

GOVERNANCE AT THE INTERNATIONAL MARITIME ORGANISATION: THE CASE FOR REFORM

The International Maritime Organisation (IMO), a United Nations' specialised agency, creates "a regulatory framework for the shipping industry that is fair, effective, universally adopted and implemented."ⁱ The shipping industry could contribute up to 17% of global CO₂ emissions by 2050 if left unregulatedⁱⁱ. Therefore, the IMO has an integral role in helping the shipping industry to meet the targets set out in the UN Sustainable Development Goal 13 on climate change and Goal 14 on oceans, as well as the targets of the Paris Agreement.

In anticipation of a complete governance assessmentⁱⁱⁱ, this paper summarises some preliminary key findings.

BACKGROUND

The IMO was assigned the task of limiting and reducing emissions from shipping under the Kyoto Protocol back in 1997. The IMO embarked on the development of a strategy on the reduction of greenhouse gas emissions from ships in 2016 and an associated roadmap will see an initial strategy adopted in April 2018 and a final strategy agreed in 2023.

The goal of Transparency International's governance assessment is to provide an overview of challenges existing in the IMO's governance and decision-making processes and to provide recommendations for improvement to support its aptitude to develop and implement effective strategies and policies. The assessment identifies the key governance and anti-corruption measures in place in terms of transparency, accountability and integrity.

KEY FINDINGS: TRANSPARENCY

IMO's administration and activities

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.

The level of transparency of the IMO's activities is more 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.

Open Registries

In an open registry (also known as a flag of convenience or international registry) the shipowner does not need to be of the same nationality as the country where the ship is registered.^{viii} When the IMO was established in 1958 only 13% of ships were flagged under open registries but that figure has grown to approximately 75% today.^{ix}

Typically, states that operate open registries compete with one another to offer shippers low tax rates (often 0%), light-touch environment and social regulation and high levels of financial secrecy, including the effective concealment of ownership, in exchange for registration fees. Operators may choose and change a ship registration as they see fit. According to the OECD^x, the registered owner of almost all open registry ships is a shell company set up for the sole purpose of owning that one ship.

More than half of the world's fleet (52%) is concentrated in the open registries of five states: Liberia, Malta, Panama, the Marshall Islands and the Bahamas.^{xi} Many of these are known as tax havens for ships^{xii} while the European Union recently classified the latter three as tax havens^{xiii}.

Delegate accountability

Members of the public do not know what their appointed representatives are advocating for behind closed doors. This is partly because the IMO operates by consensus and the instances in which states actually cast votes are rare. Yet a lack of transparency in two areas also shields delegates from public scrutiny. Firstly, IMO reports of meetings do not normally reflect the positions taken by individual representatives. Secondly, journalists are forbidden from naming speakers in open plenary sessions of the assembly without first gaining their consent^{iv}.

KEY FINDINGS: ACCOUNTABILITY

Financing

The IMO does not publish its financial regulations. The finance mechanism, which relies on contributions from its 170 member states, is unbalanced. In 2016, ten states provided 64% of all contributions, which was 35% of the IMO's total income. These were (in descending order) Panama, Liberia, Marshall Islands, Singapore, Malta, Bahamas, United Kingdom, China, Japan and Greece^v. Contributions are calculated using an unpublished formula that includes a "flat base rate with additional components based on ability to pay and merchant fleet tonnage"^{vi}.

Eight of the top ten contributors currently occupy elected positions on the IMO council^{vii} including four states which operate open registries* (Panama, Liberia, Malta and the

Bahamas). The provision of funding does not necessarily equate to a council seat or to influence within the council. Yet the IMO lacks mechanisms to provide public assurance that the states which fund the IMO are not simply buying influence.

The policymaking process

The 170 member states of the IMO make policy on a one member one vote basis^{xiv}. IMO policies - conventions - typically come into force after they are ratified by a specified number of states that collectively represent a minimum specified percentage of the world's fleet (measured in tonnage). States with larger tonnages have an advantage in the policymaking process because their decision to ratify has greater consequence, in proportion to their tonnage, for whether and when the convention comes into effect. This mechanism is potentially open to abuse by the five open registries that together regulate more than half of the world's tonnage. The IMO's lack of transparency, over delegate accountability in particular, provides no assurance that this risk is managed or mitigated.

The consultative membership scheme

Interest groups have access to the IMO's policymaking process via the consultative membership scheme, which is designed to source technical expertise and permit stakeholders to express points of view. Once membership is approved, members can access confidential documents, submit documents to agendas, and observe and speak at meetings of the assembly, committees, subcommittees, working groups and correspondence groups. There is no cap on the participation of a consultative member other than its own resources. In practice, industry bodies significantly outnumber other stakeholders. For example, at the most recent meetings of the IMO's five committees, trade associations outnumbered civil society organisations (CSOs) by almost five to one (312 to 64) and labour organisations by more than three to one (312 to 101).

Consultative members are not free to criticise the IMO. The rules of membership require members to "be fully in harmony with the spirit, functions and principles of the IMO" and to "support the activities of the IMO". This is a particular challenge for CSOs who are often mandated to campaign publicly and robustly on issues, which may be incompatible with the requirements to be in harmony with and support the activities of the IMO. Consequently, they can face expulsion.

Whistleblowing and complaints

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 dealt with cases of whistleblowing^{xv}, there is no information in the public domain and the policy is also not publically accessible. The IMO's mechanism to report wrongdoing is open to use by external parties and works in exactly the same manner as the whistleblowing policy.

KEY FINDINGS: INTEGRITY

IMO secretariat's ethics

The IMO secretariat is subject to a code of conduct which is reasonably comprehensive: it addresses the declaration of interests including financial disclosure, regular outside employment, and the acceptance of gifts and hospitality. The rules governing senior appointments and promotions follow a set of public procedures that require the Secretary General to convene a promotion board which is made up of senior staff from across six divisions of the organisation although the Secretary General is responsible for all final decisions.

Government delegations and private companies

The IMO does not regulate the way governments appoint their delegations nor does it subject delegates to codes of conduct. Governments are able to appoint employees of private companies to their delegations. For example, Brazil appointed five “advisors” from Vale S.A, a multinational company with substantial shipping interests, to its national delegation to MEPC 71^{xvi}, the most recent meeting of the IMO's Marine Environment Protection Committee, in July 2017.

The employees of private companies who represent member states at meetings can determine their government's position. This typically happens when states with open registries outsource registry management to private companies. 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. There is no requirement for delegates to publicly declare conflicts of interest such as other sources of employment. Thus the IMO, its member states and indeed the public are unaware of the full extent to which private interests are representing governments at meetings.

A guiding principle of the United Nations 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. Another principle of this system is to respect the sovereignty of states and not to impose controls on delegates from member states. In the case of the IMO, however, the latter undermines the former. The appointment of companies to represent and determine their government's position on behalf of national delegations leads to a partial privatisation of inter-governmental policy-making in shipping.

RECOMMENDATIONS

The IMO 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:

- considering the development of a comprehensive access to information policy which enables the public access to timely information on the organisation's operations and activities with limited and clearly defined exceptions
- publishing substantive information about the council and secretariat's activities, 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
- removing the restriction on journalists which currently forbids them from naming speakers in open plenary without consent
- publishing, in full, a copy of IMO financial regulations including the funding formula of the IMO's finance mechanism.

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

- considering the introduction of requirements for member state representatives to hold an official public mandate as members of their domestic civil service, and to demonstrate an absence of conflicts of interest in their role as national delegates, including through disclosure of assets
- 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
- considering modifying the ratification process for IMO conventions so that the importance of tonnage as a measure of a state's influence is reduced
- considering introducing a quota system for consultative members to ensure a more balanced representation among different interest groups
- consider allowing local organisations to become consultative members
- removing restrictions on consultative members' ability to openly criticise the IMO.

The IMO 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
- 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
- establishing an ethics committee to oversee and enforce the above integrity measures.

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Through TI's climate governance integrity work, TI is actively contributing to promoting anti-corruption, transparency, accountability and public oversight in the development and implementation of global and national climate policy and processes.

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ⁱ IMO, www.imo.org/en/About/Pages/Default.aspx [accessed 22/03/2018]

ⁱⁱ European Parliament, Emission Reduction Targets for International Aviation and Shipping (web), [accessed 22/03/2019]

ⁱⁱⁱ The study will be published in full in May 2018. For this governance assessment TI adapted an existing methodology ("Global Climate Finance: An anti-corruption and governance mapping and assessment toolkit") developed under TI's Climate Governance Integrity Programme. It uses nine indicators to provide a qualitative analysis of the governance strengths and weaknesses of the IMO (two for transparency, five for accountability and two for integrity). The research process included a combination of desk-research, informal consultation with 20+ stakeholders from the public, private and civil society sector and a formal consultation with the IMO through a questionnaire.

^{iv} "Offshore carbon: why a climate deal for shipping is sinking", Climate Home News (web), 15 July 2016.

^v IMO, Financial Statement 2016, (London: IMO, 2017)

^{vi} *ibid*

^{vii} Only the Marshall Islands and Hong Kong (an associate member) do not have seats.
www.imo.org/en/MediaCentre/PressBriefings/Pages/35-Council-Elections-A30.aspx [accessed 14/3/18]

^{viii} UNCTAD, Structure, Ownership and Registration of the World Fleet, (Switzerland: 2015)

^{ix} Mansell, J. Flag State Responsibility: Historical Development and Contemporary Issues, (Wollongong: Springer, 2010, p. 85)

^x OECD, Transparency of Ownership and the Impact of Security Seafarers (web), [accessed 22/03/18]

^{xi} UK Department for Transport, Shipping Fleet Statistics 2016, (London: Government of UK, 2017).

^{xii} Tax Justice Network, Financial Secrecy Index 2018, (London: Tax Justice Network, 2018).

^{xiii} 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.

^{xiv} Although it is common practice for states to work by consensus and resort to voting in the rare instances when consensus is not agreed.

^{xv} As per the IMO's Internal Oversight and Ethics Office statement in a response to a written question from Transparency International.

^{xvi} IMO, Marine Environment Protection Committee 71st Session List of Participants (London: IMO, 2017)