etats d'une même région est nécessaire
pour parvenir à l'exploration, à l'exploitation, à la conservation
et à l'administration rationnelles et optimales des ressources de
la mer tant vivantes que non vivantes;

Animés du désir de fixer les limites entre les deux zones;

Ont désigné à cet effet leurs plénipotentiaires, à savoir :

Pour le Gouvernement de la République d'Haïti : Serge Elie
Charles : Ambassadeur, Représentant Permanent d'Haïti auprès
de l'Organisation des Nations-Unies.

Pour le Gouvernement de la République de Cuba : Carlos Amat Forés : Ambassadeur, Directeur de la Direction d'Amérique I du Ministère des Affaires Etrangères, qui après avoir présenté leurs Ploms Pouvoirs et les avoir estimés en bonne et due forme, sont convenus de ce qui suit :

Article 1.— Le Gouvernement de la République d'Haiti et le Gouvernement de la République de Cuba décident, sur la base du principe de l'équidistance ou de l'équité, suivant le cas, de fixer la ligne de démarcation entre la Zone Maritime Economique Exclusive d'Haiti et la Zone Economique de Cuba.

Article 2.— La ligne de démarcation mentionnée au paragraphe antérieur qui constitue la frontière maritime entre les deux États est définie par les arcs de cercle maximal qui unissent les points dont les coordonnées géodésiques déterminées à partir des meilleurs renseignements disponibles à l'heure actuelle sont les suivants :

POINT NO.	LATITUDE			LONGITUDE		
	Deg	Min	Sec	Deg	Min	Sec
1	20 :	22 :	24.76	73 :	34 :	56.48
2	20 :	19 :	17.27	73 :	36 :	45.08
3	20 :	7 :	44.70	73 :	43 :	11.10
4	20 :	5 :	15.16	73 :	44 :	30.05
5	19 :	59 :	42.59	73 :	47 :	36.67
6	19 :	57 :	19.38	73 :	48 :	53.03
7	19 :	54 :	4.16	73 :	51 :	4.20
8	19 :	50 :	29.42	73 :	53 :	9.98
9	19 :	50 :	23.38	73 :	53 :	13.07
10	19 :	49 :	41.40	73 :	53 :	25.72
11	19 :	44 :	35.27	73 :	55 :	50.22
12	19 :	43 :	33.70	73 :	56 :	29.65
13	19 :	40 :	32.76	73 :	58 :	3.17
14	19 :	35 :	46.24	74 :	0 :	38.81
15	19 :	32 :	20.09	74 :	2 :	26.66
16	19 :	27 :	56.12	74 :	4 :	40.55
17	19 :	27 :	35.78	74 :	4 :	53.44
18	19 :	24 :	48.19	74 :	6 :	47.94
19	19 :	24 :	30.02	74 :	7 :	20.56
20	19 :	24 :	20.88	74 :	8 :	46.62
21	19 :	23 :	58.75	74 :	10 :	44.25
22	19 :	23 :	50.15	74 :	11 :	18.95
23	19 :	23 :	21.42	74 :	13 :	31.72
24	19 :	23 :	18.14	74 :	13 :	44.77
25	19 :	22 :	59.07	74 :	15 :	44.21
26	19 :	22 :	28.04	74 :	17 :	18.04
27	19 :	22 :	3.13	74 :	19 :	0.24
28	19 :	21 :	58.75	74 :	19 :	45.63
29	19 :	21 :	17.47	74 :	22 :	26.58
30	19 :	21 :	15.17	74 :	22 :	29.45
31	19 :	20 :	48.06	74 :	24 :	32.89
32	19 :	20 :	31.98	74 :	25 :	37.76
33	19 :	20 :	9.90	74 :	27 :	17.17
34	19 :	19 :	53.14	74 :	28 :	38.57
35	19 :	19 :	38.21	74 :	29 :	42.39
36	19 :	19 :	26.08	74 :	30 :	49.44
37	19 :	19 :	.82	74 :	32 :	20.71
38	19 :	18 :	43.03	74 :	33 :	51.74
39	19 :	18 :	7.53	74 :	36 :	23.03
40	19 :	17 :	21.00	74 :	39 :	8.84
41	19 :	16 :	24.49	74 :	42 :	14.23
42	19 :	15 :	19.07	74 :	45 :	22.20
43	19 :	15 :	4.57	74 :	46 :	7.65
44	19 :	15 :	30.58	74 :	51 :	30.08
45	19 :	14 :	33.91	74 :	56 :	21.64
46	19 :	8 :	9.63	75 :	1 :	41.92
47	19 :	3 :	35.70	75 :	10 :	8.80
48	18 :	59 :	43.75	75 :	16 :	12.20
49	18 :	59 :	25.62	75 :	24 :	50.26
50	18 :	51 :	47.81	75 :	28 :	1.70
51	18 :	49 :	55.74	75 :	30 :	23.50

Article 3.— Pour tracer la ligne de démarcation ci-dessus mentionnée les parties ont pris comme points de référence les points de base qui figurent dans l'annexe de cet Accord.

Article 4.— La ligne de démarcation figure à titre d'illustration sur la carte nautique : Echelle 1:926,560, Defense Map Agency, Nos. 26010, année 1970, révisée le 19/4/1975, 1^{re} édition, se trouvant en annexe.

Article 5.— La ligne de démarcation fixée selon les termes du présent Accord constitue, à son tour, la ligne de démarcation du plateau continental d'Haiti et de celui de Cuba.

Article 6.— Le présent Accord lie bilatéralement les deux parties, sans préjudice des positions qu'elles pourraient éventuellement adopter librement à toute conférence sur le Droit de la Mer ou tout autre forum ou négociation internationale y relatifs.

Articles 7.— Les deux parties conviennent qu'aucune d'elles ne réclamera ni n'exercera dans aucun but des droits de souveraineté ou de juridiction sur les eaux, le fond et le sous-sol marins se trouvant dans la zone économique de l'autre partie telle qu'elle a été délimitée dans le présent accord.

Article 8.— Les deux parties conviennent de coopérer à l'élaboration et la mise en œuvre de programmes de conservation des ressources naturelles et de préservation du milieu marin dans les zones qui sont l'objet de cet Accord.

Article 9.— Les deux parties conviennent de régler tout différend qui pourrait surgir dans l'application ou l'exécution du présent accord conformément à la procédure de règlement spécifique des différends telle que prévue à l'article 33 de la Charte des Nations-Unies.

Article 10.— Le présent Accord sera signé et ratifié par les deux parties conformément aux règles constitutionnelles en usage dans leur pays respectif et entrera en vigueur dès l'échange des instruments de ratification.

Fait à la Ville de La Havane, le 27 octobre 1977 en deux exemplaires en français et en espagnol, les deux langues faisant également foi.

Pour le Gouvernement de la République d'Haiti :

Serge S. Charles

Pour le Gouvernement de la République de Cuba :

Signé : Misible

Appendix II

Acuerdo sobre la delimitación de las áreas marinas y submarinas entre la República de Colombia y la República de Haití, 1978 (Traité Liévano-Brutus)

[Agreement on the delimitation of the marine and submarine areas between the Republic of Colombia and the Republic of Haiti, 1978] (Liévano-Brutus Treaty)

(See next page.-Title illegible in available electronic version)

C A P I T U L O I I

El Gobierno de la República de Colombia y el Gobierno de la República de Haití, deseosos de fortalecer la amistad que existe felizmente entre los dos países y considerando:

Que es su deber asegurar para sus pueblos los recursos naturales renovables y no renovables que se encuentren en las Areas Marinas y Submarinas de Colombia o en la Zona Marítima Económica Exclusiva y la Plataforma Continental de Haití ;

Que su interés común en la Región del Caribe requiere el establecimiento de una estrecha colaboración entre ambos para preservar, conservar y utilizar los recursos existentes en sus respectivas jurisdicciones marítimas ;

Que es conveniente fijar los límites de su jurisdicción respectiva.

A tal efecto, han designado como Plenipotenciarios, a saber:

Por el Gobierno de la República de Colombia :

Su Excelencia Doctor Indalecio LIEVANO AGUIRRE, Ministro de Relaciones Exteriores ;

Por el Gobierno de la República de Haití :

Su Excelencia Señor Edner BRUTUS, Secretario de Estado de Asuntos Extranjeros y de Cultos ;

Quienes, después de haber canjeado sus Plenos Poderes y se encontrarlos en buena y debida forma, han acordado lo siguiente:

A R T I C U L O I I

La delimitación de las Areas Marinas y Submarinas de la República de Colombia, y la Zona Marítima Económica Exclusiva y la Plataforma Continental de la República de Haití, está determinada por una línea media cuyos puntos son equidistantes de los puntos más próximos de las líneas de base a partir de las cuales se mide la anchura del mar territorial de cada Estado.

ARTICULO II

De conformidad con el método establecido en el artículo 1, la delimitación está constituida por una línea recta trazada entre los siguientes puntos:

<u>PUNTO No.</u>	<u>LATITUD</u>			<u>LONGITUD</u>		
	Gr.	Min.	Seg.	Gr.	Min.	Seg.
1	14°	44'	10"	74°	30'	50"
2	15°	02'	00"	73°	27'	30"

PARAGRAFO I : Las líneas y los puntos referentes a este Acuerdo están señalados en la Carta Náutica N.º. 25.000 Edición 1.975, Escala 1:1'800.000.

Dicha Carta está firmada por los Plenipotenciarios y aparece en el anexo al presente Acuerdo, lo mismo que el trazado de las líneas de base de cada Parte y el de la línea divisoria.

ARTICULO III

Ambas Partes se comprometen a cooperar para promover los objetivos comunes enunciados en el presente Acuerdo, dentro del marco de la Tercera Conferencia de las Naciones Unidas sobre el Derecho del Mar, así como en otras Conferencias Internacionales relativas a dicha materia.

ARTICULO IV

Ambas Partes convienen en cooperar en la elaboración y puesta en marcha de las medidas apropiadas con el objeto de evitar, reducir y controlar la contaminación del medio marino que afecte al Estado vecino. Las dos Partes se comprometen igualmente a tomar medidas eficaces para proteger las especies migratorias según las recomendaciones de los Organismos Internacionales competentes en la materia.

Esta cooperación no restringe el derecho soberano que tiene cada Estado para adoptar dentro de su jurisdicción respectiva las normas que sobre el particular juzgue pertinentes.

ARTICULO V

Ambas Partes convienen solucionar toda controversia que pudiese surgir en la aplicación o ejecución del presente Acuerdo, de conformidad con los procedimientos de arreglo pacífico de controversias previstos en el Artículo 33 de la Carta de las Naciones Unidas.

ARTICULO VI

El presente Acuerdo será ratificado por las dos Partes, conforme a las normas constitucionales vigentes en sus respectivos países y comenzará a regir inmediatamente después del canje de los instrumentos de ratificación el cual se realizará en la ciudad de Bogotá.

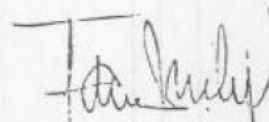
En doble original, francés y español, ambos dando fe.

Dado en Port-au-Prince, a 17 de febrero de 1978.



POR EL GOBIERNO DE LA REPUBLICA
DE COLOMBIA

CIRO LIEVANO AGUIRRE



POR EL GOBIERNO DE LA RE-
PUBLICA DE HAITI

EDNER BRUTUS

Appendix III

Leg by Leg analysis of the Haitian territorial sea and normal baselines as per U.S.

State Department *Limits of the Seas* report, 1973

(Straight baselines, 1973, pp.3-5)

Analysis relating to figure 1.5 (§1.2.3.1). This figure is repeated below for the reader's convenience.

Segment	US State department Observations
A-B	Position A plots on the U.S. oceanographic chart (NO) approximately 1.25 nautical miles northwest of the terminus of the Dominican Republic – Haiti boundary. Line A -B passes about 0.5 nautical miles from the Dominican Manzanillo Point and 0.9 nautical miles from Arenas Cay in the Seven Brothers group. At this point, line A - B is approximately 2.8 and 8.25 nautical miles, respectively, from the nearest points on the low-water line of Haiti. The points, by definition, would lie 12 nautical miles from the implied Haitian straight baseline. The implied baseline, from which A – B might be measured, would extend about 6.6 nautical miles from Caracol Point northwestward to an imaginary and seemingly arbitrary point in the sea, 4.15 nautical miles from the low-water line of Haiti.
B-C	The implied baseline for this segment extends approximately 43.6 nautical miles from the previously-described point to a peak on west-central Ile de

	<p>la Tortue (Tortuga Island). The segment illustrates the problems of positioning. By the description, the northern point of Tortuga probably is intended to be the terminal basepoint of the straight baseline segment. However, from the inaccuracies of the small-scale map, the position has been displaced approximately 2.4 nautical miles to the south. As described, Point C on the polygon lies less than 10 nautical miles from the low-water line of Tortuga. The territorial sea breadth does not attain the requisite 12 nautical miles in this area, although it is much greater elsewhere. (Note: If the territorial sea were indeed measured from straight baselines, the line near the intersectional points, e.g., B, C, D, etc., would be arcs and not angles of straight lines. The angular product is, perhaps, what is meant by droites paralleles.) The greatest breadth of the territorial sea, if straight baselines have not been employed, would be 17 nautical miles.</p>
C-D	<p>The length of the implied straight baselines would be approximately 10.5 nautical miles extending from the previously-defined point southwestward. Point D, which most likely should be Pointe Ouest on Tortuga, plots in the Canal de la Tortue 3.3 nautical miles south and west of the point. The minimum breadth of the (plotted) territorial sea would be 9.5 nautical miles.</p>
D-E	<p>The implied baseline extends 26.25 nautical miles from the previously defined point to a point near Cap San Nicolas, south of Cap du Mole. Since the latter cape extends seaward of the plotted point, it is safe to assume that Cap du Mole is the terminal point, i.e., although the coordinates dispute it, the intent probably was to</p>

	joint Pointe Ouest with Cap du Mole. The minimum territorial sea (as plotted) measures 10.1 nautical miles; the maximum, 13.5.
E-F	This segment closes the Golfe de la Gonave, a major indentation of the west coast (c. 95 nautical miles by 85 nautical miles). The implied baseline measures approximately 89 nautical miles. The terminal point (F) plots on the north shore of the southern peninsula to the east of Cap Dame-Marie. The latter is probably the selected closing point. The length of the implied line closing Gonave and the amount of water contained within the line would be excessive, by normal state practices for straight baselines. The length also exceeds the permitted closing for a bay, i.e., 24 nautical miles. The midpoint of the Line E - F lies approximately 40 nautical miles from the low-water line of the Haitian coast.
F-G	From the previously described point, the implied baseline extends 12.1 nautical miles south-southwestward to a point in the sea about 2 nautical miles north of Cap Fanchon. The intended turning point could be this cape or Cap Irois immediately to the south. The (plotted) territorial sea measures, at a minimum, 10.6 nautical miles from the implied baseline; the maximum, 12 nautical miles.
G-H	Extending southeastward, this segment presumably connects Cap Fanchon (or Irois) with Pte. Aigrette, the southwestern cape of Haiti. The plotted position, however, lies 2.70 nautical miles east-southeast of that point. The (plotted) minimum territorial sea thus becomes approximately 9.5 nautical miles. Point H, however, is situated approximately 14.25 nautical miles from the Haitian low-water baseline.
H-I	The implied straight baseline joins the previously described point to Pt. Gravois. The plotted position, however, lies approximately 9.75 nautical miles eastward of

	<p>that point. The implied straight baseline measures 38.3 nautical miles in length.</p> <p>The maximum breadth of the territorial sea claim becomes 16.5 nautical miles; the minimum, 10.0.</p>
I-J	<p>The implied baseline extends due eastward at the same latitude as the previously described position to a point in the open sea (17°59"N; 72°05'W.) approximately 14.2 nautical miles from the low-water baseline. The maximum breadth of the resulting territorial sea measures about 26 nautical miles with an average width of 20 nautical miles.</p>
J-K	<p>The plotted position of point "K" lies onshore about 0.9 nautical miles from the coastal terminus of the boundary (on large-scale charts). The implied straight baseline joins the previously described point with an insignificant cape on the mainland. As noted above, the "contiguous" zone would extend beyond the territorial sea of Haiti to overlap, in part, the claimed Dominican Republic sea.</p> <p>The "territorial sea boundary", which in effect line J - K represents, is a unilaterally established limit.</p>

