



GOVERNANCE AT THE INTERNATIONAL MARITIME ORGANISATION

The case for reform

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EXECUTIVE SUMMARY

The International Maritime Organisation (IMO), the United Nations' (UN) specialised agency for shipping, aims to create “a regulatory framework for the shipping industry that is fair, effective, universally adopted and implemented.”¹

In April 2018, the IMO announced an initial strategy² to reduce the emissions of greenhouse gas (GHG) by at least 50 per cent by 2050 – compared to 2008 levels. The announcement was widely welcomed and will trigger some immediate decarbonisation measures. However, a revised, final strategy will not be adopted until 2023 and the next five years will see the IMO's Member States enter politically charged and technically complex negotiations to agree a final GHG deal.

Currently, shipping contributes an estimated 2.5 per cent of global emissions, but left unchecked this could grow to 17 per cent by 2050. A failure to dramatically reduce the sector's GHG emissions will jeopardise the pledges signed by 195 states in the UN Paris Agreement, which aims to limit planetary warming to “well below” 2°C, and ideally to no more than 1.5°C.

The IMO's 2018 GHG strategy will probably need to be revised upwards in light of the findings of the forthcoming Intergovernmental Panel on Climate Change's special report on the impacts of global warming of 1.5 °C, in order to decarbonise the maritime sector in line with well below 2°C and/or 1.5°C temperature goals of the Paris Agreement. More and more research suggests that the shipping sector's emissions must decline to zero by 2050 at the latest.

This report evaluates the IMO's governance structure and considers whether it will help or hinder the development of policies, including an effective GHG strategy. Transparency International finds a number of critical governance flaws at the IMO. Four key issues emerge from the assessment: the uneven influence of Member States, the influence of open and private registries, the disproportionate influence of industry, and the lack of delegate accountability.

THE UNEVEN INFLUENCE OF MEMBER STATES

A small group of Member States has the power to exert undue influence over the IMO because of structural weaknesses in the organisation's financing

and policymaking processes that tip the scales in favour of states that have the most ships registered under their flags. Under the current rules, two thirds of the IMO's financial contributions come from just 10 countries, which make contributions based on the size of their fleets (measured in deadweight tonnage).

Nine of the IMO's top 10 contributors currently occupy elected positions on the Council, which is the organisation's executive body. The provision of funding does not necessarily equate to a seat on the Council or to influence within it. Yet the Council, which publishes no substantive information about its regular activities or elections, lacks mechanisms to provide public assurance that the states that fund the IMO are not simply buying influence.

The same states that finance the IMO also have an advantage in the policymaking process. IMO policies do not become active until they have been ratified by Member States that collectively regulate a specified percentage of the world's shipping fleet (also measured in deadweight tonnage). The states with greater tonnages not only contribute more funding to the IMO, but also have a greater say, in proportion to their tonnage, on whether and when a policy comes into effect.

THE INFLUENCE OF OPEN REGISTRIES

In practice, the risks of undue influence are exacerbated because tonnage is concentrated in the handful of states that operate open registries. Open registries, also known as flags of convenience and international registries, allow ship-owners of any nationality to register under their flag. They are controversial because they offer ship-owners extremely favourable regulatory environments that commonly include effective anonymity, a zero corporate tax rate and minimal implementation and enforcement of environmental and social regulations – all in exchange for the registration fees from ship-owners.

More than a half of the world's fleet sails under the flags of just five open registries: those of Panama, Liberia, the Marshall Islands, Malta and the Bahamas. These states, by virtue of their tonnage, can exercise influence over the IMO through the funding and ratification mechanisms – yet concerns remain about their commitment to regulation and enforcement. For example, three of these five open registry states (Panama, the Marshall Islands and Bahamas) were recently classified as non-cooperative tax havens by the European Union.³ There are an estimated 35 open registry states and, while their approach to regulation is not uniform, serious questions could be asked regarding their interest in formulating and implementing ambitious decarbonisation measures.

At least 17 open registries have outsourced the management of their registries to private companies, which suggests around 10 per cent of delegates to the IMO may actually be drawn from the private sector. By allowing private companies to debate and vote on issues of transnational public interest, the IMO undermines a basic premise of the UN system of international governance.

Definition: Undue influence

Undue influence occurs when particular individuals or groups gain an unfair advantage over public decision making at the expense of the public interest. This can particularly occur when decision-making is opaque, when public officials or third parties act unethically, or when access to the political system is skewed in favour of select interests.⁴

THE DISPROPORTIONATE INFLUENCE OF INDUSTRY

As individual companies and as a sector collectively, the shipping industry has a pervasive influence over the policymaking process and can access and submit documents and observe and speak at meetings at every level of IMO decision-making. These privileges are available to other interest groups but attendance records of recent meetings of the IMO's five committees show that industry representatives outnumbered civil society organisation (CSO)

representatives by almost five to one (312 to 64) and labour organisation representatives by more than three to one (312 to 101).

Private interests have additional ways of exerting influence. There are no rules governing the appointment of national delegations and states appoint companies and representatives of ship-owners directly to their national delegations. For example, a recent delegation from Brazil to an environmental meeting contained five advisors who were employees of the logistics multinational company Vale SA, which has substantial shipping interests.⁵ An effective GHG strategy would require long-term investment in clean technologies, but should companies and trade associations want to resist these measures, they are well placed throughout the IMO to delay or dilute policies that promote such investment.

THE LACK OF DELEGATE ACCOUNTABILITY

Across the IMO, Member State delegates are shielded from public scrutiny. IMO reports of meetings do not reflect the positions taken by individual representatives, while journalists are forbidden from naming speakers at meetings without gaining their consent. The result is that the public do not know which delegates are arguing for which policies.

Yet delegates are also unaccountable to the IMO itself. The organisation has no code of conduct to regulate how delegates are appointed or place restrictions on secondary employment, conflicts of interest, gifts and hospitality. Meanwhile, the organisation's whistleblowing policy and complaints mechanism only apply to staff in the Secretariat. The IMO's oversight body has no jurisdiction to investigate the activities of delegates.

The IMO does perform more positively in some areas and, in particular, the transparency around the organisation's governance framework is relatively high. Information about the remit, powers and rules of procedure of its key organs (the Assembly, the Council and the committees) is easily accessible and provides a picture of how the organisation operates in principle.

TRANSPARENCY INTERNATIONAL'S MAIN RECOMMENDATIONS

The IMO and its Member States should engage in a process of open dialogue with its external stakeholders (including civil society and industry) on how it can improve transparency, including by:

- Removing all restrictions on journalists that impair their ability to report freely on the IMO, including the provision that forbids them from naming speakers in open Plenary without consent.

The IMO and its Member States should take steps to ensure that its decision-making processes better reflect the public interest, including by:

- Developing a universal set of rules that govern the appointment of Member State delegations to ensure there is transparency on and controls over the manner in which third party representatives join national delegations.

The IMO and its Member States should ensure that all those who engage in decision-making are subject to robust integrity rules and measures, including by:

- Extending the IMO's whistleblowing and complaints policies to cover Member State representatives.
- Giving the Internal Oversight and Ethics Office the mandate to detect and investigate suspected breaches of the Code of Conduct, and provide for sanctions if necessary and referral to national authorities if appropriate.

INTRODUCTION

The International Maritime Organisation (IMO) is the United Nations (UN) specialised agency for shipping. Its primary purpose is “to create a regulatory framework for the shipping industry that is “fair, effective, universally adopted and universally implemented” and “to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.”⁶

The organisation is not a regulator itself but a forum in which its 170 Member States can engage with one another and agree common global standards and policies. These policies must then be implemented and enforced by individual Member States.

Greenhouse gases (GHGs) produced by the shipping sector are a significant driver of climate change. The sector emits an estimated 938 million tonnes of carbon dioxide, 19 million tonnes of nitrous oxides and 10 million tonnes of sulphur oxides annually, which is approximately 2.5 per cent of total global emissions.⁷ More concerning still, the industry is growing and its contribution to global emissions could account for as much as 17 per cent by 2050 if no measures are taken.⁸

In 1997, parties to the UN Framework Convention on Climate Change (UNFCCC) signed the Kyoto Protocol, which introduced internationally binding targets that mandated a group of developed nations to reduce their GHG emissions. The Protocol stipulated that states must work through the IMO to tackle shipping related emissions. This represented a new type of policymaking challenge for the organisation, which was originally conceived as a forum for promoting regulatory cooperation and common technical standards. International negotiations to reduce emissions, however, are inherently political and involve assertions of differentiated responsibility and trade-offs with national economic development. It is not clear that the IMO has developed capacity to deal with such matters.

The IMO made little substantive progress until the 2015 Paris Agreement provided a platform for UNFCCC parties to raise the ambition of their emissions reduction targets. A total of 195 countries have now signed the Paris Agreement, which aims to prevent planetary warming from exceeding the threshold of 2°C, with the ambition not to exceed 1.5°C. The Paris Agreement revitalised debates on GHG reductions in shipping and in April 2018 the IMO adopted an initial strategy, which pledges to reduce global emissions

by at least 50 per cent by 2050 against 2008 levels. The IMO and its members now face the considerable challenge of finalising and implementing this strategy by 2023.

The goal of this paper is to evaluate the existence and effectiveness of transparency, accountability and integrity mechanisms within the IMO, and to assess whether they might support or hinder the development of policies, including an effective GHG emission reduction strategy. Part one uses two maps to explain the IMO's policymaking structure and its relationships to other stakeholders in the global shipping sector. Part two undertakes a detailed assessment of the organisation's policies and practices using nine indicators to evaluate its transparency, accountability and integrity mechanisms. Part three presents conclusions and recommendations on how to address the governance risks identified.

The methodology, included in the Annex, is based on Transparency International's Climate Finance Integrity Assessment. Desk research relied primarily on policies and documents published by the IMO, as well as a range of secondary sources from international organisations and the media. Stakeholders from Member States, international organisations, the shipping industry and civil society engaged with Transparency International through semi-structured interviews which were used to identify key issues and validate findings. The participation of the IMO was unfortunately more limited. While the Secretariat briefly responded to an initial series of questions, it did not respond to a detailed set of questions based on the preliminary results of the indicators analysis, nor to the draft of this report that was also provided to the IMO Secretariat with a further request for comment and feedback.

GOVERNANCE MAPPING OF THE IMO

The IMO is given its mandate by the Convention on the IMO (1948),⁹ which sets out the organisation's purpose, functions and procedures. These have been amended accordingly in response to various historical developments. The UNFCCC Kyoto Protocol, which mandates countries to reduce GHG emissions, instructs relevant signatories to work through the IMO to limit or reduce emissions from the shipping sector.

The IMO is comprised of an Assembly, a Council, a Secretariat, five committees and seven subcommittees. All bar the Secretariat operate a policy of unanimous consensus in which Member States aim to come to a universally agreed and adopted position through negotiation. In the rare instances when consensus cannot be agreed Member States resort to voting on a one-member, one-vote basis.

The Assembly is the Plenary forum for all Member States and is the most senior decision-making level of the organisation. It is normally convened for two weeks once every two years. The Council, a 40-seat body elected by the Assembly, is the executive of the IMO and performs the functions of the Assembly when it is not in session.¹⁰ The size and composition of the Council has been expanded and altered on multiple occasions in an attempt to improve the balance of representation. Within the Council there are three categories in which states can stand for election:

- Category A: 10 states with the largest interest in providing international shipping services. Currently these are: China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States.
- Category B: 10 states with the largest interest in international seaborne trade. Currently these are: Australia, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden, United Arab Emirates.
- Category C: 20 states not elected under A or B above, but which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world. Currently these are: Bahamas, Belgium, Chile, Cyprus, Denmark, Egypt, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey.

The IMO's committees are constituted to deal with issues relating to safety, environmental, legal, technical cooperation and regulatory harmonisation issues. The Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) together oversee the work of seven subcommittees that provide further support and capacity in these areas. Committees report to the Council and are overseen by a chair and vice-chair that are elected by committee members. All Member States can freely participate in committee and subcommittee activities.

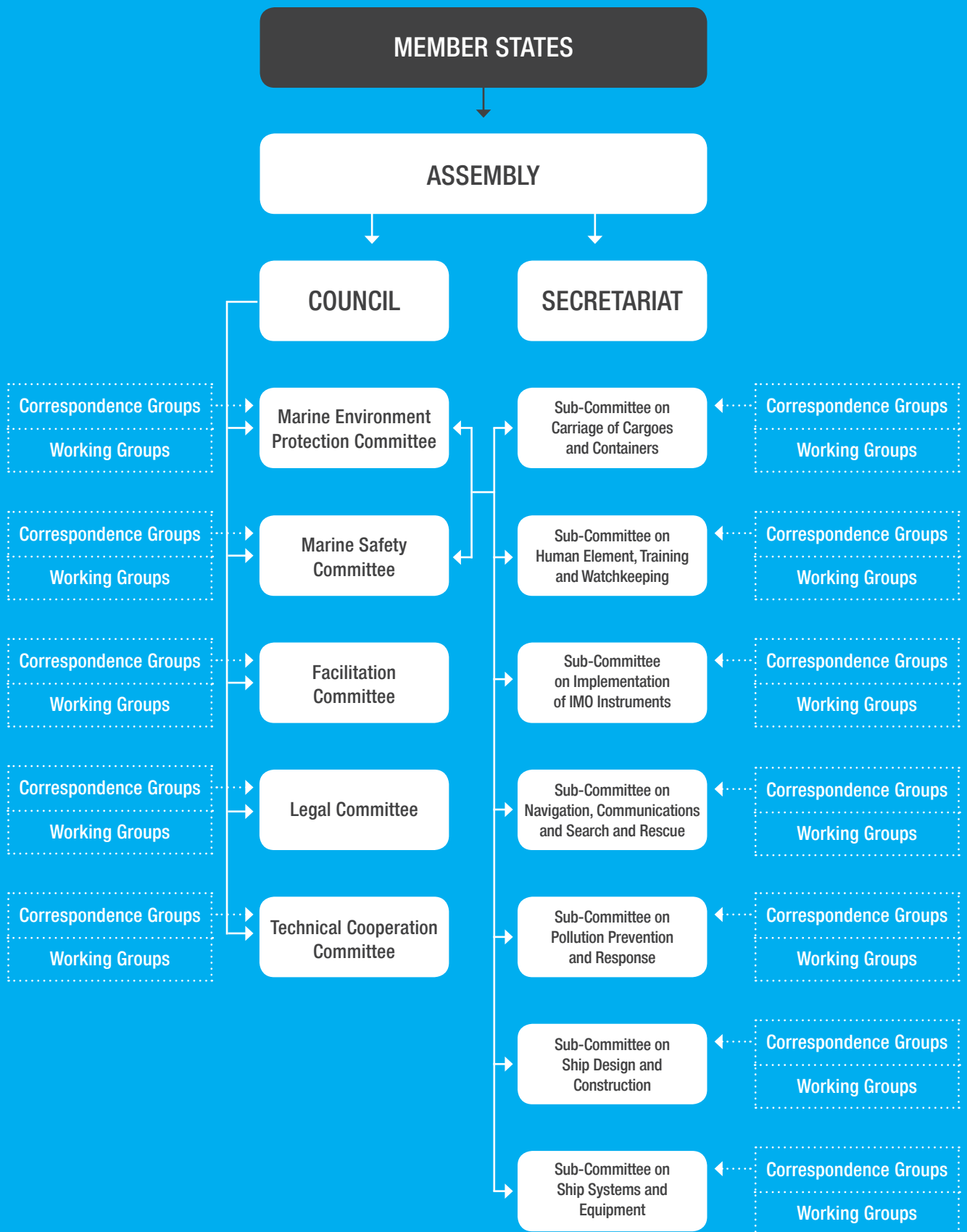
Both committees and subcommittees regularly convene working groups and correspondence groups, which often require the participation of external parties, for purposes including research, technical consultation and risk assessment. The Secretariat based in London provides administrative support to the Council and is led by the Secretary-General and comprised of approximately 300 international civil servants working across 10 divisions. The International Oversight and Ethics Office provides oversight, but it is only responsible for the Secretariat and not the wider governance structure.

HOW POLICY IS MADE

The legal instruments created by the IMO are called conventions. Members can discuss the need for and propose new conventions, or amendments to existing ones, in the Assembly, Council and all committees except for the technical cooperation committee. The Assembly must ultimately approve all conventions. Conventions do not come into force until they have been signed and ratified by both a specified number of states and a number of states that cumulatively represent a specified percentage of global registered tonnage. Both of these thresholds are determined on a case-by-case basis. Member States are then responsible for implementing and enforcing national legislation that gives effect to a convention.

GOVERNANCE MAPPING OF THE IMO

The governance map presents the accountability structure of the IMO.



STAKEHOLDERS IN SHIPPING REGULATIONS

The IMO has created approximately 60 instruments to fulfil its functions.¹¹ The organisation's Member States are responsible for implementing and enforcing conventions through national legislation. There are three types of regulatory role performed by states.

- Flag state rules govern a vessel and its crew when operating in that jurisdiction and on the High Seas.
- Port state rules govern a vessel and its crew when it is in the territorial waters of that port state waters.
- Coastal state rules govern a vessel and its crew when it is in the territorial waters of that state.

For example, French law will govern a ship flying a French flag (flag state rules) when it is docked in Le Havre and while it crosses the High Seas. When the ship enters US waters and docks at the port of Baltimore it will be governed by US law (port state rules). On entering the territorial waters of any other states during its voyage it will be subject to the laws of those states (coastal state rules).

The decline of ship-owners' use of traditional national registries and the corresponding growth of open registries has reduced the implementation and enforcement of shipping regulations in the 60 years since the IMO's inception. Port state control, in which ships are inspected by the ports where they dock as opposed to the flags under which they register, has emerged as an important regulatory tool.

The enforcement of states is supplemented in two ways. In the vast majority of cases, flag states no longer perform the day-to-day of inspections work to ensure that ships are compliant with technical standards and regulations on shipbuilding, safety and performance. Instead they contract classification societies, which may be both for- and non-profit organisations, to perform this inspection function. Twelve classification societies work to the common standards of the International Association of Classification Societies and together regulate more than 90 per cent of the world's fleet.

The International Transport Workers' Federation (ITF) also performs inspections in ports. This is a federation of 670 trade unions from 140 countries. ITF inspections aim to enforce labour standards on ships. The ITF can liaise with port inspectors on safety issues.

Shipping registries

All ships must be registered in a flag state shipping registry to legally make voyages. There are three types of registry. Traditionally, ship-owners registered in the state where their business was headquartered, in so-called national registries.

In the latter half of the twentieth century the practice of registering in open registries (initiated by the US with the creation of the Panama flag immediately after WW1) became prevalent as ship-owners sought to avoid regulations they considered costly or burdensome. An open registry is a shipping registry in which, according to the UN Conference on Trade and Development (UNCTAD), "the owner does not need to be of the same nationality as the country where the ship is registered."¹² Ship-owners instead choose the flag that is most advantageous to their activities.

According to the ITF there are an estimated 35 open registries worldwide, which is roughly one fifth of all the IMO's Member States.¹³ However, approximately 75 per cent of the world's fleet is flagged in these registries.¹⁴ At least 17 open registries contract the management of their registries to companies, which are known as private registries.¹⁵

CONSULTATIVE STAKEHOLDERS

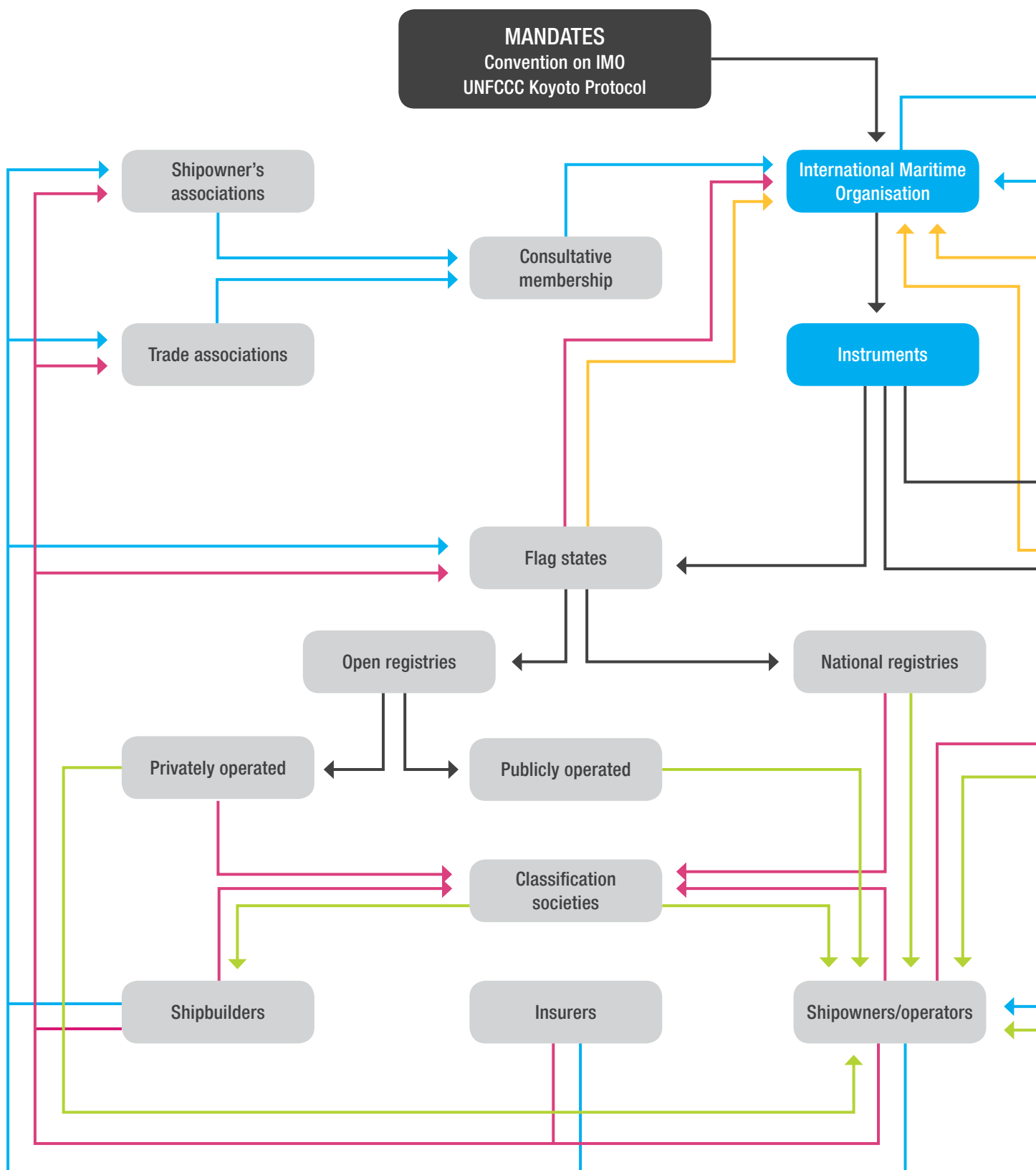
External stakeholders to the IMO and its Member States can access the policymaking process through the consultative membership scheme. Membership, which is subject to IMO approval, allows stakeholders to participate in and observe the entire policymaking process. Members are primarily drawn from four areas: the shipping industry, and environmental, labour and international organisations.

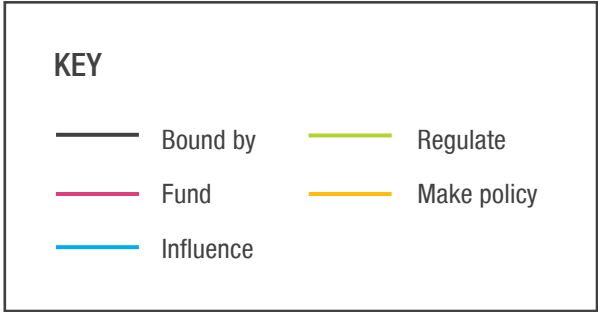
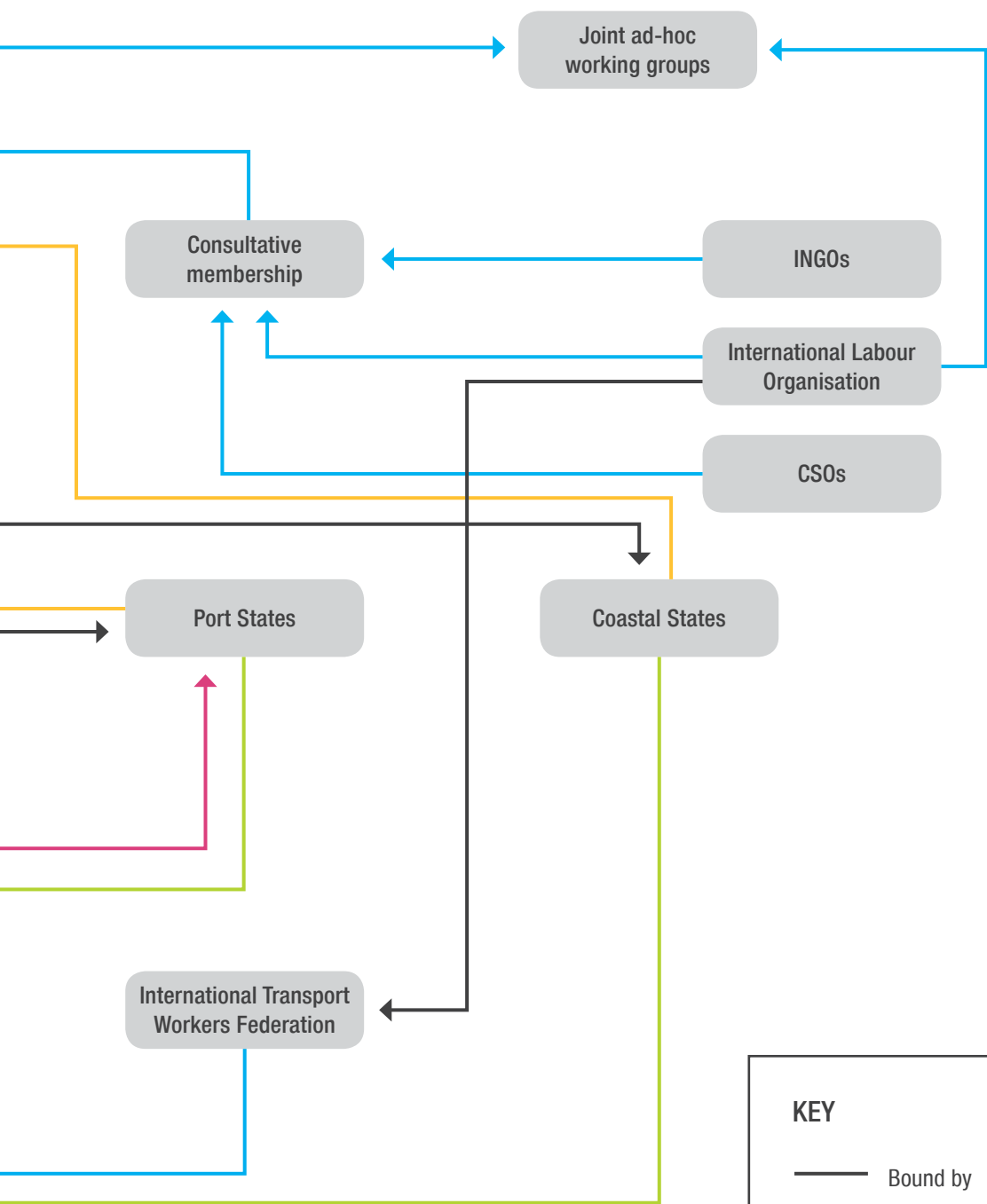
Ship-owners and operators, and the wider industry, are the primary object of regulation and must ensure that vessels and crew comply with the legislation of flag, port and coastal states. Shipbuilders are responsible for the construction of ships, which are commissioned by ship-owners, and once built insured by marine insurance companies. Classification societies must confirm that newly constructed ships meet technical standards, and provide regular assurance to both ship-owners and insurers that vessels remain compliant.

Representative organisations in civil society advocate for stronger environmental protections and effective emissions reductions programmes through the consultative membership scheme. Trade unions and professional organisations represent the people that work in the shipping sector – from seafarers to harbour masters. Numerous international organisations attend and observe IMO meetings to promote effective international regulation.

STAKEHOLDERS IN SHIPPING REGULATIONS

The stakeholder map provides an overview of the broader set of stakeholders who have an interest in the global shipping industry and how they relate to the IMO.





GOVERNANCE ASSESSMENT OF THE IMO

OVERVIEW OF THE IMO PERFORMANCE

SECTION	INDICATOR	SCORE
Transparency	Can members of the public obtain relevant and timely information on the IMO's administration, policies and procedures?	Strong
Transparency	Can members of the public obtain relevant and timely information on the IMO's activities, outputs and decisions?	Medium
Accountability	To what extent does the IMO's finance mechanism ensure a balanced representation of interests?	Weak
Accountability	To what extent do the IMO's decision-making structures ensure a balanced representation of interests?	Medium
Accountability	Do independent civil society actors participate meaningfully in the proceedings of the IMO?	Medium
Accountability	Are there effective, independent and enforceable mechanisms to handle whistleblowing or the exposure of wrongdoing by IMO staff, Member State representatives, contractors, subcontractors and consultants?	Medium
Accountability	Are there effective mechanisms in place to register and handle complaints by external actors?	Medium
Integrity	Are IMO staff and Member State representatives subject to an effective Code of Conduct and conflicts of interest policy?	Weak
Integrity	Are IMO staff and Member State representatives appointed based on clear and objective criteria?	Weak

ANALYSIS

The governance weaknesses identified above have a number of important implications which may impact on the IMO's ability to develop an ambitious and effective GHG strategy, in particular with respect to: the unequal influence of states, the growth in influence of open and private registries, the disproportionate influence of industry, and the lack of delegate accountability.

THE UNEQUAL INFLUENCE OF STATES

The balance of influence among Member States is tipped towards states with larger registered tonnages in two ways. The IMO's finance mechanism requires states with greater tonnages to contribute a greater level of funding (although the formula to determine contributions is not published). The rationale is that the cost of funding the IMO should be borne by states with greater maritime interests – for which tonnage is a metric. But with the unequal provision of finance comes a risk of unequal influence.

Nine of the top 10 contributors to the IMO currently occupy elected positions on the IMO Council, with only the Marshall Islands not represented. The provision of funding does not necessarily equate to a Council seat or influence within the Council. Yet the IMO lacks mechanisms to provide public assurance that the states that fund the IMO are not simply buying influence. This is exacerbated by the fact that there is no substantive information published about the Council's elections and its activities.

States with greater tonnages enjoy an advantage in the policymaking process because their decision to ratify has greater consequence, in proportion to their tonnage, in terms of whether and when a convention comes into effect. Due to the concentration of tonnage in a handful of states, this mechanism is potentially open to abuse by the major flag states – such as Panama, Liberia and the Marshall Islands, which together regulate approximately 42 per cent of the world's fleet.¹⁶ Yet again shortcomings in the transparency of negotiations make it difficult to know whether this vulnerability is exploited.

A lack of resources to participate in low-income states compounds the uneven pattern of participation. Bangladesh, for example, has a multibillion import and export sector while an estimated 40,000 people are employed in its shipbreaking sector.¹⁷ It is also at extreme risk from climate change threats. Yet state resources are scarce and Bangladesh sent only two representatives to the 71st Session of the MEPC in 2017 (MEPC 71).¹⁸ Many other low-income states threatened by climate change cannot adequately fund their own participation.

Ultimately, there is a risk that a few disproportionately influential states could obstruct climate change policymaking, should they perceive any negative short-term economic consequences of regulation as detrimental to their national shipping interests. This could delay, weaken or prohibit an ambitious and effective GHG strategy.

THE GROWTH OF OPEN AND PRIVATE REGISTRIES

When the IMO was established in 1958 only 13 per cent of ships were flagged under open registries, but that figure has grown to approximately 75 per cent today.¹⁹ The emergence of open registries has triggered a competition between states to earn revenue from ship-owners – who pay ship registration fees to states – by providing extremely favourable regulatory environments. Many open registries typically offer a combination of a low corporate tax rate (often 0 per cent), a high degree of financial secrecy and limited implementation and enforcement of labour, social and environmental regulations as inducements to ship-owners.²⁰

States often also offer a parallel range of additional offshore services, such as anonymous company registration, and may use open registries as a means of developing a wider offshore services economy.²¹ Thus, many open registry states are also commonly described as tax havens or secrecy jurisdictions. The secrecy that hides the true, or beneficial owner, of companies that control ships in open registries is often linked to unaccountable criminal and corrupt activities, according to both the UNODC and Interpol.²² Recent media reports on the use of open registry ships to carry large quantities of cocaine and explosives, and break trade sanctions, evidence these concerns and suggest a systemic lack of accountability.²³

Private registries

At least 17 states, representing 22.9 per cent of world tonnage, have fully outsourced the management of their ship registries to private companies, according to Interpol. Among these, 10 are Small Island Developing States which each “have a GDP ranked among the lowest 15 countries in the world.”²⁴ This raises questions about their ability to effectively enforce regulations on ships that may rarely, if ever, dock in their ports. Just two of the 17 private companies have their head office in the flag state; with the US, UK and Singapore among the most common alternative locations. The location of a registry outside the territorial jurisdiction of a state means that governments may lack the powers and access to information, as well as the financial resources, to effectively enforce regulations. Six of the last 15 members admitted to the IMO use this model, which suggests it is increasingly common.²⁵

There are at least two ways in which open registries may undermine good governance at the IMO. First, there is a question of whether, or how many, of the 35 open registry states have an interest in or capacity to develop, implement and enforce shipping regulations. For example, the European Union recently classified Panama, the Marshall Islands and the Bahamas as non-cooperative tax havens.²⁶ The influence of these states on the IMO is significant. They are all in the top six funders of the organisation (1st, 3rd and 6th respectively)²⁷ and are together responsible for 34.9 per cent of global tonnage, which gives them clout in the ratification process. Once again, the lack of transparency over what positions individual states take during meetings at the IMO makes it difficult to assess the policies that are advocated by open registry states.

Second, at least 17 open registries are under the management of private companies. These companies can assume the right to directly represent, make policy and vote on behalf of the states they represent at the IMO. A guiding principle of the UN system is that Member States must represent the interests of their citizens when they meet to discuss issues of transnational public interest and the promotion of global public goods. However private companies are constituted to prioritise profit – not to serve the wider public interest. Another principle of the UN system is to respect the sovereignty of states and not to impose controls on delegates. Yet the exploitation of this rule by open registries to appoint companies to represent flag states amounts to a partial privatisation of intergovernmental policymaking in shipping.

THE NEED FOR A “GENUINE LINK” BETWEEN SHIPS AND REGISTRIES

The question of how ships and registers should be linked has never been fully resolved. When the IMO was founded only 13 per cent of global tonnage was registered in open registries and it is unclear whether policymakers anticipated their rapid growth to become the dominant model of ship registration. Article 5 of the 1958 Convention on the High Seas and Article 91 of the 1982 UN Convention on the Law of the Sea each state that there must be a “genuine link” between a ship and the state which confers nationality on it. However, neither convention defines the meaning of “genuine”.

The UN Convention on Conditions for Registration of Ships (1986) sought to address this and requires parties to commit to “ensuring or, as the case may be, strengthening the genuine link between a State and ships flying its flag, and in order to exercise effectively

its jurisdiction and control over such ships with regard to identification and accountability of ship-owners and operators.”²⁸ However, the Convention, which needs 40 states and 25 per cent of global tonnage to enter into force, has been signed by only 15 parties.²⁹

THE DISPROPORTIONATE INFLUENCE OF INDUSTRY

External stakeholders have an extraordinary level of access to IMO proceedings. The consultative membership scheme provides access through documents and meetings to every level of policymaking. Although consultative membership is open to a range of stakeholders, in practice industry groups participate at a scale unmatched in scope and scale by other stakeholders. According to analysis of attendance records of recent committee and subcommittee meetings by Transparency International, Industry groups made up 57 per cent of all consultative members at the committee level and 67 per cent of all members at subcommittee level.

The participation of stakeholders from civil society, meanwhile, may be muted. Stakeholders who criticise IMO policy can face expulsion for criticising the organisation. This is a particular challenge for CSOs that are often mandated to campaign publicly and robustly on issues. The Greenpeace case study (see box) demonstrates that the IMO has previously suggested that the use of “intemperate language” and “protest activities” are grounds to withdraw consultative status. Thus while CSOs may acquire the rights to participate they must do so on the IMO’s terms. The lack of a code of conduct for consultative members, which could be used to hold both industry and CSO bodies to objective standards of behaviour, is a further problem. Instead the IMO reserves the right to expel consultative members at its discretion.

The balance of influence is tipped toward industry at the consultative level, but private interests have an additional, significant way of exerting influence on proceedings. Without rules governing the appointment of national delegations, states can – and do – appoint companies directly to their national delegations. This leads to another risk of undue influence and may result in governments taking positions that disproportionately favour industry concerns over other issues including climate change mitigation. In addition, because there is no requirement for the Secretariat to disclose the interactions of its staff with external parties, it is impossible to keep track of any potential lobbying activities by industry representatives at this level.

An effective GHG strategy would almost certainly impose short-term costs on the shipping sector through, for example, the use of cleaner more expensive fuels or the purchase of new efficient vessels. Should industry want to resist these measures, it is well placed throughout the IMO to delay or dilute climate change policies to protect short-term financial interests.

Greenpeace case study

There is evidence that the IMO has threatened to review the consultative status of CSOs who campaign robustly on maritime issues. In 2009, Greenpeace International (a consultative member) attended an IMO conference on shipbreaking in Hong Kong. Greenpeace also brought guest representatives from the Bangladesh Environmental Lawyers Association and the NGO Platform on Shipbreaking, which were both overtly critical of proceedings. Following the event, the IMO wrote to Greenpeace to raise concerns about the “intemperate language” used by a representative of the Bangladesh Environmental Lawyers Association and “the various protest activities carried out by the NGO Platform on Shipbreaking during the Conference and following the adoption of the Convention.”

The IMO’s letter reminded Greenpeace of Rule 3(b) that organisations must be fully in harmony with the spirit, functions and principles of the IMO and Rule 4 that organisations will support the activities of the organisation. It stated that, while Greenpeace had a right to disagree with action proposed by the IMO, “once the text was approved and adopted by consensus ... it was incumbent on organisations in consultative status to respect the view of all these States, even though they might disagree with them.” This, in effect, suggests that consultative members cannot make public criticisms of adopted IMO policy.

The letter concludes by asking Greenpeace, “in light of the imminent review of organisations in consultative status ... whether and, if so, to what extent you were aware of and endorsed these statements and activities [of the Bangladesh Environmental Lawyers Association and the NGO Platform on Shipbreaking].”

THE LACK OF DELEGATE ACCOUNTABILITY

The IMO’s rules and practices effectively shield its delegates from scrutiny. For example, IMO reports of meetings do not reflect the positions taken by individual representatives, while journalists are forbidden from naming speakers in open Plenary sessions of the Assembly without gaining their consent, and consultative members are not free to criticise the organisation. This is a particular problem in the context of consensus-based policymaking, because there are rarely records of votes on which to assess the positions taken by states.

Not only is there a lack of transparency regarding the positions taken by delegates at IMO meetings, but also delegates are unaccountable to the IMO itself. The IMO has no rules to regulate how delegates are appointed or to place restrictions on secondary employment, conflicts of interest, gifts and hospitality. Rather, as is the norm for many UN agencies, delegates are subject to the codes of conduct of their home state. This is problematic because the existence and quality of these codes varies significantly from state to state, and many are unlikely to address specific issues that arise while operating in the context of the IMO, especially if the delegates’ participation has been outsourced to private registries.

Meanwhile, the organisation’s whistleblowing policy and complaints mechanism only applies to staff in the Secretariat. The IMO’s oversight body, the Internal Oversight and Ethics Office, has no jurisdiction to investigate the activities of delegates. There are therefore inadequate internal or external checks on delegates’ behaviour and few public assurances that representatives are representing their national constituencies. The public must take at face value what the IMO and Member States pledge to be doing on climate change and have few ways to independently verify these positions.

RECOMMENDATIONS

The IMO and its Member States should engage in a process of open dialogue with its external stakeholders (including civil society and industry) on how it can improve transparency, including by:

- Developing a comprehensive access to information policy to enable the public access to timely information on the organisation's operations and activities with limited and clearly defined exceptions.
- Publishing substantive information about the activities of the Council, committees and Secretariat, including information on how national representatives are elected to the Council and how chairs and vice-chairs are nominated and elected to their positions on committees, working groups or correspondence groups.
- Publishing in full the results of Member State Audits through which the IMO assesses the quality of implementation and enforcement within state jurisdictions.
- Publishing in full a copy of IMO financial regulations including the funding formula of the IMO's finance mechanism.
- Publishing participant lists of all meetings, including Assembly, Council, committees, subcommittees, working groups and correspondence groups, in an open data format to facilitate analysis of the balance of influence.
- Publishing live video-streams of all committee and working group meetings to ensure that delegates can be held to account and that states without the means to participate can engage in debates.
- Removing all restrictions on journalists that impair their ability to report freely on the IMO, including the provision that forbids them from naming speakers in open Plenary without consent.

The IMO and its Member States should take steps to ensure that its decision-making processes better reflect the public interest, including by:

- Introducing requirements for Member State representatives to hold an official public mandate as natural persons who are members of their domestic civil service, and to demonstrate an absence of conflicts of interest in their role as national delegates, including through the disclosure of assets.

- Developing a universal set of rules that govern the appointment of Member State delegations to ensure there is transparency on and controls over the manner in which third party representatives join national delegations.
- Engaging with other relevant UN bodies (including the UN Division for Oceans and the Law of the Sea) with a view to establishing a meaningful link between ships and their country of registry.
- Modifying the ratification process for IMO conventions so that the importance of tonnage as a measure of a state's influence is reduced.
- Introducing a quota system for consultative members to ensure a more balanced representation among different interest groups.
- Allowing local organisations to become consultative members.
- Removing restrictions on consultative members' ability to speak freely about the policies and decisions of the IMO.

The IMO and its Member States should ensure that all those who engage in decision-making are subject to robust integrity rules and measures, including by:

- Collecting and publishing information on all delegates, including their full names, employers and financial interests, who are not directly employed in a full-time capacity by a Member State.
- Extending the IMO's whistleblowing and complaints policies to cover Member State representatives.
- Developing a Code of Conduct for Council members, Member State delegates and consultative members in order to regulate their conduct while operating under the auspices of the IMO.
- Giving the Internal Oversight and Ethics Office the mandate to detect and investigate suspected breaches of the Code of Conduct, and provide for sanctions if necessary and referral to national authorities if appropriate.



ANNEX: INDICATORS AND SCORES

1. Can members of the public obtain relevant and timely information on the IMO's administration, policies and procedures?

- Is information about the IMO's administration, policies and procedures available freely online? If yes, what is the scope of the information that is made public (financial information, governance-related documents and policies, complaints procedures etc.)?
- Is it comprehensive and timely (i.e. regularly updated)?
- If not available online, is it available on request? Are there stated deadlines for making such information available? If so, is it available within a reasonable timeframe (20-30 working days)?

SCORE:

STRONG

The level of transparency around the IMO's administration is high and information about the remit, powers and rules of procedure of its key organs (the Assembly, the Council and the committees) is easily accessible. The IMO also publishes an archive of conventions, including their amendments, signatories and ratifications, and a database of resolutions passed by key organs – although this information is provided inconsistently. The IMO does not operate an access to information policy.

GOVERNANCE DOCUMENTS

The IMO publishes a range of documents regarding its administration, policies and procedures on both its website (imo.org) and a document portal called IMODOCS. IMODOCS is the official document repository and hosts restricted documents that are only accessible to Member States and consultative members, but members of the public can also register for access to some of these documents. The IMO did not respond to a written question from Transparency International regarding the availability of documents to the different types of registered user.

IMODOCS hosts detailed information about the organisation's remit, powers and rules of procedure. Much of this information is in a 216-page pdf called Basic Documents 1.³⁰ This includes the Convention

on the IMO, which establishes the organisation and describes the functions of its constituent parts. It also includes the Rules of Procedure for the Assembly, Council and each of the five committees, which provides useful insight into their governance. A second file, Basic Documents 2,³¹ contains conventions that provide for the IMO's status as a UN agency, its relationship with the UK (where it is headquartered), and its relationships with other international organisations.

CONVENTIONS AND RESOLUTIONS

The IMO publishes detailed information about all of its conventions, including the texts themselves, their amendments, signatories and ratifications on imo.org.³² There is also a published archive of resolutions passed by the Assembly, Council and committees on imo.org,³³ but this information is published inconsistently and is frequently not up to date.³⁴

FINANCIAL INFORMATION

The Financial Regulations and Financial Rules of the Organization govern the IMO's financial reporting. A copy of these regulations is not published on imo.org or IMODOCS. The IMO publishes an annual financial statement that conforms to the International Public Sector Accounting Standards (IPSAS), which are the standards formally adopted by the UN (see indicator three for more).

ACCESSING INFORMATION

The IMO publishes a webpage that outlines its information resources on imo.org,³⁵ which helps users to navigate the large amounts of information on its two transparency platforms, imo.org and [IMODocs](http://imodocs.org). However, it is unclear what information is routinely published on the latter site. This problem is compounded by [IMODocs](http://imodocs.org)' poor presentation. The

portal hosts numerous links to folders, which often contain no relevant documents.³⁶

According to a 2017 report by the Special Rapporteur of the Human Rights Council, the IMO does not have an access to information policy.³⁷ There is no available information or public facing mechanism for requesting information from the IMO.

2. Can members of the public obtain relevant and timely information on the IMO's activities, outputs and decisions?

- a. Is information about the IMO's activities, outputs and decisions freely available online? If yes, what is the scope of the information which is made public? Does it include information on all decisions, voting records, lists of meeting participants, observers, meeting agendas?
- b. Does it apply to decisions made at the committee and subcommittee levels?
- c. Is the information comprehensive and timely (i.e. regularly updated)?
- d. If not available online, is it available on request? If so, is it available within a reasonable timeframe?
- e. Are there restrictions on interested parties (journalists, NGOs and others) in reporting on the activities of IMO? Do interested parties have sufficient access to report on the activities of IMO in practice?

SCORE: MEDIUM

The level of transparency of the IMO's activities is limited. There is no substantive information published about the Council or the Secretariat's activities, including the election of national representatives to the Council. Records of recent Assembly and committee meetings are detailed and relatively comprehensive, but they do not include information on how chairs and vice-chairs are nominated and elected to their positions on committees, working groups or correspondence groups. The IMO operates a restrictive media accreditation policy, which prevents journalists from quoting speakers during policy debates. In practice, members of the public do not know what their appointed representatives are advocating.

ASSEMBLY DOCUMENTS

The degree of transparency around Assembly meetings has been high for its past two sessions (A30 and A29). [IMODocs](http://imodocs.org) publishes lists of participants attending from

all national delegations and observer organisations, a detailed provisional agenda and the documents submitted by the Secretariat, Member States and observers in response to the agenda.³⁸ These documents are made publicly available shortly after the Assembly has met.

COUNCIL DOCUMENTS

There is no insight into the Council's activities, outputs and decisions in the publicly available information on [IMODocs](http://imodocs.org) or imo.org. There are no documents of significance, such as annual reports or reports to the Assembly on key issues, published by on the Council section of [IMODocs](http://imodocs.org).³⁹ There is no substantive transparency regarding the contestation and regulation of elections to the Council. Beyond imo.org's brief press statements on its activities,⁴⁰ there appears to be no meaningful information about the Council's work on the IMO website.

THE SECRETARIAT

There is also a lack of publicly available information about the Secretariat on both the IMOdocs⁴¹ portal and the IMO website. For example, the Secretariat does not publish an annual report or overview of its work. The Secretariat does not publish an organisational chart or detailed information about its divisions and priority work areas. There is no public information about IMO staff (beyond the names of the Senior Management Committee),⁴² such as information on their nationalities, expertise and backgrounds. There is only very limited information about how the Secretariat interacts with and supports the other parts of the IMO or stakeholders in the shipping sector available on imo.org.⁴³ The IMO did not respond to a written question from Transparency International regarding the monitoring of the composition of the Secretariat by nationality.

THE FIVE COMMITTEES AND THEIR SUBSIDIARY BODIES

The proceedings of committee and subcommittee meetings are relatively transparent and follow the same logic as Assembly meetings. Published documents include participant lists, agendas and written submissions to the agenda. Working groups and correspondence groups submit reports to their respective committees and subcommittees, which are also accessible in the committee records on IMOdocs.⁴⁴ All these documents are made available shortly after a meeting has concluded and the published documents tally against the agenda, which suggests they are comprehensively released.

Yet there are gaps at this level. While audio recordings of committee and subcommittee meetings are available to participants and observers, they are not made accessible to the public. This makes it hard in practice for the public to understand the arguments and policy positions taken by their national representatives, because written reports do not normally attribute statements or policy positions to delegates. The terms of reference for working groups and correspondence groups are not routinely published. There is also no available information on the procedures for nominating and electing chairs and vice-chairs or appointing secretaries to committees and groups.

MEMBER STATE AUDITS

The IMO's Member State Audit programme reviews the implementation and enforcement of IMO conventions and provides important oversight of the quality of regulation in Member States. However, the audits are not published without the permission of the country

subject to the audit. This allows Member States to conceal their records of regulatory implementation and enforcement from the public. Only two countries agreed to disclosure out of the 50 countries audited in 2016 and 2017.⁴⁵ These two audits were not yet available on the IMO website in early June 2018.

REPORTING RESTRICTIONS ON INTERESTED PARTIES

There are reporting restrictions in place across the IMO: the Assembly, the Council, the committees and their subsidiary bodies. Journalists must be accredited to report on the proceedings of these IMO organs. However, press accreditation is provided by the IMO on a discretionary basis. The terms and conditions of media accreditation state that members of the media can be excluded from IMO meetings if "their presence would have a negative impact on the efficient and effective conduct of the Committee's business."⁴⁶

Journalists who are accredited must also "report accurately the outcome of discussions" and refrain from naming individual speakers without obtaining their prior consent, according to the terms and conditions. These rules effectively mean that journalists cannot report on the policymaking process – including the negotiations and favoured policies of Member States – but only the outcomes of meetings.

These rules are enforced in practice. In April 2016, Megan Darby, a journalist for Climate Home attended a MEPC meeting, where she live-Tweeted and subsequently drafted an article based on the proceedings. Darby requested permission to name a national delegate via the IMO's communications team. She received no response and published the story,⁴⁷ which named a speaker. Darby was then found in breach of the committee's rules of procedure (for both live-Tweeting on the process and for naming a speaker), and was banned from attending further IMO meetings for two years.

There is evidence to suggest that some delegates to the IMO are unwilling to be named, which prevents accredited journalists from reporting their activities. Shortly after Darby's ban, a second Climate Home journalist attended a MEPC meeting and requested consent to publish speakers' names and attribute their comments. The reporter stated that, "few envoys seem happy to be quoted. Only three of the 15 delegations approached by Climate Home this week agreed: the Solomon Islands, Panama and Canada. Two diplomats objected strongly to requests, apparently offended their national positions on climate change and shipping should be public knowledge."⁴⁸

3. To what extent does the IMO's finance mechanism ensure a balanced representation of interests?

- a. Are there clear rules and procedures regulating the IMO's finance mechanism?
- b. How balanced and transparent is the IMO's finance mechanism?
- c. What criteria are used for determining Member State financial contributions to the IMO?
- d. Does the IMO have effective financial reporting guidelines in place?

SCORE:

WEAK

The IMO's financial regulations are not published, although its annual financial statement is prepared in line with the formal accounting standards of the UN. The organisation's finance mechanism, which relies on contributions from its 170 Member States, is unbalanced.

FINANCIAL REGULATIONS AND REPORTING GUIDELINES

The Financial Regulations and Financial Rules of the Organization governs the IMO's financial affairs. These regulations are not published on imo.org or IMOdocs so their quality could not be assessed. The IMO did not respond to a written question from Transparency International regarding the reason for not publishing the financial regulations.

The IMO does, however, have effective guidelines in place with respect to its annual financial reporting. The IMO's 2016 Financial Statement states that its accounts are prepared in accordance with "financial regulation 12.10". The statement is also "prepared in accordance with the International Public Sector Accounting Standards (IPSAS)."⁴⁹ IPSAS are the formal accounting standards for UN organisations, as adopted by the UN General Assembly in Resolution 60/283 on 2 July 2006.⁵⁰ The IMO Assembly adopted IPSAS through resolution A.1017(26) and the standards became effective on 1 January 2010.

THE FINANCE MECHANISM: CRITERIA, BALANCE AND TRANSPARENCY

According to the IMO's 2016 Financial Statement, the IMO received £55m of income in 2016 and £51m in 2015 from five sources.⁵¹ Contributions from Member States, the most significant revenue source, provided 55 per cent and 59 per cent of the IMO's total income

in 2016 and 2015 respectively. Trading income, earned through the sales of official IMO publications, generated an additional 23 per cent of its total revenue in both years. Education and research income, earned through the activities of the IMO-controlled World Maritime University and Institute for Maritime Law, provided 20 per cent of revenue in 2016 and 15 per cent in 2015. The IMO also received less than 5 per cent of its income from two further streams ("support costs income" and "other income").

Contributions from Member States are calculated using a formula. The formula itself is not published in the IMO's 2016 Financial Statement, which states only: "Assessed contributions are based on a flat base rate with additional components based on ability to pay and merchant fleet tonnage." It is unclear from this statement how the formula works. The IMO did not respond to a written question from Transparency International regarding the formula's composition and whether it has ever been published.

The IMO's Financial Statement does include the amounts received by the 10 largest contributors. In 2016, these were (in descending order) Panama, Liberia, the Marshall Islands, Singapore, Malta, Bahamas, United Kingdom, China, Japan and Greece.⁵² These states cumulatively provided £19.3m of the assessed contributions, which represented 64 per cent of all Member State contributions. Those same 10 contributors, in a slightly different order provided £19.6m in 2015, which was 65 per cent of all contributions.⁵³ These 10 states, less than 6 per cent of the total of the IMO's 170 Member States, thus provided 35 per cent and 38 per cent of the IMO's total income in 2016 and 2015 respectively.

4. To what extent do the IMO's decision-making structures ensure a balanced representation of interests?

- a. What interest groups are involved in the process of law- and policymaking within the IMO and at what stages?
- b. In practice who represents IMO Member States during meetings?
- c. What is the balance of influence of different stakeholder groups (including flag states and industry bodies) in decision-making processes?
- d. How can interest groups provide input and influence decisions?

SCORE:

MEDIUM

The IMO's decision-making structures give the shipping industry disproportionate influence over the policymaking process via the consultative membership scheme (see also indicator five), which gives accredited stakeholders significant access to the IMO policymaking process. Meanwhile, the ratification system gives a negotiating advantage to states with larger fleet tonnages, because conventions do not enter into force without the support of a specified percentage of the world's fleet. Smaller and lower income states may lack the resources to participate at IMO meetings, despite their interest in proceedings.

MEMBER STATES: MAKING AND RATIFYING POLICY

The IMO's primary stakeholders are representatives of Member States. Member States have voting rights, on a one-member, one-vote basis, but aim to make policy by consensus and resort to votes in the rare instances when consensus is not agreed. Once a convention is agreed it must be ratified by Member States. The convention only comes into effect after it is ratified by both a specified number of states and by states that regulate a specified percentage of global registered tonnage.

Member States with larger registered tonnages thus have a negotiating advantage during the policymaking process because their decision to ratify has greater consequence, in proportion to their tonnage, in terms of whether the convention comes into effect. In 2017, more than two thirds of the world's tonnage was registered in seven states: Panama, Liberia, Marshall Islands, Hong Kong, Singapore, Malta and the Bahamas.⁵⁴

CONSULTATIVE MEMBERS

A range of external stakeholders participate actively in the policymaking process throughout the policy cycle through the IMO's consultative membership scheme. Stakeholders representing different interests in the shipping sector are granted consultative status to provide both specialist knowledge and points of view to the IMO (for more on how consultative status is granted see indicator five).⁵⁵ These interests can be broadly categorised into four groups: trade associations, labour organisations, civil society organisations and international non-governmental organisations.⁵⁶

Consultative members have four privileges (described in Rule 6 of the Rules Governing Relationship with Non-Governmental International Organisations),⁵⁷ which allow them to participate in the policymaking process. These are:

- a. The right to receive a provisional agenda for meetings of IMO organs.
- b. The right to submit written statements on items of the aforementioned provisional agendas.
- c. The right to be represented by an observer at Plenary meetings of the Assembly and other organs of the IMO.
- d. The right to receive texts of resolutions adopted by the Assembly and the recommendations made by the Council, committees and other organs of the IMO.⁵⁸

Observers do not have a right to vote or a right to speak at meetings but they may, on the invitation of the relevant chair, speak on any item of the agenda. Consultative members can exercise their four privileges in every forum of the IMO's policymaking apparatus, from working groups and correspondence groups,

through to committees and subcommittees and finally the Assembly. IMO records show that consultative members, and trade associations in particular, actively participate in all of the decision-making structures of

the IMO. For example, records of recent committee meetings show that 57 per cent of observers were from trade associations.

CATEGORY	Trade association	Labour organisation	Civil society organisation	International non-governmental organisation	Miscellaneous	Total
Marine Environment Protection Committee 71	135	32	52	27	5	251
Maritime Safety Committee 71	127	46	12	6	6	197
Technical Cooperation Committee 67	4	3	0	10	2	19
Legal Committee 104	21	9	0	9	0	39
Facilitation Committee 41	25	11	0	10	0	46
Total	312	101	64	62	13	552

Records of recent subcommittees reveal a more pronounced pattern.

CATEGORY	Trade association	Labour organisation	Civil society organisation	International non-governmental organisation	Miscellaneous	Total
Sub-Committee on Carriage of Cargoes and Containers 4	81	10	0	6	0	97
Sub-Committee on Human Element, Training and Watch keeping 4	46	26	6	2	6	86
Sub-Committee on Implementation of IMO Instruments 4	36	21	4	26	3	90
Sub-Committee on Navigation, Communications and Search and Rescue 5	0	0	0	0	0	0
Sub-Committee on Pollution Prevention and Response 5	109	15	17	16	1	158
Sub-Committee on Ship Design and Construction 5	68	23	4	7	0	102
Sub-Committee on Ship Systems and Equipment 4	62	18	0	8	1	89
Total	402	113	31	65	11	622

Data on the number of documents submitted by consultative members gives another partial indication of consultative member activity. At MEPC 71, which was the most recently attended IMO meeting at the time of the research, consultative members submitted 37 documents. Of these, 15 were from trade associations while a further nine were from joint submissions by trade associations and Member States. A further 11 documents were submitted by civil society and two by labour organisations.⁵⁹

Interest groups also participated in correspondence groups at MEPC 71. For example, the correspondence group on the experience-building phase associated with the Ballast Water Management Convention had 27 Member State participants and nine consultative members, which were all trade associations.⁶⁰ A lack of easily available documentation on working group and correspondence group participation prohibited full analysis of industry participation at these levels.

BARRIERS TO PARTICIPATION

Participation at IMO meetings is open to all Member States but certain governments, such as those from Least Developing Countries and Small Island Developing States, may find that budgetary constraints limit their effective participation. Such states often lack the means to maintain a permanent staff at the IMO or to send a suitably large delegation. This can lead to the contingent problem of a lack of expertise. A lack of finance and expertise prohibit participation in committees and in particular working groups and correspondence groups.

The proceedings of the Assembly, committees, subcommittees and working groups take place concurrently, so Member States need a significant number of staff, with relevant technical expertise, to participate effectively across these forums. Yet many do not have such delegations.

For example, while the UK had 15 civil servants and four private industry representatives in its delegation to MEPC 71, Portugal, Barbados, Sierra Leone, Tonga and Ukraine, to take five examples among many, had one representative each.

5. Do independent civil society actors participate meaningfully in the proceedings of the IMO?

- a. Are there policies in place requiring the IMO to actively consult with civil society regarding their decisions or actions?
- b. Are there clear criteria for granting international non-governmental organisations consultative status? Who makes this decision? Does the IMO publish a justification if consultative status is not granted? Does the consultative status granted to an international non-governmental organisation need to be reviewed? Which criteria are used?
- c. To what extent do independent civil society actors participate meaningfully in the proceedings of the IMO? In practice, to what extent are civil society recommendations acted upon?

SCORE:

MEDIUM

Civil society and other organisations can participate in the policymaking process through the consultative membership scheme, which gives organisations the right to submit documents and the opportunity to attend meetings. However, CSOs were outnumbered almost five to one by trade associations at the most recent meetings of the IMO's five committees. There is no transparency regarding the IMO's decisions to grant or refuse consultative status to organisations, but the IMO has in the past threatened to withdraw the status of organisations that publicly criticise its policies.

GRANTING OF CONSULTATIVE STATUS

There is no formal requirement for the IMO to consult with any parties. However, the IMO recognises the need to consult with external organisations for two reasons: to source specific expertise and to permit stakeholders to express their points of view.⁶¹ External organisations may belong to the private sector, civil society or the international community.

The Rules Governing Relationship with Non-Governmental International Organisations outline who is eligible to apply for consultative status, how the

application process works, the privileges conferred on successful applicants and the times at which an applicant may apply.⁶² Two more documents, The Guidelines for the Granting of Consultative Status and the Guidelines for the Withdrawal of Consultative Status, further describe how the application and monitoring processes work.⁶³

Consultative status is granted by the Council, subject to approval of the Assembly, for up to four years and is periodically reviewed. Rule 3 states: “Before granting consultative status to any non-governmental international organization, the Council must be satisfied that:

- a. the activity of the non-governmental international organization concerned is related directly to the purposes of the International Maritime Organization as defined in Article 1 of the Convention; and
- b. the objectives and functions of the non-governmental international organization are fully in harmony with the spirit, functions and principles of the International Maritime Organization.”

This criteria, particularly the definition of “fully in harmony with the spirit and functions of the IMO,” is open to interpretation. Consultative status is also only granted to “truly international” organisations and must show it “has members, component branches or affiliated bodies in a sufficient number of countries” to be successful. This potentially excludes smaller or localised organisations, which may be legitimate stakeholders on specific issues. Rule 4 states that consultative members must support and promote the IMO. Membership is not approved unless the applicant organisation “undertakes to support the activities of the International Maritime Organization and to promote the dissemination of its principles and work.”

WITHDRAWAL OF CONSULTATIVE STATUS

The Council has a mandate to review consultative membership and withdraw it from organisations on a broad and discretionary basis. Rule 8 of the Withdrawal Guidelines states: “In the context of the periodic review under Rule 10 of the Rules or at any other time the Council or Assembly may consider necessary, consultative status to an organization may be withdrawn or suspended as appropriate if changes occur in the nature, purposes, membership or activities of the organization concerned which, in the opinion of the Council or Assembly, make continuance of consultative status to that organization inappropriate or incompatible with the Rules or any of the guidelines

established pursuant to those Rules.” The IMO did not respond to a written question from Transparency International regarding the organisations that have had consultative status withdrawn or rejected since the 29th Assembly.

TRANSPARENCY OF DECISIONS

There is no transparency regarding the applications and periodic reviews of prospective and current consultative members. IMOdocs hosts a section called “NGOs” with three categories of information: Applications for Consultative Status, Periodic Reviews, Rules and Guidelines. There are no documents published under any of these headings.

CIVIL SOCIETY PARTICIPATION IN PRACTICE

According to Rule 6, organisations with consultative status have four privileges:

- a. The right to receive a provisional agenda for meetings of IMO organs.
- b. The right to submit written statements on items of the aforementioned provisional agendas.
- c. The right to be represented by an observer at Plenary meetings of the Assembly and other organs of the IMO.
- d. The right to receive texts of resolutions adopted by the Assembly and the recommendations made by the Council, Committees and other organs of the IMO.

Observers have no voting rights at meetings but might, according to Rule 7, at the invitation of a relevant chairperson, “speak on any item of the agenda of special interest to the non-governmental international organization.”⁶⁴

It is beyond the scope of this study to holistically assess the effectiveness of civil society’s contributions at the IMO. But the privileges granted to organisations with consultative status, including CSOs, allow in principle for meaningful participation in the policymaking process. There were 10 CSOs with consultative status representing environmental and climate change concerns at MEPC 71 and MSC 71.⁶⁵ However, their participation in correspondence groups and working groups elsewhere in the IMO is limited, which may be due to a lack of resources.

6. Are there effective, independent and enforceable mechanisms to handle whistleblowing or the exposure of wrongdoing by IMO staff, Member State representatives, contractors, subcontractors and consultants?

- a. Is there any official policy or system for whistleblowing or the exposure of wrongdoing? How is the policy or system enforced?
- b. What are the procedures for handling disclosures from whistleblowers and other types of reports of wrongdoing? Are whistleblowers protected from termination, harassment or other forms of reprisals?
- c. What types of compensation or relief are available for whistleblowers who have been retaliated against?
- d. Are there effective policies and procedures in place to penalise wrongdoing by IMO staff, Member State representatives, contractors, subcontractors and consultants (corruption, fraud, mismanagement etc.)?
- e. Does the IMO publish a summary of reports received as well as actions taken?
- f. Have staff, Member State representatives, contractors, subcontractors and consultants etc. ever reported wrongdoing? If so, what were the results of the disclosures? If applicable, have whistleblowers faced adverse consequences for their actions? If applicable, have any whistleblowers been compensated for retaliation?

SCORE: MEDIUM

The IMO's whistleblowing policy applies to the Secretariat but not to the delegates of Member States. The policy is enforced by the organisation's Internal Oversight and Ethics Office, which is equipped with investigatory powers and submits reports and recommendations to the Secretary-General. Whistleblowers are protected from persecution. The Secretary-General can impose sanctions against those who initiate retaliation and rescind decisions, which negatively affect whistleblowers. Although the IMO has reportedly dealt with cases of whistleblowing, there are no examples in the public domain.

WHISTLEBLOWING POLICY AND PROCEDURES

The Secretariat's whistleblowing policy is published within the IMO Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct.⁶⁶ It applies to the activities of the Secretariat, but not to representatives of Member States or other delegates.

Serious misconduct is defined in by Staff Rule 101.2 to include, "Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work," "failure by a staff member to comply with the IMO Policy and Procedures on the Prevention and Detection of Fraud" and the "misuse

of funds, abuse of trust or mismanagement."⁶⁷ It does not include human rights violations.

The Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct also contains the Guidelines for the Investigation of Serious Misconduct, which states that the Internal Oversight Services (IOS)⁶⁸ have a wide mandate to receive reports of alleged wrongdoing. The Guidelines state that the "IOS receives and investigates reports of any violations of the Organization's regulations, rules and pertinent administrative issuances."

The Guidelines also set out in detail the IOS approach, procedures and powers it has to investigate complaints: "The role of IOS is to establish facts and make recommendations in the light of its findings. It utilizes its administrative authority for direct access to all locations, staff documents and other resources of the Organization. But it does not have enforcement powers (e.g., the ability to subpoena documents). IOS reports the results of its investigations to the Secretary-General or in certain circumstances may bring the matter to the attention of the Council." The Guidelines also explain how the IOS operates procedurally and define concepts of due process and fairness during an investigation.

An annex to the Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct expands on the "Reporting Fraud" section. It states that the IOS offers "direct confidential access by staff members and other persons engaged in

activities under the authority of the Organization who wish to report cases of suspected fraud.” The annex includes a form for reporting such cases. Reports may also be made in person to the IOS, but there is no mention of a hotline or email communication.

The IOS has discretion to decide whether or not to pursue an investigation. Paragraph 6 of the Guidelines for investigation states: “IOS has discretionary authority to decide which matters it should investigate. Following a preliminary review, IOS will assess complaints to determine whether and when to investigate and the priority and resources to be accorded to such investigation.”

Reports of investigations and recommendations are submitted by the IOS to the Secretary-General who makes decisions on whether to implement disciplinary measures. These reports are not published and neither is a summary of them.

The IMO stated in a response to a written question from Transparency International that the IOS has received whistleblowing complaints and that “necessary procedures were taken to review the reports, some of which were closed due to insufficient evidence and some led to formal investigation followed, in certain cases, by disciplinary measures.” There is no publicly available evidence of whistleblowing taking place at the IMO.

SANCTIONS

Failure by a staff member to comply with the Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct is treated as serious misconduct by the IMO. Article X of the Staff Regulations sets out the disciplinary measures that may be taken against staff by the Secretary-General (Regulations 10.1-10.4).⁶⁹ This includes summary dismissals for acts of serious misconduct.

The staff regulations do not apply to external parties including Member State representatives or contractors, subcontractors and consultants. There are no mechanisms to sanction representatives of Member States or other delegates.⁷⁰

PROTECTION FOR WHISTLEBLOWERS

The IMO offers protection to whistleblowers from retaliation through the Policy for the Protection from Retaliation for Reporting Misconduct and for Cooperating with Duly Authorised Audits and Investigations, which took effect in December 2015

but is not currently published. It is thus unclear how accessible this document is within the IMO.

The policy states: “It is the duty of the Organization to protect the confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.” However it does not elaborate on the meaning of “maximum extent possible” and therefore provides little assurance.

The protection covers any staff member who has reported another staff member(s), including temporary employees and interns in their “failure to comply with his or her obligations under the Staff Regulations and Staff Rules” and a range of other regulations and policies under regular reporting protocol. The policy does not cover wrongdoing by parties external to the IMO. The policy states that complainants can report retaliation in person, via mail or email, or via a hotline, although the policy states that the hotline number is only accessible via the IMO intranet.

When investigating a retaliation report, the policy states that the IOS first conducts a preliminary inquiry to “to determine whether there is credible evidence that:

1. The complainant engaged in a protected activity; and,
2. The action alleged to be retaliatory or threat of retaliation did take place; and,
3. The protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.”

If all criteria are met a full investigation is launched and should be complete within 90 days. The inclusion of the third criterion is unnecessary for a preliminary inquiry and should be dealt with in the course of a full investigation.

The Secretary-General has powers to take corrective measures to rectify the circumstances of a person who has suffered as a result whistleblowing. The policy states that these measures may include “the rescission of the retaliatory decision, including reinstatement, or, if requested by the individual, transfer to another department or function for which the individual is qualified, independently of the person who engaged in retaliation.”⁷¹ The act of retaliation is considered misconduct and the Secretary-General has the power to sanction the guilty parties in line with Staff Rule 110.4, which outlines the measures that can be taken against misconduct.

7. Are there effective mechanisms in place to register and handle complaints by external actors?

- a. Are there explicit procedures for external actors to lodge complaints against the IMO? Are those procedures publicly available?
- b. Is there a dedicated body within the IMO to handle complaints?
- c. Is the IMO required to respond to complaints? In practice, how often does the IMO respond to complaints about its activities or actions?
- d. Are there effective policies and procedures in place to impose sanctions for wrongdoing by IMO staff and Member State representatives (corruption, fraud, mismanagement)?

SCORE:

MEDIUM

The IMO's internal mechanism to report wrongdoing is open to use by external parties and works in exactly the same manner. The IMO has never received a complaint from an external actor.

REPORTING COMPLAINTS

The complaints procedure described in indicator six is open to use by external actors. Paragraph 2.1 of the Guidelines for the Investigation of Serious Misconduct states:

"Internal Oversight Services receives and investigates reports of any violations of the Organization's regulations, rules and pertinent administrative issuances. These reports may be from the Secretary-General, Directors, staff or persons outside the Organization."⁷²

The IMO stated in a response to a written question from Transparency International that the IOS has never received a complaint from an external actor.

The investigation of complaints is managed by IOS. Its powers to conduct investigations are described in the Guidelines for Investigation and the Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct.⁷³ Article X of the Staff Regulations sets out the disciplinary measures that may be taken against staff by the Secretary-General (Regulations 10.1-10.4).⁷⁴

The staff regulations do not apply to external parties including Member State representatives or contractors, subcontractors and consultants. There are no mechanisms to sanction Member State representatives or other meeting delegates.

8. Are IMO staff and Member State representatives subject to an effective Code of Conduct and conflicts of interest policy?

- a. Is there a comprehensive Code of Conduct/ethics and a conflicts of interest policy for IMO personnel? Are they publicly available?
- b. Is there a comprehensive Code of Conduct/ethics and a conflicts of interest policy for representatives of Member States?
- c. Do the codes cover issues such as gifts and hospitality, post-employment restrictions, including cooling-off periods, recording and/or disclosing contact with lobbyists, additional employment, inside information, potential or perceived conflicts of interest?
- d. If they exist, how are the existing codes enforced?
- e. Are staff and representatives trained on their contents?
- f. What, if any, sanctions exist for non-compliance?

SCORE:

WEAK

The IMO has a Code of Conduct for members of the Secretariat, but it does not cover representatives of Member States. The Secretariat's Code of Conduct is reasonably comprehensive: it prohibits regular outside employment and the acceptance of gifts and hospitality without prior approval, and requires staff to declare conflicts of interest and either dispose of said interest or recuse themselves from business. The Secretariat also operates a financial disclosure policy to identify and mitigate conflicts of interest in key areas of the organisation.

MEMBER STATE REPRESENTATIVES

The IMO does not operate a code of ethics or code of conduct for representatives of Member States. This means that delegates which make up the Assembly, Council, committees and other organs of the IMO are not subject to universal or comprehensive frameworks to protect against conflicts of interest, outside employment, gifts and hospitality.

THE SECRETARIAT

The IMO's Ethics Code is based on the UN Ethics Committee's Model Code of Ethics and sets out "the core values and principles we, as international civil servants, should attain and adhere to in the course of our duties."⁷⁵ The IMO's Internal Oversight and Ethics

Office developed the Code of Ethics and is responsible for enforcing this disciplinary framework.

The Code of Ethics outlines the expectations of standards of conduct of IMO personnel (which includes temporary employees, consultants, contractors and experts on mission) with reference to the framework of standards and regulations that govern staff conduct. This framework includes the Standards of Conduct for the International Civil Service and the IMO Staff Regulations and Staff Rules.

The (publicly available) Staff Regulations and Staff Rules of the IMO contain several policies related to integrity and conflicts of interest. Rule 101.2 - Staff Member Obligations and Acts of Misconduct sets out the rules governing conflicts of interest. Under this Rule, all staff are required to declare their interests in profit making businesses with which they interact in an official capacity and, when conflicted, either recuse themselves or dispose of their interests.⁷⁶

No staff member may be "actively associated with the management of, or hold a financial interest" in a business that the staff member could profit from via his/her association with the IMO. However, the definition of a financial interest explicitly excludes the "mere holding of shares in a company...unless such holding constitutes a substantial control."

Regular outside employment is prohibited without the approval of the Secretary-General, but the rules do not refer to cooling off periods. There is no explicit requirement to disclose interactions with external

parties such as lobbyists in the conflicts of interest policy or anywhere else in the ethics and conduct framework. The conflicts of interest rules also forbid IMO staff from talking to press and broadcasting companies, accepting speaking engagements and writing articles or books.

The Secretariat also operates a financial disclosure policy to identify and mitigate conflicts of interest in key areas of the organisation. Senior staff (D1 level and above) and staff working in procurement, finance or investment must submit an annual financial disclosure statement. Staff with access to confidential information, such as procurement and investment data, must also submit an annual statement according to written procedure.⁷⁷ The IMO did not respond to a written question from Transparency International regarding the transparency and accountability mechanisms associated with the annual statements.

The acceptance of gifts and hospitality is governed by Staff Regulation 1.6, which prohibits acceptance of “any honour, decoration, favour, gift or remuneration” from external sources without prior authorisation by the Secretary-General. Rule 101.2 (k) of the staff rules prohibits the acceptance of gifts and remuneration from

both within and outside the IMO, and also prohibits staff from offering such gifts.⁷⁸ There is no register for authorised gifts.

IMPLEMENTATION AND ENFORCEMENT

The IMO stated in a response to a written question from Transparency International that, “a training programme has been implemented for IMO personnel but none for Member State representatives.” It did not provide further detail on implementation.

Article X of the Staff Regulations sets out the disciplinary measures that may be taken against staff by the Secretary-General (Regulations 10.1-10.4). This includes summary dismissals for acts of “serious misconduct,” which the regulations specify includes, “Fraud, abuse of trust or the use of official position for personal gain or advantage of any kind whatsoever.”⁷⁹ Staff Rule 110.4 outlines further disciplinary measures that can be implemented for acts of misconduct. There is no publicly available evidence regarding the enforcement of the IMO’s ethical and disciplinary codes.

9. Are IMO staff and Member State representatives appointed based on clear and objective criteria?

- a. Are appointments to the IMO made on the basis of a clear set of objective criteria?
- b. Are there rules governing the way in which Member States appoint their representatives to the IMO?

SCORE:

WEAK

The IMO does not regulate the way governments appoint their delegations, nor does it subject delegates to codes of conduct. Private companies can and do directly represent governments at the IMO as a result.

SENIOR STAFF APPOINTMENT PROCEDURES

The IMO does not publish principles or policy on how it conducts recruitment. In response to a written question from Transparency International the IMO stated: “IMO Vacancy Announcements indicate the required competences, experience, education and skills as well as duties and responsibilities of the incumbent.” The IMO did not respond to a follow-up written question

regarding the existence and implementation of principles of free and fair recruitment.

The Secretariat’s appointment policies are laid out in Rule 104 of the Staff Rules. Rule 104.9 describes the appointment and promotion board, which the Secretary-General must convene to consider appointments at P1 to P3 seniority grade. When making an appointment “the Division or Office concerned shall establish a short list where appropriate, interview suitable candidates, and transmit its recommendations.”⁸⁰

The board is then free to create its own working arrangements and arrive at a consensus recommendation to the Secretary-General, who makes a final decision on the appointment. The board’s

deliberations are to remain “completely confidential” except with the authorisation of the Secretary-General. The board, chaired by either the Director of Administration or the Head of Human Resource Services, includes five members nominated by their respective Division Directors and a member appointed by the Staff Committee.⁸¹

MEMBER STATE DELEGATES APPOINTMENT PROCEDURES

There are no rules governing the way in which Member States appoint their representatives to the IMO. In response to a written question from Transparency International the IMO stated: “The decision on whom to grant credentials for a Member State delegation is solely within the sovereign authority of the Member States, and any criteria regarding the make-up of a national delegation is subject to the laws, regulations and policies of each Member State as a sovereign nation.”

This is consistent with the principle of the Plenary authority of Member States, which recognises that it is Member States who govern the organisation and thus make the rules of procedure, and which is embodied in all major IMO conventions.

The IMO stated further that IMO Rules “require each Member State to submit the credentials of the representative, the alternate representatives and any other members of the national delegation prior to the opening any session of the organ in question. The credentials must be issued by the Head of State, the Minister of Foreign Affairs or a designated governmental authority authorized to do so. These credentials are examined by the Secretariat staff for authenticity prior to the preparation of voting lists for the meeting.”

REPRESENTATION ON NATIONAL DELEGATIONS

The IMO does not regulate the way governments appoint their delegations. As a result there is a lack of clarity, consistency and transparency on the ways in which private interest groups represent governments at meetings.

Representatives of Member States are typically drawn from maritime agencies, transport ministries and, less frequently, environmental organs of government. But private interest groups can join national delegations, without obtaining consultative status, either as advisors, observers or direct representatives. For

example, Brazil appointed five “advisors” from Vale SA, a multinational company with substantial shipping interests, to its national delegation to MEPC 71. The government of Kuwait sent no representatives of its own to the same environmental meeting, but three “observers” from the Kuwait Oil Tanker Company attended as part of its delegation.

There are cases where private interests are appointed to directly represent governments. This typically occurs when Member States partially or fully outsource the management of their shipping registers to private companies. Under some of the arrangements, the companies that manage the registers also represent the contracting government at the IMO, which is a clear conflict of interest.

For example, eight of the 12 representatives of the Marshall Islands at MEPC 71 were employees of a private shipping registry, International Registries Inc (IRI) Group, which is contracted by the Marshall Islands to manage its registry. When directly representing Member States, employees of private companies can be given diplomatic titles that do not betray the identity of their employer. The eight representatives of IRI Group were comprised of one “permanent representative to the IMO” and seven “deputy commissioners”. Thus, the extent to which private interests represent governments at the IMO is unclear to the IMO itself, governments of other Member States and the public.

Private companies can exercise a Member State’s right to vote at IMO proceedings. For example, the St Kitts and Nevis delegation at MEPC 71 was solely comprised of a director and an employee of a private shipping register. In such cases, when private interests directly represent a national delegation companies assume the voting rights that would normally be exercised by a sovereign state.

The IMO did not respond to written questions from Transparency International regarding the number of delegations with either full or partial representation by private companies, whether there are any restrictions on these representatives including restrictions on the right to vote, join correspondence groups and working groups.

ENDNOTES

1. IMO website: www.imo.org/en/About/Pages/Default.aspx.
2. IMO website: www.imo.org/en/MediaCentre/PressBriefings/Pages/06GHGinitialstrategy.aspx.
3. EU puts 17 countries on tax haven blacklist", *Financial Times* (web), 5 December 2017. Note: Panama and Marshall Islands were subsequently moved to the grey list (without confirming what steps they are taking in public). "Bahamas "Blacklisted" By European Union", *Tribune* 242 (web), 13 March 2018.
4. www.transparency.org/files/content/corruptionqas/335_Influence_of_interest_groups_on_policy-making.pdf
5. IMO, *Marine Environment Protection Committee 71st Session List of Participants*, (London: IMO, 2017)
6. Section 1 of the IMO Convention.
7. IMO, *Third IMO Greenhouse Gas Study 2014*, (London: IMO, 2015).
8. European Parliament, Emission Reduction Targets for International Aviation and Shipping (web), www.europarl.europa.eu/RegData/etudes/STUD/2015/569964/IPOL_STU%282015%29569964_EN.pdf.
9. United Nations Maritime Conference, Convention on the International Maritime Organization (Geneva: United Nations, 1948).
10. The Council does not make recommendations to governments on maritime safety and pollution prevention. This function is reserved for the Assembly by Article 15(j) of the Convention.
11. OECD, "The Role of the International Maritime Organisation", in *International Regulatory Co-operation and International Organisations: The Cases of the OECD and the IMO*, (Paris: OECD, 2014).
12. United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2015*, (Geneva: UNCTAD, 2015).
13. International Transport Workers Federation (ITF), Current Registries Listed as Flags of Convenience, www.itfseafarers.org/foc-registries.cfm.
14. UNCTAD, *Review of Maritime Transport 2017*, (Geneva: UNCTAD, 2017).
15. North Atlantic Fisheries Intelligence Group and Interpol, *Chasing Red Herrings: Flags of Convenience, Secrecy, and the Impact on Fisheries Crime Law Enforcement*, (Oslo: NA-FIG, 2017).
16. UNCTAD, 2017.
17. "Bangladeshi workers risk lives in shipbreaking yards", *Guardian* (web), 5 May 2012.
18. IMO, *Marine Environment Protection Committee 71st Session List of Participants*, (London: IMO, 2017).
19. Mansell, J., *Flag State Responsibility: Historical Development and Contemporary Issues*, (Wollongong: Springer, 2010), p.85.
20. Galley, M. "Flagging Interest: Ship Registration, Owner Anonymity, and Sub-standard Shipping", *Mountbatten Journal of Legal Studies*, 14 (1/2) 2013.
21. Galley, 2013; OECD, 2014.
22. United Nations Office on Drugs and Crime, *Transnational Organised Crime in the Fishing Industry*, (Vienna: UNODC, 2011); NA-FIG, 2017. Interpol, *Chasing Red Herrings: Flags of Convenience, Secrecy, and the Impact on Fisheries Crime Law Enforcement* (NA-FIG: Oslo, 2017).
23. "Tanzania's flags of inconvenience", *The Mail and Guardian* (web), 26 January 2018; "High seas shell game: How a North Korean shipping ruse makes a mockery of sanctions", *The Washington Post* (web), 3 March 2018.
24. Interpol, *Chasing Red Herrings: Flags of Convenience, Secrecy, and the Impact on Fisheries Crime Law Enforcement* (NA-FIG: Oslo, 2017).
25. NA-FIG, 2017.
26. "EU puts 17 countries on tax haven blacklist", *Financial Times* (web), 5 December 2017. Note: Panama and the Marshall Islands were subsequently moved to the grey list (without confirming what steps they are taking in public). "Bahamas 'Blacklisted' by European Union", *Tribune* 242 (web), 13 March 2018.
27. IMO, *Financial Statement 2016*, (London: IMO, 2017).

28. Hosanee, N., *A Critical Analysis of Flag State Duties as Laid Down Under Article 94 of the 1982 United Nations Convention on the Law of the Sea*, (Milan: United Nations-Nippon Foundation Fellowship Programme 2009-2010, 2009).
29. United Nations Treaty Collection, *United Nations Convention on Conditions for Registration of Ships* (status at 22 May 2018), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&lang=en.
30. *IMO, Basic Documents 1*, (London: IMO, 2010), (updated 2015).
31. *IMO, Basic Documents 2*, (London: IMO, 2003).
32. www.imo.org/en/About/Conventions/Pages/Home.aspx.
33. www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Pages/Default.aspx.
34. For example, the three most recently published resolutions of the Council, C76(100), C75(88) and C74(86) are dated to 2008, 2002, 2001, respectively. The resolutions of the Assemblies held since 2011 have not been published, although there is a substantial archive of resolutions going backwards from that year to 1959. The resolutions of the Marine Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) appear to be comprehensively available, but the resolutions of the remaining three committees appear neither to be up to date nor comprehensive (for the years they are available).
35. www.imo.org/en/KnowledgeCentre/HowAndWhereToFindIMOInformation/Pages/Home.aspx.
36. See for example the 10 folders in the “Council” section of IMODOCS. The first three folders in the list are titled CE/S Documents, CIWGAA Documents and CIWGOR Documents and contain one document each; a provisional agenda from 2013, a provisional agenda from 2003, and a provisional agenda from 2001, respectively. In the remaining seven folders, three are completely empty while the other four contain a total of 10 agenda documents from a series of Council meetings in 2009, 2010, 2011, and one list of participants from 2005. So while it appears at first sight that the Council has 10 types of document, in reality it hosts none of significance.
37. Report of the Special Rapporteur of the Human Rights Council, On the Promotion and Protection of the Right to Freedom of Opinion and Expression (Switzerland: UN, 2017).
38. At the past two sessions, a total of 66 documents (at A30) and 75 (at A29) were published on IMODOCS, which makes it easy for the public to follow proceedings in detail.
39. Partial insights into the work of the Council are available through investigating the proceedings of other organs of the IMO. For example, a committee may publish a summary of the Council’s work as it affects that committee’s area of work. But these leads can also be fruitless. For example, in the documents available for A30 there is a document called “A 30/6 Report of the Council to the Assembly on the Work of the Organisation Since the Twenty-Ninth Regular Session of the Assembly”. However, this document is one page long. It states: “The report, which has been updated to take account of developments since the Council’s 118th session, is annexed to document C/ES.29/8. The Assembly is invited to refer to that document, which will not be reissued.” This document, C/ES.29.8 is not available on IMODOCS.
40. www.imo.org/en/MediaCentre/PressBriefings/Pages/35-Council-Elections-A30.aspx.
41. The Secretariat does publish numerous documents to support and facilitate the work of the Assembly, the Council and its Committees on both IMODOCS and imo.org. This includes, for example, monthly reports on piracy and armed robbery at sea (on IMODOCS) and annual internal oversight reports, which give a high-level overview of the audit work undertaken and completed (on imo.org). However, these documents are not about the Secretariat.
42. www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/Default.aspx.
43. www.imo.org/en/About/Pages/Structure.aspx.
44. These reports include a summary of the work undertaken and a list of organisations represented in the forums. They do not include the number or names of participants from each organisation or the policy positions of participants.
45. *IMO, Progress Report on the Implementation of the Audit Scheme*, (London: IMO, 15 September 2017). [IMODOCS, accessed 13 June 2018].
46. www.imo.org/en/MediaCentre/IMOMediaAccreditation/Pages/TermsAndConditions.aspx. Note: the IMO Assembly Rules of Procedure state that Plenary sessions of the Assembly are held in public unless otherwise stated. However, journalists cannot attend the Assembly meetings without applying for and receiving accreditation. All meetings of subsidiary bodies of the Assembly including the Council, committees, subcommittees, working groups and correspondence groups, are held in private

unless otherwise stated. The Rules of Procedure for the MEPC, MSC, Legal Committee, Technical Cooperation Committee, Facilitation Committee reference the Guidelines for Media Access to Meetings of Committees and Their Subsidiary Bodies. These Guidelines are not published on IMOdocs or imo.org.

47. “Offshore carbon: why a climate deal for shipping is sinking”, *Climate Home News* (web), 15 July 2016.

48. “Whiffs of sulphur: UN shipping talks face climate dilemma”, *Climate Home News* (web), 27 October 2016.

49. IMO, *Financial Statement 2016*, (London: IMO, 2017).

50. www.un.org/ga/search/view_doc.asp?symbol=a/res/60/283.

51. IMO, 2017, Financial Statement.

52. IMO, 2017, Financial Statement.

53. IMO, 2017, Financial Statement.

54. UNCTAD, 2017.

55. IMO, *Rules Governing Relationship with Non-Governmental International Organisations in Basic Documents 1*, (London: IMO, 2010), (updated 2015).

56. There are a small minority of groups which are not easily classifiable.

57. IMO, 2010, *Rules Governing Relationship with Non-Governmental International Organisations*.

58. The Rules also state that the extent to which organisations can exercise the rights in b), c) and d) is subject to the discretion of the Secretary-General. There is no information on how this discretion is practically exercised but in practice a large number of organisations have access to the entire policymaking cycle, as the data from MEPC 71 shows below.

59. IMO, 2017, Marine Environment.

60. Government of Canada, *Report of the Correspondence Group on the Experience-building Phase Associated with the BWM Convention*, (London: IMO, 2017).

61. IMO, 2010, *Rules Governing Relationship with Non-Governmental International Organisations*.

62. IMO, 2010, *Rules Governing Relationship with Non-Governmental International Organisations*.

63. IMO, *The Guidelines for the Granting of Consultative Status and the Guidelines for the Withdrawal of Consultative Status in Basic Documents 1*, (London: IMO, 2010), (updated 2015).

64. IMO, 2010, *Rules Governing Relationship with Non-Governmental International Organisations*.

65. IMO, 2017, *Marine Environment; IMO, Maritime Safety Committee 71st Session List of Participants*, (London: IMO, 2017).

66. IMO, “Policy and Procedures on the Prevention and Detection of Fraud and Serious Misconduct”, in Appendix F of the *Staff Regulations and Staff Rules of the IMO*, (London: IMO, 2017).

67. IMO, *Staff Regulations and Staff Rules of the IMO*, (London: IMO, 2017).

68. Also referred to in other documents as the Internal Oversight and Ethics Office (IOEO).

69. IMO, 2017, Staff Regulations.

70. It is worth noting that the IMO Ethics Code does apply to external parties, but there are no regulations underpinning this aspect of the code that can be enforced. The Code states: “For the purposes of this Code, IMO personnel includes IMO staff and related personnel, such as temporary employees; personnel or employees of non-IMO entities or individuals who have entered into a cooperative arrangement with IMO (including interns, international and local consultants as well as individual and corporate contractors); and, experts on mission.”

71. IMO, *Policy for the Protection from Retaliation for Reporting Misconduct and for Cooperating with Duly Authorised Audits and Investigations* (unpublished), (London: IMO, 2015).

72. IMO, 2017, Policy and Procedures.

73. IMO, 2017, Policy and Procedures.

74. IMO, 2017, Staff Regulations.

75. IMO, *Code of Ethics*, (London: IMO, 2016).

76. IMO, 2017, Staff Regulations.

77. IMO, “Procedures for the Filing and Utilization of Financial Disclosure Statement”, in Appendix G of the *Staff Regulations and Staff Rules of the IMO*, (London: IMO, 2017).

78. IMO, 2017, Staff Regulations.

79. IMO, 2017, Staff Regulations.

80. IMO, 2017, Staff Regulations.

81. IMO, 2017, Staff Regulations.

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