

Breaking Through

The IMO Decision-Making Process: The Decision-making Process in the IMO: a Participating Delegate's Point of View

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Document Version

Final published version

DOI:

[10.22439/phd.06.2025](https://doi.org/10.22439/phd.06.2025)

Publication date:

2025

License

Unspecified

Citation for published version (APA):

Prehn, M. (2025). *Breaking Through: The IMO Decision-Making Process: The Decision-making Process in the IMO: a Participating Delegate's Point of View*. Copenhagen Business School [Phd]. PhD Series No. 06.2025
<https://doi.org/10.22439/phd.06.2025>

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Solbjerg Plads 3
DK-2000 Frederiksberg
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www.cbs.dk

ISSN 0906-6934

Print ISBN: 978-87-7568-331-4
Online ISBN: 978-87-7568-332-1

CBS PhD School
Department of Organization

PhD Series 06:2025

BREAKING THROUGH: THE IMO DECISION-MAKING PROCESS

MICHAEL PREHN

BREAKING THROUGH: THE IMO DECISION- MAKING PROCESS

*The decision-making process in the IMO:
a participating delegate's point of view*

PhD Series 06-2025



Ph.D. Dissertation

Breaking Through:

The IMO Decision-Making Process

Michael Prehn



The decision-making process in the IMO:
a participating delegate's point of view

Supervisor: Duncan Wigan, Henrik Sornn-Friese

Submitted on: 4 November 2024

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First edition 2025

Ph.D. Serie 06.2025

© Michael Prehn

ISSN 0906-6934

Print ISBN: 978-87-7568-331-4

Online ISBN: 978-87-7568-332-1

DOI: <https://doi.org/10.22439/phd.06.2025>

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To Jessica

Acknowledgements

I have dedicated this dissertation to my wife Jessica, for academic as well as personal reasons. She has been a constant academic lodestone and an intellectual support in the whole process. With her critical comments and structured approach during our many breakfast talks about global governance and the IMO, she has a great deal of the credit for getting me to the end of the road.

I am also grateful for the very constructive feedback from Professors Elizabeth de Sombre of Wellesley and Susan Park of Sydney who put my initial efforts on a sounder theoretical track.

I am grateful for the feedback from fellow researchers at formal and informal courses and events, especially from CBS' Political Economy Group (PEG) and all the others I have met at CBS and UCL. I cannot enumerate everyone who helped me in this way, but I am particularly indebted to Federico Jensen, Tristan Smith, Isabelle Rojon, Aly Shaw, Leonard Seabrooke, Christiaan De Beukelaer, Christian Bueger, Christian Hendriksen, René Taudal Poulsen, and as discussants at my 2nd work-in-progress seminar Eleni Tsingou and Ole Jacob Sending, as well as anonymous reviewers from Marine Policy and WMU Journal of Maritime Affairs.

I am very thankful to my supervisors Duncan Wigan and Henrik Sornn-Friese for their guidance, feedback and input throughout the process.

I would also like to thank my many present and past colleagues in the IMO negotiations for their insights in the IMO process over the years, including from both the more and the less recent past (in no particular order): Ralf-Sören Marquart, Joseph J. Angelo, Dragos Rauta, Edmund Hughes, Sveinung Oftedal, Roel Hoenders, John Maggs, Bryan Wood Thomas, Olivia Flynn, Gwynne Taraska, Anne Norderud-Poulsen, Faig Abbasov, Jasper Faber, Arsenio Dominguez, Sanne Henriksen, Azara Prempeh, Julian Hunter, Simon Bergulf, Kitack Lim, Jan Hoffmann, Benoit Loicq, Anne Marie Warris, Aidee Saucedo, Bryan Comer, Simon Walmsley, and many others with whom I had had such interesting conversations over the past 25 years. I may not remember specifically all of what you have said to me, but I have learned from you all.

I would particularly thank the members of the SHAC and the 6-PAC for their insights during the course of negotiations in the IMO.

All the insights have come from these sources, but the errors and omissions are my own.

I also wish to thank DDMF – den Danske Maritime Fond – who generously financed the project, and willingly allowed me the extra time to complete, and naturally my former employer Danish Maritime and my colleague, and later director, Jenny N. Braat without whom I would never have discovered the International Maritime Organization.

Abstract

This dissertation is an analysis of decision-making at the International Maritime Organization (the IMO). The IMO is a sectorial international organisation that regulates shipping¹ and has both state and non-state participants. The IMO can adopt binding regulations that can be introduced by a majority of states against the wishes of others, with the effect that these regulations can then be enforced even against ships of the dissenting nations, and against ships of non-parties.

Conventional wisdom ascribes influence in international organisations to powerful states or large transnational corporations that have "captured" the organisation. Many observers assume that outcomes reflect the preferences of delegations that protect and promote their interests. This dissertation determines by close observation how results that do not conform to the preferences of any delegation can be reached by sometimes path dependent processes that to a high degree are determined by the actions or indecision of the chair².

Using multiple methods of participant observation, interviews and document analysis, the dissertation argues from a constructivist perspective, that outcomes are determined by decisions of the chair and influenced by path dependent processes of negotiations and the culture of the organisation, including unintentional and unforeseen effects of the actions of participants.

Although the IMO claims – as do many other international organisations – to work by consensus, decisions are shown to be in reality taken by vote. However, the chair has the power to select the timing, and the alternatives presented, and the culture of the IMO implies that no decision is likely to be made, even if a majority supports a certain solution, unless it is clear that the alternative is an undesirable status quo or will leave the rulemaking to another institution. The single most influential actor in controversial issues is the chair. Actual results will therefore be heavily dependent on the capacities and competences of the person elected as chair. The chair can choose which options are presented and when a decision is to be made, but cannot force an unpopular decision through, although in some cases the chair can prevent even widely acceptable outcomes.

The slow global progress in the IMO towards concrete decisions to protect the environment is shown not to be surprising considering the central concern of a majority of states that any regulation of shipping should not disrupt trade. Although protecting shipping from the effects of environmental regulation is a priority for these members of IMO, the process has its own dynamic that ensures that decisions of some sort will be made, and that negotiations in the IMO can break through the stalemates that impede many other international negotiations on environmental issue, such as those in the UNFCCC.

The conclusions are valid for contentious and salient issues, such as those examined. Other decisions where differences are less politically sensitive may have other dynamics.

¹ In this dissertation 'shipping' refers to seaborne transport, and does not include distribution by land or air

² In accordance with IMO practice I use the term 'chair' for chairperson.

Dansk Resumé

Denne afhandling analyserer beslutningstagning i FNs internationale søfartsorganisation: International Maritime Organization (IMO). IMO er en international organisation, der regulerer søfart. Dens aktive medlemmer omfatter både statslige og ikke-statslige aktører. IMO kan vedtage bindende regler, der kan indføres af et flertal af stater imod andres ønske, med den virkning, at disse regler så kan håndhæves selv overfor skibe fra nationer der har afvist reglen. Og endda mod skibe fra stater der ikke er parter i aftalen.

Den konventionelle visdom tilskriver magtfulde stater indflydelse i internationale organisationer eller tillægger store transnationale selskaber, der har "overtaget" organisationen, indflydelse. De fleste iagttagere antager, at resultaterne af internationale forhandlinger afspejler delegationernes præferencer, og at disse præferencer er drevet af rationelle valg eller af økonomiske interesser. Denne afhandling undersøger ved hjælp af tæt observation hvordan forhandlingsresultater opnås og konklusionen udfordrer de antagelser, der ligger til grund for disse ideer.

Ved hjælp af deltagerobservation interviews og dokumentanalyse argumenterer denne afhandling fra et konstruktivistisk perspektiv for, at resultater bestemmes af beslutninger taget af den der leder forhandlingerne og påvirkes af muligvis utilsigtede effekter af forhandlingsprocesserne og organisationens kultur.

Selvom IMO - som mange andre internationale organisationer - hævder at beslutte ved konsensus, viser det sig, at beslutningerne i virkeligheden bliver truffet ved afstemning. Lederen af forhandlingerne har imidlertid beføjelse til at vælge både tidspunktet og de mulige alternativer, og IMO's kultur indebærer, at der næppe træffes beslutning, selvom et flertal støtter en bestemt løsning, medmindre det er klart, at alternativet enten er en uønsket status quo eller kan overlade regeldannelsen til en anden institution. Den der har den største indflydelse i kontroversielle spørgsmål, er forhandlingslederen. Det faktiske resultat vil derfor være stærkt afhængigt af den valgte persons kapacitet og kompetencer. Forhandlingslederen kan vælge, hvilke muligheder der præsenteres, og hvornår der træffes en beslutning, men kan ikke gennemtvinge en upopulær beslutning. I nogle tilfælde kan forhandlingslederen forhindre selv bredt acceptable udfald.

Den sendrægtige fremgang i IMO imod konkrete miljøbeskyttelsesbeslutninger er ikke overraskende i betragtning af at et flertal af stater er mest optaget af, at regulering af skibsfart ikke må forstyrre verdenshandelen. Selvom beskyttelse af skibsfart mod virkningerne af miljøregulering har høj prioritet for disse medlemmer af IMO, har processen sin egen dynamik, der sikrer, at en eller anden form for beslutning vil blive truffet, og at forhandlinger i IMO således kan bryde gennem det dødvande, der forpurrer mange internationale forhandlinger såsom dem i UNFCCC.

Konklusionerne er gyldige for omstridte og fremtrædende spørgsmål, der ligner dem, der er undersøgt. Andre beslutninger, hvor forskellene er mindre politisk følsomme, kan have andre dynamikker.

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Document identifications

IMO documents are identified by a designation consisting of an abbreviation of the name of the body (the committee, subcommittee, working group or other e.g., 'MEPC'), followed by the number of that meeting, counting from the historically first meeting of the body in question. Then, separated by slashes, the agenda item number and the document number. The first document under a given agenda item is not numbered "1" but carries only the agenda item number. The second document is then given the number "1". IMO meeting abbreviations used in this dissertation are:

Identifications	Document from
A .../...	ASSEMBLY
BLG .../...	former SUB-COMMITTEE ON BULK LIQUIDS AND GASES
BWM/CONF	INTERNATIONAL CONFERENCE ON BALLAST WATER MANAGEMENT FOR SHIPS
C/...	COUNCIL
MEPC .../...	MARINE ENVIRONMENT PROTECTION COMMITTEE
SSE .../...	former SUB-COMMITTEE ON SHIP SYSTEMS AND EQUIPMENT
ISWG-GHG .../...	INTERSESSIONAL WORKING GROUP ON GREENHOUSE GASES

On references to documents

In this dissertation official documents issued by the IMO Secretariat – typically reports from the meetings – are cited in the text by their IMO identification number. Thus, the report from the 75th meeting of the Marine Environment Protection Committee is identified as 'MEPC 75/18', since the adoption of the report was agenda item 18. Documents submitted by member states and observers are cited in a similar to academic sources by the name of the submitting member (state) and the year. Thus, the document submitted by the Netherlands to the Ballast Water Management Conference³ numbered BWM/CONF/18 and entitled "Comments on the draft Convention" is cited in the text as: (Netherlands, 2004) and appears in the bibliography as "Netherlands. (2004, January 20). BWM/CONF/18—Comments on the draft Convention. <https://docs.imo.org/>". IMO documents issued by the secretariat are listed in the bibliography by their IMO identification number. All the IMO documents cited appear in Annex D. The document submitted by the Netherlands to the Ballast Water Management Conference will be found in that list as "BWM/CONF/18, Comments on the draft Convention.". The report of MEPC 75 will be found in that list as "MEPC 75/18 Report of the Marine Environment Protection Committee on Its Seventy-Fifth Session". All the IMO documents cited can be found on the "IMODocs" website: <https://docs.imo.org/> to which there is public access, for all who register. The data is arranged by meetings – the top-level menu item is :'Meeting Documents', under which are lists of meeting types, one of which is 'Committee' which includes 'MEPC' –

³ The International Conference on Ballast Water Management for Ships held in 2004

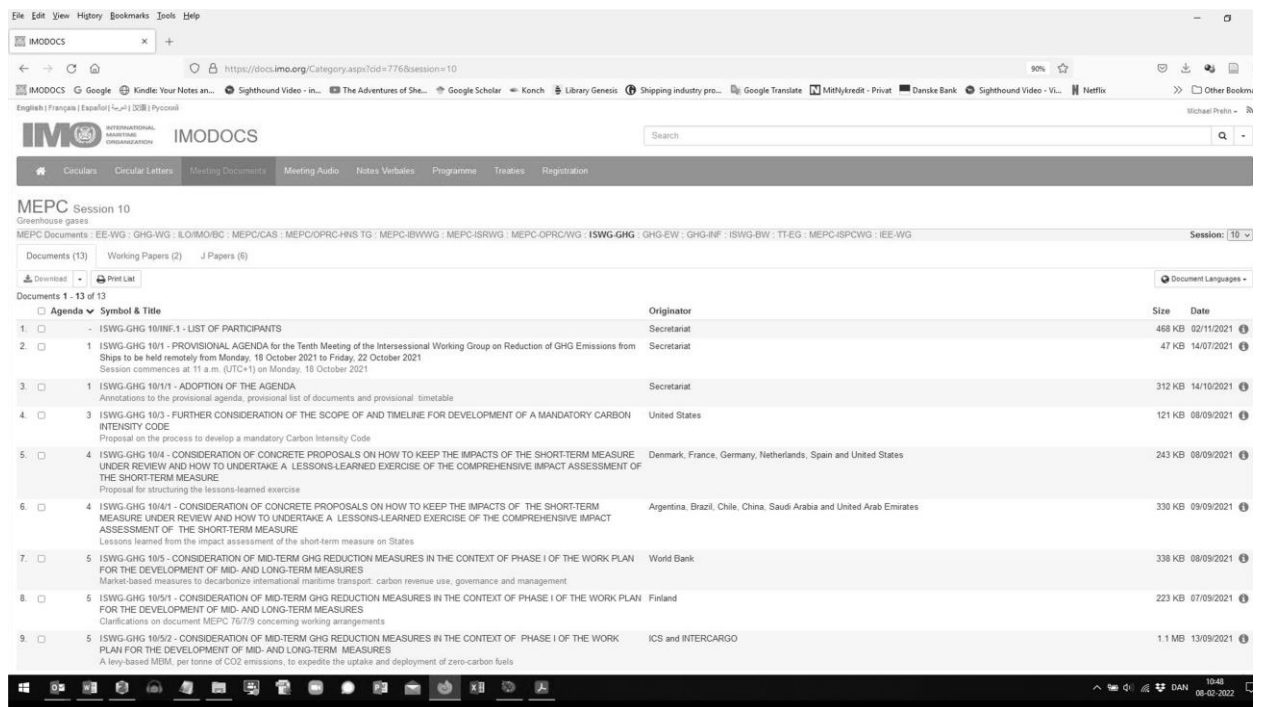


Figure 1 Screenshot IMODOCS

Source: <https://docs.imo.org/>

another is 'Sub-Committee' which includes PPR the Sub-Committee on Pollution Prevention and Response (formerly BLG) under which most documents relating to the ballast water issue can be found. At the top of the main MEPC page is a list of links to documents from working groups, including 'ISWG-GHG', which is the working group that deals with greenhouse gas issues. For all of these meetings a drop-down menu in the right-hand side allows choice of the meeting number see: Figure 1. The plenary sessions of MEPC have been recorded since 2013 (MEPC 65), and the audio is available on IMO DOCS to delegates, but not to the general public.

Other citations follow the APA 7 standard.

Own data

My empirical material was gathered in my double role as a delegate and a researcher, as described in the introduction. This data is collected in named datasets. The contents and the DOI of the datasets are described in Annex F and are referenced in the text in square brackets by the name of the dataset. For example, the [E-mails Dataset] contains four emails sent at the time of the negotiations, the [Notes Dataset] contains notes taken by me during negotiations to facilitate me as researcher and delegate. My reports of meetings are in the [Reports Dataset]. A few place I have made reference to the audio files of meetings, there are not publicly available, but I have included transcripts of the cited parts in the [Transcripts Dataset]. Extracts from about 20 interviews and conversations are anonymised in Annex F and referenced as (personal communication *N^o*) with the identification of the extract. Some undocumented personal communications are also referenced.

Chapter 1. Introduction and overview

Global governance is becoming ever more central to vital issues that affect the everyday lives of all people. The recent pandemic, the preceding financial crisis, the increasing damage that is caused by climate change and as well as other environmental ills are problems that no state can handle on its own. Unlike most international problems facing states, the adversary in many of these issues is not primarily other states which whom one can negotiate, or that one can confront. When the challenges are the indifferent laws of nature, collaboration between states seems the only possibility. International organisations have long been one kind of forum for generating cooperation and resolving differences between states. How states cooperate in international organisations – or fail to do so – is therefore a burning question.

Academics have answered this question of cooperation in international organisations on the basis of theories in International Relations that variously focus for instance on state sovereignty, economic and military capability, the structure and the nature of politics, or on abstract forces such as globalisation. Much of this theory was originally developed to explain war or other types of conflict. Moreover, work on international regulation has often focused more on implementation by states than the path leading to formulation of a rule in the first place (Almklov & Lamvik, 2018; Knudsen & Hassler, 2011). This statist perspective can lead to a view of the international legislator that is oversimplified, and which occludes recognition of a diversity of factors that do not flow from states' capacities and resource endowments yet do still influence outcomes.

The various aspects of globalisation, have inspired many investigations of international organisations (K. Young, 2012, 2014; Hopewell, 2017; Aksom & Tymchenko, 2020; Craft et al., 2021). These investigations have taken an increasing number of aspects into consideration, which can apply across many institutions. Although international organisations are created by states, the participating entities in the activities of international organisations are not necessarily all states, and this has inspired investigation of the influence on international organisations of International Non-Governmental Organisations (INGOs) and corporate organisations (Benvenisti & Hirsch, 2004; Avant, et al., 2010; Tsingou, 2014; Agné et al., 2015; Tallberg, & Jönsson, 2010; Trevisanut et al., 2020) as well as the role of experts and elites separate from states (Tsingou, 2014; Sending, 2015; Seabrooke & Wigan, 2016; Henriksen & Seabrooke, 2021).

The focus of many observers of international organisations has been construction and composition rather than operation of the many different types of international organisation⁴, possibly because these aspects are more easily observed from the outside. Much analysis has gone into the processes of change in international organisations' areas of competence, changes in their membership, and innovations in their methods of work (P. M. Haas, 1992; Stone, 2011, 2013; Tallberg et al., 2014; May, 2015; Tieku, 2019). However, this thesis argues that close

⁴ For examples of types of IO see: (Union of International Associations, 2018).

observation of the process within each organisation is necessary in order to determine how decisions in any one organisation are made. In this context, what must be taken into account is the influence that the current structure and current composition have on the policies that are enacted within international organisations.

Many issues cannot be resolved without transnational agreement, yet these agreements must then usually be implemented by nation states. The agreements reached in international fora must typically be accepted by those states that wish to do so, and then implemented by the adoption of national legislation that corresponds to the agreements. Nevertheless, some states may not wish to do so. States that do, may not necessarily implement them in the same way or at the same time. These differences in implementation often overshadow the differences in opinion and interests that must be overcome before agreement on a regulation can be reached in the first place. Thus, if states have an option of either not implementing an agreement or of implementing it in an idiosyncratic way, the form or detailed content of the agreement may seem less important to them than the interest in reaching an agreement. However, states may have different limitations in how much they can avoid implementing an agreement or implementing it in an idiosyncratic way. These limitations can be due to dynamics such as the power of international organisations, other states, civil society, or a common interest in holding together the agreement, and habits of thought such as moral imperatives. There are many schools of thought that have investigated these factors and illuminated the functioning of international organisations in this light (Carlsnaes et al., 2013). Distinct from these enquiries, my investigation focusses not on the challenges associated with implementation of agreements, but on the earlier phase in which an international organisation through negotiation reaches agreement among the participating delegations.

It is generally acknowledged that current theories of international relations are inadequate to explain all the observed outcomes of negotiations in international organisations. Some results do not seem to coincide with the interests of any actors. This is difficult to understand if negotiations are viewed only as a means of balancing interests. I find it worth investigating how it can be that states seem to accept and to respect decisions, which appear not to be ones that any of them desire. Given that global rules are necessary, one would expect the content of the rules to conform to the wishes of states. Even if a minority can be forced into accepting rules they disagree with, it is surprising that a majority or even the entirety of members states seem at times to do so.

The central subject of this dissertation concerns the influence of the process itself and of the leadership of chairs⁵ and the supporting secretariat in the decision making of international organisations. The cases in this dissertation demonstrate challenges to the assumptions of those International Relations theories that rely on the power and the interests of the participants as main explanatory factors. As demonstrated in the cases, decisions that do not implement previous agreements, also challenge many assumptions about the influence of principles, norms, and the benefits of cooperation. The influence of international business organisations challenges

⁵ In accordance with IMO practice I use the term 'chair' for chairperson.

state-centric views, and yet decision-making in the cases analysed here also challenges common beliefs about the influence of large corporations. The apparent frequent disregard of civil society representatives seen in the cases also seems to run counter to the intensified role of international environmental non-governmental organisations noted by some scholars (Tallberg et al., 2013; O'Neill & Haas, 2019; Hearson et al., 2022). It is therefore necessary to investigate the relationship between the proceedings in international organisations and the outcome in the form of decisions. Even when outcomes can be heavily influenced by specific participants, investigation in detail is necessary to shed light on how that influence is achieved.

Outcomes in Global Governance Who or How?

My investigation of negotiations that result in regulation focusses on one particular organisation: the International Maritime Organization which regulates international shipping⁶. This thesis focusses on the last phase of the process, on the actions within an international organisation that results in specific decisions to regulate shipping. The global regulation of shipping falls into the broader field of global governance.

Maritime transport is a form of economic activity which enables other economic activities. It is a basic service that – similarly to the supply of raw materials or finance – is necessary for other sectors. The particular form which this transport takes (e.g., international container shipping) has implications for the form that economic relations take (e.g., commercial globalisation; because easy cheap shipping across oceans makes distributed production possible). Thus, international shipping is of vital interest to everyone who benefits from globalisation.

The International Maritime Organization (IMO) is the United Nations specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships (IMO Secretariat, 2019). The safety regulations have been much analysed – for instance according to the scheme developed by Mattli and Woods which contrasts situations of supply of regulation and of global due process from international organisations and a broad global demand for change. Failings either on the demand side or the supply have been shown to favour narrow commercial interests rather than broader societal ones (Mattli & Woods, 2009, p. 4). The environmental regulations of the IMO have been less analysed for corporate and state influence. In this context it is useful to note that differentiating between corporate entities and states is not necessarily straightforward. In the case of the IMO, observation in meetings has shown that even behind the cards identifying national delegations the entities are not all states (Psaraftis & Kontovas, 2020).

The form that regulation takes for any particular aspect of activity, will reflect which organisation is doing the regulating, as well as the purpose of the regulation. Organisations such as the International Labour Organization (ILO) and World Trade Organization (WTO) adopt goal-oriented conventions and standards that states translate into specific national law and practice. In contrast, the IMO can adopt detailed rules that apply directly to ships. The purpose of regulation in the IMO is according to the convention establishing it (*IMO Convention*, 1958)

⁶ In this dissertation 'shipping' refers to seaborne transport, and does not include distribution by land or air

to provide machinery for co-operation in an number of areas especially maritime safety, efficiency of navigation and prevention and control of marine pollution from ships. On the environmental issues examined here, there is a widely voiced consensus among states about the importance of urgent action, yet decision-making has until now not significantly challenged the status quo. This lack of progress has in some public reports given rise to an assertion that the purpose of IMO regulation is not to protect the environment, but to support shipping. Recently there have been some instances of public assertion that the IMO is subject to "corporate capture" in the sense that the IMO is unduly influenced by the shipping sector (InfluenceMap, 2017; Merk, 2016). The background of some of these publications has been perhaps more journalistic than scientific, but the topic is relevant, as the IMO in the past few years has attempted to ensure that the maritime sector contributes to the climate challenge (Bodansky, 2016). The opposition that these initiatives have met, are considered by some as evidence of undue influence by commercial interests (Baumler et al., 2021). My research indicates that while some states' interests and some private interests coincide, the explanation of 'capture' is not the single or even a serious contributing factor to the observed lack of progress. Maritime nations do not necessarily accept the evaluations of shipping companies even if they may wish to support the sector (personal communication 8,22). Instead I attribute the lack of progress in the IMO towards effective decisions to the organisation itself, including the influence of the chair/secretariat accommodating a concern of many states, that any regulation of shipping should not disrupt trade (*MEPC 77/16*, 2021, p. 28; *MEPC 78/WP.6*, 2022, p. 12).

The IMO is a semi-democratic institution, in the sense that binding rules can be introduced by a majority of states even against the wishes of others, with the effect that these regulations will then be enforced against all ships, including ships of the dissenting nations. This follows from the terms of the MARPOL and SOLAS agreements as explained in Chapter 3 *The IMO context*. Thus, responsibility for decisions or inaction rests with the organisation, not with external factors that may influence it. Even though there is no central authority or hegemon to enforce these regulations, the structure and nature of the maritime world ensures that the regulations adopted in the IMO will be implemented.

Like other economic activities, maritime transport has impacts on other sectors and on the environment. Thus, regulation of shipping seems inescapable. However, international maritime transport poses special challenges.

International maritime transport has a special nature because it happens between, not across, the borders of nation states. Ships do not only travel to and from states, but also occupy the sea area between states, where no states' jurisdiction applies. The current web of shipping routes is based on the universal access of any ship to any port. If states were to regulate individually, shipping would have to follow all the rules of every state in order to ensure that they – trading internationally – can abide by the rules in any port they may need to visit. This is only possible if the rules are not mutually exclusive. Any regulation that is to be effective cannot be enacted within a single state. Even a large subset of states could not effectively regulate a shipping sector that supports distributed production across the entire globe. International maritime transport must therefore be regulated – if at all – by global rules at least to the extent that trade is

possible. If no formal global rules exist to regulate a given problem or issue, ships must nevertheless make a decision. As mentioned, this decision must for most ships be one that every port will accept, and every port that wished to accept trade must adopt a policy that every ship can follow. Arriving at such a common rule by trial-and-error is inefficient but eventually even uncoordinated actions will coalesce into a collective mode of operation that allows ships to trade. However, this process may take time, and the result may have disadvantages. It is therefore normally to everyone's advantage to have a common rule that is deliberately crafted, even one that does not fully fulfil everyone's requirements. Thus, in the maritime sector the common interest in taking a decision is usually far greater than any individual country's interest in a particular decision, which allows the possibility of countries facing a single unpalatable option as the only alternative to inaction, which would be even more unacceptable than the proposed solution.

Hirschmann (1970) famously conceived the possible reactions to dissatisfaction as Exit, Voice or Loyalty. In the IMO cases analysed here, states are faced with a "Hobson's choice"⁷, as Exit is impossible since IMO rules are applied also to vessels of non-participating states, and Voice (as criticising a decision) is counterproductive as it serves only to demonstrate the fact that the state in question could not prevail. This leaves only Loyalty as an option. The Loyalty in question is, however, not necessarily full acquiescence with the proposed outcome, but may only be the acceptance of the common understanding that regulation of the maritime sector should take place in the IMO. This is, however, sufficient for decisions to be made that many states do not in fact agree with. The cases in this dissertation demonstrate instances of this situation where a single take-it-or-leave-it option is presented, and the option of Exit is actually not available. This is Hobson's choice, that in the IMO is often generated by the process that is managed by the chair.

At present a number of new regulations on environmental issues and climate change mitigation are under debate, and the commercial entities affected – ship owners, cargo owners, shipbuilders, classification societies, ship management companies and others, as well as the states involved, will wish to influence the contents of the regulations and the speed with which they are introduced (Dellmuth & Tallberg, 2017; Corti, 2019). The present research on several such issues will help clarify to what extent the influences of states and stakeholders can explain outcomes and the precise mechanisms of decision-making that may be used to arrive at outcomes.

The research question

How are outcomes determined in international organisations like the International Maritime Organization, that have both state and non-state participants?

⁷ Hobson presented his customers with a single take-it-or-leave-it option: https://en.wikipedia.org/wiki/Hobson's_choice

Methodology

To place the decision-making process front and centre of analysis, I deploy an ethnographic approach to investigating the International Maritime Organization as a particular instance of global governance. My approach is based on my professional experiences. Since October 2020 I have been counsellor for the Solomon's Islands in IMO matters and have participated in all meetings of the IMO Marine Environment Protection Committee and those subcommittees and working groups that focus on climate change related issues. Previously I was for 28 years deputy director of the Danish maritime industrial organisations "Danish Maritime" where my responsibilities included representing shipbuilding interests in the International Maritime Organization on behalf of the shipbuilding industrial organisation CESA, as well as collaborating with Danish and EU authorities. My focus was on environmental protection and safety issues and providing advice on maritime technology and regulation. I was for 3 years a lobbyist in Brussels for a Danish Employers' organisation "Jernets Arbejdsgivere", and previously for 10 years a civil servant in the Danish Ministry of Economic and Business Affairs, which included four years of posting to the Permanent Representation of Denmark to the EU. I therefore have considerable experience in international regulation both in the EU and the IMO. It has been remarked (Adler-Nissen & Drieschova, 2019, p. 532) that scholars' ability to identify all relevant phenomena is limited by the difficulty of having access to the negotiation table, unless you are one of the negotiators. For that reason, my research is focussed on issues where I have the access of an active participant in the negotiations.

My experiences in the IMO have provided material about the fashioning of outcomes for which I wished to find an explanation. Existing theory seemed inadequate to explain what I have observed.

Direct participant observation is very useful to identify actions and observe the consequences, but it will be limited by the access available to the observer, and by the number of observers. As an active participant, and therefore close enough to observe the details, I have in each of the cases under consideration been advocating for certain outcomes and have been focussing on the details that were most important to my delegation. Initially as representative of CESA, I represented a B-NGO with a somewhat neutral position between the ambitious and less ambitious delegations, later as representative of Solomon Islands I represented a very active and very ambitious delegation. The policies of my changing delegations thus introduced preferences of focus and of understanding and this presents the possibility of misreading of events. I have made the preferences of my delegations clear so that the reader may take this into account. Being only one person, the physical observations were limited to situations where I was present. Observing more of the process thus required other sources of information such as interviews of the participants and document analysis of minutes, notes, reports etc. from other participants at the time of the negotiations. While my personal observations cover a large part of the actions in each of the cases, these are therefore supplemented by written material and interviews (see also Annex F).

Choosing the Cases

The three cases have been chosen to illuminate the way the IMO arrives at the content of outcomes in three types of decision. The cases were chosen to represent different types of regulation as well as for their salience, to present cases that are important to many stakeholders, rather than issues of interest only to a few. If all or most delegation attach importance to influencing the decisions, an analysis of influence will be able to perceive how – or if – even unlikely influencers, who may have impact, achieve this. For practical reasons I could only follow one negotiation at a time. The climate change issue was chosen as the most prominent issue that is before the IMO. On that topic the IMO adopted first a simple process decision containing a strategy, then a formal amendment to a binding convention, each of which is a case. This entailed that I select for my third case a different kind of outcome – introducing a new convention – that would have a similar saliency. I chose the Ballast Water Management Convention for reasons that will be detailed next.

The cases are not described in chronological order, but in order of the clarity with which they demonstrate the validity of my argument, which also is in order of decreasing complexity. Chronologically the period addressed in the Ballast Water Management Convention (case 1) was from 2007 to 2017, the period associated with the Initial Greenhouse Gas Strategy (case 3) was from 2017 to 2018 and the period covered by Implementing Greenhouse Gas Strategy (case 2) was from 2019 to 2021. Although case 2 implements the strategy adopted in case 3, each of the cases can be followed without detailed knowledge of the other.

Case 1 The Ballast Water Management Convention

The first case concerns the entry into force of the Ballast Water Management Convention⁸, which is a new stand-alone convention that was adopted in 2004. It required ratification by at least thirty States, representing at least 35% of the gross tonnage of the world's merchant shipping before it could enter into force. The issue to be decided was whether to assume that technology necessary for compliance would be available, and if not how to address this matter in order to encourage ratification. This problem was not resolved, and the convention entered into force with a partial "gentleman's agreement" not to fully implement it.

I have chosen this case over alternatives to this kind of case, which could be the Anti-fouling Convention or the Hong Kong Convention. The Hong Kong International Convention for the safe and environmentally sound recycling of ships which was adopted in 2009 is aimed at ensuring that scrapping of ships (recycling) does not pose any unnecessary risks to human health, safety and to the environment. The text of the convention was developed over three and a half years, it enters into force 24 months after ratification by 15 States, representing 40% of world merchant shipping and at least 3% per cent of ship recycling volume. This threshold was reached on 26 June 2023 and the convention will enter into force in 2025. The International

⁸ Ballast water is carried by ships, when the weight of the cargo is insufficient to keep the propellers or the hull sufficiently under water. It is thus taken on board in ports where cargo is unloaded and pumped into the environment where cargo is loaded. This water contains maritime living species, which may become invasive.

Convention on the Control of Harmful Anti-fouling Systems on Ships was adopted in 2001 and entered into force in September 2008 after ratification by 25 states representing 25% of shipping. It establishes a mechanism to prevent use of harmful substances in anti-fouling systems in anti-fouling paints used on ships. Currently two substances are prohibited. I participated fully in the negotiation of the Anti-fouling Convention and partially in the Hong Kong Convention. The negotiations of these two conventions took place before 2013 which is the year from which recordings of the proceedings are available on the imodocs website. These recordings are valuable as a necessary supplement to my notes, which before 2019 were taken only as a delegate, not as research notes. The recordings also offer an opportunity for other researchers to check my observations. The Ballast Water Management Convention remained under negotiation until 2017. Thus, for a case representing a new convention the Ballast Water Management Convention seems optimal.

Case 2 Implementing Greenhouse Gas strategy

This case consists of decisions to reduce the GHG emissions of ships. The issue was how stringent the measures should be and to which degree they should fulfil the requirement of a previously agreed strategy (Case 3). Knowledge of the content of the strategy is not necessary to follow this case. The decisions to be taken have the form of amendments to MARPOL that can be adopted by a majority of parties to the MARPOL Annex in question (Annex VI). They will enter into force automatically unless objections to the amendment are received from a specified number of parties. They thus illustrate binding decisions that can be implemented even against the wishes of some states. Only the first, short-term measures are covered in detail, as the mid- to long-term measures are still under debate. The short-term measures adopted were unambitious no significant change compare to expected developments, and insufficient to fulfil any of the requirements of the strategy they were supposed to implement.

Alternative possible cases could be the amendments to MARPOL Annex VI concerning strengthening the limit for sulphur content in fuel oil, or those implementing the data collection system for fuel oil consumption of ships. While these were also contentious decisions, I have chosen the implementation of the GHG strategy, since it is more important to many stakeholders, and it allowed direct comparison of participants' position across two types of decision. A practical additional reason is that it allowed observing negotiations that took place after the beginning of my PhD research.

Case 3 The Initial Greenhouse Gas Strategy

This case covers the adoption of the Initial Greenhouse Gas Strategy, which is a simple decision that could be adopted by the MEPC committee by a majority vote, and which has no legally binding provisions. The question to be resolved was the level of ambition of the strategy and the relationship between the IMO process and the UNFCCC. The strategy adopted was not negotiated in detail but presented incrementally by the chair. In spite of wide dissatisfaction, it was accepted with near unanimity. It is the clearest case demonstrating the influence of the chair

Possible alternatives to this case could be one of the many guidelines adopted by MEPC to interpret or detail existing rules. There are for instance about 140 such decision on the IMO

website Index of MEPC Resolutions and Guidelines including about 100 related to MARPOL Annex VI (*List of Air Pollution Guidelines*, 2023). These guidelines are, however, often very technical and do not draw the attention of many delegations particularly not small ones, and so I have not followed all of these adoptions. A better alternative than technical guidelines could be the "Strategic Plan", the latest of which was adopted by Resolution A.1110(30) for the period 2018 to 2023 and revised in December 2021. However, this is also a debate that I did not normally follow, and I have assumed that most other small delegations are similarly not engaged in these decisions. These decisions would be suitable for determining the influence on the details of legislation by those delegations who have the resources to participate. They would not be suitable for determining how major decisions could – or could not – be influenced by smaller delegations including INGOs. The Initial Greenhouse Gas Strategy, by contrast, aroused the interest of many states both large and small, and of the observer organisations, and so can be an example of how decisions are made in areas where all potential stakeholders engage with their specific preferences

The Structure of the Dissertation

The dissertation is structured as follows:

Chapter 1: Introduction and Overview

Introduces the research question and gives an overview of structure of the work as a whole and frames the overall argument of the thesis. Which is that the chair/secretariat can play a crucial role in independently determining outcomes. I justify the choice of the cases and introduces why they are useful for the questions asked and what the specific outcomes in each case were.

Chapter 2: Theoretical/Conceptual overview

Gives an overview of the relevant theoretical literature and what concepts are deployed in the thesis. It considers theory at the level of states and regimes and closes in on process and the role of the chair, and how the chair acting with support of the secretariat should be treated as a position of considerable influence. I present my conclusion that the chair is not merely a mediator but is able, where no common area of agreement has been found, to present the choice of a single option, and so can create and relatively autonomously define an outcome that does not necessarily conform to any participant's preference.

Chapter 3: Overview of the IMO

Provides an overview of the IMO necessary to understand the details of the cases. It includes a brief institutional history and description of relevant actors. It explains the different types of decisions that can be taken within the International Maritime Organization, and the structure of committees and working groups in which the negotiations take place. This chapter also give an overview of aspects of the maritime world that are necessary for understanding the case material.

Chapters 4-6 contain my cases, which are not described in chronological order, but in order of increasing clarity as concerns the influence of the chair.

Chapter 4: case 1 – The Ballast Water Management Convention⁹

This case concerns a lengthy delay in ratification of a stand-alone convention, due to concerns about the availability of the necessary technology. It analyses the influence of the shipping industry, who raised the concerns, and that of states, who were unable to resolve them. While it seems apparent that the shipping industry was influential, the actions of the IMO Secretary General, and a particular subgroup chair, were necessary to introduce the first of a series of (non-binding) resolutions that were adopted to postpone the requirements. As entry into force became imminent this precedent enabled an outcome that attempted to change the convention by means of a resolution, something that had previously been rejected. A last-minute amendment to the convention just before the entry into force shows a decisive influence of an individual, which was only possible with the chairs' support. The process is described, and sequences of events are analysed for influence exerted by INGOs, states and the chair.

Chapter 5: case 2 – Implementing Greenhouse Gas Strategy

This case concerns a binding change of the MARPOL convention ostensibly implementing the initial Greenhouse Gas Strategy, which is the subject of case 3. However, the mandatory requirements do not go beyond what could be expected from "Business-As-Usual" improvements in energy efficiency, and thus does not in fact implement the strategy. The shipping industry had significant influence on the lack of result, and the influence of the COVID was noticeable. The chair steered the decision in the direction of a 'laggard' group that was sometimes a plurality sometimes a majority, discounting a more insistent, but split, high ambition group, that was also occasionally a majority. The chair chose an outcome that a majority finally accepted. The analysis of the sequence of events is separated for influence exerted by INGOs, states and the chair

Chapter 6: case 3 – The initial Greenhouse Gas Strategy

This case concerns a controversial non-binding aspirational resolution, which in spite of protests, was accepted by a majority that was close to unanimity despite not reflecting the preferences of the largest and most active nations, nor the largest organisations. By issuing a sequence of informal papers the chair of the working group created a situation where the vast majority of states accepted a proposal, that had not been negotiated in the group. The analysis of the sequence of events is again separated for influence exerted by INGOs, states and the chair.

Chapter 7: Discussion of the 3 cases

On the background of the cases this chapter explores the ways in which outcomes do not systematically correlate with the preferences or intentions of any country or group. The outcomes that were not necessarily desired by anyone, were accepted when no other alternative was available, and the option of not deciding was deemed impossible. The chairs' influence on the process of determining an outcome is compared to other influences.

⁹ The International Convention for The Control and Management of Ships' Ballast Water and Sediments, 2004 (*BWM/CONF/36*, 2004)

Chapter 8: Conclusions

This contains my general conclusion that the sequence of events can limit possible outcomes, and that the chair can override the preferences of states and relatively autonomously create and define an outcome, that is not merely a mediation between the positions of the various parties. The IMO has its own dynamic that ensures that decisions will usually be reached (personal communication 28). Negotiations in the IMO thus have the potential to break through the stalemates that impede many other international negotiations on climate issues.

Chapter 2. Theoretical/Conceptual overview

The present dissertation adds to the studies of how decisions are arrived at in international organisations. The organisation studied has membership that includes most states and a large number of organisations, including INGOs. Its focus includes international environmental politics. There is a wide range of theoretical analyses of international organisations, that explain global environmental politics and multilateral environmental agreements. In the following review of literature, I seek to focus on the path from the preferences of participants to the specific outcome of a multilateral negotiation and identify where existing theory can be complemented.

I initially consider those schools of thought that focus most on actions of states. There is a conventional notion that states act in their national interests and attempt to maximize their power. So, it is necessary to consider how one may ascertain the interests of states and how they may be conveyed to the international organisations. In this context principal-agent theory is often used in the consideration of negotiations in international organisations. However, my purpose is to look into the details of the process. I consider the large-scale influences of the interests and preferences of the participants as the canvas upon which the working of international organisations take place, and I therefore narrow my focus to the actions of the agents inside the international organisations.

Accordingly, I relate mainly to theory that opens the interior of negotiations and seeks to illuminate the inner workings of international organisations and regimes. This includes the effects of structures, principles and norms, knowledge and other soft influences that have an effect on the decisions taken by the international organisations. My study reveals the necessity of close observation of the process and practice of negotiation. I build upon those authors who identify the ways in which the chair and secretariat steer and control the processes and thereby have a significant influence on the outcome of deliberations. This is the scholarship to which this thesis contributes. My contribution is supplementary to extant work that usefully foregrounds the role and influence of process, the chair and secretariats. This thesis supplements work that assigns significance to the negotiating context, process and practice with evidence that the chair and secretariat have more than a mediating function and can autonomously define outcomes that can be presented as the only possible decision. When referring to either the chair or the secretariat, I intend the chair, acting perhaps as the instrument of the secretariat, or the secretariat acting under instructions from the chair, without attempting to discern these situations from one another. The close relationship makes a distinction futile (personal communication 10).

States – interests and preferences

Global environmental governance has attracted much scholarly attention. It can take place in many fora, and my focus is on one particular international organisation, the International Maritime Organization. Much of the scholarship interested in international governance has taken as a point of departure the interests and preferences of those negotiating in international organisations. The functioning of international organisations is then explained via the actors'

interests and attributes, and how these condition the interactions of actors in negotiation processes. Since the purpose of the negotiations is to arrive at a common understanding in spite of different interests, it is reasonable to compare the results to the interests represented. In universal organisations like the IMO with multiple issues under consideration, a mapping of all interests is naturally not possible. Focus is therefore often on only a few states. These are often identified as "major", "powerful", "central" or "important" states, or historically as "great powers" (Bjola & Kornprobst, 2018; Lake & Powell, 2020; Mearsheimer, 1994). These few states will usually be ones that are a priori considered relevant. The interests considered are often only those that these states have in relation to other "major" states, and thus very little light will be shed on whether interests of others may be influential. Focussing on the process and the actions that take place can potentially reveal influence from such other interests.

However, the interests even of major states are difficult to identify unequivocally. The underlying interest(s) that any actor is seeking to accommodate can be difficult to perceive, as these types of considerations are seldom publicly debated. They may even deliberately be hidden. In interviews negotiators have expressed that even internally, underlying interests may not be agreed and that delegations can be working with only vague instructions. The negotiating process may change the 'red lines', even of large states (Odell, 2009, pp. 280–281). It is thus valuable to distinguish fundamental interests and longer-term goals from more immediate preferences, that are sought in the negotiations. In my research it is these immediate preferences that I follow. I understand them as those presented in official documents and proposals and as put forward orally (also in less formal contexts). However, I do not assume that these expressed preferences are the true longer-term interests or intentions of those expressing them.

To clarify the distinction; the interests of a country like Norway that is both an oil producer and a major shipping nation, as well as an active participant in IMO that has ratified most if not all IMO conventions, could for instance imply certain longer-term goals such as supporting IMO as the regulator for shipping and avoiding sudden changes for shipping in general. But a preference expressed in a negotiation about a GHG Strategy would for instance be for a level of ambition of 30% reduction by 2030, and a preference expressed in a negotiation about a specific measure might be for gradual introduction of requirements for ships over some years¹⁰. Identifying preferences is more straightforward than identifying the interests or subset of interests, that the country may consider relevant in each case. Nevertheless, the identification of real intentions can be challenging.

Tactical information concealment is a common practice of negotiators (Raiffa, 1982; O. R. Young, 1991). It can be relatively easy to observe the negotiating position or claims that a state puts forward, but this may not reflect the actual preferred outcome that the negotiator is seeking. It is quite common for negotiators to conceal information about their goals. Negotiators will often reveal as little as possible of their actual goals so as to avoid being pressed too close to their "red lines" (Blavoukos & Bourantonis, 2014, p. 3). See also for instance Odell, describing

¹⁰ These are just hypothetical examples to explain the concept. They do not reflect any assumption about Norwegian interest or preferences

how negotiators can have an incentive to misrepresent positions by exaggerating the available alternatives to an agreement, rejecting proposals that would in fact be acceptable and suggesting discontinuing the negotiation in the hope of gaining concessions (Odell, 2021, pp. 287–288). Misrepresentation of one's own preferences can also take the form of maintaining that one's position is based on lofty principles rather than self-interest. For these reasons it is only with some uncertainty that one can assume which goals a negotiating delegation is actually pursuing.

It is thus useful to distinguish interests from preferences. Like Frieden (2020) I use the term 'preferences' to distinguish an actor's preferred outcome from the strategy pursued to achieve it. Frieden argues that it is possible to observe only the behaviour of states and their leaders but not to know their true motivations, and therefore regards the preferred outcome as the relevant concept. Frieden, however, finds it impractical to deduce preferences from observations of actions. The difficulty arises because what is observed in negotiations, is caused both by underlying preferences and by consideration by the actor of the impact of the action on other participants. Frieden prefers to deduce preferences from attributes of the actors. In the first of two examples Frieden considers the area of trade policy. Simple initial assumptions about preferences of firms have been progressively extended with more general attributes such as the impact of factor endowments, the scale of industries and international diversification. Explicit consideration of the influence of such observable factors on trade-policy preferences have resulted in better research, at least to the degree that researchers agree more easily on how to formulate and evaluate their differences. In the second example Frieden examines scholarly debate about the causes of imperialism. Here Frieden finds that conflating differences in preferences with differences in strategic settings that constrain objectives, had prevented progress in resolving the principal explanatory issues. Frieden points out that a disagreement, that appeared to be about the role of interstate competition was in fact due to different assumptions about preferences. These assumptions were based on what countries and groups did, and did not distinguish actors' preferences from the setting. This resulted in unclear debates, untestable propositions or unobservable implications. For this reason, Frieden suggests that some preferences have to be assumed for states, as they cannot be observed directly.

Deducing preferences from statements and proposals can reduce the problems arising from the fact that positions taken in negotiations do not always align with interests assumed from attributes. It also avoids the issue that preferences arising from constant attributes would be constant and align across issues, which observations show that they do not (Moravcsik, 1997). Deducing preferences from statements avoids the assumptions that they would align between states with similar attributes or differ for states with different attributes. Depledge (2006) observes that that members of the G77 grouping form alliances almost exclusively inside the G-77, despite the great diversity of its members (oil exporters, low-lying and small island states, emerging industrial powers, very poor rural economies). The alliances do not show this divergence. If it were only attributes that ultimately determined such alliances, one would expect that in some issues of limited interest to all G-77 members, alliances would form comprising only a minority of G-77 members with countries outside the group. Depledge notes that this does not seem to happen. Apparently objective, substantive interests deduced from attributes are thus insufficient to explain positions taken by governments in international negotiations.

The risk in assigning preferences and interests from attributes is also that of a circular logic. If actors' interests are inferred from sources of power such as economic strength, and influence is also assigned on that same basis then attributing the outcome of a negotiation to a large economic actor leads to a circular conclusion. I therefore argue that preferred outcomes should be determined as an exercise that is separate from that of exploring underlying interests or determining who is powerful or influential.

The preferences of "interesting" states are often considered to remain constant either for practical reasons of research design, or for ontological reasons (Frieden, 2020, p. 44). This, however, elides the practical observation that states do change negotiating positions. Also, constant sets of preferences would not explain how different results can emerge from separate negotiations on the same subjects involving the same states. Case 1, The Ballast Water Management Convention shows that the group of states that had agreed upon the convention did not allow it to enter into force despite the interest they must be assumed to have had in its implementation. Case 2, Implementing the strategy, demonstrates that the group of states that had agreed on the strategy that was adopted in Case 3, did not implement what they had agreed. The preferences of the states between each of these cases seems not to be constant. However, in order to evaluate which preferences influenced the outcomes in each of the cases, I do assume constant preferences for the participating states throughout each case.

Statements about results are not reliable indicators of preference. If an unsatisfactory negotiated result is reluctantly accepted by a participant, public statements about it immediately after the result must reflect this acceptance. At least two factors will tend to encourage a positive evaluation. One is the probability that the result was deemed acceptable as the best that could be obtained at the time. At that point in time the result is evaluated against the probable outcome if it had been rejected. Earlier in the process, and in the very beginning of a negotiation each possible outcome would be evaluated against both the status quo and against an optimal outcome. Thus, the acceptability or otherwise of a given outcome will vary with circumstances. This is the result of negotiation position usually being constantly evaluated during the process. As described in "Diplomacy and the Making of World Politics" (Adler-Nissen, 2015, p. 288) negotiations require an ability to make compromises, and goals may change as the parties learn more about the issue and about their opponents.

Another factor is the desire to appear as much as a 'winner' as possible, and not expose one's possible lack of power to gain what one wanted. For the career diplomat and the professional lobbyist there is a necessity of portraying one's employer, whether a country or an organisation, as influential, since future negotiations will be affected by the impression others have. For states and organisations power in negotiations is an important attribute, and it would be counterproductive to publicly accept losing in a negotiation. These kinds of mechanisms are explored in the works of Erving Goffman, and related to diplomacy by Rebecca Adler-Nissen (Adler-Nissen, 2012; Goffman, 1956). The same processes are at work in case 2. The ambitious countries did not achieve an acceptable result yet welcomed the short-term measure adopted, as if it were a success, thus avoiding exposing their lack of ability to ensure full implementation of the initial strategy.

There is wide agreement that states seek power, but the central concept of 'power' is unclear and there is no consensus about how it works or what it is. Outcomes of negotiations within international organisations are traditionally seen as determined by the actions performed by various actors, each motivated by their interests, and translated into the decisions of the organisations by a causal force – such a cause often described as power. (E. B. Haas, 1964; Wight, 1986; Abbott & Snidal, 1998; Finnemore & Goldstein, 2013). There is wide agreement that power exists in multiple forms, and that power, however defined, determines at least some outcomes. There is also wide agreement that it does not inevitably lead to specific predictable outcomes of negotiations (Cox et al., 1973; Wight, 1986; Barnett & Duvall, 2005b). Power is thus a relevant concept, but it should not be conflated with authority and influence (Jinnah, 2014, p. 71). In order to distinguish them clearly, I will consider power as a potential that may or may not be exercised. I consider authority to be the legitimate use of power, and influence to be a result of actions. I consider authority to be directed towards a desired outcome, which may or may not be achieved. Influence is usually assumed to result in a desired outcome, but I include both intended impacts and unintended consequences of actions.

There can be power to prevent action as well as to impose it, including the power of agenda setting. Power can include coercion, the ability to persuade – or even mobilization of bias. In the seminal book *The Anatomy of Influence: Decision Making in International Organization* Cox et al. (1973) compare power with influence in international organisations. They consider actors in the categories of representatives of governments, representatives of national and international private associations, representatives of international organisations, executive heads of organisations, officials that are members of the bureaucracy of the organisation in question and private individuals. For each organisation analysed, Cox et al. consider which of these categories of actors typically have influence on the outcomes either as an Initiator, a Vetoer, a Controller or a Broker, showing diverse routes to influence. In "Power in global governance" Barnett & Duvall (2005a) offer another taxonomy of power resulting in the ubiquitous two-by-two table distinguishing direct or diffuse actions on one axis and specific actors or social relations on the other. This results in the categories of Compulsory, Institutional, Structural and Productive Power. Compulsory power is direct control of one actor over another. This is relatively rare, but it is for example what allows the chair to instruct secretariats to phrase the reports of meetings in specific ways. It also allows chairs to limit speaking time. Institutional power uses rules, norms, and procedures that can privilege or constrain actors' participation over that of others. Chairs have this type of power and can use it for instance by structuring agendas or by calling delegates to separate meetings. Productive power concerns systems of knowledge and practices that give capacity for action. Secretariats can for instance use this kind of power by organizing workshops and distributing studies and reports to state actors. The credibility and expertise of secretariats can give their advice power. Structural power works more indirectly for instance by shaping how interests are presented, conceived and understood. In a definition of structural power Strange (1998, p. 31) identifies as crucial the ability to change the range of choices open to others, without putting pressure directly on them to take one decision or to make one choice rather than others. Structural power is not always wielded deliberately by the negotiating parties and in the case of the IMO is also seen for instance in the generally held

assumption that shipping should not be hampered 'unnecessarily' by regulation. This is the kind of power chairs have when they summarise a debate and describe agreements or differences. The core of how the chair can independently choose outcomes is the ability to authoritatively define the questions being asked and to tally the support or opposition.

These various categories of power are not mutually exclusive. They recognise consideration of power that is not materially based. Barnett & Duvall make reference to scholars' general "awareness that power works in various forms and has various expressions that cannot be captured by a single formulation" (Barnett & Duvall, 2005a). Power is real but elusive. States may have it, but consideration of power should not imply that states are the only source of influence.

Another categorisation divides power in four "faces": coercion, manipulation, domination, and subjectification. Each face may play out on four "sites": power "in", "through", "over", and "against" an organisation." These faces of power may be exercised in individual cases ('episodically') or less visibly through continuing organisational relations (Fleming & Spicer, 2014, p. 240). For my purposes of explaining decisions in international organisations not all will generally be relevant, but it is useful to recall that even when certain types of power normally dominate, others may occasionally play a role. In Cases 2 and 3 (the climate change related cases) the influence of small pacific island developing states (PSIDS) in the IMO has for instance been enhanced by the creation of a fund which receives voluntary donations (from developed states) and facilitates participation by developing states in IMO climate negotiations. This fund was created on the initiative of Belgium, Chile and 3 PSIDS, and it is managed by the IMO secretariat. Arguably, these states and the secretariat have thereby influenced the negotiations "through" the IMO organisation. While this thesis focuses on the way these influences play out and have their effects during the negotiations, it is necessary to recall that the basis for the actions of the participants are these many forms of power.

Power is often associated with capabilities or resources. The "high politics" of war and national security is the focus of much of the literature on International Relations. Power in "low" politics is often less of a concern which may elide any features that are important mainly in "low" politics contexts. Literature tends to equate power resources with military might or economic production (GDP). Wight (1986) considers power to be composed some basic components such as population, geographical extent and economic resources, and also of less tangible elements like efficiency, education and technological skill, as well as moral cohesion. In International Relations power is associated usually with states only, and indeed often with some states only. Wight's remark "quarrels between small powers seldom harm anybody except themselves" (Wight, 1986, p. 100) indicates that small states tend to be neglected. The influence of relative power on the actions and influence of smaller states is thus left under-investigated. A recent analysis describes the influence of the Marshall Islands in a specific issue in the IMO as stemming from "one of the smallest and poorest states" (Corbett et al., 2020). In the IMO context it may be more relevant that the Marshall Islands is one of the worlds three largest flag states. Case 3, the Initial Greenhouse Gas Strategy, analyses the same sequence of events as Corbett et al., but differing from them I do not evaluate the power and the influence of the

Marshall Islands in that process as a small state achieving a desired result against powerful opposition. I see only a limited impact of the preferences of the Marshall Islands on the outcome, but the actions of the Marshall Islands were a significant part of the process that ensured that some kind of result would be achieved.

Differences in resource endowments do not always convert to power and influence on outcomes. In "Back to Basics: State Power in a Contemporary World", Finnemore & Goldstein, (2013) edit a volume that analyses different forms of power and different types of actors. They consider that power arises because actors are unequal in some aspect and this inequality can be used to determine political outcomes. The existence of powerful non-state agents and autonomous institutions is seen to challenge previous ideas about how states' own power works. Finnemore & Goldstein conclude that the essays in their volume demonstrate that the existence of states' power is a useful but incomplete explanatory factor. On the other hand, they show that rule-based international regimes that are designed to favour of the weak, may create dynamics that favour the great powers. Abbott & Snidal (1998) argue that although powerful states can structure international organisations to further their own interests, they must give some power to otherwise weaker states in order to induce them to participate. Thus, they see power of other entities such as international organisations or civil society as channelled through powerful states. The re-focussing of power often still has its main focus on large states, which may elide the independent roles of other actors, smaller and non-state. In case 2 a Business INGO¹¹ with sufficient resources could seize the initiative and did so in the absence of IMO or states' actions.

The negotiating power of powerful states results also, according to Moravcsik & Vachudova (2003, p. 44), from the somewhat counterintuitive idea, that those who gain the least from a negotiation result can have the largest influence on it. Moravcsik & Vachudova argue, that those who would gain most from an agreement are most willing to accept sacrifices to achieve it. Conversely those who would gain the least are least willing to compromise or accept losses. The willingness of states to expend resources or make concessions is thus primarily a function of preferences, not of capabilities, so that bargaining power aligns inversely with strength of preference. But since richer and larger states, will normally see relatively smaller gains from any international arrangement than poor states can expect, it is still the largest and richest states that are expected to have the most influence. This idea is useful for the realisation that strength of preference need not align with capabilities and may not be constant over time. The power of a given state may therefore be expected to vary with the problem being addressed and with the forum in which it is exercised.

Just as interests and negotiating positions can change over time, the influence of individual states is not constant even when their interests and negotiating positions are constant. This could be due to variation in capacities (economic, military, political), but such changes are not immediately reflected in influence in international organisations (Kaya, 2015). To explain this, Kaya introduces the concept of an adjusted power approach. Changes in economic power of states influences the power of those states within an institution, but this effect is contingent upon

¹¹ I refer to these as "B-INGOs" to differentiate them from other non-governmental organisations

the institutional setting. Institutional conditions can thus determine the significance or non-significance of changing capacities and differential developments between states. This argument also applies to other capacities or factors that lead to influence. They may not always or immediately lead to the same influence in all fora. Since institutional conditions vary between institutions, generally or historically powerful states do not necessarily wield the same influence in all organisations (Cox et al., 1973, p. 3). The International Maritime Organization, which has a limited scope of its mandate, includes some smaller members who in some respects have more capacity than larger states or entities. Examples are flag states, like Denmark and Norway, or a port state like Singapore that are smaller countries than most but have many maritime resources. It is therefore necessary to observe the influence and capacities of specific actors, including possible influence of institutional conditions and variations in the relations between them.

A concept related to power is that of hierarchy in international relations. The term is often used to describe a ranking order of states as well as persons. Lake (2011, p. 61) describes hierarchies of states as set of dyadic relationships and sees the authority of one state over another as a social contract that exchanges order or security for compliance and legitimacy. There are other views, and the review by Mattern & Zarakol (2016) gives an synopsis of recent work that shows that some analyses of hierarchies of states see them not as trade-off bargains but as constructed by features of the environment in which actors find themselves and where the hierarchical position implies having certain interests. Often hierarchies are seen in the contexts of national security and as dyadic dominance (Wight, 1986; Clark, 1989; Lake, 1996; Bukovansky et al., 2012; Sharman, 2013), which can shed little light on how hierarchy between states may influence relations between multiple states in multilateral fora.

Some instances of how states preferences may be influenced by their perceived position in the hierarchy of states are the "special responsibilities" attributed to particularly the United States by Bukovansky et al. (2012). Based on three cases viewed through negotiation results (not process) Bukovansky et al. consider goals stimulated by "Spiderman ethics", which imply that "with great power comes great responsibility", thus not deriving the actions of states from pure self-interest. Another example is Towns (2012), who posits that policies can be affected by the unequal standing of states generated by norms. In the context of norm diffusion, a particular standing of a state as "modern" or "developing" as opposed to "traditional" can influence adoption of specific policies. Towns' case is the diffusion pattern of legal sex quotas through countries. The Countries' perception of their position in the hierarchy influenced the policies taken on legal sex quotas. A similar effect could be expected for environmental policies. Since hierarchy can stratify the individuals in a negotiation as well as the entities they represent, the concept will be also useful in theory that looks more closely at the decision-making process.

Irrespective of how the preferences of individual actors are generated, the actions undertaken to further these preferences will depend both on the capabilities of each actor and on the type of problem and the importance attributed to it by the actor. Cox et al. (1973) use salience and the type of problem to differentiate between types of international organisation. For problems similar to climate change and environmental issues, which are assumed to have high priority for powerful countries, Cox et al. opine that such issues will (continue to be) under the direct

control of those powerful states. Cox et al. considered this to be the most effective way of handling "important" business and expects such business to be handled in organisations where states dominate the decisions. These types of organisation are termed "oligarchic", and the organisation type is deemed "almost by definition" to be dominated by the most powerful states (Cox et al., 1973, p. 429). Other decisions that less immediately affect powerful states can then in this view be treated in organisations where the executive head or representatives of poorer countries and the secretariat can have the more influence, or where the actual participating persons or other groupings (mainly subsystems of states) outside the international organisations can dominate decision making. This excludes the IMO from the category of "oligarchic" organisation because its mandate is limited to shipping, but at least in treating aspects of climate change the salience of the issue is such that the outcome should have high priority for powerful countries. My cases can shed light on decision-making instances where both powerful and less powerful states have interests. I am assuming that all three of my cases are likely to have sufficient importance for all states to wish to have influence. In Cases 2 and 3 (the climate change related cases) the interest in each state will most likely be wide. In case 1, the interest in each state will most likely be centred in subsystems of environmental or shipping interests. I observe that in none of these cases are outcomes decided only by "powerful" states.

Moravcsik & Vachudova (2003) unpack the unitary state as an actor, and find that it is structural forces inside states that coalesce into national interest. Substate groupings have interests that underlie states' positions and can determine the content of agreements between states in international organisations. Seeing the state as a non-unitary actor can help explain why states' interests, policies and negotiating positions can change from situation to situation even though the underlying realities and even the political leadership may remain the same. Substate groupings may gain or lose influence on policies for internal reasons. This view of Moravcsik & Vachudova thus considers that while states are the fundamental actors in world politics, each state represents at a given time only some subset of their domestic society. The influence in international fora of changing national subgroups is seen as being wielded through states, and the amount of influence on the resulting agreements thus stems from the power of states. The concept of non-unitary states and subsets of domestic society is also relevant where internal groups in states can act directly in the international sphere through INGOs. This is the case in the IMO, where shipping interests can be significant internally in some states and also represented in the IMO in B-INGOs.

In this context it is an issue how a state or substate ensures that those acting on its behalf in international organisations perform as expected. This 'principal-agent' issue has received much attention but will not be detailed here. My focus is on the decision-making process within the IMO and the mechanisms of gaining influence. Any substate influence wielded through states or INGOs will simply be considered an interest of that state or INGO. I simplify my task by considering the preferences expressed, and not the underlying interests and for this purpose it is thus less important whether the preferences expressed by delegations conform to the interests of the principal state or INGO, or of any grouping. The issue is, however, important for the consideration of which possible solutions can be accepted by the participants. Negotiators must identify which solutions lie within the 'win-set' that their instructions from the principals allow,

and the perceptions and skills of the negotiators play a role in this determination. The concept of win-set was explained by Putnam (1988) as the set of solutions that can be negotiated in the international setting and also accepted by the constituency of the principal. In many member states of the IMO this constituency in states will include maritime interests that are similar to those represented in the negotiations, and the overlap of the possible solutions acceptable both nationally and internationally may be influenced by this overlap of interests.

It has been pointed out that the presence in national IMO delegations of representatives of private companies is a sign of influence of non-states. As described by Sending in "The Politics of Expertise" (2015) theorizing global governance has long included nonstate actors. These other actors may have ways of using power and have types of power that are unlike those of states. Many of these subgroupings have alternative paths to presence and perhaps influence in the IMO, through international (private) organisations that have observer status. A clear example of this is the International Chamber of Shipping (ICS), that in case 2 demonstrated direct access to both formal and informal negotiation fora.

This presence of observers is one example of action by non-states in IMO. Another, possibly unique factor, is the presence of flag administrations that are not government entities, but private companies (see page 46 where Flag States are described). Nevertheless, states represented by officials are the most numerous. Theory has usually looked at international organisations with the straightforward view that states are the principal actors and that the international organisations are created by states in the pursuit of shared goals (Abbott & Snidal, 1998). This simplification is justified by the obvious fact that states are an essential element of international formal cooperation, and that most other actors are subordinated to one or more states. A common view is therefore that IOs are merely the instrument or field where states' competing or conflicting interests play out (E. B. Haas, 1964). However, the presence in the IMO of interested parties that are not states requires consideration of their role, and the reason for their presence, as well as the consideration of possible influence from the organisation itself. My analysis of the cases focusses on the actions of delegates and chairs as parts of the organisation, and their interactions.

International organisations and non-state participants

In analysing the governance that takes place in international organisations theory must also consider the organisation itself and the actions of the various entities present. For the IMO these include both national and international organisations of different kinds, including other UN organisations, international private organisations, Intergovernmental organisations like the European Union, Port State Control MoUs¹², and subunits of states, such as the Faeroe Islands and Hong Kong. Many of the participating entities form part of several international regimes. Regimes have been defined as principles and norms, both informal and formal, that frame how states and individuals behave in any given issue area (Levy et al., 1995). The concept is broad

¹² A Memorandum of Understanding on Port State Control is an agreement between regional Maritime Authorities implementing a harmonized system of Port State Control.

and includes both international organisations, their rules and procedures as well as broader principles and norms, and regimes can be created by formalized legal agreements as well as by informal, unwritten understandings and relationships. Such principles and norms have an effect on the decisions taken by the international organisations (Trevisanut et al., 2020). Studying regimes allows consideration of a multiplicity of types of actors and practises. One way of taking into account a diversity of influencing factors, including non-state actors and processes, is considering the regime in which the decision is taken. The regimes themselves can be considered as having independent agency as actors, as can entities, other than states, that are part of the regimes

In order to open the internal workings of international organisations, analyses that expanded the type of actors considered should thus include both internal processes, mechanisms and structures and include secretariats and chairpersons as well as external influences, also those not directly represented in the negotiations. Such categories invite consideration of a wide field of actors. Nonstate actors have power and can play significant roles also in international organisations. In a special issue of *International Organization* (Keohane & Nye, 1971) dedicated to this insight a number of examples are given where the complexity of coalitions is not caught by a state-centric paradigm. They show that private organisations and subunits of governments can have distinct foreign policies which are not all filtered through the top leadership, and which do not fit into a unitary actor model. The issue shows "transnational" connections that reach across state boundaries and are initiated by or acting upon private individuals and groups. All these entities may seek to influence international organisations which may give access to non-states, allowing them to also influence the outcomes of decisions taken in international organisations.

Explaining outcomes thus cannot rely on state power as a general explanation, even though it may in some cases be the only necessary element. The presence of multiple actors in international organisations, including nongovernmental organisations, and other private sector bodies has long been recognised, and the influence of NGOs on global environmental politics is often considered understood and uncontroversial (Betsill & Corell, 2007; Tallberg et al., 2013, p. 254). Taking the Asian Development Bank as a typical case and International Whaling Commission as a case with significant access for trans-national actors Tallberg et al. explain NGO influence mostly by their national lobbying and ability to place issues on the agendas and making public proposals. The route to influence in international organisations is thus also here seen as going through states.

NGO influence during negotiations in international organisations is described by Betsill & Corell as consisting mainly of close cooperation with state delegations (Betsill & Corell, 2007). Thus, also through states. The influence is often demonstrated by showing convergence between NGO positions and the final outcomes, often without considering corresponding influence from others. In some cases – for instance the Andresen & Skodvin (2007) analysis of the International Whaling Commission, the overlapping of NGO position with that of presumably powerful states (USA) is considered as a partial explanation or an alternative to NGO influence. The influence

of environmental INGOs¹³ is generally attributed to their claim to moral authority and their perceived authoritative knowledge/information (Carlsnaes et al., 2013). The general acceptance of NGO influence is usually implicitly associated with civil society NGOs, even though most definitions of NGOs comprises both commercial and ideational or civil society organisations.

Business organisations with international scope are easily overlooked in the context of NGO influence, when the focus is on environmental and civil society NGOs. The influencing by commercial organisations of decisions in international organisations has attracted attention. However, often the focus has been on capture by "industry" taken as large, multinational corporations (Bouwen, 2002; Binderkrantz, 2005; Dal Bó, 2006; Deshman, 2011; K. Young, 2012; May, 2015; Hendriksen, 2020). The possibilities of influence from international organisations that represent commercial interests is often disregarded, and the actual methods of capture are not often (if ever) detailed. The definition of "industry" should – at least in the case of the IMO – include an array of different organisations (B-INGOs) that organise and represent various economic operators in the maritime field, including among many others ship owners, ship operators, and organisations that supply services to states such as flag registration or certification.

Many considerations of how private industry may wield influence concern the vast resources of multinational corporations (Booth & Erskine, 2016). Such resources are not necessarily accessible to B-INGO secretariats some of which are quite small. In *Handbook of International Relations* (Carlsnaes et al., 2013), the broad scope of NGOs and their different capacities, motivations and moral or ideological basis makes it clear that there are organisations that are very different from the NGOs usually considered, for instance transnational terrorist and criminal networks. There are also intermediate transnational organisations that are neither simply "forces for good" nor integrated with 'the dark side' (Risse, 2013, p. 432). In the IMO there are also a number of organisations that do not easily fit into the customary categories that serve to identify civil society or multilateral corporations. The most obvious example is classification societies, that are standardisation bodies, that also perform governance and authorization tasks on behalf of states (see page 51).

Apart from this plethora of entities that may be constituents of regimes, there may also be larger structures comprising several regimes. In a special issue of *Earth System Governance*, "Towards a Sectoral Perspective on Global Climate Governance", Oberthür et al. (2021) identify sectoral institutional complexes as units of analysis. They are systems composed of several international institutions including states, non-state actors such as firms, civil society organisations and municipalities and regions as well as transnational institutions and institutional complexes involving these actors. The special issue takes a sectoral view and looks at five sectors (fossil-fuel supply, power sector, energy-intensive industries, land transport and international transport, including the IMO) and their efforts to facilitate decarbonization. The regulatory portfolio of the IMO is found to have major weaknesses, which are at least to some degree ascribed to "lobbying weight of incumbent players" such as International Chamber of Shipping, which is portrayed as

¹³ I refer to these as 'e-INGOs'. The difference in capitalisation from B-INGOs serves mainly to facilitate reading.

insisting that policy instruments must not inhibit development (Rayner, 2021 sec. 2.2 last paragraph). A main finding of Oberthür et al. is that barriers and challenges vary significantly across sectoral systems and includes influence of large incumbent businesses.

The regimes across which climate regulation of maritime transport is considered include the IMO, the UNFCCC, the Paris Agreement and the European Union as well as the Clean Cargo Working Group¹⁴, the Clean Shipping Index¹⁵, RightShip and Carbon War Room¹⁶, the World Ports Climate Initiative, the Getting to Zero Coalition, and the Poseidon Principles as well as the Global Maritime Forum, that has been instrumental in setting up several of these regimes. None of these private fora are formally members of the IMO, but all have some degree of access to climate negotiations. They are thus, in the same way as the IMO itself is, examples of regimes that can be considered as nonstate actors in their own right. Each may have preferences that differ from those of states or of their members, and may exert influence on outcomes, or claim such influence.

International organisations, as distinct from the participating states and INGOs, as actors in their own right, independent of state behaviour, are considered for instance by Finnemore (1996) and Park (2006) in examining norms developed by and in international organisations. Park's investigation of policy norms in an analysis of the IMF and the World Bank demonstrates that that the norms of these IOs are shaped by their organisational culture and identity, and that they may change over the lifetime of the organisation. There is some divergence between scholars as to how such norms may originate – for instance from norm entrepreneurs, from states or from non-state actors. However, the development of new norms within international organisations seems to be an uncontested fact. It is interestingly (Park & Vetterlein, 2010, p. 227) noted that interactions between actors may "shape policy norms that are quite different from what the advocates of those norms originally intended". This is a recognition that influence may be unintentional. In this same context Park & Vetterlein also observe that changes in policies do not necessarily correlate with any specific type of actors, and thus also not with powerful states. The argument is that international organisations can be influenced by ideas generated from many sources, outside or within organisations, by organisational culture and identity and by their staff. This can shape policies that can be attributed to the regime itself and not to states or other members. The regime itself is subject to its own norms and has its own interests and preferences and can be considered an actor in its own right.

As actors, IOs and regimes have agency. Having interests and agency, regimes can pursue them independently of the actions of states. Lall, in "Beyond Institutional Design: Explaining the Performance of International Organizations" (Lall, 2017), observes in another context that IOs can enjoy policy autonomy vis-à-vis states. Lall uses a quantitative data set based in part on official government evaluations of IOs and in part on an original survey of IO staff to

¹⁴ CCWG analyses/compares efficiency.

¹⁵ Clean Shipping Index assigns an environmental performance label to ships

¹⁶ RightShip and Carbon War Room implement an efficiency rating system

compare efficiency of international organisations. His study of performance concludes that IOs, that have policy autonomy vis-à-vis states, show higher levels of performance, and Lall identifies sources of autonomy in alliances between IOs and non-state actors as well as in the technical complexity in IO activities. Lall sees a divergence resulting from changes in the interests and policies of states developing from the time of creation of the IOs, so that a pursuit of collective interests is replaced by states focussing on national interests. This implies that in those cases where Lall sees policy autonomy and high performance, the international organisations have agency to implement interests that are not (any longer) entirely consistent with those of member states. A similar conclusion follows from the observation by Barnett & Finnemore (2004) of the "pathologies" of international organisations.

The agency of an international organisation to pursue its own interests may not be "pathological" but can also be a legitimate implementation of its purpose. Martinez-Romera in "Regime Interaction and Climate Change" notes in the context of interests of regimes, that the issue of mandate and competence implies that for IMO and ICAO regulating the climate and environmental impacts of the two sectors will also reinforce the forum hegemony of the two sectorial organisations (Martinez-Romera, 2018, p. 187). Martinez-Romera understands that the intention of the Paris Agreement was to endorse that climate regulation of shipping should take place in the IMO but not necessarily give the IMO exclusive authority in the area. Such exclusivity may, however, be an interest for the organisations themselves. Martinez-Romera points out that in the case of ICAO unilateral action by the EU (i.e. another regime) has proved to be a more effective driver for action than the weak regulatory pressure from the climate regime. This, however, seems not to be happening in the IMO climate cases (case 2 and 3), where the threat of unilateral action by the EU is again present – until now with little significant effect on the IMO.

The interactions of the maritime regime of IMO and the aviation regime of ICAO, both of which also overlap with UNFCCC are also analysed by Martinez-Romera, who describes the regimes as very different. The analysis is legal and mainly descriptive giving no explanations for the origin or effect of the differences between the fundamental principles. These differences are analysed to determine whether there exists a legal conflict in the sense of "a situation where two rules or principles suggest different ways of dealing with a problem". Martinez-Romera uses concrete examples of interaction between the climate, ICAO and IMO regimes around the issue of GHG emissions from international aviation and maritime transport as a case. The interaction is described as mostly taking place through UNFCCC bodies and does not seem sufficient to ensure progress. This same conclusion – that the reports submitted by ICAO and IMO to UNFCCC have not resulted in substantive debate or feedback from UNFCCC – is found in Oberthür (2003, p. 201). Martinez-Romera's finding is that, rather than a legal conflict between ICAO and IMO regimes, the diverging objectives of the regimes can be seen as a political conflict. Martinez-Romera credits capacity and financial assistance by the ICAO through the GEF and UN programmes with addressing the political problem and building the support from developing countries that was needed for the adoption of the CORSIA mechanism, under which airlines offset growth in CO₂ emissions. Similar effects might come from the IMO GloMEEP programme – the Global Maritime Energy Efficiency Partnerships Project – that supports the

uptake and implementation of energy efficiency measures for shipping (Martinez-Romera, 2018, p. 203). An inducement initiated by the secretariates in one forum could thus allow progress in another.

Regime complexity, and the variations between multiple regimes that have competing or overlapping authority over an issue, can allow what Alter & Meunier call "chessboard politics", which is acting in one forum to influence negotiations in other fora, by making "moves in a single international institution to reposition pawns, knights, and queens within other institutions" (Alter & Meunier, 2009, p. 16). This is similar to 'forum shopping' or "forum-shifting", which makes it possible for those who can set the agenda in a given forum, to ensure that decisions are taken in that forum, rather than another, that is less favourable to them (Keohane & Victor, 2011, p. 4). Thus, the actions of states and groups within an international organisation, can be influenced by debates or decisions in other international organisations.

The idea of regime complexity is relevant to the consideration of regime overlap between climate and shipping regimes. Bodansky (2018) analyses the differences between international regimes that are relevant to the regulation of emissions from ships and finds that there are three regimes: (1) the UN climate change regime; (2) the International Maritime Organization; and (3) the United Nations Law of the Sea Convention (UNCLOS). Bodansky addresses differences in the policy processes by which these regimes are defined and investigates the possibility of a competitive relationship between the UN climate change regime and the International Maritime Organization. Unlike Martinez-Romera, Bodansky sees no competitive relationship between the regimes, contending that the IMO is supporting the objectives of UNFCCC. Bodansky suggests that the UNFCCC and IMO do work constructively together and ascribes such a cooperative relationship between UNFCCC and IMO as due in part to the fact that the two have principally the same membership. The apparent conflict between the UNFCCC's principle of CBDR and the IMO's principle of non-discrimination is rejected in noting the IMO's acceptance of a compromise position attributed to the IMO secretariat, that both CBDR and the principle of no more favourable treatment can simultaneously apply (Bodansky, 2018, p. 495). This compromise is described in case 3, where it is apparent that the careful wording does not necessarily imply that both principles fully apply.

The overlap in mandate between the UNFCCC and the climate negotiations in IMO was in fact a source of friction, and Kopela (2014) concludes that despite institutional collaboration and parallel membership, the interaction between the two has hampered adoption of measures to reduce GHG emissions from ships (Kopela, 2014, p. 71). This is depicted as being due to what "appears to be a misconstrued conflict" between a general principle of climate regulation of common but differentiated responsibilities, CBDR, and a general principle of shipping regulation of flag neutrality or "no more favourable treatment". The apparent misconstruction of the conflict between CBDR and the principle of no more favourable treatment may be assumed to be deliberate at least for some actors (Kopela, 2014, p. 95), which makes the concept of regime complexity and regime overlap more complex. Also in their chapter in "Regime interaction in ocean governance: problems, theories, and methods" Wisken & Kreuder-Sonnen (2020, p. 124) distinguish 'norm conflict' that describes a legal inconsistency, from 'norm

collision', that describes a dispute linked to overlapping rules. They point out that the two concepts overlap only partially: inconsistencies in legal formulations may not lead to a dispute, and disputes about legal inconsistencies may actually be about norms that can be compatible. As mentioned above Martinez-Romera's finding is that, rather than a legal conflict between ICAO and IMO regimes, the diverging objectives of the regimes can be seen as a political conflict. Case 3, the Initial Greenhouse Gas Strategy, details how this conflict was used to slow progress.

Regime interaction between the IMO and the climate change regime was also included in a research project on ocean governance (Trevisanut et al., 2020). In this project Hey (Hey, 2020) also discusses IMO and the climate change regime principle of CBDR, and the effect of the CBDR based burden-sharing arrangement. These take the form of several so-called flexible mechanisms, one of which, the clean development mechanism (CDM), could benefit investments in developing countries. Hey notes that transferring the regulation of the reduction of CO₂ emissions from the climate change regime to the IMO could expose developing states to the risk of losing their CBDR-based preferential position under the Kyoto Protocol. The principle of CBDR was already under pressure in the UNFCCC negotiations on a follow-up instrument to the Kyoto Protocol that was being negotiated at the time when IMO started to consider GHG issues (Hey, 2020, pp. 94–95). Hey concludes that principles of regimes as well as the institutional arrangement of regimes reflect political choices that were made at the time the regime was negotiated, and continue to serve the interests of some actors and not others (Hey, 2020, p. 126). In the conclusion to "Regime interaction in ocean governance: problems, theories, and methods" Trevisanut et al. (2020) identify a range of techniques, processes and balancing mechanisms that can mediate regime interactions, and note that one limitation of these is that they do not provide any indication as to which specific factors will influence the results in each regime. The influence of these regime overlaps on the IMO negotiations were motivating for some participants but the degree to which they were actually influential is thus an empirical question.

Accordingly, the structure of a regime, including its internal rules and practices and the relations of its members to each other can influence outcomes. Regime theory tries to show how different types of political institutions lead to different outcomes, and how for instance different principles of differentiation inside the regime, or different types of goals for the regime itself, lead to specific results. These are what might be termed rule-based differences, that determine how regimes influence their members and include the effects of different systems of decision making such as voting or consensus requirement and the role of a secretariat. Some scholars identify international organisations as arenas that are rule-based rather than power-based. While also maintaining this, Daniel Drezner (2007, 2009, 2019) asserts that the underlying causal determinants of international cooperation is the distribution of power and interests, and that increasing complexity of international regimes will benefit powerful states. The mechanism would be that a fragmented legal order with multiple contesting institutions gives more flexibility to those who can engage in forum-shopping. Thus, a proliferation of international organisations and rules can weaken the sense of legal obligation that normally would ensure that the rules are followed (Drezner, 2009, p. 67).

Whether rules are followed may also depend on what the collective interests are. Sometimes states may not want the international organisations to actually solve the problems or arrive at binding solutions (Dimitrov, 2020). Failure to agree can then be seen as an "unfavourable" outcome if compared to the alleged purpose of the IO, but as a "success" for the laggard states that are its principals. In its initial configuration the IMO was possibly a representative of Dimitrov's case, but later developments have changed it into something more decisive. Some of the mechanisms IOs may employ to ensure agreement and compliance include benefits exclusion, so that non-compliant actors can be excluded by dominant members at low cost from benefits of the regime. This is not possible for common pool resources, or "global commons" such as the oceans, that are difficult or impossible to exclude others from enjoying, but Keohane & Victor, suggest that similar trade-offs could nevertheless be reached for instance by rich countries offering access to carbon markets to other countries if they implement tight emission controls and other complementary policies (Keohane & Victor, 2011, p. 12). Like many other authors Keohane & Victor (2011, p. 3) consider the outcomes of international negotiation to depend mainly on the power resources of the states involved, thus assuming that any actions of the regime, are channelled through states. This is of course an empirical question, which I attempt to clarify by observing the mechanisms by which the IMO can act through the chairs and the secretariat.

In many analyses it seems to be understood that the autonomy considered is the autonomy of the secretariats of the international organisations. The other parts of the organisations; chairs, plenaries and working groups are often assumed to be acting exclusively as national representatives, so that autonomy is attributed to the organisation only if actions originate in the secretariat. Tallberg (2013) consistently identifies each chair by nationality, seeming to imply that the chair of a committee does not act as part of the organisation/secretariat, but exclusively a national representative. It is, however quite possible for international organisations to have a certain amount of independence that enables the organisation in its own right to influence state interactions, for instance by mediating states' disagreements (Abbott & Snidal, 1998). This is a main function of chairs but may also rely on secretariat assistance. In that case such influence should be considered as influence of the IO. Only if a chair pursues national goals should it be seen as state influence.

In "Rules for the World" Barnett & Finnemore (2004) consider international bureaucracies to be similar to national ones and their descriptions clearly envisage mainly the secretariats, not the organisation as a whole including chairs, plenary, working groups etc. The transformation of the mandate of an IO into concrete actions may be - and is usually in the IMO – done by committees of member delegates and not by staff members. This is a feature of forum organisations, whereas secretariat actions are typical of service organisations. It is difficult to distinguish from each other the influence of secretariats, chairs and committees that consist of states' representatives. They can all pursue compromises without them being necessarily in any one state's interest, and they may all seek a decision that seems to flow from consensus. Research (Depledge, 2007; Lundgren, 2023) shows that the action of the secretariat can be done in the name of the chair and actions of the chairs can be supported or guided by the secretariat. Conclusions of committees may be conclusions of the chair or suggestions of members. In

either, the wording will often be formulated by the secretariat. It is therefore better to consider the chair and the supporting secretariat together as the unit of analysis for those actions that are best or only performed through the chair or by the secretariat, since they are difficult to disentangle (Biermann & Siebenhüner, 2009). The ability of the chair to manage the agenda and broker agreements and get privileged access to information about preferences or red lines is not an exclusive right but is more available to a chair than to other actors because of the hierarchy implied by the chair's formal position. It is the subject of my three cases to identify who specifically has acted and how they have done so to reach the outcome that resulted.

Process and Practice

Outcomes are created by the processes of negotiation, and identifying the specific actions that lead to outcomes requires close observations. Investigations of practices have shown that informal social relations can be important, particularly for those parts of the negotiations that are conducted outside the formal meetings, in the corridors and informal groups. Hierarchy between individual negotiators is important for the impact of their actions. Not all status derives from the principals that negotiators represent. Merje Kuus (2015) explains how resources and relationships of negotiators do not all derive from the institutions of the states they represent. Taking the diplomatic structures in the EU as an example Kuus depicts the influence of professional styles and membership of social elites that give symbolic power to some actors and disadvantages others. In the context of the enlargement of the EU from fifteen to twenty-seven, conforming to the accepted kind of argumentation, appearance, and social interaction and thus having a good "sense of the game" gave the "old" countries' diplomats a playing field tilted in their favour, even if this did not determine the specific outcomes. This does not disaffirm the influence of state power, but informal hierarchies can make some possible outcomes more or less likely than others. Observing the actual interactions of negotiators is necessary to reveal these relations and to see which actions by which actors have led to the result.

A prerequisite for influence is being heard, which is not guaranteed. The right to speak is not a guarantee of being heard. And being present does not always confer a right to speak. As in other human interactions, hierarchies, position and status can be important, and the position of an actor in a negotiation may not always exclusively be determined by the hierarchical position of the principal. In "International Pecking Orders: The Politics and Practice of Multilateral Diplomacy" Pouliot (2016) discusses hierarchy and authority as distinct concepts, where hierarchy arises from social practices structured by established ways of doing things, and authority from recognised legitimacy. In these terms, a hierarchical position or claim is automatically associated with any social interaction and a pecking order is thus established and continuously re-created. The significance of this pecking order is of course an empirical question. Hierarchies as they exist are taken for granted, they are "given" in the sense of not being voluntarily entered into. They are taken for granted yet simultaneously contested, since in the case of negotiations, each participant strives to win even over those in stronger positions (Sending, 2015). Social hierarchies can therefore shape how policies are understood and legitimated.

The personal status of negotiators flows initially from the principal they represent but can be significantly modified by personal attributes. Sending (2015) explores authority of experts inside and outside international organisations. Drawing from international and transnational examples of UN peacebuilding operations and population governance, Sending explains how claims to authority are shaped by struggles for recognition among professionals. Seabrooke (2014) also sees experts competing for authority and thereby creating professional networks with status hierarchies and, using the concept of epistemic arbitrage as an example, shows how professionals as individuals can hold power over transnational issues. Similarly, in "Who Governs the Globe?" (Avant, et al., 2010) the focus is on individuals, who are established as authorities, and how they affect outcomes. The unit of study is the "governors", who are affecting policy by creating issues, setting agendas, establishing rules, and evaluating outcomes. The authors investigate international systems, private sector organisations and sub-state units with roles in international affairs. The investigation explicitly centres on the process by which the actors acquire their positions and authority and concludes that this relies on relationships of these governors with their base or sponsors and with one another. The authority wielded may thus also come from states or from sources that are independent of states and can work through mechanisms that are independent of states. Delegates can have standing for instance as "experts" in their own right or as representatives of important voices, and the norms of how things are done can structure the authority of expertise or representation. These positions can vary between regimes so that the hierarchies will not be identical if the same issue are treated in different fora.

Following the paths in specific cases that have led to decisions can achieve an understanding of how the observed pattern of actions have led to specific decisions. It is not always necessary to assume a corresponding underlying intention, a defining structure or an accompanying power in order to perceive a pattern. Practice theory follows actions themselves as explanatory of influence. The performance of actors are not seen as an epiphenomenon deriving from power and interests, which are – as we have seen - empirically difficult to ascertain (Adler-Nissen & Pouliot, 2014, p. 891). Thus, examining the process avoids presenting agency as either a reflexive and rational enterprise by calculating agents or as an unconscious mental machine following taken-for-granted rules (Reckwitz, 2002, p. 258). Instead, the actual activities of the negotiators in their environments can be observed. Even though the actions are observable without necessarily revealing the intentions, it can be useful to recognise how these are understood by the actors and their counterparts. The assumed purpose or intention can itself have consequences for how outcomes are evaluated by participants. Thus, an examination of practice cannot stand alone but should include consideration of more intangible factors.

Observations show that specific actions by individuals can on occasion cause changes in an otherwise predicted flow. The UN Security Council resolutions on military intervention in Libya in 2011 were influenced by the seasoned diplomats of France and the UK against reluctance from the United States as well as opposition from Russia and China. Adler-Nissen & Pouliot (2014) investigated by questionnaire various officials with a central position in the multilateral negotiations leading to the intervention, followed up by interviews and ethnographical studies in a foreign ministry as well as secondary sources. They demonstrate how French and British delegations bartered competence into influence, and overcoming opposition from states that had

veto powers in the security council, and against wide opposition from the BRICS. The acknowledged competence of the British representation in the UN security council made it possible for that delegation to take the initiative in formulating the resolutions. As the situation on the ground in Libya deteriorated, British and French negotiators acted very rapidly. In cooperation with the Lebanese mission, they obtained a Security Council resolution, that served as a basis for a more forceful resolution whose implementation then prevented counters from the BRICS. The practice approach by Adler-Nissen & Pouliot demonstrated that influence involved a constant negotiation of what was seen as possible, and the dynamics of the processes allowed a departure from the preexisting assumed distribution of power. A similar change in what was considered possible happened in case 1 where an individual with high personal status had a decisive influence on the final decision.

Determining the influence of stakeholders and identifying the path and the weight of such influence requires distinctions that cannot be made without observation of the processes by which the influence arises (Block-Lieb et al., 2013; Block-Lieb & Halliday, 2017). Observing over many years the negotiation in multiple fora of UNCITRAL, Block-Lieb & Halliday have been able to identify the actors that placed their marks on the result and saw that a small core of delegations and delegates were consistently active in each issue-area. The vast material collected concentrates on the "Big Deals" that from the points of view of delegates were critical. These delegations included both state and non-state actors and external interests. The observations showed that level of influence of an actor may arise from many causes including the expertise, the personality or the weight of the actual activity of the delegation members. In the case of the IMO, business NGOs, constitute an active distinct group that has its own voice in the deliberations. The economic weight of the shipping industry gives industrial NGOs access to the secretariat and the chairs without needing any state as intermediary (Hendriksen, 2020; Prehn, 2021) (personal communications 5). The availability of delegates with relevant knowledge and the ability to author workable proposals are resources that can be converted to influence. This is confirmed for instance in case 2 (implementing the GHG strategy) where the informal initiative that influenced the subsequent formal negotiations was greatly boosted by having a well-known retired member of the secretariat act as chair.

Expectations and beliefs about what is possible, play a large role in negotiations. Perceptions about other participants' motives and interests are likely to colour each negotiating party's actions. In one study, Pouliot (2010) shows diplomatic dealings from the point of view of practitioners in the NATO-Russia Council where from 2002 to 2014 individual NATO Allies and Russia met as equal partners – instead of meeting in a bilateral NATO vs Russia format. The process was intended to build on reduced confrontation after the dissolution of the Soviet Union. Building on interviews with officials in Moscow, Brussels, Washington, Berlin, London and Ottawa, Pouliot observed that the NATO allies constituted what he calls a "security community" characterized not by the absence of disputes, but by the understanding that even serious national security disputes are solved peacefully. The NATO-Russia Council discussions did not achieve a similar "security community" that included Russia, in spite of the fact that neither Russia nor NATO were apparently including in their military planning any operations against the other. The main reason for this, and the subsequent deterioration of relations seems

to have been a long habit of mutual distrust, that was easily confirmed by both sides viewing the other's policies and actions as demonstrating willingness to use military force. So, despite both sides aspiring to lessen tensions the opposite outcome resulted. The aspiration was not sufficient to reach agreements. The putative common understanding should have also been enacted in and through practice (Pouliot, 2010, p. 237). Although this study is from the area of military confrontation this does not imply that the conclusion is uninteresting for other areas of international relations.

The NATO-Russia Council discussions demonstrate that results are not always intended by any participant. Similarly, in the cases relevant to climate change that are discussed in this dissertation, the expectations that countries have concerning the North/South divide experienced in UNFCCC contexts influenced the manner in which the process unfolded. As explained in "Back to Basics: State Power in a Contemporary World", (Finnemore & Goldstein, 2013, p. 324) chains of events may lead to outcomes that are very different from intentions or expectations of any of the participants. This was evident in case 1, the Ballast Water Management Convention, where the result did not correspond to anyone's intention.

The general difficulty of change in any human endeavour also plays a role in international negotiation. It is generally acknowledged that policies have a tendency to be stable and that it requires a significant effort to change them – particularly if the issues are deemed important (Greener, 2005, p. 62; Reinalda, 2013, p. 613). This means that the influence of "laggards" (conservatives) is systematically more likely than that of "progressives". Two of my cases form a part of the present climate negotiations, that are particularly difficult and are in a "gridlock" (Depledge, 2006; Hale et al., 2013, p. 277). The problems are at least partially due to the fact that the difficulty of reaching a substantive agreement has delayed taking necessary action, which then has aggravated the problem and increased the difficulty of reaching substantive agreement. In the absence of substantive agreement, the outcome of a negotiation may be failure or spurious agreement that conceals the disagreement (Dimitrov, 2020). Case 2 demonstrates this type of outcome, as the agreement reached has little effect on the actual emissions of greenhouse gasses, even though it was hailed as a negotiation success by many. The apparent support of a decision that one does not actually agree with is not as remarkable as it might seem. As mentioned on page 15 it can be counterproductive to publicly accept losing in a negotiation, since this can weaken one's position in future negotiations.

My cases contain several examples of interactions where the hierarchical position of delegate plays a role. The most significant hierarchical position is, however, the special position of the chair. An example of the working of hierarchical positions is seen in case 2. The traditional speaking order that had allowed NGOs and states to speak in the same sequence was altered so that NGOs were not heard until all states had spoken. In the IMO cases the authority of individuals is visible both to limit the area of possible outcomes, and when authority is a path to being chair of a formal or informal group.

Role of chairs and secretariats

Process may have limited importance where outcomes are overdetermined as they would be if preferences wholly coincide but where there are divergences, process may significantly influence outcomes. In those cases the chair/secretariat seen as one level of analysis can be a key process variable (Lundgren, 2023).

Control of the negotiation environment can limit or even determine outcomes. The environment of a negotiation includes the facilities available to negotiators and the norms and ideas of the regime. In "Post-treaty Politics" Jinnah (2014) explains how under some circumstances, secretariats can shape how states act. The specific cases concern overlaps both inside the biodiversity regime complex, and its interaction with the climate change regime, as well as with the trade-environment politics at the WTO, and the overlap between the Convention on International Trade in Endangered Species (CITES) and the UN Food and Agriculture Organization (FAO). On the bases of process-tracing – employing a combination of document analysis, interviews, and participant observation in different combinations for each case, Jinnah concludes that secretariats change power relations between states and thereby influence outcomes.

The influence of the secretariats on states is not one of direct power. Jinnah's ontological view is that decisions are taken by states, and that influence on states is the route to influence on outcomes. In cases where workshops or subgroups may contribute to a solution, these will often depend on arrangements of the secretariat that will not only consist of assigning a room and a time (and thereby perhaps limiting access) but also often assigning a chair or convener to the group, as well as under some circumstances inviting outside presenters. In some of Jinnah's cases secretariat actions support some (developing) countries' participation in the negotiations. In another the issue at stake had been re-framed by the secretariat from one of only biodiversity conservation to one that included adaptation to climate change and in this context human security. Jinnah reaches the conclusion that secretariat influence is particularly likely when state preferences are not set and when the expertise of the secretariat cannot be easily substituted, and when a path-dependent dynamic can guide policy decisions. In my cases, particularly the climate related cases 2 and 3, state preferences were and are very definite, and yet I argue that the influence of the chair/secretariat has been decisive. This expands the reach of Jinnah's analysis.

Input to the process of negotiation can limit or even determine outcomes. Even where issues are salient many states will depend on external information on factual and legal descriptions of the world. These can be found in many different kinds of reports and analyses, only some of which may be viewed by the participants as reliable. The secretariat of any international organisations will often be a source of such information, and the way information is presented or the timing and context of presenting it can influence what delegations perceive as possible. If this kind of information is provided by the secretariat, it will in most cases be treated as more reliable than that provided by other participants. The influence of secretariats in this way is considered by Johnson (2014), in "Organizational Progeny: Why Governments are Losing Control over the Proliferating Structures of Global Governance". The specific context is the participation of

international bureaucrats in design negotiations that create new IGOs. Process-tracing shows how bureaucrats from international organisations helped shape the design of new international organisations with the result that these organisations' secretariats are more insulated from state control than if only states had been influential. An extensive quantitative analysis shows widespread impact from existing international organisations' bureaucracies in creating new international organisations. This is done by demonstrating a correlation between state control, and participation by existing international organisations in setting up the organisation and shows that particularly initiatives from existing international organisations' secretariats were important for the degree of insulation of IOs from state control. By this analysis, the fact of independent interests from these bureaucrats is clearly demonstrated. In the cases considered here a separate independent interest from bureaucrats is not identified, but actions of the secretariat convey information of importance for instance when the legal analysis in case 1 excluded possible options.

International organisations may pursue policies that do not align with those intended at the time by the states that created them (Barnett & Finnemore, 2004). Autonomy of organisations themselves is widely accepted as a fact. This autonomy and authority of bureaucracies as depicted in "Rules for the World" naturally imply that the bureaucracies may have policy objectives that differ from those that the member states have. Barnett & Finnemore focus on the secretariats of the International Monetary Fund, the United Nations High Commissioner for Refugees and the secretariat of the United Nations Security Council. While they accept that autonomous capacities of the bureaucracies can be necessary for effectiveness of international organisations, they note the danger that the IOs may develop in undesirable ways. This development is envisaged as a development of the secretariat, which accords well with the structure of activities in service organisations like the IMF and the UNHCR, where secretariats act, but is less obviously appropriate for the Security Council, a forum organisation, whose decisions are taken by the member states, and so should not be able to contravene the (collective) objectives of those states. However, in support of Barnett & Finnemore, my case 2 demonstrates that the chair and the secretariat can at least sometimes clearly override the preponderant will of the member states.

Categorising influence into different types Biermann & Siebenhüner, (2009) in "Managers of Global Change", argue that secretariats can have "cognitive, normative, and executive influence" on the actions of the international organisations studied, which include both forum organisations like the IMO which focus on rulemaking, and service organisations like the World Bank that provide services to countries. In both cases cognitive influences work by changing knowledge and belief systems, and normative influence rests on authority, whereas executive influence flows from agenda management, formulating conclusions and drafts, and from making resources like meeting facilities, conferences or other arenas that allow inclusion or exclusion of actors. However, forum IOs are quite different from service organisations and the two types may have very different degrees of independence from their member states (Park, 2018, p. 19). The nine case studies in "Managers of Global Change", show that bureaucracies can have a significant autonomous influence in global environmental policy. The variation in their autonomous influence is attributed by the authors less to institutional arrangements and designs

and more to the problem structure and processes. Biermann & Siebenhüner provide a basis for revising the assumption that international bureaucracies primarily seek to maximize their mandate, funding, staff, and power. Their autonomy can also cultivate benevolent behaviour from a secretariat with more laudable goals, for instance that of supporting a chair's efforts at compromise.

The forum for negotiation may be less or more conducive to establishing agreement. Finding an outcome may depend on establishing trust, which is far more difficult in a large group than in a smaller one. Depledge (2005) identifies the specific type of negotiation in international organisations, whose potential scope includes all or almost all existing state governments. This is often referred to as 'conference diplomacy', a term which may tend to elide the repetitive nature of intergovernmental negotiations in a permanent forum. With a permanent forum delegates may build trust over a long period, although this is of course not guaranteed. The climate negotiations in the IMO are carried out in a different environment from that of the UNFCCC and the Paris Agreement, and the likelihood of agreement is higher. Depledge notes that in this type of global intergovernmental negotiation, inequality is inescapable and that the legitimacy, and therefore the acceptability, of the outcome may be compromised if, as Depledge considers is often the case, the more powerful countries are tempted to shut out the less powerful and present them with a *fait accompli*. If those countries that do not perceive the process to be fair have power to obstruct the negotiations, this may lead to failure or necessitate last-minute concessions. These issues of trust arose also in the cases that I consider. In one of the cases presented here, case 2 (implementing the GHG strategy), those (PSIDS) left out of the limited access negotiations were not in a position to remedy the situation.

Organisational factors can influence a particular outcome but are not generally considered sufficient to override a political will to reach – or not to reach – an agreement. Depledge (2005) asserts that the fact that the US and Russia rejected the Kyoto Protocol influenced the climate negotiations more than any organisational changes could, but even so "COP 7, concluded on a tide of optimism that the Kyoto Protocol could be brought into force and made to work, even without the participation of the US or its climate change ally, Australia" (Depledge, 2005, p.39) because there was sufficient will to reach agreement. Depledge describes the organisation of the UNFCCC system of climate negotiations, focussing on the chair and secretariat, on the procedural rules and on the forum, texts and the timing, and on the channels of influence from specifically ministerial and NGO participation. Depledge (2005) uses cases from the UNFCCC negotiations stretching from the Conference of the Parties (COP 1) in 1995 to COP 9 in 2003, where Depledge had personal experience of working in the UNFCCC secretariat. These personal observations are supplemented with interviews, and informal conversations with delegates and secretariat staff. A later publication (Depledge, 2007) acknowledges that a large number of factors can decisively influence decision making, but focuses on those factors that can be changed by conscious action. This includes actions of the chairs, and the secretariat, the actual rules of procedure and of decision-making, the choice of arenas including informal groups and complementary forums, the textual development process, and the management of time.

On the basis of these elements Depledge concludes with 12 key insights. These insights include the key observation that the chair is in a position to interpret and improvise on the formal rules of procedure and adapt them to the process. Unity and continuity in the secretariat and the chair and the availability of competent support from the secretariat is also vital, but the single factor that can make the greatest difference is an effective chair. Such a chair can ensure a balanced procedural equity and transparency, minimize procedural obstruction, create complementary forums for side negotiations and manage the textual development process. An incompetent chair can do the opposite, and thereby equally influence the result (personal communication 26). In my cases the organisation of the IMO negotiations during the COVID pandemic is a clear example of how the organisational factor can influence the outcome. The other negotiations, however, were conducted with sufficient room for parallel processes, so that the physically limiting factors of the IMO do not in general necessarily restrict the possible outcomes, even though specific decision by the chair or secretariat can do so.

All the avenues of influence that are available to the secretariat are equally available if channelled through the chair, and it is thus difficult to distinguish the chair's influence from that of the secretariat. Underdal points out that "active chairs and active secretariats tend to appear on the scene together" (Miles et al., 2002, p. 474), making it difficult to distinguish the impact of chairs from that of secretariats. Like Underdal, Depledge (2007) points out that the work of the chair is not easily distinguishable from the influence of the secretariat, since they are interdependent and can in combination influence outcomes. The secretariat may compensate for chairing weaknesses and conversely a chair can override secretariat influence (personal communication 15,29,30). Biermann & Siebenhüner, (2009) also treat the secretariat and chair together as one influence. In my case 1: The Ballast Water Management Convention, I describe how the Secretary General of the IMO interceded in a process where the chair of the MPEC Committee would have been expected to act, and in cases 2 and 3 (the greenhouse gasses cases) the secretariat issued significantly important discussion papers probably authored mainly by the working group chair. In case 2, Implementing the strategy, the results of at least some meetings were apparently based on well-prepared conclusion which would most likely be authored by the secretariat before the meeting in coordination with the chair.

The chair/secretariat has specific avenues of influence not open to others. The exact nature of them depends on the specific organisation. In UNFCCC contexts, for instance, the ability of the chair to propose a single negotiating text can be limited, so that a mandate is needed for preparing a chair's text (Depledge, 2005, p. 157). This is not the case in the IMO. Informational and procedural assets of the chair can be used to influence outcomes in ways delegates could not have done. The position of chair forces delegates to give at least lip service to ideas and suggestions from the chair, which is often enough to allow influence over material decisions. The formal informational and procedural capacities of chairs are supplemented by informal ones such as consulting privately with delegations (often called 'confessionals'), holding both formal and informal meetings with limited participation, and summarising debate and thereby determine which questions are central. One of the methods of multilateral chairs that have developed over the past 20 years is "the chairs summary" where the chairs formulation does not

reflect consensus but imposes a text that is specifically his personal evaluation of where a solution could lie (Depledge, 2005). My case 3 demonstrates a radical version of this trend.

Using the Presidency of the EU as a case Tallberg (2010) suggests that the influence of chairs is mainly derived from informational and procedural power resources that formal leaders have, whereas the importance of the hierarchical position of the chair is downplayed. Blavoukos & Bourantonis (2011) see chairs as policy entrepreneurs. They introduce parameters for success including the mandate, the resources and the formal constraints and see a broad and vague mandate and a high degree of informational asymmetry as an ideal environment for an entrepreneurial chair. They also consider the chair's political capital important and find decision-making rules and control mechanisms to be constraining. Using four UN multilateral negotiations as cases Blavoukos & Bourantonis give examples of both successful and unsuccessful initiatives of chairs and conclude that decision-making rules will condition the outcome of chair's entrepreneurship more than the process will, but that political capital, which can ensure the acquiescence of the negotiating parties may be sufficient for the chair to have an impact on the negotiation process. My cases demonstrate that chairs have in fact had determining influence and I detail the manner in which the procedural decisions shaped the process.

Since chairs in the IMO are delegates, there is of course a possibility that chairs may use their influence not to strive for the most broadly supported outcome, but to tailor an agreement in favour of their own preferences. This preference may be blatantly favouring national interests, or it may be kowtowing to power, or it could be a personal opinion. Any such bias is of course difficult to determine, given the existence of a norm requiring neutrality on the part of a chair, which would either limit or disguise unwarranted partiality on the chair's side. However, I detail instances where the chair shows differing treatment of majorities and minorities. In each of my cases the actions of the chair are identified, and any correlation with the national position of the chair's country may or may not be considered to be intentional. In "The Opening Up of International Organizations: Transnational Access in Global Governance" (Tallberg et al., 2013), the nationality of each chair is consistently identified when referring to them, indicating that the chair is not seen as part of the organisation, but as predominately a national representative. The focus is on whether the national interests of the chair's country of origin can bias outcomes in favour of the states they represent. For my purpose of determining the path of influence, the motivation of the chair is not so important – chairs may have personal, improper motives and states may have lofty ones. I attempt to demonstrate only the mechanisms of influence.

The Libya intervention described above, shows how outcomes were changed by national representatives using the 'penholder' system of the UN Security Council. This is a system was introduced originally in 2006, when France, the United Kingdom, and the United States together negotiated and drafted some specific resolutions. This developed into a practice whereby one or more Security Council, usually one of these 3 permanent members, are given a right of initiative over an agenda item- it now extends to most issues. The 'penholders' are in this situation similar to secretariats and chairs in the methods they can use albeit they represent states (Loiselle,

2020). There is little doubt that the 'penholders' will not introduce a solution that conflicts with interests of their states. But as in the case of an elected chair from a participating state, the solution proposed must in the end be acceptable to those deciding. The general use of a single negotiation text provides a similar avenue for influence as does the 'penholder' system. A recent new avenue for influence is the practice of negotiating on the basis of a text displayed on a common large screen. The text is edited by the secretariat as the discussion is ongoing. This type of technical actor (the text on the screen) may be seen as control of the chair, of the secretariat or as an affordance of a technology, possibly expanding the typology of influence (Adler-Nissen & Drieschova, 2019). However, the editing and possible manipulation is done in full view, which allows the delegates to follow the process and if they wish protest, even though it is for practical reasons often difficult to correct mistakes or misuses on the fly.

Summary

It is generally recognised that there are differences in the level of influence of various actors. The purpose of this dissertation is not to evaluate these differences in influence, but to illuminate the manner in which influence is exerted. I argue that in some cases this can only be done with the support of the chair. Many of the paths to influence identified by theory must thus be seen as means of influencing the chair. Where the chair has the option of ignoring a source of power, it will effectively not exist, but if the chair considers a certain delegation or argument powerful, it will be so even, if not everyone would agree. When referring to the chair or the secretariat, I intend both the chair, acting perhaps as the instrument of the secretariat, and the secretariat perhaps acting under instructions from the chair.

There has long been a wide consensus that global governance involves not only states, but also a variety of non-state actors. There is also wide agreement that while these all have very different levels of influence, states are central. It is however not clear how states and other actors with competing interests bargain over those interests or how – or even if – they are reconciled (Kahler & Lake, 2004, p. 411). There is a common idea that negotiation moves positions closer together, and that agreement often implies a compromise that gives everyone something. My cases show how that may or may not happen, and how the issue of who gets what, if indeed anything, is very much up to the way the chair structures the decision-making. This choice of the chair may be determined by where the chair sees an objective compromise. However, the choice may also be influenced by how the chair perceives the importance or power of the delegations. My cases also demonstrate that negotiation is not always about moving towards a middle ground. I argue that the question is not merely "who decides?", but even more "Who can decide, who will decide?".

Different types and paths of power such as the categories and typologies mentioned, help view power as a structural relation rather than as an attribute. Regime theory has helped focus on the possibility that an organisation can be an actor in its own right for instance by upholding ideas that limit possible outcomes. I therefore value the idea that shared assumptions and ideas and structures can be influences.

I use the concepts of interests and preferences and understand preferences to be those that are stated by delegates or contained in written submissions, but I do not necessarily take these as the objectively real underlying interests. The acknowledged difficulty of determining genuine interests makes it difficult to draw firm conclusions from perceived interests. Even preferred outcomes are not always true reflections of what is desired: 1) they may only be relative. Someone wants A but prefers B to C and so join a 'B' plurality in order to avoid 'C'. 2) Someone may propose an unrealistic solution (D) in order to promote A or B as an outcome. As pointed out by Odell (2021, p. 314) "each negotiator has an incentive to distort". I thus also consider the tactics of presenting a preference.

Forum differences and regime conflict are useful for examining decisions in the IMO where mandate overlaps with other regimes. However, it is not easy to establish a clear inference on how or if other regimes influence the IMO. In the cases considered in this dissertation, the UNFCCC regime is relevant to the IMO process for the case concerning climate change, and this overlap has been extensively analysed. In the case of the ballast water convention the regimes include the International Joint Commission and the Great Lakes Fishery Commission (a US/Canada regime) that initiated the process and the IMO, where the US/Canada regime pointed to a problem and a solution, which was in the end accepted by the IMO.

Many realise that the chair – or a combination of the chair and secretariat – have profound influence on negotiation outcomes. In my cases the functions of the chair and secretariat are similar to those described by Depledge, but in the IMO the capacity for independent action of the chair is wider than what Depledge describes for the UNFCCC. The IMO has fewer limitations on a chair presenting suggestions or calling for consultations or introducing a common text. Depledge sees the hierarchical position of the chair and the substantive input as well as the procedural organisation as the main tools of influence. This includes developing proposals and ideas that could help forge an agreement. My cases demonstrate how this happens, and (in case 1) how in its absence no substantive agreement is reached. My cases also investigate both how the chair can facilitate agreement and (in case 2) how it is possible to twist prevalent opinion. I view role, power and influence of secretariats and chairs by observing mainly structural power, executive influence and hierarchical position. I observe how the procedural rules in IMO do not favour stonewalling tactics, thus giving chairs and secretariat an incentive to construct an outcome even in the absence of a widely supported solution.

My cases have been chosen for high saliency, since such issues will be ones where most states have interests and will presumably want to influence policies. In more technical cases, some states who could have had influence may have refrained from interceding for reasons of capacity, or because the issue would not be relevant to them. My investigation avoids the necessity of determining why a particular outcome is sought, and merely traces the activities that have had significant impact on the outcome. Success of a negotiation may be evaluated by the actual change in the physical world (were the shipping emissions reduced?), or by the adoption of an agreement that intends such an effect (are the agreed requirements sufficient?), or it may more modestly merely require an agreed text, that the participants consider an adequate response (was there an outcome?). My own analysis is limited to this last variety and how that output is

generated – the text of an agreement, that may or may not solve the problem under discussion. In the cases presented here most participants hailed the outcomes as successes, even though it seems clear that they fell short of optimum solutions.

The cases demonstrate how the chair of a group can wield decisive and independent influence on negotiated outcomes. Extant scholarship emphasises the role of the chair in analyses that are focused on process and practice, by demonstrating a strong mediating role and capacity in the office of the chair. In supplement, I show that the chair can also independently define and determine outcomes. The chair is not merely a mediator but, at least in some circumstances, is able to impose the choice of a single option in a situation where no other agreement can be reached. I depict this contribution here with a simple image (Figure 2). On the left we see the chair identifying a sweet spot between diverging interests and preferences. On the right we see the chair autonomously creating and defining an outcome, where no common area of agreement has been found. This is possible where the prospect of no decision is less attractive than the outcome proposed by the chair.

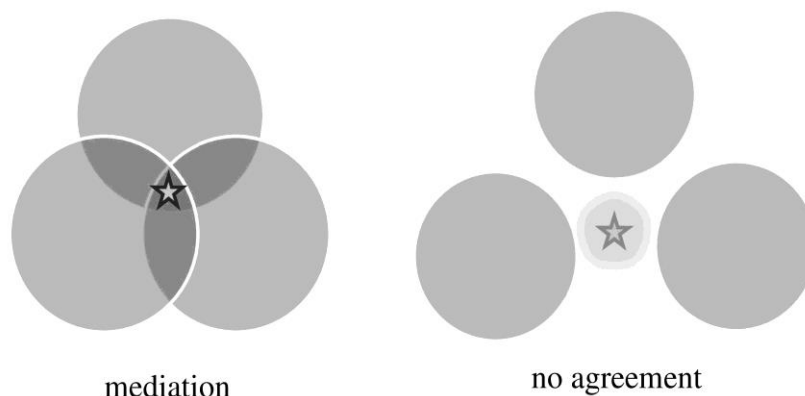


Figure 2 The chair autonomously creating an outcome

Source: own graph

Chapter 3. The IMO context

In order to evaluate if my conclusions about decision-making in the International Maritime Organization may also apply to other fora it will be useful to describe those key elements of the International Maritime Organization that are important for the present analysis. Since the IMO is also an institution with its own culture and a specific self-image both of which influence the decision-making process, I will give a short background explanation of the organisation and the sector it regulates. These features and characteristics are critical to understanding some of the details of my description of the cases. Some aspects of the maritime sector and the International Maritime Organization differ from many other international organisations and may be unique.

As the United Nations agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships, the International Maritime Organization considers itself the default agency for regulating shipping. Other institutions do have mandates to regulate maritime activities such as labour relations, fishing, raw material or energy exploitation etc., but any rules adopted in the IMO concerning ships will necessarily have an impact on these activities also. The IMO thus regulates for instance shipbreaking and loss of fishing gear.

Exactly what will be adopted in the IMO depends on many factors and is the subject of this dissertation. Any regulation that is intended to apply to shipping generally must in practice be enacted in the IMO, since while other fora may well adopt rules, they will only enter into force and be implemented if they are explicitly accepted by each state. IMO rules can – almost uniquely – be introduced even if opposed by many states, and once in force will apply even to ships of nations that have not accepted them.

This is a result of the nature of shipping, and not only a consequence of a political decision. The *raison d'être* of shipping is to supply universal transport from and to every port in the world. Ships have lifetimes of 20-30 years, and only very few do not change their area of service in their lifetime. Most ships change owners several times, so the possible resale value of a ship is important to providers of finance and to the owners who provide their own equity. A ship that cannot access every port will have a smaller number of possible purchasers, and therefore command a lower price. Having access to every port in the world, however, means being able to adhere to all local rules and requirements, which is possible only because in actual practise these rules do coincide to a very high degree. That similarity stems *inter alia* from implementing regulations or recommendation from the IMO and other international bodies. If this were not the case, local rules could be incompatible, and some ships would be limited in their ability to serve some ports, which will usually be a disadvantage to both the ships and the ports. Accordingly, even though the legal rules of MARPOL and SOLAS allow states to remain outside an

International Maritime Organization convention (see page 44) ships trading internationally cannot in practice do so¹⁷.

This phenomenon is the source of a possibly unique pressure to achieve a material outcome that is present in the IMO. If ships are faced with a decision they must take, such as choosing a fuel, the decisions must be compatible with the rules of its ports of call, or at least acceptable to the ports that the ships must serve. If a significant number of ports wish to solve a particular problem an IMO rule will ensure that they are compatible, but a failure of IMO to regulate will not in the long term allow ports to apply different rules. Since ships must serve all ports, a common mode of conduct will eventually evolve that allow ships that follow it to enter any port. The uncertainty of which rule will emerge and how long this will take, is a powerful incentive for IMO regulation.

Background

The IMO is an agency in the United Nations family but was created in a separate process by the states that are members. The IMO convention was thus not created by decisions of other UN bodies, and many IMO delegates consider the IMO independent of UN resolutions for that reason. However, the United Nations Convention on the Law of the Sea, (*UNCLOS*, 1982), was not negotiated within the IMO, and it provides the general framework of freedoms and obligations of states vis-à-vis ships both on the high seas and in territorial waters. *UNCLOS* obliges states to legislate for foreign ships only in order to implement 'generally accepted international rules or standards' (*UNCLOS*, 1982 Article 21) and thus states should not generally impose their own national regulations on ships. This *UNCLOS* rule does not specify a role for the IMO but allows and obliges states to apply internationally accepted rules and standards in the maritime area. These rules and standards naturally include the IMO family of rules, notably conventions like the MARPOL¹⁸, and the SOLAS (Safety Of Life At Sea) convention¹⁹. Every ship is also obliged (by *UNCLOS*) to register with, and fly the flag of, a state, which is then responsible for ensuring that the ship complies with the national regulations of that state (DeSombre, 2006, p. 69; *UNCLOS*, 1982, Article 91).

As the following brief history of the IMO shows the organisation has been very much a creation of the west. Even today and even in matters of global significance (such as climate change) the active delegations in the negotiating bodies are predominately western (Psaraftis & Kontovas, 2020, Figure 2).

Originally ships were regulated on the basis of their 'home' port. European ports had regulations for ships owned by their citizens, and these regulations formed the basis of later national rules

¹⁷ This condition does not apply to the same degree to all vessels. Fishing vessel for instance do not trade world-wide and are usually limited to certain waters. This has made a global system regulating the safety of fishing vessel far more difficult to achieve than that for transport.

¹⁸ International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997

¹⁹ SOLAS - International Convention for the Safety of Life at Sea, 1974

such as the "Grande Ordonnance de la Marine d'Août 1681" also called the marine code, drafted in France under the reign of Louis XIV. This code requires that "The Officers of the Admiralty will be required to establish every year in the month of December a register of all ships belonging to citizens of their jurisdiction with the names of the owners..."²⁰. The object was to obtain a list of all French ships in private ownership (Osmont, 1714; Warlomont, 1955). This was not a permanent register of ships, but a dynamic registration of owners. The introduction of mandatory general regulation of ships is generally attributed to the British Merchant Shipping Act, 1854 (Seymour, 1855), under which British ships were subject to a broad set of rules including a system of tonnage measurement, certificates of mortgage and sale, rules relating to the engagement of seamen, and to the discharge and payment of wages, provisions concerning health and accommodation, provisions made for the prevention of accidents, rules as to sailing ships and powered ships and regulations with regard to building and equipment of ships including passenger vessels and limitation of the responsibility of ship owners. International regulations for preventing collisions, based on the British rules, were adopted by a maritime conference convened by the United States in 1889 (Palmer, 2005).

As far as those ships were concerned that would basically sail from their home port, visit a foreign port and then return to the home port, a system of national legislation could be adequate, but no national provisions would necessarily be applied to a ship sailing between two countries neither of which were its home. In the beginning of the last century some states opened their registries to ships who were neither required to visit the state nor to have significant ties to that state (Carlisle, 2013, p. 145; DeSombre, 2006, p. 71). Such ships – under 'flags of convenience' – could constantly be out of physical connection to their flag state. They would only service ports of other nations. These ports would by UNCLOS be limited in their possibilities of applying national rules to these ships and ports were therefore interested in international sets of rules, which would be common to all ships, and that could be applied by ports to foreign vessels.

SOLAS and MARPOL

A major stimulus for maritime regulation has often been shipping casualties. The Titanic disaster on 15 April 1912 led to an international conference that was held in 1914. The Conference negotiated the SOLAS (Safety Of Life At Sea) convention which after several setbacks entered into force in 1933 (Harvey, 2012, pp. 6–7). The SOLAS convention did not establish an international organisation. The IMO was not created until 1948 by a separate international conference. This convention, however, was also not immediately accepted, and not until 1958, did the convention come into force (Harvey, 2012, p. 14). This slow development reflects the conservative nature of the sector but is also an example of the recognised necessity of globally uniform rules for ships.

²⁰ Seront tenus les Officiers de l'Amirauté, a peine d'interdiction de leur office, de faire tous les ans au mois de Décembre un état de tous les Vaisseaux appartenant aux Bourgeois de leur ressort, qui contiendra : leur port, âge, qualité & fabrique, avec les noms des Propriétaires & de l'envoyer au Secrétaire d'Etat ayant le département de la Marine.

Tacit Amendment

An important feature of the decision-making process of the IMO is the ability of the organisation to adopt rules by majority vote and without the agreement of states that would generally be considered powerful. This process arose out of necessity. As the graphic issued by the IMO in 2013 (Figure 3 page 45) shows, there has been an increasing focus on environmental issues since 1982. As European states started to enforce the IMO conventions for ships in their ports, an increasing number of flag states also began to apply these conventions to the ships they registered (DeSombre, 2006, Chapter 5; Barrows, 2009, Chapter 6).

In the 1970s, a number of major amendments to SOLAS as well as some new conventions were negotiated. These amendments and conventions entered into force very slowly, though ratification of each by a sufficient number of states. This slow process was increasingly seen as a problem, particularly for the safety improvements that were introduced by changes to the SOLAS convention. A new procedure allowing more rapid entry into force was therefore introduced, initially in SOLAS (Adamson & Brown, 1998, p. 3). The procedure allows for amending or extending the annexes to a convention by a majority of the parties. Such an amendment is then considered to be accepted unless one third of the parties, making up 50% of the gross tonnage of the world's merchant fleet object to the amendment. Importantly, these amendments can be extensions of regulation and introduction of new requirements, not merely adjustments of existing rules. This means that active acceptance is no longer necessary to introduce a new legal obligation. The International Convention for the Prevention of Pollution from Ships, MARPOL, that was adopted in 1973 includes this new tacit amendment procedure. This procedure is now the default method of changing all IMO conventions.

Member states

Legal analyses of these types of amendment procedures may distinguish between those that allow amendments to be imposed on states who do not support the change, and those that include an opt-out mechanism so that any state that does not wish to be bound by the proposed change may refuse to be so bound (Hathaway et al., 2011, p. 9). In the case of MARPOL and other IMO conventions, this distinction is not as relevant as it may seem. Ordinarily, being bound by a convention would require not only ratification but also for each state to enact legislation to incorporate the convention into national law. Without such national legislation the convention would have no effect in the legal sphere of the state in question. However, the IMO conventions oblige those bound by them to enforce the terms of the conventions towards all ships irrespective of their flag and irrespective of whether the flag state is a party to the convention. This principle is commonly referred to as the principle of 'no more favourable treatment'. The tacit amendment procedure is not unique to the IMO but combined with the principle of enforcement against ships of non-contracting nations, this is a significant departure from most theories of the basic nature of relations between sovereign states.

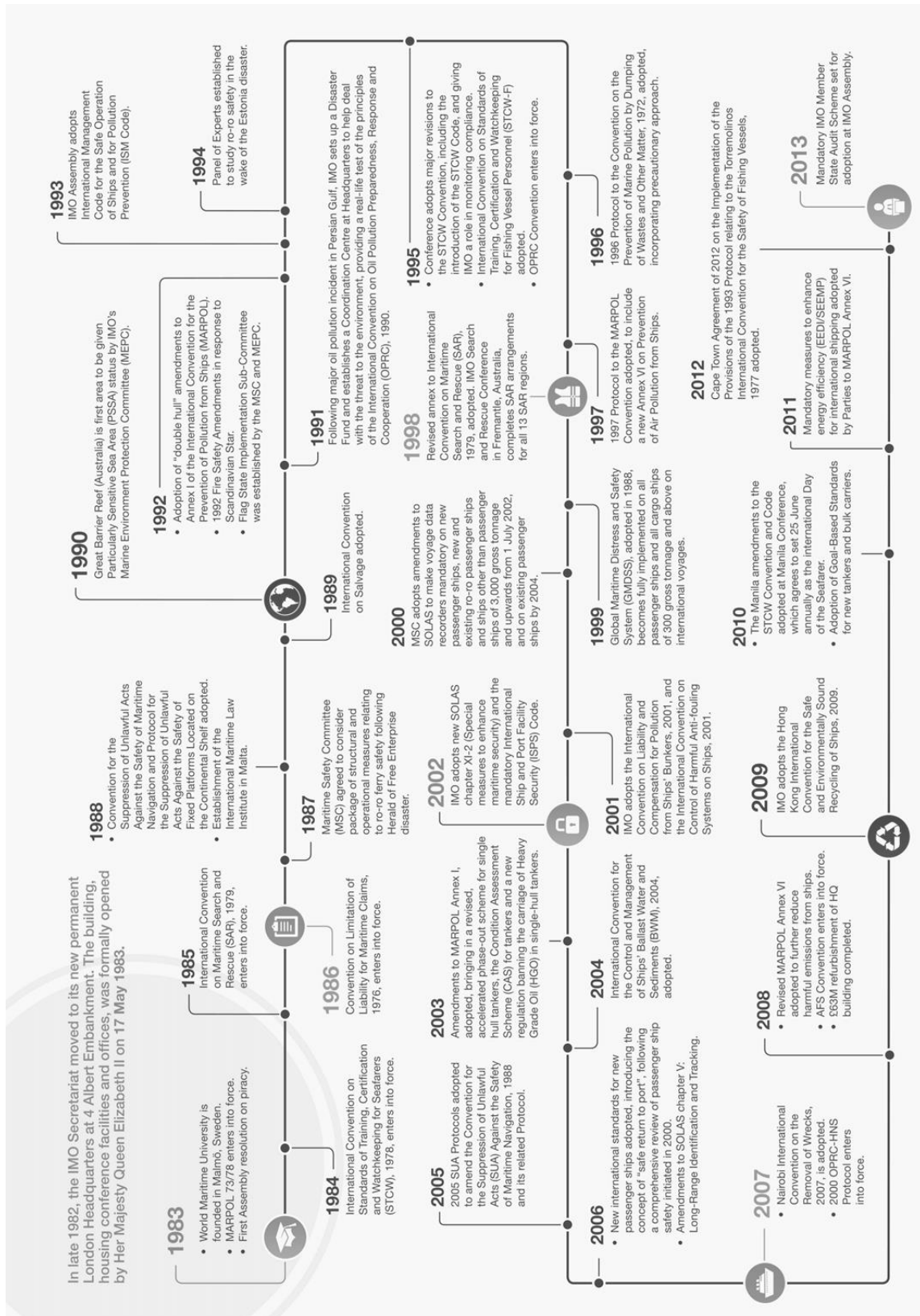


Figure 3 IMO work in 30 years

Source (IMO, 2013)

All signatories to MARPOL have accepted this principle, which allows and obliges other states to enforce MARPOL regulations against all ships²¹. Thus even if formally some states could keep out of an agreement, this would not in practice be a way to avoid that the rule would be enforced against ships flying the flag of that state (Okere, 1981, p. 536). It is possible with this procedure to keep the existing regulations operative in a changing world, but more importantly it is also possible to introduce completely new rules in existing treaties (O’Leary & Brown, 2018, p. 15).

The development of the IMO has been constantly in the direction of expanding the mandate and authority of the organisation and increasing its membership, including the observers and consultative INGOs. The group of stakeholder states has similarly expanded from originally mainly flag states to other countries, that form new groupings and INGOs. The IMO does not distinguish between type of states, allowing one equal vote to every member state. The conventions do distinguish between state that have ratified them and each of their Annexes, and those who have not. This distinction is important for the decision-making process, but not to the application, since the signatories will apply IMO convention rules to all ships.

Flag States

Implementation of the IMO requirements is carried out primarily through the flag states, where ships are registered, and secondarily through port states, where ships may be controlled as they call to load or unload (Marten, 2011, p. 51,55). The largest flag states are Panama, Liberia and the Marshall Islands. The most important port states are arguably those with major trading ports. The importance of a state in the IMO context does not necessarily reflect its importance in other international fora or in international relations more broadly. Two of the major flag states (Marshall Islands and Liberia) are usually represented in the IMO by private companies that manage the flag administration on behalf of the government. Panama was for a long time represented by a private interest, who now represents another flag (personal communications 6). But many of the ships flying the Marshall Islands flag, or that of Liberia and Panama, are owned by American interests. However, the United States is not itself a very large ship registry. Its registry is comparable in size to that of Denmark. Some flag states – like Greece and Denmark – are members of the EU, which is not itself a member of the IMO, even though many issues debated in the IMO lie within its competence. Assumptions about influence being a function of resource endowments or size must therefore be seen in the light of these different types of relative importance.

Flag states have an interest in being parties to the IMO conventions, since only parties can issue the certificates that ships need when entering the ports of states that will implement the conventions by ensuring that the documentation required is on board. The Marshall Islands' delegation and the Liberia delegation have for many years usually been composed of personnel from the private companies that manage the registries (International Registries, 2014; The Liberian Registry, 2019). Even in other national delegations headed by civil servants from

²¹ For a legal discussion of this principle see Environmental Norms in Maritime Law (Tsimplis, 2021).

administrations, there are very often representatives of private companies, and while they seldom if ever speak in plenary they can represent the state in working groups (personal observation, and personal experience, having done this). These experts provide resources for the delegations they are part of and ensure that the companies and interests they represent will be aware of the exact manner in which the discussions go. They will be able to use whatever skill and flexibility they have to influence the results. Ethnographical observation of such phenomena is necessary to shed light on the significance of these kinds of representation which may be relevant also in other fora, where the presence of industry advisors may be less obvious.

Traditional flag states such as Greece and Cyprus, Denmark, Norway and Germany can muster sufficient expertise to individually evaluate the consequences of alternative forms of regulation, and they have resources to participate in the work in the IMO. The United States and Great Britain are also endowed with sufficient personnel and expertise and have interests to defend. Many states' representatives in the IMO are, however, not conversant with flag administration or commercial operation of ships, nor schooled in physical or biological science and will therefore tend to focus on very general or immediate considerations of their governments. The positions of delegates naturally reflect the pressures on the entities for which they act as agents. This leads to the observed result that democracies are often more ambitious in regulating climate than non-democracies, and that shipping dependent entities (flag states) are usually less ambitious than trade dependant ones.

China appears on all of the usual 'top 5' lists, and Greece, Japan and Singapore on both the lists in Table 1, but USA, South Korea, Panama, Liberia, Malta, Bahamas and the Marshall Islands are each only sizable in one aspect.

Flag	tonnage 2020		Owner	ship \$-value 2019
Panama	234.735.311	1	Greece	105.227
Liberia	187.801.367	2	Japan	94.721
Marshall Islands	170.971.422	3	China	90.873
Hong Kong	130.306.076	4	Singapore	49.966
Singapore	96.100.980	5	Norway	48.854
Malta	82.442.533		USA	44.519
Bahamas	64.126.903		Germany	31.460
China	61.065.326		South Korea	30.007
Greece	38.041.961		UK	29.028
Japan	28.688.956		Denmark	23.028

Table 1 Top maritime nations

Source (Lloyd's List, 2020; *Top 10 Shipowning Nations*, 2019)

UNCTAD data from <https://unctadstat.unctad.org/> gives a similar list.

The largest flag states are without comparison: Panama, Liberia and the Marshall Islands. The order varies with the method of counting, but these countries represent more than half of all shipping. Expanding the list to including China, with Hong Kong, raises the combined percentage to about 70% (Lloyd's List, 2021). Even more extreme concentration is seen if shipbuilding is considered, where China, South Korea and Japan build more than 90% of world

tonnage (UNCTAD, 2022). The states with major ownership of vessels are more difficult to identify, since registration does not necessarily indicate the true owner. However, the ICS publishes estimates of the distribution of ownership of shipping tonnage which indicate that USA, Japan, Greece and China own together in total about 40% of world tonnage both by value and by tonnage (ICS, 2021).

It is clear that the largest flag states (Panama, Liberia and the Marshall Islands) are not among the states usually regarded as powerful in resources and capacity. They are, however, the largest contributors to the budget of the IMO. The next largest flag state, China is on the other hand a powerful global economic factor. The largest shipbuilding states: China, the Republic of Korea and Japan are economically large and the major ship owning state, which is with some uncertainty, the USA, is the economic heavyweight par excellence.

Developing Countries

As can be seen in the cases, the developing countries do not form a coordinated group in the IMO. For a different view see Karim (2015, pp. 18 & 24). This is unlike the situation in other UN organisations and is due at least in part to the special structure of the maritime world. The interests of nations in maritime transport do not align with the traditional North-South dichotomy. The major flag states, Panama, Liberia and the Marshall Islands are all developing countries, and for them the maritime interest is vital. In maritime issues, however, they have little common economic interests with other South American, African or Pacific developing states. Those developing states who have no particular flag state interest are not often active in the IMO. It is difficult for a state with little maritime expertise to participate in legislative activities which primarily focus on technical rules for flag states, even if those rules are also to be implemented by port states (personal communication 7). The cost of maritime transport is of high interest to exporters of low-priced commodities, but the IMO rules have only a very marginal influence on the competitive positions of exporters (MEPC 76/7/13, 2021; UNCTAD, 2023).

Oil-Producing countries

The OPEC countries do not traditionally operate as a group in the IMO, but Saudi Arabia and United Arab Emirates consistently agree in climate issues, often supported by Russia. Other major oil producers do not appear to coordinate with them, or even to participate very actively.

South America

The most active South American Countries, Argentina and Brazil, are usually supported by delegations from the rest of Latin America. The cooperation often extends to Mexico, but not usually to Panama. Occasionally Spain will support South American positions, apparently for cultural reasons. The EU limitations on its members may limit the extent to which this can happen.

Groupings

Delegations that can operate collectively, such as the members of the European Union, the Pacific SIDS and a number of South American countries, can distribute the work of participating

with interventions as well as writing of submissions among many persons. Their delegations can support each other during negotiations. This can give them resources similar to much larger states. From personal experience I have seen that delegations that agree with a given submission do not always co-sponsor it, simply because the timeframe for submissions and the bureaucratic procedures for accepting co-sponsorship do not allow it. Submissions written by one state may thus on occasion be submitted by another with a faster authorisation process. Thus, the identification of submitters, and co-sponsors does not always accurately reflect which states or other actors are behind a certain proposal. The ability to make multiple submissions is indicative of resources and a wish to have influence, but not necessarily an indicator of power or influence on the result. Similarly personal experience indicates that speaking time and frequency depends also very much on the individual delegate, as well as on the capacity of the delegation to follow a debate and simultaneously draft interventions.

EU

During and before the IMO meetings a formal and informal coordination takes place among the members of the EU. While I participated in the Danish internal preparations for the IMO meetings (from about 1995 to 2019) it was the custom to assemble interested private organisations for industry and civil society in Denmark around the time of the formal EU coordination. It was clear from the briefings before and after these meetings in the EU Working Party on Shipping that the Commission always attempts to ensure a common EU position even when there is no formal EU competence and member states may want to advocate differing policies.

The formal legal status of the EU in the IMO is that the EU as such has no presence, but that the EU Commission has observer status and thus can speak and participate. However, the Commission cannot negotiate or express itself in the name of the Community even on matters of exclusive Community competence. Often the EU position is expressed by the EU member state country that holds the rotating presidency of the EU, which can be quite confusing to other participants at the IMO to whom it may not be clear why a smaller EU member, normally a silent spectator, speaks to a technical point that the delegate may even seem to have difficulty in formulating precisely²² (Wouters et al., 2009, p. 48).

The SHAC

The Shipping High Ambition Coalition, SHAC, was created in 2017 after initiatives by the Marshall Islands (RMI) going back to 2014 (Pacific Islands Development Forum, 2017). The RMI had previously, in 2015, presented a proposal (by Mr. Tony A. De Brum, Minister for Foreign Affairs, Republic of the Marshall Islands) at MEPC 68 for setting a reduction target and agreeing associated measures for international shipping. (*MEPC 68/21*, 2015). On this basis the Marshall Islands, supported by the University of the South Pacific and its international academic contacts, created a forum of cooperation: the Shipping High Ambition Coalition (SHAC),

²² For instance, at MEPC 68 on 13th May 2015 in the Afternoon session at 17:30:29, when time was short, Latvia spoke as presidency of the EU. In the audio one can hear some laughter from the floor.

initiated in April 2017 at a side event to the Third Pacific Regional Energy & Transport Ministers' Meeting in Tonga. The participating states in this group were basically the Pacific SIDS and the EU. The coalition has since enlisted other countries, including New Zealand and Canada.(Corbett et al., 2020; Pacific Islands Development Forum, 2017). The Biden administration joined the SHAC in 2020. The SHAC cooperation led to five submissions to MEPC 71 co-sponsored by a number of Pacific countries and some European countries. These submissions were heavy on science delivered by universities. The submitters were, in different combinations: Antigua & Barbuda, Belgium, Denmark, France, Germany, Kiribati, the Marshall Islands, Netherlands, Solomon Islands, Sweden, Tonga, Tuvalu and two organisations : IAPH and ICHCA.

BRICS

There are often coherent positions in the climate issue between Brazil, Russia, India, China and South Africa.

INGOs and the IMO

Industry organisations

Many authors have researched the influence of business in international organisations. The main focus of most of these has been companies or multinational corporations rather than B-INGOs (Falkner, 2008; Mattli & Woods, 2009; Avant, et al., 2010; Abbott & Snidal, 2010; Carpenter & Moss, 2013; Fleming & Spicer, 2014). A number of the economic interests have one or more international organisations that serve these interests in some way. Some, but by no means all, of these B-INGOs are represented in the IMO, where they have consultative status. They include both some very active and some almost invisible organisations. The most active are sometimes alleged to have 'captured' the IMO (Karim, 2015; InfluenceMap, 2017; Baumler et al., 2021).

When considering INGOS it is important not to conflate the INGO with its members and with the interests it represents. A central concern of such organisations is to retain and increase its membership, which is not the same as having exactly the same interests as its members. Retaining and increasing membership is done i.a. by reporting successes in representing member interests (personal communication 2). Naturally, reporting successes is straightforward when members raise issues with the organisation, and these are then resolved to the satisfaction of the members. However, even if an optimal outcome is not actually achieved, outcomes can still as far as possible be reported as possibly partial successes. This implies that one cannot always take statements by member organisations about their successes at face value. It is necessary to observe closely the preferences expressed and note if they change as the outcome solidifies. It is also worth noting that businesses that are members of the same organization are different, and do not necessarily have identical interests. The interests that a B-INGO represents are therefore not always evident. The complete list of B-INGOs represented in the IMO is open to interpretation as to the business nature of each. In Annex D is a list of INGOS with consultative

status at IMO identified as those that I consider to be B-INGOs and those I consider e-INGOs. In order of their apparent²³ importance, they are principally the following:

IACS and other technical organisations

The International Association of Classification Societies has 12 members. These are the main classification societies that establish technical standards and requirements that address maritime safety and environmental protection. IACS thus has access to trusted technical expertise and is therefore very influential in the IMO even when acting as a commercially interested entity. The role of the IACS members is complicated as they are both issuers of official certificates on behalf of governments as well as issuers of commercial certificates attesting conformity of ships and equipment with their own or ship owners' requirements. Major inputs to the IMO from IACS are the 'unified interpretations' of the IMO regulations that are put forward to resolve ambiguities in the IMO regulations or guidelines. These are most often adopted with little or no debate only on the recommendation of IACS (personal observations over many years). A few active organisations can be considered similar in nature to IACS, in that they mainly serve as purveyors of factual information. These notably include IMarEST; The Institute of Marine Engineering, Science and Technology, and RINA; The Royal Institution of Naval Architects.

ICS

The ICS styles itself as the global trade association for ship owners and operators and is primarily an association of national shipowner associations. The membership covers over 80% of the world merchant fleet. ICS members include all sectors of shipping, and mainly refers to its membership as the 'shipowner' community. The owners of dry bulk carriers, oil tankers, chemical tankers, gas carriers, container ships, general cargo ships, offshore support vessels, and passenger ships also operate these ships, and some are primarily operators rather than owners. The companies are, however, not directly members of the ICS, but must in principle be represented through a national association. The criteria for these national associations are presumably different for each of the 40 countries represented in the ICS. The ICS has a secretariat of 28 (*ICS Secretariat Web*, 2022).

WSC

The World Shipping Council is the voice of liner shipping, which is the segment of shipping that transports containers on regular routes with fixed schedules. These are the largest and wealthiest shipowning and ship operating companies, and include A.P.Møller-Maersk, MSC, and COSCO as well as 17 other members (*WSC - Who We Are*, 2022). The secretariat has 13 staff located in offices in Washington D.C., Brussels and Singapore.

INTERTANKO

The International Association of Independent Tanker Owners is a trade association for oil tankers. The 'independence' is from oil company and state-controlled tanker owners. The 24

²³ Based on the activity and reputation among active delegations of each.

staff members are located in Athens, London, Oslo, Singapore and Washington DC (INTERTANKO, 2022)

BIMCO

Originally named the Baltic and International Maritime Council, BIMCO is known mostly for the widely used charter parties, bills of lading and other standard agreements and standalone clauses that cover the full lifecycle of ship-related operation and activity. BIMCO has direct membership with members from the largest ship owners in the world to small local port agents and law firms. Its membership covers about 60% of the world cargo fleet tonnage. This includes owners and operators of ship types which are not well represented by the ICS, for instance bulk carriers. A staff of 58 is situated in Copenhagen, Singapore, Shanghai, Athens and London (BIMCO, 2022).

The civil society INGOs

The much shorter list of civil society INGOs can be seen to be mainly environmental INGOs. The few trade unions and professional societies are not very active in the environmental issues considered here and consider only the e-INGOs (with my apologies to trade unions and charities). The e-INGOs are not specifically maritime, and thus the IMO receives only a part of their focus, and the maritime issues must be coordinated with broader policy to a much higher degree than is the case for most other delegations, both of nation-states and of other INGOs . The level of activity of e-INGOs varies considerably from topic to topic. Some that are often vocal have been: CSC; the Clean Shipping Coalition (whose members include Seas At Risk and Transport and Environment), FOEI; Friends of the Earth International, Greenpeace International, Pacific Environment and WWF; the World Wide Fund for Nature. A more complete list can be found on in Annex D, in a list of the most active civil society INGOS .

Only a few delegations are consistently active

The IMO strategy on GHG and the Ballast Water Management Convention were negotiated in theory by all members of the MEPC, but in practice it was negotiated mainly by those who submitted concrete papers and those who spoke. Very few delegations provide specific solutions. Most submissions merely indicate general positions that are not easily converted to legislative regulation, or they comment on other submissions without proposing regulatory alternatives. In the Ballast Water case it was particularly evident that submissions mostly pointed out problems but did not contribute proposals for their solution.

The number of active delegations varies between meetings of plenary sessions of the MEPC and working group meetings, where more of those who have capacity will be present. Not every active participant represents a state. INGOs, both B-INGOs and e-INGOs, may be more active than many states. Presence at the IMO meetings may not necessarily be a sign of active participation or interest in all the issues. Some major flag states may see very little traffic along their coasts or in their ports, others are heavily dependent on maritime traffic for vital supplies or exports. States' maritime interests do not follow resources or power distribution in the traditional sense. The North/South divide does not appear fundamental at the IMO, where a few developing countries (included in Table 1 "Top maritime nations"), that are the largest flag

states, have an interest in international transport that aligns well with the interests of some highly industrialised nations where many vessel owners are located. Many of the other developing states are exposed to the environmental, access and cost impacts of shipping and align more with states that depend on shipping while not benefitting from any income from ships. This undermines analyses that focus on north-south distributions (Karim, 2015), of those see domestic and regional interest as central (Tan, 2006) or ones that focus on states that are able to harness and bring to bear economic weight (Cafruny, 1985).

This background has shown the historic and legal basis of the IMO and the broad array of states and organisations that somehow must work together if a common regulation of any maritime sector issue is to result. As already pointed out (see page 41) regulations that are intended to apply to shipping generally must usually be enacted in the IMO. The next section will cover the types of decision that are at the disposal of the institution, and the degree of agreement necessary for an outcome, including the roles played by delegates, chairs and the secretariat.

Working in the IMO

The IMO acts through Committees, the Council and the Assembly, as well as through Subcommittees, Working Groups and Correspondence Groups. The greenhouse gas strategy was debated in the Marine Environment Protection Committee, the MEPC, and its working group on greenhouse gases. The ballast water issue debated in the MEPC, and its ballast water review group as well as in the Assembly. Each of these levels has its own competence and authority so that final decisions can be taken in the Committees without confirmation by Council or Assembly.

Types of decision

The IMO is not limited in the types of decision it can take. The decisions will usually be taken by 'consensus', which may in practice be by majority. The IMO conventions allow the IMO to adopt almost any required measure (O'Leary & Brown, 2018). The formal processes can be different for different types of decision, but in the following I will use the term 'agree' as a common term for any decision, even though they may be designated differently in the IMO process and can be of several different types.

Under the IMO convention, the IMO can agree by a simple majority to any decisions such as elections of chairs, approval of proposed agendas, interpretations of existing texts, as well as guidelines and other rules that are not binding legal obligations. These can formally be in the form of a resolution or may be included in the report of a committee. The IMO can also negotiate and agree the texts of completely new conventions, which must then include rules for the diplomatic conference that will adopt the text, and the prerequisites for ratification required for entry into force.

The MEPC can agree to regulations that amend the annexes to existing conventions, such as MARPOL through changes to or extensions of the annexes, by the so called "tacit amendment procedure". This implies a multiple-step process of first 'finalization' which describes endpoint of a negotiation where the chair determines that there is a sufficient consensus for a certain outcome. This outcome is captured in a document but may still need editorial improvements.

Finalization of an amendment to a MARPOL Annex, is secondly followed at a subsequent meeting by 'approval' of the legal text "with a view to adoption" at a later MEPC, where thirdly it must be adopted by a two-thirds majority of the Parties to the Annex present and voting. The term 'adopt' is the usual term for the final stage of such amendments and is also used in the IMO for the final decision to agree to a resolution or a guideline. Each of these types of decision is treated in more detail in this section²⁴.

In the IMO cases analysed here, each issue confronts an environmental topic of concern, but each of these cases uses a different legal form. One is a new convention that requires ratification, one is a non-binding resolution that can be adopted by a simple majority and one consists of modifications to MARPOL that can be adopted by the tacit amendment procedure.

Introducing a new convention

The most difficult process is creating a new convention. The MEPC can decide to do this and can develop the text, but the formal process requires a diplomatic conference, with specially accredited delegates, and the resulting convention will not enter into force until it has been ratified by whatever process it itself requires. The diplomatic conference can be a separate meeting in a location anywhere in the world, or it can take place during a normal IMO meeting, where the formal status of the meeting is temporarily changed, which is faster and easier. The main barrier to introducing requirements in this way, is the ratification process, which in many countries takes years.

Amending a convention

The IMO conventions, for instance MARPOL, assign power to its signatories acting in the IMO to alter or supplement the annexes to the convention. The method by which this can be done is the tacit amendment procedure mentioned on page 44. MARPOL assigns the MEPC as the forum for such amendments. Thus, deliberations in the MEPC do not lead to decisions which must be accepted at the higher levels of the Council or Assembly. Instead, proposed amendments of conventions may be presented directly to the parties to the convention and adopted by a process, that allows a majority of those states who are actively interested to adopt binding new rules. The tacit amendment procedure implies that an amendment to any MARPOL Annex can be accepted by a majority consisting of two-thirds of those parties to that particular MARPOL Annex, that are present and voting in MEPC. This is not the same as two-thirds of all the parties to the convention. It can in fact be a very small number of states, as long as the issue is not so controversial that anyone votes against. Any rule that is accepted in this manner is then submitted by the secretary general of IMO to the whole set of parties, with the effect that the amendment will enter into force for all parties, unless it is explicitly rejected by one third of all the parties, and only if this one third represents at least 50% of the gross tonnage of the world's merchant fleet (MARPOL Article 16(2)(f)(ii) and (iii)). There are no limits to the content of such amendments, which must, however, amend existing Annexes, which contain the operative

²⁴ For a more comprehensive list of conventions and other decision see "Vessel-Source Marine Pollution: The Law and Politics of International Regulation", which includes tables of Conventions and of the IMO Resolutions and Guidelines (Tan, 2006)

measures, rather than the convention itself, which contains the procedural provisions. Thus, the tacit amendment procedure cannot introduce a new Annex to MARPOL, but can introduce new chapters and new regulations in existing Annexes.

Only rarely and many years ago, has the MEPC formally voted on a MARPOL amendment. One was a famous "roll call" vote, where every delegation's vote was recorded (*MEPC 62/24*, 2011, para. 6.108). This vote introduced the first GHG measure, which was framed as an energy efficiency measure. The vote was demanded under pressure from states that did not wish to regulate GHG and did not consider CO₂ a "pollutant". The vote carried the new rules with a large majority, but the losing minority²⁵ made statements – also at later meetings – deploring the lack of consensus and they opposed taking up market-based measures to reduce GHG. The lack of progress on GHG regulation from 2011 to 2018 was seen by many IMO delegates as a consequence of this vote, and this heritage drives members and the secretariat to avoid voting (personal communication 38). Even delegates who have not experienced votes express concern at the prospect of a vote in MEPC (personal communications 12 and 34)²⁶. This concern leads to the often-repeated fear that a vote will be "divisive". However, there is little evidence that postponing or avoiding the majority decision in 2011, would have made subsequent GHG regulation more likely. In fact, from a purely logical point of view the divisive nature of the 2011 decision came from the request from Saudi Arabia for a vote and the demand from Brazil that it be by roll call. It was these two delegations that deviated from the practice of deciding by the "majority of those who spoke". As the cases show, the chair or the secretariat can construct debates so that the outcome of a hypothetical vote is clear and thereby restrict the choice to either an unacceptable outcome by vote or one that may be represented as a success even by those who in reality oppose it. Decisions are in fact often essentially taken by a voting process, but as long as this is not formally a vote, the chair can elect to either follow the "majority of those who spoke" or decide not to follow it and continue the debate, or let decisions on timing or process be used to replace decisions of substance (personal communication 41). The cases show how this choice of the chair constitutes the basis for significant influence.

The requirement that 50% of world tonnage is necessary to reject a change adopted by the tacit amendment procedure is particularly interesting. The 3 largest flag states, Panama, Liberia and the Marshall Islands together represent more than half of all shipping. Any amendment that is passed in the MEPC, and supported by them will thus enter into force if even if a majority of other states should oppose it. There are currently 107 signatories to MARPOL Annex VI. If they are all present and voting 72 votes can force an amendment. If the three major flag states support an amendment decided by a sufficient majority of those present and voting, it can then not be rejected by any number of other states. An amendment that is supported by even two of the large flags would have a good chance of survival even against opposition from many. An amendment that passes in MEPC against the votes of the major flag states still has a good chance of entering into force. The three flag states would have to persuade 33 other states to

²⁵ Brazil, Chile, China, Kuwait, Saudi Arabia

²⁶ My empirical material including notes from IMO meetings, conversations and interviews are summarised in Annex F

actively reject the proposal. It is this phenomenon I call the IMO's "semi-democracy". A majority present in MEPC that includes any major flag states, has a good chance of imposing its will on the global community even against the will of "major" powers and other large flag states. Establishing that such a majority exists is the task of the chair, and this fact grants the chair power also to not determine the existence of a majority, or where several outcomes might be acceptable, to choose one in particular.

Adopting a resolution

Decisions that are not taken within the ambit of a specific convention can be taken under the IMO convention itself, which allows decision to be taken directly by a majority vote of the members present and voting. Abstaining members are not counted arrangement as "present and voting". This also allows decisions taken by very small numbers, as long as the other states remain silent.

This process is the one used when adopting guidelines and resolutions and usually conforms to the practise of citing "the majority of those who spoke" as a basis for decision. Guidelines and resolutions are not considered legally binding on the member states. The decisions on unified interpretations of conventions are used by IACS to guide the classification societies, and thus also not binding on member states, but they are followed by IACS members, unless a member state with which an IACS member has a contract should object. Consequently, these interpretations are usually adopted only with the unanimous agreement among those who speak.

These formal rules of adoption are naturally followed, but usually the culture of negotiation – often referred to as "the IMO spirit" – will be to attempt to find a compromise that can find unanimous support. Other cultural limitations and the effects of long IMO practices are also necessary element to understanding how outcomes are arrived at.

Selecting the chair

The chair and vice-chair of MEPC are elected by the members for a term of one year, and are eligible for re-election for up to four further consecutive terms (*MEPC 70/18/Add.1 Annex 14*, 2016, Rule 18). There is no corresponding rule for the chairs of working groups. These elections and selections are usually uncontested. The chairs of MEPC are usually nominated by two or three member states and for working groups by the chair of MEPC, from the most active and respected members of the group in question (Hendriksen, 2020, p. 31). The choice is prepared through discussion with active members who might have objections, and with a number of geographically comprehensive delegations who can propose and second the proposal. Working group chairs can continue in office indefinitely. Mr. Sveinung Oftedal (Norway) has chaired the Intersessional Working Group on reduction of GHG emissions from ships since its inception in 2017.

Culture of IMO

The participants and their partially common "culture" are a heterogenous group. There are many widely held assumptions and ideas among delegations, such as the necessity of shipping for the global economy, the existence and desirability of a level playing field. These assumptions and

ideas may limit the perceived possible outcomes. The "culture" of the IMO limits the possible area of agreement, and helps narrow the choices, by allowing some proposed regulations to appear more "realistic" than others. These can then preferentially be considered without a serious debate on the choice. The networks between states and that between delegates overlap but are not identical. Only a few delegations are consistently active (personal communication 44), but the common goal to ensure that any regulation of shipping is done by the IMO, and not in other fora, encourages acceptance of broad compromise solutions.

Consensus

As do many IOs, the IMO professes to decide by consensus. This term is differently understood in different decision-making bodies. Understanding the way the IMO works is not just a matter of defining or identifying consensus. The term "consensus" while having a relatively clear meaning does not adequately describe the decision-making in the IMO.

Comparing the IMO to other organisations it is remarkable that with respect to the IMF, in "Rules for the World" Barnett & Finnemore (2004) find it necessary to point out, that the executive board of the IMF rarely votes on most matters. Instead, the managing director simply concludes the discussions with a statement about "the sense of the meeting," which constitutes the board's decision. Barnett and Finnemore find this anomalous and would expect a vote, since state representatives in other large public bureaucracies often take opposed positions. However, this is the normal way of taking decision in the IMO. The chair of the committee, subcommittee or working group will end the discussion by concluding that "most of those who spoke" or "the majority of those who spoke" advocated a certain decision. This decision is then taken even if certain delegations may still oppose it. See for example Report of the Maritime Safety Committee on Its Ninety-Seventh Session (*MSC 97/22*, 2016, p. 22). The most recent and striking example of this is the adoption of the IMO Initial Strategy on the reduction of greenhouse gas emissions from ships. Several states, formally criticised the lack of consensus and the United States reserved their position, but no mention is made of this in the descriptions on the IMO web-site, and there was no expectation from the dissenting delegations that the strategy would not go forward (*MEPC 72/17*, 2018, para. 7.19). Formal votes are rare in the IMO, but the decisions taken by majority in this way are common (personal communication 34). The IMO thus has a process for adopting decisions by a majority. This is also the case in working groups where non-state INGOs in consultative status may be the most active participants. The majority of delegation who speak and thus decide, may in those situations include INGOs and there may be a minority of states supporting the decision. In working groups, there has historically been no distinction made between participants from INGOs or those from states (for instance (*SSE 4/WP.5*, 2017, p. 4) this has been confirmed in several interviews.

An interesting development is that the chair of MEPC has recently thrown his weight into calling for "inclusion" of the minority when a majority was opting for stringent measures (see page 121). This request for "inclusion" meant that no decision was to be taken at that time, but that the minority views calling for more lenient measures should be incorporated in a new compromise. In other situations, the chair has allowed a small majority to take an undemanding

decision with no consideration of the minority that called for stringency. This allows for several interpretations, including the possibility that the "laggard" states had more influence. Another possibility is supported by the indications from persons with knowledge of the secretariat that the chair was made aware of which delegations represent signatories to the convention under which decisions are expected to be taken. Re-evaluating the majority in the specific instances reveals that those who advocate stringent measures include several non-parties to MARPOL Annex VI. It is of course also possible that the chair merely favoured maintaining an atmosphere of cooperation, since the assertive stance of the "laggards" is not mirrored in the more diplomatic statements of the "high ambition" states.

It is also interesting in this context, that INGOs with consultative status have recently been quite obviously pushed out of the debates in the MEPC committee. The previous treatment of INGOs could – and did – allow the conclusion that at least some INGOs could be influential and form part of the "the majority of those who spoke". This is apparent from the Ballast water case, where the ICS was very active. The novel process of not allowing INGOs the floor until all states have spoken and a conclusion is virtually reached makes it clear that in those situations only states are being considered. Even before this change some e-INGO interventions were effectively ignored as they are seen as "unrealistic", in relation to the prerequisites that regulation should be flag neutral, technologically indifferent and ensure a level playing field (personal communication 4,27). An example of this was clearly seen at ISWG-GHG 5 in May 2020 when an intervention by an e-INGO was heard and welcomed, but ignored, as described on page 103 [Transcripts Dataset].

The processes and the methods work of the members of the IMO, for both states and observers, as will be described in more detail will show that the role and function of the IMO is not merely to express a majority opinion or to follow a few dominant views, but that the participants and their preferences, as well as the procedures will contribute to each delegation's conceptions of what is possible, and that this is crucial to understanding the resulting decisions.

A large number of the active delegations share views that lead to the common agreement that shipping should be regulated by the IMO. Some of these perceptions originate in the shipping industry, some in maritime states, some are opinions of the chair. In the ballast water case one such perception was the acceptance that ships should not be "penalised" for the non-functioning of novel, untested equipment. Both in the ballast water case and in the cases related to climate regulation it has been generally accepted without debate that ships should have an economic life of 25-30 years, and that it would be unreasonable to require early scrapping or substantial reconstruction and retrofitting of younger ships contracted before regulations were adopted. The common interest for all IMO delegations – that shipping can and should be regulated by the IMO – leads to decisions that generally attempt to preserve the status quo of shipping.

Practical aspects

The meetings of the MEPC and its working groups take place at the IMO headquarters in London, on Albert Embankment 4, opposite Westminster, the government district. The building is purpose built and contains a large plenary room with facilities for more than a thousand

delegates and a viewing gallery, where journalists and academic observers, and even delegates can spill over if necessary. And if this is not enough space the live feed from cameras and microphones in the plenary can be piped to meeting rooms throughout the building and even online. The style of the building and its many displays of maritime gifts from member states give it an aura of authority. The ground floor plenary meeting room and the 1st floor delegates' lounge have floor space enough to accommodate many simultaneous conversations between delegates.

Plenary

The MEPC meets 3 times every biennial, thus twice in one year and once the following year. The main sub-committee of the MEPC, the PPR (Pollution Prevention and Response) meets annually. In addition, correspondence groups and intersessional working groups can be set up as needed, within certain limiting parameters set by the Council. A similar schedule is established for the other committees of the IMO, of which there are several. A plan of meetings is prepared every year for the whole organisation and the updated version is available online well before the years' start. In advance of the meetings of the MEPC an agenda is made available on the website <https://docs.imo.org/>, the contents of which are described later in this section. The agenda of each MEPC is fixed at the previous MEPC and contains certain permanent items originating in longer term decisions, also decisions in the Council, and the Assembly. Although somewhat hierarchical, the structure does not require that MEPC decisions are confirmed or



Figure 4 the plenary at IMO

Source: <https://www.flickr.com/photos/imo-un/26227959390>

authorised by Council or Assembly. Each level has its own responsibilities and decisions are taken by the member states at the level considered appropriate. The ballast water case shows both an example of the Assembly deciding in a process handled by the MEPC, and an example of the MEPC adopting a resolution that overrides a previous Assembly resolution. The IMO's

Marine Environment Protection Committee accepts proposals from all member states and all observers. Each proposal is presented to the committee and any, but the most uncontroversial issues, are sent to a Working Group that typically sits for two or three days in parallel with the committee and reports back at the end of the one-week session of the committee. The climate issues investigated in this dissertation are usually also worked on in the customary working group that sits in parallel to the plenary of MEPC. The agenda and all submissions are reviewed by the secretariat and the chair and a chair's timetable of the meeting is elaborated. This is posted online before the meeting and after the formality of adopting the agenda the timetable is usually accepted as the basis for work. Often a working paper containing proposed terms of Reference for working groups is issued ahead of the meeting. In situations where time may be short, and discussions are ongoing the chair may suggest early establishment of working and drafting groups, which can begin their work on the first day of the meeting (typically Monday) without waiting for a plenary debate to decide on controversial issues and formally ask the working group to debate them.

Intersessional working and correspondence groups

The decisions of the MEPC can involve the setting up of correspondence groups and intersessional working groups, both of which can advance the work between the plenary meetings. A correspondence group will be mentioned in the MEPC report with the name and contact information for the coordinator. Interested delegations (both states and non-states) can e-mail the designated coordinator who will circulate documents to all who have registered. Often the correspondence group will draft its result in several rounds, the first of which may be a questionnaire and the last of which will be the report.

An example of an intersessional working group is The Intersessional Working Group on Greenhouse Gases (ISWG-GHG) has met between the MEPC meetings since 2017. Like all the IMO meetings these meetings are numbered. The 13th meeting took place in December 2022, and ISWG-GHG 14 took place in March 2023. The latest that is covered in this dissertation, ISWG-GHG 15, was held back-to-back with MEPC 80 in June and July 2023. The chair of all

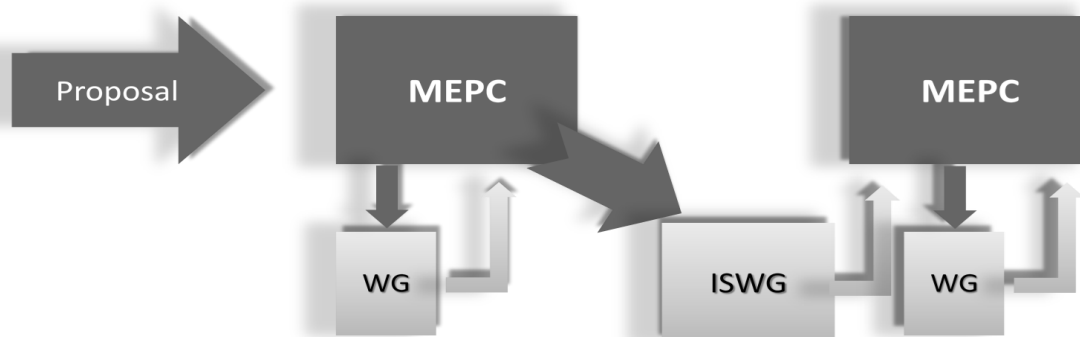


Figure 5 flow of work in MEPC

Source: Author's own graph

these intersessional meetings has been the same: Mr. Sveinung Oftedal of Norway – an IMO

veteran for more than 20 years. He is director in the Norwegian Ministry of Climate and Environment and is the Norwegian Head of Delegation in the MEPC. He has also chaired the GHG working groups in parallel to the plenary of MEPC. The ISWG-GHG works only in English and does not usually establish subgroups. Any work outside the plenary is thus wholly informal and is often limited to "like-minded" delegations coordinating their arguments and positions, and "small groups" of delegations across divides that draft compromise texts. The coffee and lunch breaks are the forum for bilateral – and multilateral – exchanges that serve to progress the negotiations, and sometimes to setup evening meetings or dinners, where longer talks can take place. Occasionally the chair will ask delegations with opposing views to find a compromise outside the meetings. These can sometimes be relatively official "friends of the chair" as described by Tolba (2008). Thus, for instance I participated at MEPC 76 in an informal subgroup that was asked to work on a specific issue, which was resolved, without this being apparent from the official report²⁷.

Process

In both plenary meetings and working group meetings, the debate is conducted in the following manner: the chair will introduce the agenda item, possibly structuring the debate around issues or possible compromises. The delegates will ask for the floor by raising their delegation's name card and placing it vertically in the slot in front of them, where it is otherwise kept in a horizontal position to identify the delegation. Delegations are (usually) recognised by the chair in the order they raise their cards. Meetings are usually held from 9.30 to 17.30. The morning session breaks from 11 to 11.30 for coffee and informal consultation, there is a lunch break from 12.30 to 14.30 and the afternoon session breaks from 16.00 to 16.30 for coffee and consultation. During these breaks much of the actual negotiation takes place. Working groups can have much longer working hours and will often meet from 9 in the morning and will on many occasions work until well into the night. Some chairs of working groups routinely work the delegates until ten at night (and thus the secretariat even longer). Outside working hours many delegates meet informally and even privately, and presumably discuss the



Figure 6 Coffee break consultations

Source: Own photo

²⁷ The meeting audio from MEPC 76 of 11 June 2021, morning session at 13:45:37 reveals the chair asking an informal group to consider and report back. The official report contains the result of this group's work in document MEPC 76/15 paragraphs 7.25 and 7.28 but does not mention the informal group.

issues. Evening dinners and drinks are mostly within "likeminded" groups, but bilateral meeting of delegations with differences also take place. I have participated in some bilateral meetings with delegations which do not align with the views of my delegation. I am aware of at least two informal dinners where significant decisions were made: one created the alliances that led to the creation of SHAC (see page 49), and one elaborated a last-minute extension of the requirements of the Ballast Water Management Convention (see page 97).

On the first day of a meeting (typically the Monday), the Secretary General will usually host a reception, allowing some informal talk among delegates. In other evenings, where delegates are not in working groups, and in the mornings, there will be consultations between groups that cooperate, as well as ad hoc discussions, sometimes organised as dinners sometimes as meetings in meeting rooms of the IMO building. The EU member states often meet both before and after each day's session.

Reports

The last day of any IMO meeting is usually taken up with the reports of the working groups and the report of the committee. During the discussion of the reports of the working groups substantive comments and decisions can be made by the committee, but the reports themselves cannot be changed. The delegations who have not participated in the working groups will in theory be able to make their voice heard at this point, but it is difficult to gain time to do so, which places small delegations at a severe disadvantage. The reports will contain a number of considerations raised and all those resolved in the working group, and the report will end with some "action points" that represent the recommendations of the working group to the committee. These points are typically where delegations who do not agree to the conclusions of the group will make their proposals. If successful any proposals for alteration will appear in the report of the committee, but the working group report itself will not be changed.

During the discussion and adoption of the committee's own report which usually takes place last on the Friday of the week of the meeting, no new comments or decisions can be introduced. The report is supposedly wholly historical and is merely a record of what was said and decided. Often delegations will attempt to include in the report considerations that were not actually voiced during the week, but usually the chair will refuse this.

This working method creates a time pressure that may not apply in other international settings. If the outcome of a meeting is exclusively the operative text of a resolution or convention it can be debated until the last minute and if consensus is required, delegations may gain leverage by holding off acceptance until the last minute. If no result is achieved, no final document needs to be issued. In the IMO this "last minute" typically occurs on Thursday, and the week's debates are fairly completely described in the report that is adopted by plenary on the Friday. MEPC decisions need not be formal separate documents but can be set out in the report as opinions of the majority or of the committee, or of an undisclosed number of delegations. Minorities can formulate their positions in formally attributed statements attached to the report or included anonymously in the body of the report. A delegation can opt for its dissenting opinion not to be registered at all. Thus, even if no final result is obtained any advances towards compromise can

be fixed in the report, which may also include quite specific statements of positions, some attributed to specific delegations but most anonymous. Proposals by the chair may be attributed in the report, but they will not be caught by analysis of written submissions. They may appear as "J-papers"²⁸ on the imodocs website but will not usually be referenced in the report. Oral proposals and comments are usually not attributed to delegations in the reports. This gives a definite dynamic to the work. The concentrated focus during the week and the necessity to report and thus cement progress on the Friday, makes attempting to block decisions by not participating in the negotiation, a typically inferior option to suggesting alternatives or compromise. Since the draft report is in the hands of the chair (and secretariat) and any alterations must be accepted (at least tacitly) by the plenary, the chair has an instrument in the report to note suggestions that have support, without concluding that they are accepted. Thus, notwithstanding the conservative nature of the sector and the institution, there is a significant chance that any negotiation will gradually lead to a result.

Before considering how these formal and informal rules played out in the cases, it is necessary to note the significant impact the COVID pandemic had on negotiating during the period under consideration.

During the pandemic

In 2020 and 2021 the COVID-19 pandemic prevented physical meetings in the IMO building and a system of virtual meetings was set up that included the MEPC and ISWG-GHG. Due to technical challenges and for reasons of health for the participants, the meeting hours were shortened to only 3-4 hours per day. The agenda of the MEPC was shortened by allowing consideration by e-mail of many documents that were assumed to be non-controversial. A drafting group worked in parallel with the MEPC meetings, but no working group was established. Thus, only the plenary debate was available for negotiations, and as it was considerably shortened there was effectively only one intervention from each delegation on each subject. The report was more brief than usual, and the consideration of the report was brief, but a 5-day review period for the report was introduced. During the review, changes could be introduced, but only for delegations to suggest better ways of reflecting their own views. This had no effect on the pressure to achieve some outcome on the Friday. The number of issues and the number of interventions was reduced, but the fundamental flow of the meeting itself was unchanged.

Nevertheless, these changes introduced a profound transformation of the method of work. Gone were the informal contact in coffee breaks. Gone was the possibility of talking to another delegate on one issue while another issue was being debated. There was little possibility of sounding out possible compromises before the chair would conclude. Any of these options would be available to delegates who were connected to other delegates on alternative media, but not effortlessly available to those who did not know each other well beforehand.

²⁸ J-papers are papers issued by the secretariat during the course of a meeting in order to facilitate the debate. The "J" anecdotally refers to the term 'job' used in the typing pool to denote an urgent task.

These practical aspects both before and after the pandemic, and the culture common to most IMO delegates, thus create and support the influence of the chair, particularly in situations where there is no clear and large majority for any particular outcome. In the next chapters three cases will be used to show how in each the process allowed reducing the options of choice to one material choice with no alternative except failure of IMO to regulate, and how the chair was a significant and autonomous source of influence.

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Chapter 4. case 1 – The Ballast Water Management Convention

If you don't know where you are going, you might not get there

Introduction

This case shows that even where it is clear that a major industrial organisation and the United States are active and influential, the outcome can be understood only if the process is taken into account, and the central influence of the chairs and secretariat are considered. In this case, the issue under discussion concerned the entry into force of the International Convention for The Control and Management of Ships' Ballast Water and Sediments (*BWM/CONF/36*, 2004), the text of which had been negotiated over a number of years and finalised with unanimous concurrence at a diplomatic conference in 2004, but which required ratification before it could enter into force, something that did not happen until 2017. The International Chamber of Shipping (ICS) was a leading opponent and the United States a firm supporter of the convention. In spite of the undoubted influence of these two delegations, it was the chairs and the secretariat including the Secretary General and the Legal Office that enabled the adoption of a series of (non-binding) resolutions to postpone the requirements, despite the wishes of a majority of states to maintain the original agreement.

Ballast water

The ballast water convention that is the topic of this chapter sought to regulate one particular harmful effect of the shipping industry (transport of invasive species) by imposing a responsibility on ships to control it. The use of ballast is necessary for most vessels, as ships are designed to be immersed to a certain level in the sea to maintain stability and to ensure immersion of the propeller. When a full cargo is loaded, the weight will ensure that the ship is afloat at the required level of immersion, but when cargo is unloaded ballast must be taken on board to keep the vessel at the required level of immersion. When a cargo is again loaded the ballast must be released to keep the ship afloat. Taking in ballast water in one port and releasing it in another moves not only the water from one port to another but also transports any living organisms in the water from one habitat to another. The arriving species may find themselves in conditions where they have no natural enemies and may distort the ecology of the receiving environment. Ballast water is a significant, but not the only, source of invasive maritime species (Hewitt & Campbell, 2010, p. 4 and Table 9). The Ballast Water Management Convention (BWMC) required use of technology that did not exist at the time it was agreed and would have to be developed before it would be available.

Requirements

The requirements of the convention were specified in its annex, which forms an integral part of the convention. The annex included a standard for ballast water exchange – the "Regulation D-1", and one for ballast water treatment – the "Regulation D-2". D-1 standard requires 95 % of the (coastal) ballast water to be exchanged with deep-sea water. The D-2 standard is a requirement for ballast water treatment such that a discharge contains less than 10 viable large organisms per cubic metre of ballast water and less than 10 viable small organisms per millilitre.

The limit between "large" and "small" is 50 micrometres. Anything smaller than 10 micrometres is ignored. The D-2 standard was to be phased in gradually, while the D-1 standard (ballast water exchange) was to be applied immediately. This was the approach that had been generally

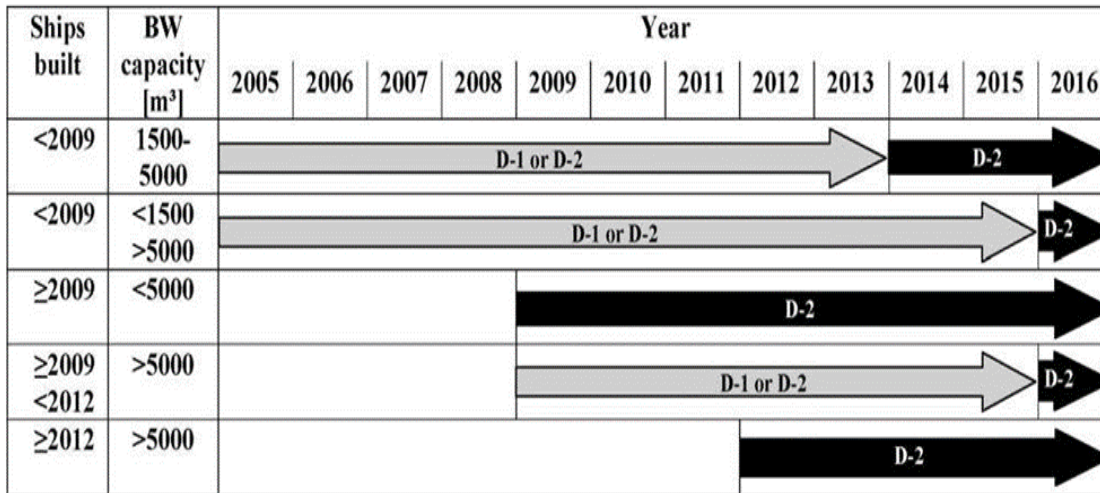


Figure 7 Ballast water treatment phase-in
Source: Gollasch et al., 2007, p. 588

foreseen since the first debates in the IMO. The actual timing of the phased introduction was rather complex and numerous graphic and textual explanations have been fashioned. One example is Figure 7, which shows that ballast water treatment (D-2, the darker arrows) is initially optional but D-1 (exchange, the lighter grey arrows) is mandatory for all ships until the date at which D-2 becomes mandatory:

The dates in Figure 7 correspond to the original planned phase-in of the convention (Gollasch et al., 2007, p. 588). The text of the convention assumed that the convention would enter into force before 2009, so that the obligation to implement D-2 could be differentiated between "new" ships, i.e. ships built in or after 2009 and ships built before, that would already be in service when the convention entered into force. For these "old" (or "existing") ships the convention included a grace period so that they would only have to implement the D2 standard, which implied installing equipment, by 2014 or 2016. There was also differentiation by size so that "small" ships (with less than 5.000 m³ of ballast water) built after 2009 and "large" ships (with more than 5.000 m³ of ballast water) built after 2012 would have no grace period but would have to have the equipment installed from the date of delivery. The first date of application for mandatory installation of equipment was 2009.

Ratification after 2009 could create a situation that would effectively require some ships to install new equipment immediately on whatever (later) date the convention entered into force, or it could perhaps retroactively consign ships to a condition of non-compliance. A similar risk would be associated with ratification after 2012, 2014 or 2016 for some ships. The assumption, that the fear of such a development would encourage rapid ratification, turned out to be erroneous.

Availability of technology

Despite the fixed dates written into the convention ratification was slow, and the expected development of technology was in doubt. The approach of including fixed dates in the convention had been criticized – particularly by the shipping industry (*ICS Key Issues*, 2006). However, some member states – notably the United States – had argued that environmentally sound, biologically protective and enforceable standards should allow innovation and intense technology development during a phase-in of the requirement (United States, 2004). This belief was based on the idea that technology would be developed and that states would ratify to ensure that it would be installed before the fixed dates. However, to assuage concerns about possible unavailability of the technology, the regulation D-5 of the convention required that a review should determine whether appropriate technologies were available. This was to be done at least three years before the earliest effective date.

In the first year after the convention was signed, the United States proposed how the IMO could perform this evaluation in time. It was accordingly decided to establish a Review Group during MEPC 53 in 2005 to conduct the review of the status of the ballast water management technologies. The review was specifically required to consider only some aspects: safety, environmental acceptability, compatibility with ship design and operations, biological effectiveness and cost effectiveness, but not for instance to which extent the equipment was actually manufactured. The review clause foresees that a positive decision to adopt amendments to the convention might follow. This seems to establish that in the absence of such a decision the convention would remain unchanged. The Review Group at MEPC 53 found it "reasonable to expect that ballast water management technologies and type-approved systems will be available" by October 2008. However, the Review Group did not conclude definitely on the availability of ballast water management systems (BWMS) (*MEPC 53/24*, 2005, para. 2.50-2.51) and a new review was to be conducted the following year. It is worth noting that "availability" was not clearly defined.

There was no clear agreement on what "availability" should exactly mean. It could mean type approval, or manufacturing capacity and deliverability world-wide – or even the probability of finding maintenance at suitable locations. It could mean that the equipment that was on the market could actually achieve the required standard when in use. In the first ballast water Review Group at MEPC 53 the balance of opinion was that all technologies that had potential should be considered. However, a significant number of delegations were of the view that only systems currently placed on the market should be considered. There was also some agreement at the ballast water Review Group at MEPC 53, that in the determination of whether appropriate technologies were "currently" available, the time needed for approval should be taken into account (*MEPC 53/WP.1*, 2005, para. 57). This implied that technologies would be included if they were likely to become available within the timeframe even if they were not approved at the time, and thus not on the market. This issue was not resolved. The term "availability" was eventually somewhat defined in 2006 by the Review Group at MEPC 55 as "type approved equipment will be available to be incorporated into the ship building process, so that the system is installed and working on delivery, in compliance with the dates stipulated in the convention",

which implies being on the global market, but still does not clearly indicate for example whether the review must look also at capacity and deliverability world-wide.

Chronological overview

The Ballast Water Management Convention (BWMC) was adopted at a diplomatic conference in February 2004. It foresaw an initial period where ballast water exchange would be required, followed by a requirement to install Ballast Water Management Systems, that would be developed in the meantime.

Ballast water has long been a concern of the international community. Guidelines have been issued by the International Council for the Exploration of the Sea (ICES), and in 1988 the International Joint Commission and the Great Lakes Fishery Commission suggested the adoption of mandatory measures in the IMO. The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, recognized the issue of invasive species as a major international concern, and in its Agenda 21, requested the IMO to consider the adoption of appropriate rules on ballast water discharge to prevent the spread of non-indigenous organisms (*Agenda 21*, 1992, para. 20.a.vi.).

The text of the convention was, however, not agreed until 2004. And its requirement for entry

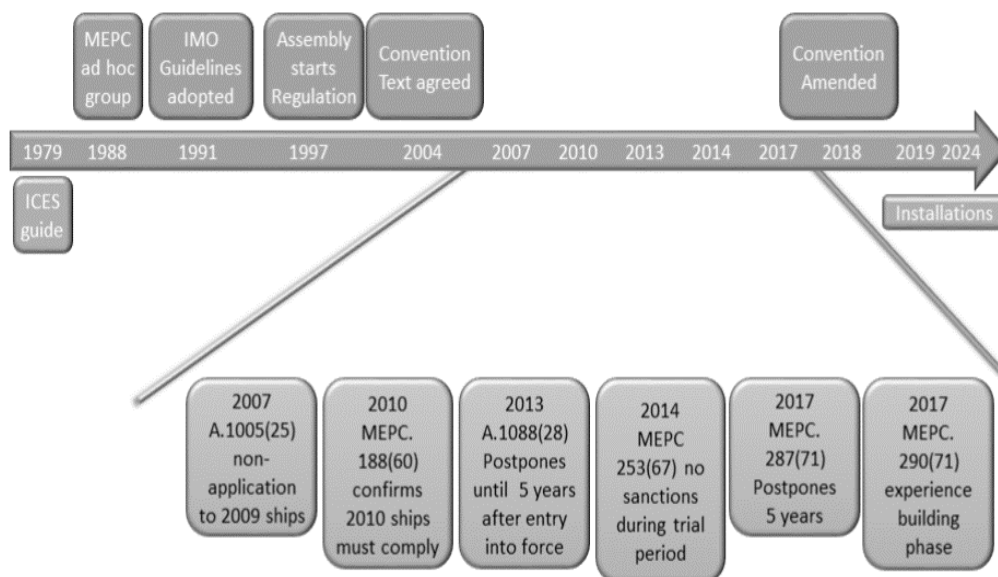


Figure 8 Timeline Ballast Water Convention

(The convention entered into force on 8 September 2017)

Source: Own tabulation, based on data from <https://docs.imo.org/>

into force was ratification by not less than 30 States, the combined merchant fleets of which constitute not less than 35% of the gross tonnage of the world's merchant shipping. Only a few states ratified each year, initially mostly small flags, and the threshold was not close as the fixed date of 2009 approached. The development of the technology was slow while the IMO conducted a lengthy dispute on how to tackle the problem of whether the technology would be available. Ultimately no solution was found and the convention entered into force with an

obligation that many were doubtful about. The remedy that was found, was a recommendation that initially, during an "experience-building phase", sanctions should not be applied to vessels that could demonstrate that required efforts were made. This recommendation is currently valid until further notice but will be reconsidered in the autumn²⁹ of 2026. When the convention finally entered into force it was amended to change the fixed dates, to take the long delay into account, but still with no resolution of the problem of availability.

The following analysis will focus on the formal IMO deliberations in the decade 2006-2017, during a long delay in the ratification process. The main decisions taken in the IMO during this period on the subject of ballast water are plotted on the timeline in Figure 8. The decisions marked in Figure 8 were resolutions, adopted in response to the concerns about availability, and intended to encourage ratification of the convention and to postpone implementation. The 2007 Assembly resolution A.1005 was an emergency stop-gap measure introduced by the Secretary General when the MEPC Committee could not act. The 2010 resolution MEPC 188 was a symbolic attempt to retain the timeline of the convention. The resolutions 2013 A.1088 and 2017 MEPC 287 were intended to change the convention by postponing the requirements, and the 2014 MEPC 253 and 2017 MEPC 290 resolutions were relaxations of the enforcement of the requirements.

Delay

Immediately after the diplomatic conference that adopted the text of the BWMC, the MEPC, at its 51st session in April 2004, decided to embark on a programme for the development of guidelines and procedures for implementation of the convention. This was evidently a prelude to an expected rapid entry into force. The convention included absolute dates for mandatory "treatment" which requires installation of treatment equipment – Ballast Water Management Systems (BWMS). The first of the dates included was 2009, so even though 14 sets of Guidelines were to be elaborated there seemed to be time enough.

Ratification was slow, and the actual entry into force of the convention was severely delayed despite the apparent agreement on the principles and text of the BWMC, and on the urgency of reducing the transfer of invasive species. The convention specifies that it will enter into force twelve months after the date on which it has been ratified by not less than 30 States, the combined merchant fleets of which constitute not less than 35% of the gross tonnage of the world's merchant shipping. This method of determining entry into force is very common in maritime conventions (Tan, 2006, p. 78). This condition proved slow to fulfil.

Until 2007 the tonnage covered by ratifications was insignificant, and the number of states that had ratified until then was only 11. This corresponds to an average of less than 5 ratifications per year. If the level of ratifications remained at that level, this would imply that ratification by the required 30 countries might be reached in about 2009. However, the additional requirement that these flag states must represent at least 35% of the world total tonnage was an added significant barrier, considering that the top 8 flags account for more than 65% of tonnage. The

²⁹ Presumably, the autumn in London where the IMO is located.

provision was thus in effect a right of veto for these 8 states in combination, if they agreed not to ratify. This did not happen. The large flag states did not consistently coordinate their responses.

Initially there were very few ratifications, which may have been due to technical reasons³⁰ or to the criticism of the convention by shipping industry organisations, particularly the ICS. In 2007, however the ICS became increasingly concerned with the possibility of unilateral US action and concluded that there was no longer any reason for ratification to be delayed (ICS, 2007a, 2007c). Liberia – the second largest flag state – ratified in 2008, and the Marshall Islands in 2009, each adding about 10 percentage points to the tonnage. Other large flag states did not, however, follow suit. The required number of 30 states' ratifications was reached in 2010, but these early ratifications were mostly from relatively small states and the tonnage covered in 2010 was only about 25%. Entry-into-force conditions of the convention were not met until 8 September 2016 with the accession of Finland.

The graph in Figure 9 shows how the number of annual ratifications stayed low until a turning point in 2016, which coincides with the attainment of the 35% threshold. After 2016 many more states, including the remaining large flag states, ratified the convention so that most of the world's tonnage was soon covered. The early ratifications by Liberia and the Marshall Islands did not change the previous trend of about 5 ratifications annually by states each of which represented only little tonnage. In the single year following 8 September 2016, however, 13

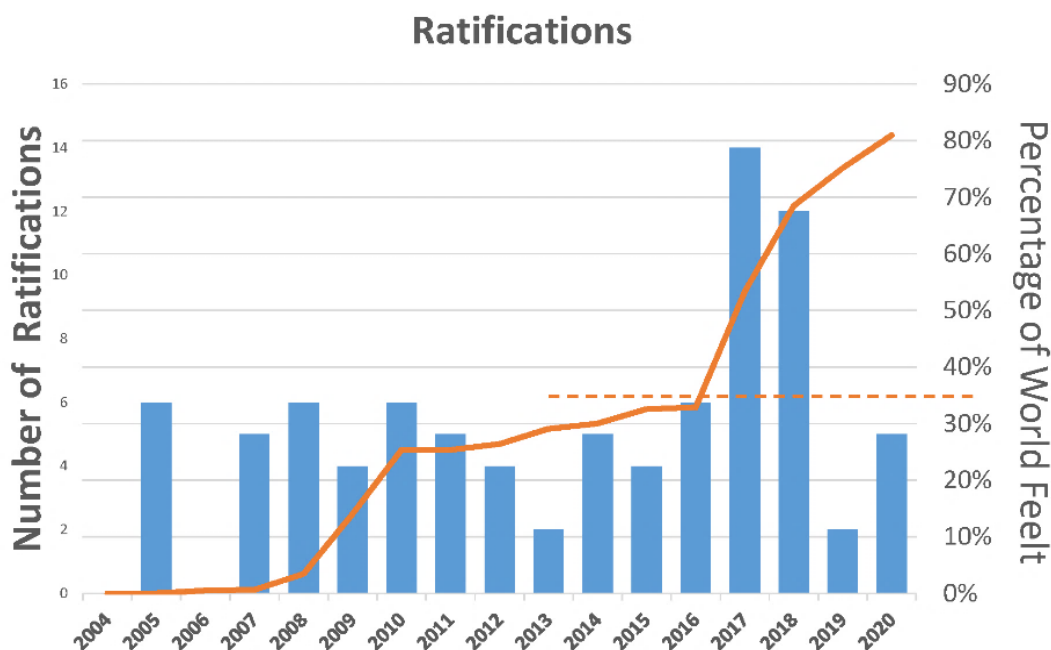


Figure 9 Ratifications of the Ballast Water Management Convention

Source: Own tabulation, based on MEPC Reports

countries ratified, doubling the tonnage. In that one year as much of the world's flag state tonnage was included as had been covered in the preceding 12 years. The rate of ratifications

³⁰ Ratification would require complex new legislation in each country which would have to be introduced into existing plans and schedules for legislation.

was obviously influenced by a different set of circumstances before and after 2016. There was no decision in IMO that can explain the change. This breakthrough is understandable, as an effect of a self-reinforcing process.

In order to understand this turning point, I have considered the decisions taken in the MEPC during the period. The debates and decision reflect that while states had preferences and requirements that could lead them to ratify, the uncertainty about the technical issues raised in the IMO made them hesitate. However, the decisions taken in the IMO in the period did not lead to any reduction in the uncertainty. This indicates that the turning point was not determined by any material change in the convention nor by any of the decisions taken during this period. Instead as the number of ratifications rose towards the necessary number, entry into force finally became virtually certain, at which point states joined even though no material improvement had been achieved. The early ratifications by Liberia and the Marshall Islands precluded a blocking by the largest flag states, so that a sufficient number of smaller flags could trigger entry into force. When it became certain that the convention would enter into force, it became necessary for all flag states to implement it, so that they would be in a position to issue the required certificates for their ships. Up to that point the slow rate of ratification remained constant throughout the period, demonstrating that the increasing number of states adhering to the convention was not due to any resolution of the problems. The sudden increase was endogenous to the process of gradual ratification, which was produced mainly by a large number of states whose shipping industry was modest, adding to the early adhesion two large flag states that had followed the shifting advice from the main shipping organization, the ICS.

My analysis shows how the approach of using resolutions arose and identifies the central influence of the chairs and secretariat, and the path dependence of the final result. The resolutions did not alleviate concerns about availability. The gradual process towards entry into force was not changed, and although a major shipping industry organisation and the United States were active and influenced the decisions, neither achieved the outcome they preferred, and the process cannot be understood without considering both the limits and possibilities of the chairs in the process as it developed. The concerns and the preferences of the active participants did not change significantly over the period from the negotiation of the convention in 2004 to the entry into force in 2017.

Preferences

In order to evaluate who may have had influence on outcomes, it is necessary to determine the preferences of the relevant participants. The countries and organisations that were active in the process can be roughly grouped as having High, Medium and Low ambitions, where the high ambition corresponds to a preference for rapid introduction of the mandatory measures of the convention, and the low ambition corresponds to a preference for no application of the mandatory measures, and the middle ambition represents states that during the process worked procedurally towards compromise, without any particular preference for urgency or stringency. I identify the preferences primarily as Low if no solutions are proposed but serious problems are raised, as High if rapid, stringent implementation is suggested, and Medium if specific solutions

to minor challenges are sought or compromises proposed. The specific preferences of the delegations in each group are not necessarily identical, and not necessarily constant over time.

The most extreme views were those of the ICS and the United States on opposite sides of the issues. The ICS suggested in (*MEPC 55/23*, 2006, para. 2.32 and Annex 6) that ships built up to a certain date should not be required to comply at any time with the treatment requirements, and that technology should not be made mandatory for any ships until it was widely in use (*ICS Key Issues*, 2006). Since the equipment would represent no economic benefit to the ship, wide use could not be expected until the equipment was made mandatory. The ICS suggestions thus imply that the equipment would never become mandatory. On the other side, the United States issued mandatory ballast water management regulations of their own in 2004, that would require control methods approved by the US Coast Guard. At the time there were no such approved methods, and the requirement to use Ballast Water Management Systems was expected to be phased in concurrently with the development of the technology (*Federal Register / Vol. 69, No. 144*, 2004, p. 44952).

The active delegations in the process (based on their written submissions, and the IMO meeting reports) were: Brazil, Canada, China, Germany, Japan, Liberia, the Marshall Islands, the Netherlands, Norway, Panama, the Republic of Korea, the United States, the European Union and some of its members, and the observer organisations ICS, INTERTANKO and WSC. While all of these professed agreement with the goals of the BWMC, not all the preferences stated would in fact pursue an immediate entry into force. Most in fact, mentioned problems, without suggesting solutions, putting many of them in the "Low" ambition group. The United States actively submitted proposals that pressed for rapid and strict implementation of the convention, and Australia, Canada, the Republic of Korea and WWF held similar positions. The European Union, in the role of observer as the EU Commission, also argued for rapid ratification, but this was not a coordinated EU policy of all the member states. India was active without exhibiting a clear preference for either delay or rapid implementation, and IACS was characteristically neutral. Norway was arguably medium ambition as they ratified early but supported the criticism from the shipping industry. My own delegation, CESA, representing both shipbuilding and equipment manufacturers, was mainly concerned with rapid entry into force so that investments in developing the new required technology could be recuperated.

On the basis of submissions and the MEPC discussions, Canada, China, Japan, Liberia, Panama, the Republic of Korea, the Marshall Islands, and the B-INGOs; ICS, INTERTANKO and WSC all supported Low ambition, which in practice seemed identical to not enforcing the convention. Many of these states may have had some environmental interest in the convention, but with a lower priority than the High ambition delegations. Some had an additional hesitation about the possibility of enforcement, or about imposing costs on shipping. As far as the B-INGOs are concerned they were the main Low/No ambition actors and were interested in reducing the cost, liability, and uncertainty for ships. From my conversations with delegates at the time, I recall that most of those I spoke with had no particular concern with or knowledge of the biological aims of the convention.

The disadvantages of the convention for members of the ICS and other shipping organisations were several: The most apparent was the cost of installing equipment and the physical risks associated with adopting ballast water exchange. There was also the complication of training crews to operate the equipment, which according to at least one major shipping representative was difficult to operate and erratic in performance (personal communication 3). More seriously, there was an irreducible risk of non-compliance even if ships used their best efforts. The convention imposed a specific requirement limiting the number of viable organisms in the ballast water released. That number could not (and can still not) be determined by the ship while it is underway. If the ballast water should turn out not to be within limits, and the non-compliant ballast water could not be released, the ship would be unable to take cargo onboard, resulting in a serious loss. As a separate issue there would be the possibility of a fine, but for the ship the most severe consequence would be the delay and risk of not being able to fulfil the transport contract. Most if not all other IMO requirements impose obligations that may be costly but are unequivocal. A ship carrying the necessary certificates is assured permission to operate. I therefore deduce that the preference of the B-INGOs was actually to achieve a similar situation by the elimination of the objective quantitative requirement limiting the number of viable organisms. If the convention could not be prevented (which had proved impossible in 2004) then the shipping organisations would want it modified to require only certification as documentation of any requirements, not an objective measurement that the ship could not confirm.

Based on this, the most active delegations can be considered to belong to the three groups as follows:

High Ambition, rapid implementation	United States, Australia, Canada, Republic of Korea, <u>WWF</u>
Medium ambition	Norway, EU and its members (including at the time the UK) India, <u>IACS</u>
Low/No ambition not enforcing	Japan, Brazil, Liberia, China, <u>ICS</u> , <u>WSC</u> , <u>INTERTANKO</u> ,

Table 2 Ballast Water ambition groups

source: Own tabulation, from the IMO submissions

The outcome of the long delay and the consequent presumably considerable number of invasive species that have established themselves in the interval, clearly represents a loss or defeat for the High Ambition group, but the final implementation of the convention may count as a partial or ostensible success. The long delay followed by temporary non-enforcement can be seen as a partial success for the Low/No ambition group, but not as a solution to the problems that the convention presented to them. The basic interests and the actors involved did not change substantially in whole period from around 1980, when the issue arose, to 2017, when the convention entered into force.

Process

The process that determined the outcome, was initially influenced by a limiting opinion of the IMO Legal Office. This led by a path dependent process to a series of resolutions in contradiction of the preferences of a majority of states.

As mentioned on page 59, IMO procedure includes sending any contentious issues, to a working group that meets in parallel with the committee. The issue of availability was treated in such a group during MEPC 53 in 2005. This Review Group was set up to conduct a review of whether ballast water management systems would be available, which the group considered it reasonable to expect. The group did not conclude definitely (*MEPC 53/24*, 2005, para. 2.50-2.51) that systems would be available, but that it was reasonable to expect so. A later Review Group at MEPC 55 agreed that ballast water treatment technologies would "probably" be available, but some delegations found the uncertainty high, and the group therefore compiled a list of issues related to these uncertainties with associated recommendations. However, these recommendations, which were listed in an Annex to the Review Group report, were mostly information to be gathered from states and not efforts to ensure that technology would be developed (*MEPC 55/WP.4*, 2006 Annex 5). These decisions reflect that while the majority believed that systems would be available, it did not impose this view clearly on the hesitant minority. The Review Group set up at subsequent meetings repeatedly addressed the issue, each time eschewing a decision that the technology would not be available, but estimating with varying degrees of clarity that it would probably be available. The spirit of consensus prevailed and prevented a clear decision. The review clause of the convention had left as the default an unchanged convention, rendering an explicit opinion avoidable. The idea that the uncertainty of the availability of the necessary technology could be resolved later, turned out to be illusory.

The MEPC 55 Review Group did decide that two parallel actions (amending the application date of convention, and development of an exemption procedure) would be necessary if type approved systems would turn out not be available in time. These actions were considered in the context of a discussion about when a final decision could be made on availability. They were thus tentative and preparative in nature and only to be implemented if and when it would be finally determined that the technology would not be available. The MEPC committee, however, did not agree to this action plan but instead asked the Legal Office of the IMO to provide legal opinions on the two options of the plan and on how to address the concerns. Presented with a proposal from the subcommittee for an action plan. The MEPC opted for no plan. The request to the Legal Office was similar to, but not exactly what, the Review Group had recommended. The Review Group had considered whether the convention could be amended when it had not yet come into force and had been advised by the Legal Office of the Organization that it would be "very difficult to do so". Nevertheless, the Review Group requested MEPC to endorse the two options, including that of amending the convention, and to ask the Legal Office to provide advice on this in the light of a recent experience with what appeared to be a similar change to MARPOL Annex IV. The MEPC Committee did not endorse the proposals, but merely noted them and requested a legal opinion. Thus, the legal opinion was not on how to amend the convention or develop an exemption procedure, but more generally on legal issues. The MEPCs request to the Legal Office were for options to address the "relevant concerns", which were not explicitly mentioned, but from the context could be understood to be the list of issues in Annex

5³¹ to the Review Group report, and the (unspecified) "negative consequences caused by the possible delay". The reason for this change is not documented in the report.

The opinion requested of the Legal Office was reported to the next meeting of the subcommittee, BLG 11, and it evaluated both of the two options as not viable. The argument was basically that before the convention entered into force neither adoptions of amendments nor exemptions could rest on a valid legal basis, since the only such basis would be the convention itself. The Legal Office instead gave as its "preferred and most appropriate" legal option to address "the situation", as the adoption of a Protocol to BWMC (*BLG 11/4/3*, 2007). The term "the situation" seems to describe something more concrete than the Review Group's suggestion of preparation for a possible future situation where it might be decided that systems were not available. The subtle differences in wording changed the nature of the legal opinion that was being requested. The proposal of a protocol was not an opinion on the different options. Since the content of a possible protocol was not specified, this procedure could of course be used for either of the two options or any other change to the convention that might be considered. The introduction of a legal opinion, which would seem to be objective, changed the framing of the problem from one of determining if technology was available and if it was not to decide on a course of action, to devising a remedy for a situation in which there were "concerns".

It is not clear from the Legal Office's statement exactly how a "protocol" could change a convention not yet in force. The legal effect of a protocol is of course exactly that of a convention, so the construction would possibly have to be that the protocol would have the effect of a new convention that entered into force before the BWMC and obliged its parties to implement (or not implement) the BWMC in a specific way. Such a protocol would not automatically be binding on all the states that had already ratified the original BWMC convention but would only be binding on the states that ratify the protocol. However, if this happened to be exactly those states that were parties to the BWMC, the object of altering the convention at the instant it entered into force could arguably be achieved. However, this did not happen, and it was not actually promoted by the legal opinion. Instead, a resolution was adopted by the MEPC as majority decision rather than a unanimous adoption by parties to the BWMC.

The Legal Office suggested in its opinion that absent support for a protocol, one of three other possibilities could be considered: 1) a common interpretation adopted by consensus with no objections, 2) a common reservation or declaration by ratifying states, which would, however, only apply between states with the same reservation, and thus not for those who had already ratified, or 3) a resolution adopted by MEPC by consensus with no objections. The interpretation and the resolution would seem to be essentially identical options, both relying on unanimity, and not giving legal certainty, and while some options would be possible to implement as an exemption for only some ships, the resolution was expressed to postpone implementation of the convention for all ships irrespective of whether treatment technologies were in fact generally available in 2009. This corresponded to a proposal to the same meeting from the ICS for such a resolution (ICS, 2007b). It thus seems that the legal opinion of the

³¹ mostly lack of information from states as mentioned on page 75.

secretariat in effect supported the ICS proposal of a resolution postponing for all ships, even though the opinion claims to suggest that a protocol, that could have a more specific content, would be preferable.

At the subcommittee meeting BLG 11 the issue of whether the technology for BWMS could be considered to be "available" was not addressed, but reference was made to the previous conclusions of the Ballast Water Review Group, that type approved ballast water management systems would probably be available. This was thus still the opinion of the majority of the group. Even without agreement on the reality of the hindrance, a solution was invited and a recommendation to the parent body made (*BLG 11/16*, 2007, para. 4.11) "*Noting the support for an MEPC resolution on this matter*" MEPC 56 should "*consider the text proposed by ICS as a basis for further development of such a resolution should the availability of technologies still be a matter of concern by that time*". Indicating that it was not proposed to immediately adopt such a resolution. The "*support for an MEPC resolution*" was not a decision by BLG to recommend such a resolution, and read in conjunction with the statements that "*Norway, supported by a large number of countries, expressed the view that an MEPC resolution as described in option 3 of the Legal Office could address the concern*" seems to show that only 'a large number', not a majority supported a resolution. The continuation reading "*most of the delegation [sic] spoke in favour of urgent action to avoid further delay which could lead to unilateral regulations. Some delegations expressed their view in favour of a protocol*" seems to imply no wide agreement on which action, if any, to take. The wording of this conclusion must be ascribed to the chair/secretariat. It allows preparation of a resolution as the reaction to a possible unavailability even though the subcommittee as a whole did not consider this to be necessary.

Resolution as a Solution

The solution of a Protocol, although apparently recommended by the Legal Office, was thus not encouraged in the opinion, and is in fact only briefly mentioned, after which it is immediately assumed that member states would not be supportive of such a Protocol. This way of presenting the possible solutions indicates that while the legal opinion of the Legal Office was that a protocol should be the preferred and most appropriate option, the document was worded to discourage this solution. In the first draft of the report of BLG 11 to MEPC, the Legal Office view is presented in the following terms (*BLG 11-WP.1*, 2007, para. 4.7):

"The Sub-Committee further noted that the most appropriate option to address the situation created by the uncertain availability of ballast water treatment technologies by first application date of the D-2 standard, as suggested by the Legal Office, is the adoption of a Protocol to BWM Convention." (my emphasis)

In the final report (*BLG 11/16*, 2007, para. 4.7) the text reads:

"The Sub-Committee also noted that, in the view of the Legal Office, the preferred and most appropriate option to address the situation created by the uncertain availability of ballast water treatment technologies by first application date of the D-2 standard is the adoption of a Protocol to BWM Convention". (my emphasis)

Thus, indicating that the Sub-Committee did not necessarily agree with the Legal Office. The solution of a protocol was rejected without any detailed record of a debate. There was support for a protocol, but apparently more support for a resolution.

Without determining that availability in any of the possible meanings was an actual problem, the BLG report thus recommended to its parent body, that the MEPC should consider a resolution calling on states not to enforce the first compliance date. This was a response to the request from MEPC that BLG 11 consider the opinion of the Legal Office and subsequently report to MEPC. Since a report was necessary, a recommendation had to be found. The option of not making any recommendation was not available. The wording of the recommendation had to satisfy views that did not overlap. Most apparently believed that availability was not a serious problem. Some foresaw that a resolution or a protocol would be necessary. As mentioned, the IMO's mode of work requires a report to be adopted on the last day of a meeting. This means that the consensus or majority finding on the subject of the legal opinion would be reported. In theory BLG could have decided to recommend that no action be considered because there was no consensus that a problem of availability would exist. However, the legal opinion, reflecting a possible, not an existing problem, in effect recommended the adoption of an MEPC resolution similar to the ICS proposal calling on States not to enforce the first application date. The BLG conclusion suggests developing such a resolution in case it would be necessary. Thus, the resolution was suggested as a solution to a partially undefined problem, whose actual existence had not been determined.

This recommendation was not the result of an agreement in the group to solve a specific problem that was foreseen. Formally it only concerned what should be done if action should prove necessary. However, the description of the problem had shifted away from a determination by the Committee of whether appropriate technologies were available, and which subsequent possible amendments should be implemented if the review should lead to a conclusion that technologies were not available. Instead in the wording used by the Legal Office of what was to be addressed was "concern about the application date of the D-2 standard before the availability of ballast water management technologies was confirmed by the Committee". The task of the review: to determine whether the technologies were available was subtly altered to a confirmation that they were available. Absent such a confirmation the assumption would then be that they were unavailable. This wording could be understood to support developing a resolution to be used in the absence of a positive determination that technologies were available. This was an inversion of the convention text, that implied an assumption that technologies would be available. This change emerged from the process of and the inaccurate wording, not from a specific identifiable decision to change the task of the review. This inaccurate wording seems compatible with an intent by the chair/secretariat to override the Review Group's consistent opinion that availability would not be a serious problem. If it was not deliberate it nevertheless shows that the wording of the reports, which is in the hands of the secretariat, can have significant consequences for outcomes.

The process had thus pointed to a solution of the not yet determined problem to being an agreement not to enforce certain dates unless there was agreement that the equipment was available. This was consistent with the ICS proposal, which however had not been widely

supported by member states. The legal form of this agreement was expected to be a unanimous resolution, which would seem difficult in a situation where the majority of member states in the Review Group did not consider available to be a serious problem. This problem was then presented to MEPC 56 some months later.

The Committee agreed (at MEPC 56) with BLG 11 that a working group should consider an MEPC resolution as suggested by ICS, but MEPC 56 did not agree to adopt such a resolution, and the group did not develop the text. The working group reported that the standard could be met and that technologies would be available to meet the first implementation date. However, some ships could be affected by procedural and logistical problems so that they could not meet the standard until 2010, or possibly 2011. In plenary most of the delegations that took the floor considered the choice of dates rather than the option of action or no action, and unlike in the working group, most were of the view that moving forward the first date of application to 2011 would be more appropriate and, the Committee thus agreed, "subject to appropriate reviews", to "consider" 1 January 2011 as the new possible D-2 application date. But no decision was actually taken to do so, and no decision was taken on how it would be possible to do this. There was apparently some agreement as there had been in BLG, that something should be done, but no agreement on what. Instead, a result was achieved that implied agreement to move the date, but no agreement on when or how to move it. Thus, despite the lack of full agreement, an element of a solution was cemented, with the effect of limiting future choices. The report lists 30 "actions" decided by MEPC 56, but no material decision was taken on moving the dates in spite of the wide agreement on the need for some form of action.

The reason for this absence of decision can be deduced from the Legal opinion of the IMO services (*BLG 11/4/3*, 2007, para. 20) where it is emphasised that the suggested solution would need to be adopted unanimously, since the Parties which had not agreed could reject the understanding when the convention would come into force. A similar remark is made in the legal opinion concerning an exemption process if it was put in place by the MEPC as a recommendation. The Legal Office warned that the recommendation should be unanimously agreed upon, since there would be no obligation on States to recognize exemptions given under such a process, when the convention would come into force. Spain, who opposed a decision at MEPC 56 to postpone the dates, argued that their national legislation, on which ratification was based, included the dates in the convention (*MEPC 56/23*, 2007, p. 11). This would also have been the case for any other states whose implementation legislations included the whole text of the convention. On this background the members would naturally hesitate to decide on a recommendation to move the date, if it was opposed by countries that had already ratified without this recommendation. It is interesting to note a remark in the report of the meeting of the Ballast Water Review Group during MEPC 56, recalling that the MEPC 55 and BLG 11 debate as finding that all three mechanisms were non-viable from a legal point of view (*MEPC 56/WP.4*, 2007, para. 60). As this must have been a widely held view in the Review Group, it is not surprising that unanimity could not be achieved for a decision that some would consider to be a not legally acceptable recommendation that would conflict with already adopted national legislation. Those three rejected mechanisms included the mechanism of using a resolution, that was eventually used multiple times.

The sequence of events was thus:

- 1) An initial wish from most of the interested and active states in the MEPC 55 Review Group to prepare to amend the BWM Convention, if type approved systems turned out not be available for 2009, and to develop an exemption procedure for the first set of vessels. The Review Group estimated at the time that technologies would be available and thus that these two options would probably not have to be put into effect. Nevertheless, the group proposed considering other options to be prepared if technologies were not available and the two suggested remedies were not legal.
- 2) A rejection by the Legal Office of the two options, and an ineffective suggestion that a Protocol should be adopted, followed by a rejection by the MEPC of a Protocol, apparently on the recommendation of the secretariat, but possibly not of the Legal Office.
- 3) A remaining option of an agreement with unanimity not to enforce the first implementation date, "until appropriate ballast water treatment technologies become available".

The outcome of MEPC 56 was an invitation to states and observers to submit proposals on how to ensure that shipowners facing problems related to unavailability of ballast water treatment technologies are not legally penalized (MEPC 56/23, 2007, p.17). So far, no proposal had been made that would solve the problem, but the MEPC invited states and observers to present a solution to the next meeting of MEPC, which was to take place in April 2008. Any such proposal would, however, most likely be too late for ships to be delivered in 2010, since they would be under construction in 2008. As this must have been clear to the plenary, the outcome must be seen as a decision to maintain the dates of implementation despite the disadvantages for ships, that wished to delay installing the equipment until they could be certain that the convention would in fact enter into force. The majority of member states thus still supported the original intent of coercing the development and introduction of ballast water management systems by maintaining a risk of retroactive or abrupt introduction of the requirements of the convention.

Assembly Stepping in

The MEPC conclusion to consider proposals for a solution in 2008, was not realised as the committee had intended. The time frame was important if the intention was giving certainty to ships that would be delivered in 2009, since the construction of ships would not normally take more than two years. Thus, ships contracted to be delivered in 2009 without BWMS would normally in 2007 not yet be under construction. If a postponement of the requirement could be agreed before the end of 2007, construction could begin with the assurance that ships would not be required to change the building plans. It was therefore not useful to wait for the 2008 meeting. Even if a proposal were to be put forward, a decision taken in 2008 could not give clarity to ships already being constructed in that year. To be safe, ships to be delivered in 2009 would have to install systems even though the convention was not – and might never be - in force.

Instead of waiting for MEPC 57 in 2008, a proposal for a resolution was presented to the Assembly that met 4 months after the MEPC meeting, and thus still in 2007. As previously, the issue of availability was still undecided, and the proposal did not contain any general solution. The content of the new proposal was merely to exempt some ships from enforcement of the

standard (A 25/11/1, 2007). The way this developed will be detailed below where the influence of chairs and states is discussed. The resulting Assembly resolution paved the way for a series of resolutions dealing with the issue of availability. This first resolution delayed implementation for the ships to be delivered in 2009.

No changes to uncertainty

The uncertainty and reluctance of states were not alleviated by the new Assembly resolution. Ratifications continued at a rather constant rate of no more than half a dozen annually. There had been no fundamental change in any of the aspects that had been criticized, the delay in implementation only mirrored the fact that time had passed. The process had, however eliminated the possible solution of changing the convention by protocol or by reservations or declarations. The problem remained not clearly identified and was not recognised by most states as an actual problem. While it was clear to the Committee that the convention could not be altered, the process had demonstrated that remedies could take the form of resolutions that could be adopted by consensus.

In the following sections I will look at the possible influencers of this process; the shipping industry, the chair/secretariat, and the individual states. These all intervened in the process, and particularly the shipping industry and the United States were active and influential, but my observations substantiate the view that individual chairs had a significant independent influence on the result. The episodes of the process just described, and the sequence of events are analysed first for influence exerted by INGOs, then for states' influence and finally for the influence of the chair.

Industry influence

During the whole process the criticism of the convention was led by the main shipping organisation, the International Chamber of Shipping, and this obviously influenced the process. The ICS had been actively engaged in discussions on the subject of ballast water for some years, and had argued for moving away from mid-ocean ballast exchange, which was considered hazardous, and had suggested as early as 2001 that the IMO should develop standards of treatment of ballast water and approved methods (*ICS Key Issues*, 2001). On the adoption of the convention the ICS specifically criticised that several issues were unresolved including non-availability of the technology and the inclusion of fixed dates in the convention (*ICS Key Issues*, 2004). The ICS expressed in 2007 a request for delay until adequate technology and equipment had been type-approved in accordance with the IMO Guidelines (ICS, 2007c), but an even more restrictive view had been previously expressed – that equipment should not be made mandatory until it was widely in use, since type approval would not guarantee that the systems would in practise fulfil the requirements of the convention (*ICS Key Issues*, 2006).

Neither the ICS nor any other shipping industry submitter ever proposed a specific definition of availability or a formulated a rule change that would alleviate the problems. It appears that the shipping organisation had a significant impact on the proceedings, and the ICS's and some flag states' actions in identifying the problems did lead to decisions by both the MEPC and the Assembly. These decisions did not, however, resolve the problems that had been identified.

For MEPC 54 which took place in 2006, the Committee considered a proposal from the shipping industry (ICS, 2006) to put back by one year the first D-2 standard application date (i.e. 1 January 2009 to 1 January 2010), if the outcome of the review in 2006 at MEPC 55 should indicate that suitable treatment technology was not available. The argument was that the time necessary for testing and approval would not be sufficient. The Committee had invited submissions on possible options should the coming review indicate that the anticipated progress had not been achieved, but no submissions other than that of the ICS were entered at MEPC 54 on this issue. There was – perhaps for that reason – wide support for the ICS suggestion, and the Committee endorsed the proposal in principle (MEPC 54/21, 2006, para. 2.21). This endorsement did not apparently extend to the entire proposal which included continued postponements until a future confirmation of the availability of equipment, after which a revised application date should be adopted. This proposal represents the ICS preference, that the convention should not be applied to any ship until a positive decision to do so was adopted. Nor did the endorsement "in principle" lead to a decision on how to implement such a change of date. At MEPC 55 the Review Group's proposal to prepare for an alteration of the dates in the convention was not endorsed and the opinion of the Legal Office given at BLG 11 effectively removed the option of amending the convention from the table.

For BLG 11 a new shipping industry proposal was put forward. In BLG 11/4/14 the ICS proposes the adoption of a resolution calling on States to suspend application for a limited period of time until appropriate ballast water treatment technologies become available. This was an adaptation of the ICS preference of non-application. In the report of BLG, the proposal from the ICS is treated in the same paragraph as the legal opinion that included a draft MEPC resolution that corresponds to the ICS proposal. This conformity between the third option of the legal opinion and the ICS proposal, would be consistent with a pre-arrangement of some kind involving the secretariat and the ICS. The ICS had not had success in getting its previous proposal though, but with support of the secretariat chances improved.

The ICS submission addresses a situation where technical solutions are not available for most ships. But this determination had not been made. In fact, most of the Review Group considered it likely that technical solutions would "probably" be available. Nevertheless, on the basis of the discussion the subcommittee (BLG) invited the MEPC to work with the ICS text and develop a resolution to be adopted if MEPC 56 would still find that the availability of technology was a matter of concern. The Committee agreed (at MEPC 56) with BLG 11 that a working group should consider an MEPC resolution as suggested by the ICS, but MEPC 56 did not agree to adopt such a resolution. The divergence on advisability of a resolution is apparent also from the fact that BLG also noted that MEPC 56 would consider approvals of more BWMS (*BLG 11/16*, 2007, p. 15), which would tend to reduce the concerns about availability and reduce the need for the resolution. It thus seems that an idea presented by the ICS was included in the report on the legal opinion despite opposition from states, and conflict with the Legal Office's official position.

In 2007, however the ICS became increasingly concerned with the possibility of unilateral US action and started to recommend ratification of the convention (ICS, 2007a, 2007c). Liberia –

the second largest flag state – ratified in 2008, and the Marshall Islands in 2009, each adding about 10 percentage points to the tonnage. From a conversation with a national delegate, it seems possible that this was a consequence of the change in the ICS position (personal communication 36). The ICS still maintained in 2007 that equipment would not be available by 2009, and recommended ratification in order that the dates could be changed. The argument was that an unaltered date would place ships in an impossible dilemma: if ships were unable to install the equipment during 2009, a later entry into force would make their non-compliance illegal, even if the equipment were still not available at that date. The lack of decision at MEPC 56 was therefore harshly criticized by the shipping industry (ICS, 2007c). As a consequence of this criticism and on the initiative of the Secretary General, the Assembly stepped in with a resolution. That resolution is further detailed in the section below where the influence of chairs is discussed.

When consensus was that no further postponement of implementation was advisable, the ICS made a suggestion to MEPC 59 plenary not to move the dates, which would at least give clarity, and the Committee decided to instruct the Secretariat to prepare a draft MEPC resolution confirming the application dates. This was adopted as MEPC.188(60) in 2010, which merely stated that the ballast water management systems installed on ships constructed in 2010 would have to meet the requirements of the convention once it enters into force. This resolution was a symbolic decision, that did not alter or recommend any action but was adopted despite the enduring worries of some delegations about availability.

In 2010 and 2011 repeated concerns were raised by the shipping industry about the possible lack of capacity necessary for retrofitting a large number of ships in a short time when the convention would enter into force (ICS, 2010, 2011). This was a new aspect, limiting "availability" by manufacturing and installation capacity, not by type approval. The MEPC noted that there were some difficulties for certain types of vessels, but also noted that BWMS were currently being fitted. The worries were not exactly dismissed but did not lead to any remedial action. The issue was taken up later by India and by Japan in 2012. The comparable Japanese initiative that resulted in an influential correspondence group report will be mentioned later where states' actions are considered.

The challenges associated with retrofitting BWMS were again raised by the shipping industry and one submission in 2012 to MEPC 63 about this issue was co-sponsored by 7 shipping industry and professional organisations (IACS, ICS, INTERCARGO, INTERTANKO, IPTA, OCIMF and NACE), where previously it had been mostly the ICS that had presented the shipping industry views. The rhetoric was somewhat harsher – the ICS is cited for saying that the type-approval requirements for testing of treatment equipment are not "fit-for-purpose". This implied that even type-approved equipment that was manufactured and marketed all over the world, might not be considered to be "available" if type approval could not guarantee that the equipment would in practice fulfil the requirements of the convention. (MEPC 64/23, 2012 Annex 1)³². The ICS insisted that the type-approval did not ensure compliance of the equipment,

³² The Annex is mislabelled as MEPC 63/23, although attached to MEPC 64/23

and that compliant equipment was not available. The ICS proposed the adoption of an Assembly resolution agreeing that all Parties should apply alternate provisions (not specified) until the convention itself could be amended (ICS, 2012). A similar submission by Liberia, the Marshall Islands, Panama³³, BIMCO, INTERTANKO, CLIA, INTERCARGO, InterManager, IPTA, NACE and WSC also suggested a new Assembly resolution. Neither of these proposals contained specific texts for changes but mainly described in general terms that change was required (ICS, 2012; Liberia et al., 2012). These proposals were rejected by many states, but MEPC 64 agreed to the development of an Assembly resolution, which would not change the application dates, thus confirming that any amendments to the provisions of the convention would have to be considered and decided upon after the entry into force. The task of development of such a resolution was given to a correspondence group led by Japan, which will be discussed in the section detailing the influence of states.

In 2013, the ICS no longer encouraged governments to ratify the convention, being still not convinced that there were sufficient type-approved equipment and facilities available to meet the anticipated demand. At the same time in a new attempt to avoid implementation, the ICS requested a review of the type-approval guidelines (ICS, 2013, p. 28). Apart from the issue of whether type approved equipment would be available, the ICS now contended that the process of testing for type approval was not sufficiently robust to ensure that that type approved equipment would meet the standard. An additional technical claim was put forward that analysis performed by port state control by taking samples from the ballast water, was unreliable, and that better sampling and analysis procedures would be required to ascertain if the BWMS was complying with the standard.

At the subcommittee meeting of BLG 17 in February 2013, a submission by Bahamas, Greece, Japan, Liberia, Panama, ICS, BIMCO, INTERTANKO, SIGTTO, INTERCARGO and InterManager was made, proposing that port States should not perform ballast water sampling until new sampling guidelines had been agreed (Bahamas et al., 2012). This was justified by an assertion that the sampling process was not satisfactory. So even if ships succeeded in obtaining a BWMS, the port state sampling procedure might incorrectly regard the ship as non-compliant. The member states co-sponsoring this submission now also included major flag states that were not open registries (Greece, Japan). In this context Germany repeatedly proposed at BLG 17 and MEPC 64 that no criminal sanctions should be imposed solely on the basis of sampling. The importance of this support from traditional flag states will be considered in the section on states' influence.

Entry into force last minute by INTERTANKO

For most of 2016 it was apparent that entry into force could be expected soon. The entry into force conditions of the convention were met on 8 September 2016 with the accession of Finland. This started the 12 months interval before entry into force, which thus meant that the BWMC

³³ These three flag states are the largest open registries. Two of them are managed by private firms located in the US. See on Flag States, page 43.

entered into force on 8 September 2017. A new postponement was introduced in a last-minute amendment to the convention just before the entry into force.

According to the agreement in the 2013 Assembly resolution the postponement should be introduced into the convention when it entered into force. MEPC 69 therefore adopted draft amendments to the convention in accordance with the timeline of resolution A.1088(28). The main issue concerning these amendments to the ballast water convention was whether to adhere strictly to the dates in resolution A.1088(28). A proposal from Liberia at MEPC 70 for new extension of the timeframe received support from a submission cosponsored by India, ICS, BIMCO, INTERTANKO, CLIA, IPTA and WSC. A slight majority of members of MEPC supported this further postponement, but it was argued that new instructions from the Assembly would be necessary before changing the dates of the Assembly resolution. The solution found was to circulate draft amendments with the original dates from A.1088(28), but since a majority (albeit small) now wanted a further extension of the delay, an annex with alternative dates giving a further postponement were attached to the report from MEPC 70. This text would be available to MEPC 70 and could then be inserted as an amendment to the circulated draft amendments before adoption. This decision was arrived at though an extraordinary effort of INTERTANKO in a public dialogue with the chair. This will be detailed in the section where the influence of chairs is discussed.

Conclusion Industry

The suggestion that the shipping industry has "captured" the IMO is thus seen to be somewhat misleading since the proposals and preferences of the ICS and other shipping organisations were not usually or promptly adopted. However, it is also not entirely inaccurate as the deliberations and decisions of IMO focussed to a great degree on problems raised by the ICS. The specific submissions of the ICS mainly raised issues in a manner that would discourage ratification, but at a certain point the ICS recommended ratification. The preferences of the ICS would have required changes to the convention, but these were not specified, and when changes seemed unfeasible the ICS proposed delays. A consistent majority of member states did not agree with the ICS' contention that the technology was unavailable or not fit for purpose, which prevented the ICS from achieving its preferences. However, the chair validated the concerns raised by ICS, despite the lack of proposals that could solve the issue. The framing of the problem did change from considering a possible future problem mainly for some ship types or sizes to a general concern that required postponement of requirements for all ships. This change was not a deliberate decision but followed changes in imprecise wordings that were enabled by the chairs and the secretariat using structural power and executive influence.

States

As indicated in Table 2 there was a group of high ambition states (United States, Australia, Canada, Republic of Korea) that preferred a rapid and strict implementation of the convention. Other states (Japan, Brazil, Liberia, China) had more regard for the difficulties and did not choose to implement the convention against the wishes of the shipping industry. These states had nevertheless agreed to the text of the convention in 2004. Since there was no discernible

change in the nature of the problem of invasive species, it seems that agreeing to the text of the convention was not a reliable indicator of agreement to the contents of the convention.

This section describes the concerns and influence of some states, that despite their concerns did not find a way forward out of the problem. With no agreed solution and wide concern in some states and much of the shipping industry, the outlook for rapid entry into force was bleak. While early submissions had predominately been written ones often by B-INGOs ³⁴, at later discussions were also based on oral interventions in the meetings by state delegates. The large flag states and other B-INGOs joined the ICS in its criticism of the convention. It was, however, still a major difficulty that no one seemed to be able to find a solution that would lead to sufficient ratifications. Instead, a series of resolutions were adopted.

As mentioned (on page 79), the first of these resolutions was agreed when the first hard deadline of 2009 was approaching. In an unusual initiative the Secretary General proposed that instead of waiting for the MEPC to resolve the problem, the Assembly should adopt a resolution to the effect that ships constructed in 2009 should not be required to comply with the standard. A single commenting document was submitted by the United States to the Assembly meeting. This contained suggestions for substantial changes, which – while supporting the immediate intent of protecting ships soon to be under construction – did not exempt them permanently from the requirements of the convention, but only until 2011 (United States, 2007, para. 2). The Secretary General proposed in his document, that member states send experts on the matter to the Assembly, and the US did so.

The proposal put to the Assembly by the Secretary General was a single option, that was contrary to the US preference in the negotiations for rapid implementation of the convention. In preparation of expected wide support for the Secretary General's proposal the US made a number of bilateral contacts with delegations favourable to the US position to ensure that there would be expertise at the Assembly. These delegations agreed to convene an informal group at the Assembly meeting and had agreed in principle, that a solution would have to be found at that meeting (personal communication 48).

No decision was taken under the initial plenary debate in the Assembly. Instead, the subject was treated by an ad hoc working group, which reported to the Technical Committee (committee 2). The ad hoc working group was chaired by the United States, and was attended by 79 delegations, including Spain and the ICS. It built its deliberations upon the previous informal consultations convened and led by the United States (*A 25/5(b)/2*, 2007, para. 71; *A 25/C.2/WP.3*, 2007, para. 6). It was this informal group that developed a compromise that was then refined by the ad hoc working group, reported to the Technical Committee and adopted on 19th November 2007 by the Assembly plenary (*A 25/Res.1005*, 2007). The chair of the informal group and of the more formal Ad Hoc Working Group was Bud Darr, then Deputy Chief of the Office of Maritime & International Law at the U.S. Coast Guard who had authored the US

³⁴ Since MEPC 52, ICS and other B-INGOs had submitted 5 documents, Japan 4, US, Germany and Korea each 3, Brazil 2, and Australia, Norway, and the UK each 1.

submission, and who was in my personal experience a very dynamic and assertive negotiator. This delegate was from the United States, a significant actor in the negotiations, and a country with its own national legislation on ballast water. A significant part of world trade could be affected if different approaches were taken in the US and elsewhere. Nevertheless, the US proposed amendment to the Secretary General's proposal was not carried through on the basis of being a US proposal. An amended version was developed under US leadership, that conceded the principle proposed by the Secretary General of exempting the most immediately concerned ships but kept the pressure of uncertainty desired by the US. This was achieved by the US taking the chair of the informal groups. The alternative to adopting the compromise developed would have been either to adopt an Assembly resolution by a vote, which would risk have it contested by some states when the convention came into force, or to remain with the MEPC 56 result; hoping that a solution would be found in April 2008, which would, however, be too late for ships being constructed in 2008. If the informal group and the more formal Ad Hoc Working Group had not been led determinedly by the United States, but by for instance Norway or Japan, it seems likely that the single option presented would have been different, very probably similar to the one proposed by the Secretary General.

The resolution recommends that ships constructed in 2009 should not be required to install ballast water management systems until their second annual survey³⁵, but no later than 31 December 2011. This was consistent with (but less radical than) the US commenting paper, but not with the proposal of the secretary general. Nor was it aligned with the US preference of rapid and strict implementation. The content of this decision was not determined by the Secretary General, and not by the shipping industry B-INGO (ICS), but by the initiative of United States, personified by a particular delegate. This example of influence by a large state widely seen as a hegemon, shows that the method used by the United States to gain that influence was to acquire the chair of the group(s) that constructed the compromise. The process of initial broad contact also demonstrates that the size and importance of the United States was not considered sufficient alone to counter the Secretary General's proposal, just as it had not sufficed to prevent it being put forward.

The stopgap nature of this Assembly resolution A.1005(25) (*A 25/Res.1005*, 2007) from 2007 was a consequence of the accelerated process that followed the failure of MEPC to find a solution to the still undefined problem of availability. The sequence of events shows the ability of individuals, in this case the Secretary General and the US delegate, Budd Darr, to influence the process, particularly when action seems to be required but no consensus exists as to what should be done. It was the first of many resolutions, that attempted to eliminate the negative consequences of an entry into force after the fixed dates of the convention.

However, similar attempts to modify the application dates failed. A 2005 proposal from India problematising the dates of the convention had not had much effect. MEPC 53 included in its report a statement by India, that the time necessary for approval and the difficulties of shipboard

³⁵ This wording replaces a fixed date with a time period, so that any retrofitting work is staggered in time, and would not all concentrate itself on one single day.

testing, indicated that the effective dates for the D-2 standard (i.e. January 2009) might not be met (*MEPC 53/24*, 2005, para. 2.47). A proposal from ICS to delay was received positively, but as mentioned on page 81, had no effect (ICS, 2006). Later, at MEPC 59 in 2009, Japan submitted a document that also raised the question of availability, now in a different form, describing the practical challenges in "matching" BWMS with the ships and concluding that the mere consideration of general availability of type-approved systems would not be sufficient, since for each ship, the availability of a genuinely suitable BWMS would not necessarily be the same as availability of generally suitable systems (Japan, 2009). Several delegations shared these concerns, but the Committee decided that no changes to Assembly resolution A.1005(25) (*A 25/Res.1005*, 2007) were needed and even requested a MEPC resolution supporting the original application dates. In September of 2010 at MEPC 61, the ICS and India are cited for concerns that even if BWMS systems were available the capacity of shipyards to retrofit existing ships with the systems might not be sufficient (ICS, 2010, p.6; MEPC 61/WP.8, 2010, p.20). This was an argument for a general delay but was not heeded. These proposals show that there was no general support for delays, and that the capacity arguments put forward by India and Japan were not seen as compelling. The consistent view of the majority of member states was that no action was necessary.

The issue of whether there was sufficient capacity for retrofitting of existing vessels was raised at both MEPC 63 and 64 (both in 2012), and while there was now considerable sympathy for the concerns of the shipping industry, a submission by Korea showed that by the year 2020 more than 60,000 ballast water management systems could be made in the Republic of Korea alone. This compares with an estimate that with full compliance, about 68,000 vessels in the global merchant fleet would need to install BWMS before 2020 (IMarEST, 2011). Accordingly, no conclusion was reached that lack of capacity was in fact a problem. Nevertheless, Japan suggested, on the basis of the continued expression of doubts about availability, that the capacity of repair yards and the ability of manufacturers might not suffice, and proposed rescheduling of the BWMS installation (Japan, 2012, p.3). Many delegations were still opposed to altering the dates in the convention. However, after considerable debate, MEPC 64 agreed to set up a correspondence group led by Japan for the development of an Assembly resolution which could address these concerns, but with the specific stipulation that there was to be no changing of the application dates.

This result must be seen as the cumulative effect of submissions and lobbying by mainly the ICS, India and Japan on concerns about capacity, type approval testing, sampling, and the constant concerns raised about availability. There was still a general consensus that the necessary technology would (probably) be available, and that no remedial action was necessary. No actions other than changing the application dates had been proposed, and this had in effect repeatedly been rejected by the majority of states. Nevertheless, Japan overcame the substantial opposition to changing the dates, by acquiring the chair of a correspondence group that considered the question. The task of the correspondence group was to address "concerns of the industry" – thus not the concerns of states, and "to ease and facilitate the smooth implementation of the Convention". The opposing delegations managed to have included in the

terms of reference the specific condition that the application dates were not to be changed, but this condition was in practice overridden by the chair of the correspondence group.

The correspondence group reported to MEPC 65 in 2013 and in spite of the clear stipulation of not changing the application dates, had nevertheless developed three options for relaxing the implementation schedule, without discussing any other possible ways of addressing the concerns. The options in the report were evaluated by the IMO Legal Office (at the request of the correspondence group) and only one was considered possible: an Assembly resolution containing a relaxed schedule for compliance (*MEPC 65/2/18*, 2013, para. 16). The Three proposed options limited the choice between rescheduling for all ships constructed before the entry into force of the convention, rescheduling only for ships constructed before 2012 or rescheduling only for ships constructed before 2009. The options were differentiated based on estimates of the total workload of retrofitting. This estimate of workload was produced solely by the coordinator of the correspondence group, Japan, and neither discussed nor endorsed by the group (*MEPC 65/2/11*, 2013, para. 8 and footnote). With the report giving no option that did not imply postponement, there was no easy way to choose anything else. The report gives no indication of why the states accepted the overriding of the condition that the application dates were not to be changed. The text of the resolution recommends that parties to the convention "notwithstanding the schedule set forth in regulation B-3" should enforce the standards in accordance with the relaxed schedule. This does not change the legal obligations of the convention but merely recommends that parties disregard them, until the convention can be changed. Some member states had suggested other legal methods, but with the Legal Office only accepting a non-binding Assembly resolution, this was the only method considered. The validity of this view was not shared by all. A legal opinion by the department of Law of the University of Trier (*MEPC 65/2/11*, 2013 Annex 7) gives an alternative view, of actually amending the convention by a binding agreement.

MEPC 65 tasked a working group with finalising the recommended resolution. Several delegations raised concerns that the resolution would cause a peak in installations, which would undermine the objective of avoiding capacity problems. In an informal process led by Canada a last-minute change was introduced with the effect of spreading the dates by which ships would have to comply with the D-2 standard over a five year period (Lloyd's Register, 2013, para. 3 Executive Summary; *MEPC 65/22*, 2013, para. 2.57.2). This was a situation where an initiative by a state was successful through the informal formation of a group chaired by that state.

This process shows specific influence of Japan, as coordinator of the correspondence group, and Canada as forming and leading an informal group on the outcome. It also confirms the influence of the IMO Legal Office that was recommending resolutions as the only option to introduce delays or moratoria on the requirements of the convention.

The resolution adopted as A.1088(28) on 4 December 2013 by the Assembly, effectively postponed the dates of required installation to a five-year period after the entry into force of the convention, whenever this might come to pass. As previously noted, there was universal agreement that the convention could not be changed before it had entered into force. Accordingly, the Assembly resolution seeks to achieve its result by recommending that, as soon

as possible after entry into force of the convention, the relevant regulation be amended consistent with the understanding reflected in the resolution. However, those states who had already ratified and had quoted the text of the conventions in their legislation would have difficulty in changing the requirement as long as the convention itself was not changed. The process of amending the convention after its entry into force would take some time and in the interval states who would follow the dates of the Assembly resolution would not be in compliance with the convention in force and potentially not in compliance with their own implementing legislation. The states advocating this delay would arguably not have gained consent from the committee as a whole had not the Legal Office put its weight behind the option of this Assembly resolution.

Germany also had significant influence. At BLG 17 and also at MEPC 64 in 2012, Germany proposed that, in the absence of an agreed sampling guideline, port States could agree to voluntarily refrain from initiating criminal prosecution under article 8 of the BWMC based on sampling results alone (Germany, 2012, para. 6.1). This proposal was in support of shipping industry's contention that sampling was unsatisfactory, but would allow sampling to be performed, which could both substantiate the industry claims and provide a basis for improvement. However, this particular proposal was not immediately accepted but would with the help of a chair develop into a new way of postponing implementation. The idea was picked up by the chair of BLG in a later suggestion for an interim guideline "for trial use" during which the sampling methods could be evaluated, and not used as the only basis for sanctions. This later evolved into the general exemption from sanctions that is the present situation. The proposal from Germany was originally unheeded, but being picked up by the chair could be introduced in the chair's proposals.

A group of countries: Bahamas, Greece, Japan, Liberia, Panama, along with many shipping organisations, proposed in February 2013 to the working group of BLG 17, that port state control should refrain from sampling ballast water. This idea was combined with the German proposal that one should not sanction, and it was agreed that during the trial period and until agreement was reached on an appropriate sampling and analysis protocols, port States would refrain from applying criminal sanctions or detaining ships based on sampling alone. It was also agreed that the trial period of two to three years should follow the entry into force of the convention and that this would be sufficient (and presumably necessary) to enable sufficient validation of the sampling and analysis methods (*BLG 17/WP.4*, 2013, para. 9). This understanding rested not only on the similar proposals by Germany and the group of states and organisations, but on the fact that several leading experts on sampling and analysis technologies were present in the working group and had developed this concept in informal consultations outside the meeting (*BLG 17/WP.4*, 2013, para. 5)³⁶. The BLG does not have competence to decide but only to recommend to the Committee, so the understandings that were accepted by the BLG were forwarded as recommendations to MEPC 65 (*BLG 17/18*, 2013, pp. 14–15).

³⁶ From the list of participants, I can identify only 3 leading experts: Dr Sarah Bailey (Canada), Dr Frank Stuer-Lauridsen (Denmark), and Dr Stephan Gollasch (Germany).

These understandings amounted to an agreement to test the interim guidelines on sampling during a transitional period of 2-3 years after entry into force of the convention. In this period ships would not be detained solely on the basis of sampling, but sampling should be done, and the results should be used to improve any BWMS systems that could not comply with the requirements of the convention. The agreement would not postpone the obligations in the convention, nor require states not to sanction non-compliance, but only to refrain from using sampling as authoritative evidence of non-compliance. Sanctioning would thus still be a possible reaction to ships that had no BWMS installed, or whose BWMS was insufficient, if the evidence for this was based on other evidence.

Canada was instrumental in promoting a resolution text concerning sampling as evidence. MEPC 67 in 2014 saw a continued and increased pressure to amend the type-approval system and to protect those who had already installed systems approved under the allegedly insufficient system. This was a parallel to the criticism of sampling. Early movers who had installed a BWMS might risk sanctions if port state control found the BWMS non-compliant. A shipping industry critique was now more widely co-sponsored (13 INGOs) and oral support from states was given in the meeting to the idea of amending the type-approval process and adopting a MEPC resolution, based on an agreement not to penalize early movers. The result of the work in the MEPC 67 working group, based on a Canadian proposal, was a new resolution by MEPC. MEPC.253(67) adopted on 17 October 2014, agreed that port States should refrain from applying criminal sanctions or detaining a ship, "based on sampling" during a trial period and to immediately begin a comprehensive review of type-approval guidelines. It also stated in general terms that ship owners that had installed type-approved ballast water management systems prior to the application of the revised guidelines, should not be penalized. In contrast to the German proposal the protection from sanctions or detaining was not described as "solely on the basis of sampling", but as "based on sampling", thus potentially excluding sampling even as supplementary evidence of non-compliance. It is worth noting that the trial period was also referred to by the Canadian delegation in their compromise proposal as an "experience gathering phase". This term was to appear later and take a wider meaning of not enforcing compliance at all during the initial phase. In 2016 the Committee established a correspondence group under the coordination of Canada to further develop the experience building phase (*MEPC 70/18*, 2016, para. 4.51). The Canadian initiatives and leadership in informal conversations thus lead to a formal leadership in the development of the concept that had been the subject of the initiatives. Again, the method that an influential state used to gain influence was acquiring the chair of a subgroup that was entrusted with development of text.

Liberia proposed several specific texts of draft amendments that would relax the enforcement schedule that had been decided by the Assembly resolution A.1088(28) in 2013. They were not accepted, but there was some sympathy in 2016 for the idea that a new extension of the timeframe was necessary based on a concern regarding capacity to retrofit. The effect of the original Liberia proposal could be to postpone the time when ships must install ballast water systems for up to 15 years, which was generally considered excessive. A subsequent less radical proposal from Liberia at MEPC 70 was accepted after intervention from INTERTANKO in a dialogue with the chair as described under the section on chairs' influence.

Conclusion states

States did have successes in adjusting the resolutions as they progressed towards adoption. The method of using resolutions was, however, initiated by the Secretary General in contradiction of the preferences of the apparent majority. The Legal Office was instrumental in promoting resolutions as the only instrument. The United States, Canada, Japan, Germany and Liberia were all active in formulating the details of resolutions, and had influence in both subcommittees and working groups, but they did not achieve their primary preferences, and at least some of their influence was achieved only through chairs and the secretariat.

Chair/secretariat

The influence of the chair and the secretariat can be exercised in many ways, some of which are subtle changes of wording, such as those in the opinions of the Legal Office, that require some effort to discern. A definite point that shows the influence of the chair/secretariat was the process that led to the 2007 Assembly resolution.

The member states in the Review Group at MEPC 55 in 2006 had determined that that type approved ballast water management systems would "probably" be available for installation prior to the first application date of the convention. The majority of states were apparently of the opinion that system would be available, although not willing to decide at that time that necessary technologies would certainly be available. In consequence, they did consider contingency measures in case technologies turned out not to be available. What was envisaged was two parallel actions one preparing to amend the application date of the convention, and the other the development of an exemption procedure. The report of the Review Group was debated in the plenary of MEPC 55 on Thursday 12 October 2006. However, the draft version of the MEPC report (*MEPC 55/WP.9 Add.1*, 2006, para. 2.36), dated 12 October (and thus probably written before the final debate in plenary actually took place), suggests that the Committee was expected to endorse the two options, while the in final version (*MEPC 55/23*, 2006, para. 2.42-2.43), the Committee clearly does not endorse the proposals, but merely notes them and requests a legal opinion. No statements by delegations are reported addressing this change. It seems likely, that the legal opinion given in the Review Group was intended to advise that amending the convention was probably impossible but was worded more carefully as "difficult". This seems to be a reasonable understanding in view of the clear rejection of the two options by the Legal Office in its later advice. Both the Review Group and the secretariat, when it was preparing advice for the chair of MEPC and drafting the *MEPC 55/WP.9 Add.1*, may have understood only that it would be difficult, and acknowledged that the majority of interested members apparently preferred that MEPC should endorse the two options.

From the official Swedish report, it seems that there was a wide debate in MEPC, resulting in the committee not endorsing the working group proposal [Sv-Reports Dataset]. There is no official record of the debate on this issue and there are no details of member state preferences. It may safely be assumed that those member states who had supported the options in the Review Group would also at least initially support them in the plenary. The change was therefore very likely due to input from the Legal Office, which - having realised that MEPC might endorse

something that the Legal Office would consider illegitimate - would then have advised the chair of MEPC to avoid endorsing the proposal and instead merely note it and ask for a legal opinion. This would allow the chair and secretariat to prepare for a later decision not to pursue this path.

The secretariat's involvement was more clear in the subsequent part of the process, when the Legal office presented its advice. As mentioned, the opinion requested of the Legal Office was reported to the subcommittee BLG 11, and the Legal Office evaluated both the two options as not viable. Instead, the Legal Office suggested as the "preferred and most appropriate" legal option the adoption of a Protocol to BWMC (BLG 11/4/3, 2007). This suggestion is, however, not pursued. The BLG 11 report to MEPC 55 continues immediately after this statement by the Legal Office, that it was Legal Office's view that a diplomatic conference would be necessary to adopt a protocol and that this should only be considered as a last resort. This last view is not reflected in the written opinion. Instead, the sentence after the quoted the "preferred and most appropriate option" states that "Only a protocol can provide a legally sound solution to the problem being confronted." This is not compatible with the statement that it should only be considered as a last resort. This advice that a protocol should be the last resort is not a legal evaluation, and as such it seems strange that the Legal Office should express such an opinion, especially as it is not accompanied by any justification. As it is not reflected in the written opinion it must have been expressed orally. There is in the report of BLG 11 to MEPC reference to an oral statement by the Head of the Legal Office of IMO made at BLG 11 with reference to the different features involved in the adoption of a resolution. It does not refer to the possibility of a Protocol, and is limited to two somewhat ambiguous statements in answer to questions from delegations:

- "... *implementation of a resolution would be effective provided there was consensus regarding its application among IMO Member States*", which does not address the issue of the legal status of a resolution that suggests that states do not enforce the first compliance date of the convention.
- "... *the adoption of a resolution would affect the legal status of those countries who have already become Contracting States*", which does not indicate exactly how they would be affected but may imply that they would be contravening an obligation at least with respect to one another to enforce the first compliance date of the convention.

The Swedish report from the meeting refers to the statement as "*the only solution to the date problem that is legally sustainable (provides "legal certainty") is that a protocol is drawn up for the convention. However, this would require a diplomatic conference and would thus become a political issue*"³⁷ [Sv-Reports Dataset]. It seems clear that something has been omitted from the statements by the Head of the Legal Office. The statement that a protocol should only be considered as a last resort does not have a clear source, but from the context it seems to be attributable to the Legal Office, that is, the secretariat.

³⁷ "Enligt IMO:s Legal Office är den enda lösningen på datumproblematiken som är juridiskt hållbar (ger *legal certainty*) att ett protokoll tas fram till konventionen. Detta skulle dock kräva en diplomatisk konferens och skulle därmed bli en politisk fråga."

Apart from the protocol, the Legal Office provided three other options: 1) a common, agreed interpretation of the convention that would automatically push the 2009 date to a point 3 years after entry into force; 2) a common reservation by States that ratify the convention, and 3) an MEPC resolution calling on States not to enforce the first compliance date.

In the legal opinion, only the resolution option was presented with substance. The protocol as well as the reservations and the interpretation were described in general terms. The possible resolution, however, was specified as "calling on States not to enforce the first compliance date for a limited period of time until appropriate ballast water treatment technologies become available to achieve the performance standard contained in regulation D-2". This wording is operational and very similar to a proposal from the ICS to the same meeting (ICS, 2007b). Delegations were divided on the issue of choosing between these options. The option of a protocol was supported by "some" delegations, but the option of a MEPC resolution was supported by "a large number" (*BLG 11/16*, 2007, para. 4.9). On this majority basis BLG recommended that MEPC should consider specifically the ICS proposal as a basis for a resolution, if the availability should continue to be a matter of concern. This shows a majority decision to consider a resolution, but no decision that there was a real necessity for a resolution at the time. The chair did not propose a choice between a resolution or a protocol, since there was no agreement that either action was to be taken at the time. However, the chair's text did report and recommend a preference for a resolution, rather than the presumably alternative majority preference for no intervention until availability should be considered an actual problem. The chair's conclusion also recommended that the resolution that was to be considered would be similar to the ICS proposal to delay for all ships, and that it should be "considered" in the absence of a positive determination that technologies were available.

This sequence of events is consistent with the idea that someone with authority intervened with the Legal Office's technical legal opinion to prevent calling for a protocol and a diplomatic conference. There was no immediate decision to adopt a resolution, since there was no actual recognition that there was a problem of availability that should be solved, nor was there a decision on how such a problem could be solved if it existed, but the process did in practice exclude the solution of a protocol – a solution that according to the legal opinion was the only one that was legally sound.

The question of availability was debated extensively in the Ballast Water Review Group, with a conclusion that a limited number of technologies would be available, but that some ships could be affected by procedural and logistical problems. MEPC 56 noted "concerns of the shipping industry" and invited submissions to MEPC 57 (in 2008) on how ensure that shipowners facing problems related to unavailability of ballast water treatment technologies would not be legally penalized. It was thus clear that there was wide agreement among states that the technology did exist, but there were two slips of understanding that ultimately led to decisions based on an assumption of general unavailability.

The first slip was that BLG recommended that MEPC should prepare reactions without having determined that there would be an availability problem (*BLG 11/16*, 2007, para. 4.11). It is clear that the majority opinion was that there would probably not be a serious or general problem. The

second slip was to consider the specific solution, as proposed by the ICS of moving the application dates, that would only be appropriate to a situation where ballast water treatment technologies would not be available at all – still without having determined that there would be an availability problem. The imprecise wording used ("a matter of concern") blurs the difference between "availability" as the existence at a given point in time of type approved equipment that is in production, and "concerns related to the availability" as a fear that in the future installation of equipment might not be feasible or only possible at excessive cost and/or delay for some locations or for some ships, including those already under construction. These slips were probably not random changes but seem to be deliberate formulations designed to ensure that action would be taken to protect ships against delay, port state detentions or sanctions, in case the repeated agreement among a majority of states, that type-approved technology would probably be available, turned out not to be correct.

Since moving the application dates was not a recommendation of the BLG or the MEPC, the wording of the conclusion must be ascribed to the secretariat, or the chair. However, no decision was taken at MEPC 56. The working group charged with developing the resolution that would postpone the implementation for all ships, did not do so, presumably because there was no agreement in the group that availability was a significant problem. The plenary of MEPC would probably have the same majority opinion and would additionally have had the problem that no text was available. Even if the chair/secretariat wished to promote the resolution it would be difficult, and thus the chair instead proposed a procedural conclusion inviting new proposals to ensure that ships would not be penalised if faced with actual unavailability. The process thus demonstrated that the opposition to a general postponement of the requirements was sufficient to prevent a decision in MEPC to do so.

A decision was thus expected to be made at MEPC 57 on the basis of new submissions by states and observers on how to ensure that ship owners facing problems related to unavailability of ballast water treatment technologies would not be legally penalized (MEPC 56/23, 2007, p.17). So far, no proposal had been made that would solve this problem, but the MEPC chair apparently suggested that someone would present a solution to the next meeting of MEPC, which was to take place in April 2008. This would, however, be too late for ships being constructed in 2008, and which would be delivered after 2009, and thus potentially face an obligation to install the equipment later at short notice.

The prospect of continued uncertainty brought a new set of actors to prominence. A new proposal was made for a decision to be taken in the Assembly meeting in November of 2007. It was presented by the Secretary General of the IMO "following consultation with the chair of MEPC". This was quite an atypical construction. If the chair of a committee needs help from the secretariat to compose a compromise solution, it will still normally be presented as a proposal of the chair. The new proposal was submitted on 21 August 2007 well ahead of the Assembly meeting, and only a month after the MEPC 56 had failed to act. This procedure was atypical, and was motivated by the perceived urgency of achieving a result (A 25/11/1, 2007, p.5). The MEPC process foreseen for the following year would be too close to the 2009 deadline.

A natural understanding would be to see this initiative as coming from the Secretary General only, in reaction to the incapacity of the MEPC to act. The fact that the chair of MEPC was not associated as author of the proposal could be ascribed to dissent on his part with the method suggested (a recommendation for a resolution of the Assembly), which had been in effect rejected by the MEPC (see page 78, on the finding that all three mechanisms were non-viable). It seems possible that the chair of MEPC would not formally propose a solution that contradicted a recent view of the Committee. It is also possible that the chair had other reasons for avoiding the precedent of such an Assembly resolution.

The content of the proposal was obviously influenced by the repeated claim of the shipping industry that something should be done, and by the specific proposal for a resolution that the ICS had put forward. However, the influence of these claims on the MEPC had not been sufficient to generate an agreement. The decision to override this MEPC position was taken by the Secretary General.

The ships that were to be covered by the Secretary General's proposal were those to be delivered in 2009. The proposed exemption from enforcement was for the ship, not for any period of time, so that any ship built in 2009 would for its entire lifetime be exempt from the requirements of the convention. The wording allowed for an alternative of extending the coverage of the exemption to ships built in 2011 or even until 2014 (*A 25/11/1*, 2007 Annex, para. 2). This kind of coverage was typical of the ICS' proposals at the time. It is thus possible that the proposal was drafted by or in cooperation with the ICS. If that were the case this path of proposing with the assistance of the Secretary General was more successful than submitting the ICS' own documents. The Secretary General proposed in his document, that member states send experts on the matter to the Assembly meeting so that the Technical Committee of the Assembly (usually set up by the Assembly as committee 2), could finalise the matter. This inclusion of experts was also atypical and clearly indicated that a solution was expected to be found at the meeting, even if wholesale redrafting of the resolution would be necessary to achieve consensus.

The agenda of the Assembly included an item 11 "Consideration of the reports and recommendations of the Marine Environment Protection Committee". Under this item the MEPC chair reported on the conclusion of the committee to invite submissions to MEPC 57 in the following year. He made no mention of the Secretary General's proposed Assembly resolution (*A 25/SR.5*, 2007). The Secretary General, however, did mention his proposal under this agenda item, merely hoping that the Assembly would consider his proposal, and a few delegations supported it, with no-one opposing. Significantly Spain, who was present, did not repeat their opposition (see page 78), even though the problem of national legislation containing the text of the conventions presumably still existed. One may therefore assume that Spain had become convinced in the meantime that such a step was necessary. As described on page 85, the Secretary General's proposal was debated in an informal group and in the customary technical committee, number 2, which developed a text recommending to postpone, but not to exempt, ships from the requirement, and only for the ships that were built in 2009. This was adopted in a situation where everyone was aware that the convention itself was not being changed. The rationale behind such a decision was not simply the concern that technology might not be

available, it was a recognition that some or many ships delivered in 2009 or later would not be delivered with BWMS even if it would be available, since there would be no requirement in force on the day of delivery. The recommendation ignored the legal issues for states that would follow the recommendation in violation of the letter of the convention, and for some in violation of their national implementation legislation. Ships constructed in 2009 or later, were thus given a deferral – by the 2007 Assembly resolution A.1005(25) (*A 25/Res.1005*, 2007) – until the vessel's second annual survey, though no later than December 31, 2011. This deadline would slip at the end of 2010 if the conditions for entry into force were not met by then. This process shows that an initiative from the IMO Secretary General forced a decision and countered the inability of the MEPC chair to develop a decision.

At MEPC 58, in 2008, the Committee reconsidered the issue of availability. As had been usual, it tasked a working group to report on the matter. The working group was again of the view that there were technologies available for ships constructed in 2010 and that production capacity would be available. The conclusion reflects that some delegations (but still a minority) considered that availability would be a problem in 2010. The initiative of the Secretary General was thus a successful effort to override the views of a majority of member states. This majority included the United States. The role of the United States in this process is detailed above where the influence of states is considered. By recommending a solution to the immediate problem for ships delivered in 2009, but not for ships delivered later, the uncertainty for ships delivered in 2010 was not removed. This was undoubtedly a deliberate choice on the part of the states who wished to press for early implementation. The concerns that continued to be raised about lack of availability were obviously not being solved by delays and extensions, but no alternative solutions were on the table. At MEPC 59 the Review Group again decided with some clarity that ballast water management systems would be available to ships constructed in 2010.

The situation was thus that there was an expectation among most member states that equipment would be available, and a majority opinion that no action was necessary. In contradiction of this the secretariat (the Secretary General) successfully coerced states to adopt a recommendation to disregard the dates of the convention as far as ships constructed in 2009 were concerned. As this recommendation was non-binding, and considering that the convention was not in force, this would not actually change any legal situation in any state. Nevertheless, it was a statement of intention that was adopted against the wishes of an apparent majority of states.

As the entry into force became certain, a new postponement was introduced in a last-minute amendment to the convention just before the entry into force. This was mainly an effort by INTERTANKO. The sequence shows a decisive influence of an individual with high personal status. Without the chairs' support, however, the change could not have been introduced. As mentioned above (page 90), a small majority of delegates at MEPC 70 supported a Liberia proposal on further extension/delay beyond those draft amendments to the convention that MEPC 69 had adopted. The split was, however so close to being even that the chair did not want to the committee to decide in favour of either. The MEPC has a history of avoiding decisions by vote. As described on page 55, there is a general fear that a vote will be "divisive". On the other hand, most delegates firmly believe that a common rule determined by IMO is necessary for

shipping to continue to serve world trade, and this is seen as an overriding objective. Continuing with a decision that was now supported only by a large minority seemed impossible, but following normal procedures would imply significant delay, and let the convention enter into force in a manner not supported by either of the two groupings. The decision to do either of the two could, however, be taken by the chair.

In this situation the delegate from INTERTANKO³⁸ suggested a compromise of submitting both texts to the adoption procedure and letting MEPC 71 decide which text (or texts) to circulate for adoption on September 8th, when the convention was in force and could be changed. This solution was developed in a public dialogue on the floor of the MEPC between the chair and the delegate from INTERTANKO, who referred during this debate to his previous position as head of the US delegation at the time of the development of the ballast water convention. Drawing heavily on his personal credibility and long history of participation in IMO meetings, he persuaded the chair to include an alternative text that was developed informally during the meeting by INTERTANKO, ICS and WSC. The chair then strongly suggested to member states to reach an agreement before MEPC 71. At an informal dinner hosted by INTERTANKO, the compromise was further developed with the UK and Norway³⁹ (personal communication 35). At MEPC 71 the two texts were combined in a "compromise proposal" submitted by a small but broad group of states covering almost every continent and every level of development: Brazil, the Cook Islands, India, Liberia, Norway and the United Kingdom. Such a constellation of co-sponsors is quite rare. The content was an extension of two years so that ships delivered before the entry into force would have to install equipment during the five-year period starting two years after the entry into force i.e., from September 2019. This proposal was presented to MEPC by Norway, indicating that the compromise was elaborated in part by the chair of the Sub-Committee. The chair of MEPC did not open a general debate but asked the member states only to indicate if they opposed the compromise presented by Norway. Only a very few states (Ireland, Denmark, Belgium, and Japan) questioned the compromise, which the chair took to mean that the compromise was overwhelmingly supported [Reports Dataset]. This was a situation where the chair, confronted by a wide split in the committee, could present a single alternative as the only or preferred solution. The elaboration of the actual compromise was the work of the INTERTANKO delegate but was successful only through being actively supported by the chair.

Conclusion Chair

While INGOs and states did have significant influence in a number of the situations, it is thus clear that the method used was often that of acquiring the chair of a subgroup. Some positions such as the chair of the MEPC and the BLG are predetermined, and the secretariat in the form of the Secretary General and the Legal Office, is an irreplaceable institution, and these have permanent possibilities of influence. Delegations either influenced these permanent institutions

³⁸ Joseph J. Angelo former head of the U.S. delegation to MEPC

³⁹ Sveinung Oftedal, who now chaired the relevant Sub-Committee

or created and chaired separate groups. The efforts of Japan did not succeed until a Japanese chair of a correspondence group could override the mandate given by the plenary. Similar effort of Germany and India were not accepted. The efforts of the secretariat in preparing a resolution to postpone implementation was eventually successful despite a majority of states opposing it. The drafting of reports allows a slow shifting of emphasis. This slow drift must be attributed to the secretariat or the chair, who control the exact wording of these documents. In the instances described personal initiatives were crucial but were conducted by chairs, except for the effort by the INTERTANKO delegate, who conveyed the effort through the chair. I therefore argue that it is to a high degree the office that creates the influence by identifying the options that can be selected. Influence did not seem to arise from the nationality of the specific chair, but from the structural power and executive influence of the position.

Conclusion case 1

The repeated use of resolutions was the process by which the IMO acting with structural power and executive influence reached a point where it could endeavour to change the convention in contradiction of most states' wishes to retain the convention timeline. The preference for this method must be attributed to the secretariat or the chair, which cannot be distinguished. The first resolution was adopted in 2007 by the Assembly plenary on the proposal of the Secretary General. This resolution was contrary to the opinions of a majority of states, and contrary to the conclusion of MEPC that this mechanism was not viable from a legal point of view. The second resolution of the MEPC in 2010, was a symbolic decision that merely stated that the ballast water management systems installed on ships constructed in 2010 would have to meet the requirements of the convention. It was part of a debate on whether to postpone this requirement and demonstrates that the majority of the MEPC and its subgroups consistently wished to retain the convention unchanged. It was a symbolic decision by those states that did not wish to weaken the pressure on the introduction of the new technology, and who were convinced that, if necessary, the technology would be available. The third resolution was adopted by the Assembly in 2013, and did not seek directly to amend the convention, but recommended that, as soon as possible after entry into force of the convention, the relevant regulations be amended, and that in the meantime states should ignore the relevant part of the convention. This also contradicted the preferences of most states who had only agreed to test guidelines on sampling during a transitional period and to not detain ships solely on the basis of sampling but had not agreed to change the obligations in the convention, nor require states not to sanction non-compliance. The fourth resolution by MEPC, not by the Assembly, from 2014, agreed that port States should refrain from applying criminal sanctions or detaining a ship, "based on sampling" during a trial period. This did not amend the convention, nor did it formally propose not implementing any requirement in the convention. It merely agrees on the questionable value of "sampling" as evidence of non-compliance. In 2016 the MEPC agreed to draft amendments to the convention that were to be formally adopted after entry into force of the conventions. These amendments changed the dates of application from fixed ones to dates relative to the entry into force of the BWM Convention. This did not contradict the preferences of states, as the changes merely reflected the passing of time, and a realisation that entry into force could not be predicted. The

fifth resolution (*MEPC 290(71)*, 2017) from 2017 only months before the entry into force, does finally attempt to change the convention by removing the requirement on states to fully implement the convention by applying appropriate sanctions to non-compliance. This contradicts Article 8 of the convention which requires that violations shall be prohibited, and sanctions shall be established.

So, in the face of urgent concerns that were raised, without proposals for a solution, resolutions were adopted that gradually came closer to a change of the convention. The preference of the shipping industry to have an obligation that could be easily documented, and not one that relied on biological measurement that would be unavailable to the ships, was in the end somewhat accommodated. But the change is merely a recommendation, that is not enacted in the convention and is not guaranteed to last. While the shipping industry representatives did set the agenda for discussions in the IMO, they did not control the outcome. The recommendation not to penalize specifically does not exclude other non-penal reactions, that can be just as detrimental or more. Port states are still under the convention obliged to prevent discharge of non-compliant ballast water. If ports fulfil this obligation, ships can be prevented from loading cargo, which will have severe commercial consequences. If ports do not prevent all non-compliant discharges, the problem of invasive species will continue.

The United States and the majority of states that wanted an early and strict implementation were not able to prevent this potentially permanent delay in enforcement. An outcome that amounted to changing the convention was adopted, but not in a binding formant and not with the content that was preferred by the B-NGOs. However, a temporary exemption that was in the end requested by B-NGOs was – at least for the time being – accepted, even by the states who had previously found it unacceptable. The influence of individuals came at several decisive moments, demonstrating that persons acting as official or as unofficial chairs can have decisive impact on outcomes. These outcomes were shaped by the structural power and executive influence of chairs and the secretariat and created an outcome that was not the preference of any delegation.

Chapter 5. case 2 – Implementing Greenhouse Gas Strategy⁴⁰

Binding regulation by qualified majority

Introduction

This case concerns the measures that have been adopted to reduce GHG emissions from ships in implementation of the IMO's initial GHG strategy (MEPC 72/17/Add.1 Annex 11, 2018), which is described in case 3. I have taken the cases out of the temporal sequence, in order to present them in order of decreasing complexity and increasing clarity as concerns the influence of the chair. It is not necessary to have any knowledge of the content of the strategy to follow this case. Nevertheless, there will be a few references in the chapter to the strategy, which will be treated in detail in the next chapter.

As in the previous chapter after a timeline and consideration of the process, the action and influence of INGOs and that of States are considered, and finally the influence of the chair/secretariat is demonstrated.

The measures to be adopted were binding amendments to the MARPOL convention that could be adopted by a qualified majority and did not require ratification. They were elaborated over a series of MEPC sessions, and a series of "intersessional" meetings of a working group under the MEPC (ISWG-GHG). This procedure of plenary meetings that leave most negotiation to working groups is quite typical of IMO practice. For more mundane examples see Horn et al (2008, para. 2.1) and Figure 5. The MEPC had previously adopted an "initial" GHG strategy that required that specific short-term measures were to be agreed between 2018 and 2023, and that mid-term measures were to be agreed between 2023 and 2030, and that long-term measures were to be agreed after 2030. These measures are intended to achieve the goals of the strategy. The issues to be decided were the choice of technical means, the timeframe, and the stringency of implementations, including which of the strategy aims were to be implemented by each measure.

The short-term measures were agreed in 2020 at MEPC 75, introducing a onetime minimum efficiency requirement for all existing ships, and a mandatory operational carbon intensity indicator (CII), with progressing reduction rates for all ships. The actual values for these reduction rates were adopted the year after at MEPC 76 in 2021. These implementations require each ship to have a plan for emission control, but do not in practice imply significant actual reductions of emissions compared to a Business-As-Usual projection. This lack of effect is due both to the absence of follow-up mechanisms that would ensure compliance, as well as the modest improvement requirement values, that are close the historical technological development. The meetings that arrived at this outcome included novel procedures and online

⁴⁰ Much of the case in this section is discussed in an award-winning conference paper by myself and Federico Jensen (Prehn & Jensen, 2021).

meetings with limited time, following a delay where no meetings were held, while IMO grappled with the problems presented by COVID.

The effect of the COVID pandemic was first to postpone several meetings and then to change the process to an online format that limited the time available and impeded informal contacts. Instead, the chairs selected named delegations to conduct informal talks outside the process. The chairs' decisions in this new format showed how it is possible to differentiate the treatment of majorities and minorities in the IMO process.

The postponement of meetings created a vacuum that was filled by informal meetings organised initially by the ICS. The influence of the shipping industry on the implementation process was significant but did not result in achieving industry goals or adoption of industry proposals. The outcome that was adopted was a result of the chairs' management of the process, and the chairs' choices of which delegations to grant influence.

The case demonstrates the importance of the chairs (also chairs of informal groups), and the significance of control of the agenda. The online format of some of the meetings made it difficult for delegations to participate in informal conversations that normally would take place in coffee breaks, and the other changes, that the chair imposed as a consequence of the COVID limitations, visibly limited the possibility of an inclusive general compromise. This case also demonstrates the value and some of the weaknesses of my method of close observation of the process of negotiation. In this case my possibilities of observations were better than in the previous cases, since I was now a representative of a state with a high profile, which was not the

MEPC 73/19/Add.1
Annex 9, page 2

Streams of activity	ANNEX							
	2018 MEPC 73	2019 MEPC 74	2020 MEPC 75 MEPC 76		2021 MEPC 77	2022 MEPC 78 MEPC 79		2023 MEPC 80
<i>Candidate short-term measures (Group A) that can be considered and addressed under existing IMO instruments¹</i>	Invite concrete proposals	Consideration of proposals	Consideration and decisions on candidate short-term measures that can be considered and addressed under existing IMO instruments e.g. further improvement of the existing energy efficiency framework with a focus on EEDI and SEEMP, ITCP ²					
<i>Candidate short-term measures (Group B) that are not work in progress and are subject to data analysis</i>	Invite concrete proposals	Consideration of proposals	Consideration and decisions on candidate short-term measures that are not work in progress and are subject to data analysis, consistent with the Roadmap ³					
			Data analysis, in particular from the IMO Fuel Oil Consumption DCS					
<i>Candidate short-term measures (Group C) that are not work in progress and are not subject to data analysis</i>	Invite concrete proposals	Consideration of proposals	Consideration and decisions on candidate short-term measures that are not work in progress and are not subject to data analysis e.g. National Action Plans guidelines, lifecycle GHG/carbon intensity guidelines for fuels, research and development ³					
<i>Candidate mid-/long-term measures and action to address the identified barriers</i>	Invite concrete proposals	Consideration of proposals including identification of barriers and action to address		Progress made and timelines agreed on the development of mid- and long-term measures				
<i>Impacts on States³</i>	Invite concrete proposals	Finalization of procedure	Measure-specific impact assessment, as appropriate, consistent with the Initial Strategy, in particular paragraphs 4.10 to 4.13					
<i>Fourth IMO GHG Study</i>	Scope	Initiation of the Study	Progress report	Final report				
<i>Capacity building, technical cooperation, research and development</i>	Development and implementation of actions including support for assessment of impacts and support for implementation of measures							
<i>Follow-up actions towards the development of the revised Strategy</i>		Ship fuel oil consumption data collection pursuant to regulation 22A of MARPOL Annex VI (DCS)			Initiation of revision of the Initial Strategy taking into account IMO DCS data and other relevant information			Adoption of revised Strategy

¹ Includes ongoing work pursuant to regulation 21.6 of MARPOL Annex VI.

² "In aiming for early action, the timeline for short-term measures should prioritize potential early measures that the Organization could develop, while recognizing those already adopted, including MARPOL Annex VI requirements relevant for climate change, with a view to achieve further reduction of GHG emissions from international shipping before 2023" (paragraph 4.9 of the Initial Strategy)

Figure 10 Timeline of implementation for the strategy

Source: MEPC 73/19/Add.1

situation in the previous two cases, where I was representing a B-INGO. On the other hand, the online format highlighted the fact that participant observation only captures what the observer experiences.

Timeline

The adoption of the measures followed an agreement on a program of actions adopted at MEPC 73 in 2018. This plan of action (*MEPC 73/19/Add.1 Annex 9*, 2018) consisted of a number of streams of activity running from 2018 to 2023. The programme was decided in the form of the timeline reproduced in Figure 10. The timeline stretches until MEPC 80, which was held from 3rd to 7th July 2023. The timeline shows consideration of proposals for measures beginning in 2019 with "consideration and decision" of short-term measures taking place from 2020 onwards. The term "decisions" avoids the usual IMO terminology associated with MARPOL amendments of "approval" of the legal text "with a view to adoption" and a later "adoption". Each of the strands of the timeline has a pointed end, which also subtly might suggest that work would not be completed in 2023. The strategy on which the measures depend did not lend itself to easy implementation. The measures that were expected to reach the targets of the strategy were not specified to any great precision. The issues that had apparently been solved by the adoption of

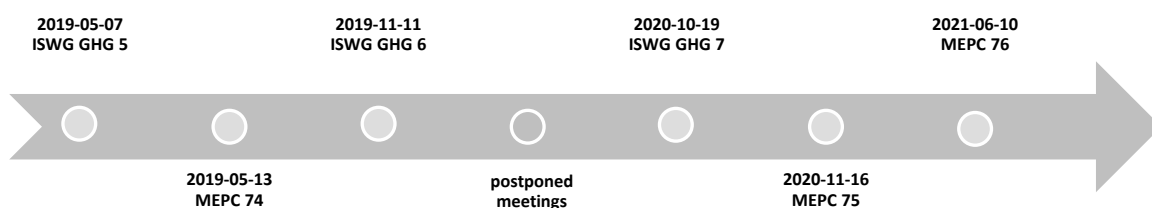


Figure 11 Meetings on Measures

Source: Imodocs and own participation

the strategy turned out to be still controversial, and the timeline reflects a lack of agreement on the necessity of urgent adoption of mandatory measures.

The meetings that were to define the mid- and long-term measures began in the usual way with MEPC and associated working group meetings, including intersessional meetings (see Figure 11 and also Figure 5). The first opportunity to consider concrete proposals was the meeting of ISWG-GHG 5 that took place in 2019, followed by MEPC 74 and ISWG-GHG 6 in the same year. In the following year, 2020, the COVID pandemic resulted in delays, and the introduction of private meetings organised by the ICS and informal meetings organised by IMO, so that the ISWG-GHG 7 did not meet until October 2020. MEPC 75 met in November 2020 and MEPC 76, that took the decision on the short-term measures, was held in June 2021.

Process

The management of processes was not efficient in producing agreement on measures. The meeting of ISWG-GHG 5 in May 2020 was shortened by a day because Monday was a bank holiday in England and it was scheduled to close on Friday the 10th of May at lunchtime ostensibly in order to give time for delegations to engage in informal consultation before MEPC

74, that was to meet the week after. A fair amount of time was spent the first day of ISWG-GHG 5 on a passionate statement by the UK student climate network representative Noga Levy-Rapoport, who gave the IMO the "Greta Thunberg treatment"⁴¹, calling for urgent and courageous action right away [Transcripts Dataset]. Many delegations praised the intervention, but the meeting agenda did not allow for decisions on measures or even for any detailed considerations of individual proposals for measures, so the intervention and the comments were not timely. In spite of the polite welcome that was given by many to Ms Noga Levy-Rapoport's intervention, and the lengthy interventions that followed her ardent speech, the official report makes no mention of her intervention (*MEPC 74/WP.6*, 2019). What was left of the meeting was dominated by the debate on the issue of impact on states while the chair requested only general comments on a list of 10 approaches prepared by the chair, collating the proposals [Reports Dataset; Sv-Reports Dataset]. The effect of the chair's and the secretariat's management of the available time, including allowing the lengthy student climate network intervention, was thus only to allow time to treat impact on states, without debating the actual measures.

The process at MEPC 74, which took place the following week, limited the scope of any possible measures debate. The chair of the intersessional working group gave an oral report to the MEPC plenary. The working group was then tasked to debate proposals on candidate short-term measures. The originally proposed terms of reference for the working group was to consider and prioritize the proposals (*MEPC 74/WP.2*, 2019, para. 4.2). These terms of reference were, however, altered to allow only an identification of measures that could be further developed and finalized later. This change ensured that no decision to prioritize or select a measure could be taken at the working group meeting (see also page 111, where the decision is detailed under the discussion of states' influence). This working group spent most of its effort on defining the process of evaluating the impact on states of future measures [Sv-Reports Dataset]. This "impact assessment" was widely required as a prerequisite for the adoption of a measure, which may have been why the chair(s) were avoiding a difficult debate on prioritizing measures before the impact assessment procedure could be agreed upon. However, if this was a deliberate policy the original wording of the terms of reference for the working group was inconsistent as it would have allowed a debate of substance. As far as the measures were concerned, the comments during the intersessional (ISWG-GHG 5) that had taken place the week before, had seemed to suggest a broad acceptance of some of the general ideas in these approaches, including requirements for existing ships [Reports Dataset] but any possible outcome of the working group at MEPC 74 was limited by the reworded terms of reference which explicitly included only identifying proposals that could be further developed and not prioritizing any over others.

2020 COVID pandemic

The MEPC had planned to meet to debate and possibly decide, from 30 March to 3 April 2020. A preparatory meeting from 23 to 27 March of the ISWG-GHG was also foreseen. These meetings that were foreseen for early 2020 did not take place because of the travel restrictions

⁴¹ <https://splash247.com/shipping-gets-the-greta-thunberg-treatment-as-crunch-imo-talks-get-underway-in-london/>

imposed by many countries as a consequence of the COVID pandemic. The meetings of MEPC 75 and of ISWG-GHG 7 were initially cancelled rather than postponed, and some time passed before virtual, on-line meetings, became possible. A number of e-INGOs were worried that this would delay the urgent implementation of the Strategy, and in April of 2020 they requested the IMO to immediately start hosting online meetings [E-mails Dataset]. This was not at the time considered technically a possibility for the organisation due to the high number of potential participants (at the most recent meeting, 1,175 people had been in attendance). Furthermore, it would be a major challenge to introduce simultaneous online translation into the six official languages required (Raun, 2020). The Secretary-General spoke on 1st May 2020 with the chairs of MEPC, and of the Intersessional Working Group. The chairs suggested a preparatory virtual meeting, on GHG short-term measures to facilitate ISWG-GHG 7 to prepare draft amendments to MARPOL Annex VI, which could then be approved by the next official session of MEPC (IMO Secretariat, 2020b). As it turned out there were actually two informal IMO meetings, but the introduction of online meeting facilities was not accomplished until a decision by an extraordinary session of the Council, which was held from 4 May to 3 August 2020 (by correspondence) introducing changes in the working methods. There was thus a lacuna while these changes were being considered and introduced.

In this lacuna, the ICS initiated a series of private meetings with selected delegations, mostly those who had submitted proposals to MEPC 75 and some "like-minded" and active delegations⁴². This group was later expanded to include other delegations. There is some indication that some coordination took place between the ICS and the IMO secretariat. At the very least the ICS reported the results of these meetings to the IMO, who acknowledged them and followed them up. The process of normal IMO routines presided by elected chairs with assistance from the secretariat was thus skewed. The meetings were not proffered as negotiations but were ostensibly only to facilitate an exchange of views so as to assist progress once the IMO meetings resumed [informal meetings Dataset]. A disadvantage of participant observation is apparent here, in that only those contacts that came to my attention can be included in my analysis. There were possibly many other informal contacts. There was some mention of meetings with participation of developing countries including Mexico, but there did not seem to be for instance a similar initiative within the SHAC group.

To distinguish these meetings, the ICS-sponsored online meeting will be called "private", while the IMO sponsored preparatory virtual meetings will be called "informal". While these first online meetings both "private" and "informal" were not designated as negotiations, they did allow the conversations to continue during the pandemic and create a better understanding of the strengths and weaknesses of each of the approaches. The "private" meetings were nevertheless to form the basis of future work. They also served to habituate delegates to working in virtual meetings over extended periods. The "informal" GHG discussion sessions were moderated by the chair of the ISWG-GHG, whereas the "private" meetings were moderated by a former IMO

⁴² The participants were: Australia, Bahamas, Brazil, Chile, China, Denmark, France, Germany, Japan, Liberia, Malaysia, Marshall Islands, Norway, Panama, Saudi Arabia, Singapore, United Arab Emirates, United Kingdom, International Chamber of Shipping, and the Royal Institution of Naval Architects,

employee from the secretariat who was very well-known to all the participants and who had assisted the chair as secretariat at working group meetings. Both types of meetings were thus similar to the later formal IMO debates.

One effect of the private meetings was to focus attention on a combination of the three elements: EEXI, SEEMP and a rating system. MEPC 74 had identified four basically different options. The focus at the ICS sponsored meeting excluded one of them; regulating ship operational speed as proposed by the Clean Shipping Coalition, who were not invited to the talks. This choice influenced the future work, and it was achieved by the ICS taking upon itself the role of chair and achieving some progress in the lacuna created by Covid. Not every organisation could have successfully done this, and not every format of meeting organised by the ICS could have achieved the same outcome, but conversely the influence that the ICS gained was not in the end to favour the preferences of ICS.

On 29th May 2020 the IMO called for an informal preliminary discussion session (a virtual meeting) on the short-term measures to be held from 6th to 10th July 2020 (IMO Secretariat, 2020a). This meeting was limited to documents already submitted to the IMO under the GHG agenda item. However, in the call for the meeting specific reference was made to "recent developments", including "progress on the informally coordinated work on the two approaches". This was obviously a reference to the ICS sponsored meeting. The timing of the call only two weeks after the ICS meeting, with reference to its "developments" indicates a recognition and even endorsement of the initiative (IMO Secretariat, 2020a).

The following series thus seem to be a connected flow:

Date	Host	Comment
14 May 2020	ICS	Private Meeting
3 June 2020	ICS	Private Meeting
11 June 2020	ICS	Private Meeting
30 June 2020	ICS	webinar on IMRB
6 July 2020	IMO	informal GHG discussion session
5 October 2020	IMO	informal GHG discussion session

Table 3 Informal meetings in 2020

Source: Own tabulation based on reports

While it is by no means certain that the ICS initiative was agreed in advance with the IMO secretariat, there was sufficient exchange of information about the process for the Secretary General of the IMO to refer to the result as "progress". The informal IMO meeting was moderated (not "chaired") by the ISWG-GHG chair Mr. Sveinung Oftedal. No official participants list is available. The meeting was not supposed to negotiate, but statements were made to move the possibilities of an agreed solution forward. Many agreed that both an EEXI and an operational measure could be adopted. Not all delegations agreed that a consensus was close. Some remarks were of a nature to delay any decision. A second informal meeting took place 5 October to 6 October 2020. That meeting was again "moderated" by the chair of the working group, Mr. Sveinung Oftedal. More than 200 persons were logged on to the meeting,

but no list was issued, so the attendance was not clear except for those who spoke. This, second, informal meeting was specifically intended to introduce the 10 documents that had been submitted since the initial informal meeting, which included a "combined" proposal cosponsored many delegations across the divide. A number of proposals for measures (37) had already been submitted to the postponed ISWG meeting by the end of February 2020, but after the first "informal" meeting a new submission had come in, cosponsored by 20 delegations across the divide submitted as ISWG-GHG 7/2/26. The differences between the original separate proposals remained, but they were now linked, so that the operational requirements of the European approach now corresponded to the rating system as suggested by China, and a low rating could result in a requirement to improve the EEXI level that was suggested by Japan. The submission included wording for changes to MARPOL. This "combined" proposal could thus be transformed into a comprehensive solution, if agreement could be reached on each of the mutually exclusive options that were included in the document. Despite the informal nature of the meeting the moderator drew a somewhat unclear conclusion that a solution along the lines of the combined proposal was possible, but that more work was required on "impact on states".

Reassuming Work in October 2020

The ISWG-GHG 7 on 19th October 2020, was the first official IMO negotiation on greenhouse gases to take place entirely online. It used the Zoom platform. According to the official list of participants (*ISWG-GHG 7-INF.1*, 2021), the meeting was attended by 374 participants, of whom less than 50 spoke. The result was unambitious.

The procedural effect of the informal meetings and the effect of the specific meeting technology (Zoom) was noticeable. During the meeting of ISWG-GHG 7 it was for instance not possible to determine who was present without speaking. The usual process in the IMO is for any document that is to be debated to be introduced by the submitter. This had also been done in the informal meetings, but in this, the first formal online ISWG-GHG meeting, the chair (Mr. Sveinung Oftedal of Norway who had "moderated" the informal group) did not invite submitters to introduce their proposal but instead gave delegations a choice of base document for the discussion of either the "combined" proposal from 20 countries or a Pacific Environment and CSC proposal related to speed. Neither of these documents had been introduced at an official IMO meeting but had been discussed at the informal meetings. The delegations were asked for a brief statement of preference, not lengthy interventions, thus essentially putting the choice to a vote. Almost all delegations opted for the "combined" proposal as a base [Notes Dataset].

In another variation of normal procedures, the "combined" proposal was then used as the basis for informal discussions led by named delegations outside ISWG-GHG 7 rather than for a paragraph-by-paragraph debate in the working group. This external and untransparent process resulted in a text, whose detailed origin was clear only to some. A crucial influence of China and Japan on the result was enabled by this external process which was initiated at the request of the chair. It followed a similar proposal of the chair at ISWG-GHG 6, for external discussions in a correspondence group coordinated by named proponents of measures. The introduction of officially sanctioned external subgroups was an innovation that significantly altered the process,

similarly to the ICS initiative of hosting private meetings in the vacuum of the postponed official meetings.

As for the previous case, I will investigate separately the influence of INGOs, States and chairs on this process.

INGOs

The actions of INGOs outside the IMO process included shipping industry voices that were asking for action on the longer-term measures and others that opposed them. Media reports (Kristiansen, 2020) that were reflecting suggestions from Danish and Norwegian ship owners that the IMO should put a carbon levy on the agenda as soon as possible, were contradicted by the International Chamber of Shipping, ICS, which did not agree but considered it more important to roll out the short-term plan. Accordingly, the ICS attempted to take the lead in discussing mid- and long-term measures, when the official meetings were interrupted by the Covid pandemic.

Documents	Description	Sponsors
ISWG-GHG 7/2/6 + 7/2/7	Goal based technical measure using the EEXI.	Greece, Japan, Norway, Panama, United Arab Emirates, ICS, BIMCO, INTERTANKO
ISWG-GHG 7/2/8	Goal based technical measure using the EEXI.	Greece, Japan, Norway, ICS
ISWG-GHG 7/2/9	Goal based operational measure based on carbon intensity (CII) and transport work	Denmark, France Germany
ISWG-GHG 7/2/14	Proposed operational measure, using the SEEMP and a carbon intensity metric (CII)	Greece, Japan, Norway
ISWG-GHG 7/2/16	Proposal to combine the EEXI with a goal based operational measure, Including CII	India, Liberia, Panama, Singapore, United Arab Emirates, ICS, RINA
ISWG-GHG 7/2/21	Proposal for a goal based operational measure incorporating a simplified rating mechanism CII	Brazil, China

Table 4 Proposals at "private" ICS meeting 1

Source: own tabulation from meeting reports [informal meetings Dataset]

ICS fills vacuum

As mentioned on page 103, the ICS took an initiative, inviting some delegations to "private" meetings during the COVID pandemic, when physical meetings in the IMO were cancelled for several months. At the first private meeting called by the ICS on 14th May 2020, the discussion was limited to the proposals that the organisers considered most relevant; measures using the EEXI, those strengthening the SEEMP and a simplified rating mechanism. They are listed in Table 4, with the sponsors, who were not quite identical to the participants at the meeting. Those present at the first private meeting were: Australia, Bahamas, Brazil, Chile, China, Denmark, France, Germany, Japan, Liberia, Malaysia, the Marshall Islands, Norway, Panama, Saudi Arabia, Singapore, United Arab Emirates and the United Kingdom. The EEXI proposal, co-sponsored by the ICS was noted as "well received" in the resume. The 4 proposals on "operational measures" were debated as one subject (Carbon Intensity Indicators, CII), and the

resume of the meeting highlighted some significant differences between participants in how CIIs should be implemented. This meeting resume was naturally written by the ICS, giving the organisation the possibility to slant the report.

The 2nd private meeting, held 3rd June 2020, included virtually the same participants, and continued the discussion from the first, by considering the issue of impacts on member States, and by allowing the proponents of measures to proffer answers and explanations to issues raised at the first meeting. The 2nd meeting considered issuing a wider invitation for a 3rd meeting that was to be held on 11th June, and decided to include the European Commission, Canada, Russia, the United States, and the Netherlands, to which there were no objections. It was suggested – but not immediately agreed – to include also some Pacific SIDS (the Marshall Islands was already present). It turned out that Solomon Islands was invited to the next meeting, which is why I eventually have had access to reports of these conversations. At this last of the three meetings, some of the discussion at the previous two was repeated for the benefit of new participants, but it was intended mainly to concentrate on technical matters. I am not sure minutes of the 3rd meeting were ever circulated, but there was not much movement towards agreement with the "two camps" still each advocating their preferred options (personal communications). The meeting apparently decided that in view of the IMO decision to initiate its own informal talks, there was no reason for the ICS to host any more meetings. Nevertheless, the ICS did host an online seminar that promoted their own proposal of an international maritime research and development board (IMRB).

Conclusion INGOs

Thus, these private meetings gave the ICS power to manage the process by deciding who would be allowed to present their proposals at length. As the ones sponsoring and moderating the meetings, the ICS could also frame the meetings in terms of reaching consensus with the focus of fusing the more ambitious and less ambitious positions. It also gave the ICS the opportunity to promote its own suggestion of a research fund financed by a mandatory 2 US\$ levy on fuel. This proposal did not, however, in the end benefit from the ICS initiative. By chairing the private meetings, the ICS gained power over the process, and did have influence, but failed to reach a result corresponding to their preferences. The main result of the private meeting was to bring together the states who were advocating high ambition with the proponents of less ambitious measures, all in part building on the same existing IMO regulations. This resulted in a focus on the mechanism rather than the level of ambition. While it is naturally impossible to determine all the motives of the ICS in taking this initiative, it seems likely that it was an endeavour to bolster cooperation between the less ambitious states, which was apparently also the effect.

States

The interested parties

The Preferences of the most active participants in the negotiation were conceived at the time as two groups. Taking as an example the most speaking delegates at MEPC 75 and ISWF GHG 7, shown in Figure 12, the preferences of the 31 delegations who spoke more than 10 times and for more than 10 minutes can be usefully summarised by whether they expressed mainly:

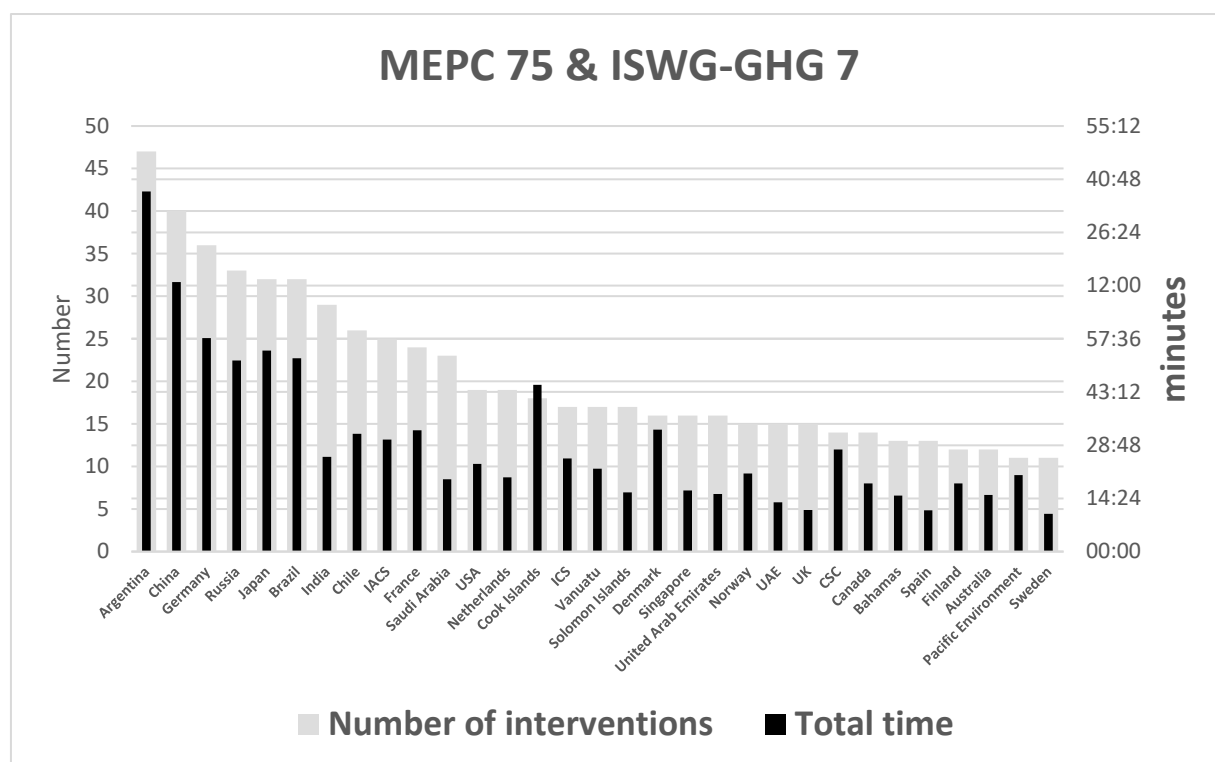


Figure 12 Most active delegations at MEPC 75 and ISWG-GHG

Source: count from audio record

- a single concern or several concerns
- which specific concerns these were
- the level of ambition,
- whether the time horizon considered is longer or shorter.

My notes from the time of the meeting of the ISWG-GHG 7 categorise the preferences in only two groups, with a majority of delegations emphasising the difficulties in implementing any mandatory measures, and a large minority expressing the necessity of rapidly incentivising lower GHG emissions.

However, the preferences of these delegations can be usefully distinguished in more detail as set out in Table 5, which leads to a separation into three levels of ambition: High, Medium and Low.

Preference	Delegations	Ambition
1.5° aligned targets, urgency, long horizon	the Marshall Islands, Solomon Islands, Pacific Environment	High
Effective restrictions, urgency, mandatory Ship Energy Efficiency Management Plan (SEEMP)	Denmark, France, Germany, UK, Sweden, Spain, Finland, the Netherlands,	High
IMRB and some support for PSIDS	Vanuatu, Bahamas	Medium
No urgency, proposals not "mature", long horizon	USA	Medium
Efficiency requirements for existing ships – EEXI	Japan, Norway	Medium
IMRB, EEXI, wait for impact assessment, long horizon	ICS, UAE	Low
Rating mechanism, BAU trade impacts, wait for impact assessment, long horizon	Argentina, Brazil, Chile, China, Cook Islands, India, IPTA	Low
Opposition, maintain present energy supply (Oil)	Russia, Saudi Arabia	Low
Table 5 Preferences at MEPC 75 and ISWG-GHG 7		
<i>Source: own tabulation based on notes, submissions, and audio</i>		

The preferences and groupings identified naturally reflect a simplification, but Table 5 illustrates that with a spectrum of preferences, delegations on the same general sides of an issue may have both common preferences and competing ones. It is apparent that the overlap of negotiation positions is not simply a grouping into two or even three camps. Even the delegations that appear to be aligned have different preferences and may have overlapping preferences with opposing delegations. Agreement on one issue need not imply agreement on others, and not all issues are equally important.

Short-term measures

At the intersessional in November 2019 (ISWG-GHG 6) there had been a general sense that the proposed measures fell into two general approaches: on one hand a "technical" approach including the proposal from Norway and Japan on EEXI and proposals from Greece and BIMCO on power reduction, and on the other hand an "operational" approach including a proposal from Europe on strengthening the SEEMP, the proposal from China on the rating mechanism, and proposals from France and CSC on speed reduction. These approaches crossed some of the political divide between "laggards" and "progressives" that had divided the negotiations since the debate in 2016 on the Initial Strategy. There was no evaluation by ISWG-GHG 6 of the merits of any proposal. Instead, the chair of the intersessional suggested that the approaches could be combined and/or be complementary and the proponents Japan, China, Denmark and France were asked by the chair to coordinate on developing these approaches (MEPC 75/7/2, 2019, para. 32). This proposal was an innovation. The format was close to that of a correspondence group, and contact information was given in the same way as for a correspondence group, but what was proposed was that the delegations collaborate on a compromise based on the similarities in the proposals they had co-sponsored. This collaboration between states was thus not an initiative of the states themselves but impressed on them by the chair.

The two approaches ("technical" and "operational") were not easy to combine. The European proposal was a goal-based approach requiring ships to actually reduce emissions by operational means. This would not exclude technical alterations but could also be achieved in many other ways. The Japanese proposal was effectively a single technical measure – limiting engine power. It also allowed other means but stressed that the cheap and simple option of limiting engine power would be available to all. The goal of emission reduction was thus suggested to be replaced by the proxy of engine power. Since engines are almost never run at full power, such a reduction might only eliminate power that would not be used anyway. The Chinese proposal was a rating system, with no mandatory requirement, only the expectation that rating system would be converted to a competitive advantage for the "better" ships. This would presuppose that cargo owners would be willing to select the "better" ships over others, that might be cheaper or more convenient. So, while the proposals shared some features of usage of existing IMO regulations and concepts, they were very different in their intentions.

Disagreement was apparent at MEPC 74 in May 2019 when the working group was given a mandate to discuss the short-term measures. The proposal of the chair for the terms of reference to the working group were contested particularly by China, Brazil and the USA who suggested a streamlining or organizing of the proposals without prioritizing them (*MEPC 74 Audio 15 May Morning*, 2019, Location 12:09:34) ; [Transcripts Dataset]. Other delegates argued for advancing the work by selecting or excluding approaches. The chair of MEPC suggested to amend the original proposal to "*consider, organize and streamline proposals on candidate short-term measures, with a view to identify those measures that can be further developed and finalized in the following sessions, focusing on meeting the 2030 level of ambition set out in the Initial the IMO Strategy on reduction of GHG emissions from ships;*" (*MEPC 74/J/8*, 2019), which eliminated the prioritization of measures, but might still have reduced the complexity of the numerous proposals. This was again, as a consequence of opposition from primarily US, Brazil, and Saudi Arabia, shortened by the chair to "*Consider, organize and streamline proposals on candidate short-term measures, with a view to identify those measures that can be further developed and finalized in the following sessions;*" (*MEPC 74/18*, 2019, para. 7.38 & 7.42.2; *MEPC 74 Audio 15 May Afternoon*, 2019, Location 14:33:06 to 14:43:01); [Transcripts Dataset].

The limiting wording of the terms of reference effectively ensured that no decisive debate on measures could take place. The process shows the chair giving influence to the protests of 10 states including the largest and those most opposed to regulation, in what amounted to a negotiation with them on how much leeway the working group would have. This disregarded other states (totalling 18) pressing for advancing the work by prioritization of the proposals and accepting the original terms of reference. The delegations who spoke on the issue are listed in Table 6, which shows that the two sides of this issue did not correlate with the grouping into ambition camps. It also demonstrates that the chair allowed the smaller group (with the largest members) to block progress.

Advancing the work		Delay	
Country	Ambition	Country	Ambition
Belgium	High	Argentina	Low
Costa Rica	Medium	Australia	Medium
Cyprus	Low	Brazil	Low
Finland	High	Colombia	Low
Japan	Medium	Ecuador	Low
Netherlands	High	Ghana	Medium
Nigeria	Low	Hong Kong, China	Low
Panama	Medium	Iran (Islamic Republic of)	Low
Republic of Korea	Medium	Saudi Arabia	Low
South Africa	Low	United States	Medium
Spain	High		
Sweden	High		
Turkey	Low		
Tuvalu	High		
Peru	Low		
India	Low		
Malta	Medium		
Vanuatu	Medium		
Table 6 Delegations supporting prioritization of measures or delay <i>Source own tabulation from MEPC 74 Audio 15 May 2019 Morning Session</i>			

Allowing a minority of 10 states against 18, that accepted the original terms of reference, to limit the discussion in the group seems to be giving more weight to the opinions of Brazil, China, Saudi Arabia and the United States (and others) than the group including Japan, Korea and Panama (and others). This was a choice of the chair that was not explained. In the exchanges the chair merely accepted the suggested changes, and this was not challenged.

Accordingly, the working group did not achieve any advances as far as measures are concerned but did draft a MEPC circular on a procedure for assessing impacts on states of measures. This was consistent with the apparent plan of the chair/secretariat to progress the impact on states issue before debating the actual measures. Any possible further progress was interrupted by the Covid pandemic and was resumed at the "private" ICS-hosted meetings.

The private meetings in 2020 initially only included some proponents. After the private meetings, some of the participants created a consolidated text that was presented as document ISWG-GHG 7/2/26 submitted by China, Croatia, Denmark, France, Germany, Ghana, India, Italy, Japan, Malaysia, Nigeria, Norway, Republic of Korea, Singapore, Spain, United Arab Emirates, and the ICS. A previous agreement, from November 2019, that the two approaches (technical and operational) should be further developed in parallel, had not given any result, but this consolidated proposal seemed to cut across the divide that had been seen earlier. It was as

close to a middle ground as it was possible to get, but it was not actually a compromise. The main common elements of the submission were:

- Every ship must have a technical one-time certification of a minimum fuel efficiency.
- Every ship must implement a management scheme that reduces the actual fuel used.
- Every ship is rated annually.

This could be understood to mean that the methods to be used would be the CII and the EEXI. There were numerous unsolved issues, mostly on the type of possible corrective action if the targets were not met, and crucially on the level of reduction that the measures were supposed to achieve. This consolidated document was not a result of the invitation from the chair at ISWG-GHG 6, but of the intervening meetings organised by the ICS. This new broadly co-sponsored document was available for the second of the informal meetings and the resumed formal online meetings organised by IMO.

In the first formal online ISWG-GHG (No 7), in October 2020 it was noticeable that of the 300 participants, those that spoke were predominantly those who had participated in the ICS meetings (the European nations, Japan, China, and some South American states).

Although a few delegations referred to the speed related paper from CSC, it was essentially ignored, even though evidence was presented that speed control could be effective in rapidly reducing GHG emissions. The many states supporting the "combined" proposal made it straightforward for the chair to suggest using it at base document. The initial comments showed a split between 20 high-ambition delegations to 31 low-ambition (counting only states) but was summarised by the chair as an even split [Notes Dataset] and Table 7.

Somewhat simplified the options in the combined document ISWG-GHG 7/2/26 were:

1. Options on the size of ships to which CII is applied.
2. Options on improvements to repeatedly low CII rated ships.
3. Options on EEXI reduction factors.

High ambition	Delay / avoid
Belgium	Angola
Canada	Argentina
Croatia	Australia
Denmark	Bangladesh
Finland	Brazil
France	Chile
Germany	China
Ireland	Colombia
Italy	Cook Isl.
Marshall Isl.	Cyprus
Mexico	Ecuador
Netherlands	Hong Kong
New Zealand	India
Norway	Iran
Poland	Japan
Singapore	Liberia
Solomon Isl.	Malaysia
Spain	Morocco
Sweden	Nigeria
UK	Panama
	Paraguay
	Peru
	Philippines
	Republic of Korea
	Russia
	Saudi Arabia
	South Africa
	Turkey
	UAE
	United States
	Vanuatu
Table 7 Ambition at ISWH-GHG 7	
Source: own tabulation from notes	

The most significant aspect of the CII was still to be agreed: the reduction over time that would be required. Additionally an agreement had to be reached on impact assessments, since it had been agreed that a comprehensive impact assessment of the combined measure would have to be undertaken before amendments to MARPOL implementing any agreement could be adopted. The implication was that the requirements agreed previously for an initial assessment would be impossible to fulfil, and that the assessments submitted with the proposals did not meet these requirements. These unresolved issues would all be treated after decisions on the options concerning the CII had been taken. The negotiations on these options took place outside the meeting following the chair's request that the primary focus points work together to create a compromise or a consolidated document. In the chairs summary on Tuesday, 24 March 2020 he specifically asked France, China, and Japan to develop a compromise on the basis of the combined document [Transcripts Dataset]. This was similar to the request from November 2019 at ISWG-GHG 6 for collaboration among the same named states. In this situation, however, the request was not to submit a document to a future session, but to craft a compromise that could be presented to the group during the week. The time given was short, and the chair made it clear that absent a proposed compromise from these states a chair's text could be expected. The chair thus gave an exclusive opportunity to these three named delegations. The choice of delegations was not explained nor recorded in the official report.

The consolidated text agreed outside the meeting by France, China, and Japan, mostly rested on the low ambition options from the combined document, which is not surprising as two of them were in the low ambition group. The compromise included a downward revision of several of the proposed EEXI reduction factors. The text was without any significant enforcement provisions for operational emissions. On the morning of the last day of ISWG-GHG 7, France and China presented the text in a J-paper as a compromise. Presenting it as the only option on the Friday gave delegations the choice of failing to present MEPC with a possible decision or advocating the adoption of this compromise document. As the chair had clearly indicated that absent a compromise text he would submit his own proposal, the choice was in reality either to accept the J-paper as a compromise or have the chair present it to MEPC as his suggestion. The proposal was therefore widely accepted as the best that could be done, but many delegations expressed with varying degrees of strength that the result was unsatisfactory. The result was rejected only by: Solomon Islands, the Marshall Islands, New Zealand, Belgium, the Netherlands and Bangladesh.

Result for short-term measures

The compromise text from ISWG-GHG 7 was presented to MEPC 75 which took place on a virtual platform (KUDO) 4 weeks after the intersessional, from 16th – 20th November 2020. The report from the intersessional was adopted on the 2nd day after a round of interventions where the vast majority of delegations including the EU, actively support the ISWG-GHG 7 results. This was a significant change in positions from states who had advocated high ambition at the beginning of the intersessional meeting (see Table 7). Only the Marshall Islands, Solomon Islands, Tuvalu (and arguably New Zealand) rejected the outcome from the intersessional (MEPC 75/18, 2020, para. 7.24) [Sv-Reports Dataset]. Since there was no official vote, this was

registered as a consensus decision. Many high ambition delegations echoed the sentiment that "something is better than nothing" and accepted an insufficient result in that spirit (*MEPC 75/18*, 2020, para. 7.19). These delegations nevertheless publicly concurred with the official IMO view that this was a success. This demonstrates that a result that is not satisfactory can nevertheless be presented as a success, even by delegations that opposed it. The outcome was aligned with the low ambition majority of delegations. It demonstrates that the chair in this case did not choose a specific compromise but assigned influence to specific delegations.

Mid-term measures

According to the plan of action (*MEPC 73/19/Add.1 Annex 9*, 2018) (see Figure 10, page 101) proposals for mid- and long-term measures were to be solicited from member states in 2018 and deliberations were to start in 2019, at MEPC 74. This had, however, not materialised, as focus had exclusively been on the short-term measures.

Some delegations were stressing that in their view market-based measures should not be considered at all since they could lead to trade distortions, could disadvantage countries distant from their markets, could make international maritime trade unsustainable, and could conflict with the rules of the World Trade Organization (*MEPC 75/18*, 2020, para. 7.62). Another section of the report from MEPC 75 (*MEPC 75/18*, 2020, para. 7.25) relates that "many" delegations stressed the urgent need for the organisation to start development of mid- and long-term measures. This view was mainly held by SHAC countries from the EU and the Pacific SIDS, but was met with sharp opposition mainly from BRICS, but including also the Cook Islands. While there was no obligation in the strategy to introduce such measures, the agreed strategy did oblige member states to initiate a discussion of them, and the plan of action foresaw that this would begin in 2019. The opposition from states to start this discussion must thus be seen as an unwillingness to actually do what was agreed in the strategy.

The issue of initiating the discussion of mid-term measures was referenced several times during other debates at MEPC 75 in the context of future work. Near the end of the Thursday debate the Cook Islands referred to this a "reopening a debate on a document that did not carry" and also Argentina seemed to take this stance. In an unprecedented, repeated use of a "point of order" request, and by speaking at length the Argentinian delegation dominated the debate. The ambition of the unambitious "BRICS" group (see Table 14) seemed to be to delay any decision to begin debating new measures. This policy seemed to work well [Reports Dataset], and MEPC 75 took no decision on the proposal to move to mid-term measures.

Conclusion states

The perceived split into two groups was not the only way of understanding the different preferences of states, but was shared by many, including apparently the chairs of MEPC and ISWG-GHG. A more nuanced analysis shows that a number of states had preferences that did not fully coincide with either of the two opposing groups. Nevertheless, the opposition of the BRICS-led group to actually implementing the strategy was successful in introducing delay. Principally this was achieved by the chairs management of the meetings to focus first on the method of predicting the impact on states of any measure. The SHAC-centred high ambition

group did not have a similar single approach and although a majority of delegations accepted advancing the work, this was hampered by the inclusion in the Initial Strategy (*MEPC 72/17/Add.1 Annex 11*, 2018, para. 4.10) of a requirement that the impacts on States of a measure should be assessed before adoption of the measure. The influence of these states on the process was in each situation channelled through the chair's active use of structural power and executive influence.

Chair/Secretariat

This section shows how the chairs of MEPC and of the ISWG-GHG reacted to being faced with reluctance to regulate, and how the restrictions imposed by the Covid pandemic played out in new procedures. The activism of the chairs is demonstrated both in those instances where specific states' preferences are privileged and when majorities and minorities are treated differently.

The first opportunity to consider concrete proposals was the meeting of ISWG-GHG 5 that took place in 2019. A major procedural decision was that of effectively shortening ISWG-GHG 5 by several days. Monday was eliminated because of a Bank holiday, with no compensation for the lost time. Tuesday was taken up by the student climate network intervention by Noga Levy-Rapoport calling for urgent action. It seemed that the chair of the intersessional had approved the making of this intervention at the beginning of the session, since he gave the floor to CSC immediately after adopting the agenda. Many of the least ambitious delegations welcomed her admonition at some length, which may be seen as delaying the very actions she was encouraging. The chair made no effort to shorten these interventions. Since the last day was shortened and was as usual dedicated to adopting the report, the planning and management of the meeting thus eliminated much of the working week. This short time was spent on debating a procedure for evaluating the "impact on states", not on measures.

The lack of debate on measures was no accident. The chair of the intersessional did not invite a detailed discussion of the measures but called only for general statements. On the agenda were 26 documents submitted to ISWG-GHG 5 and also 19 documents submitted to MEPC 74 with proposals for candidate measures and the procedure for assessing impacts on States. These 45 documents were, however, not the basis for the debate. The basis for discussion was a "J" paper issued by the chair, collating the proposals in 10 "approaches" (*ISWG-GHG 5/J/6*, 2019). There were both supportive and critical comments to these approaches, and the chair did not conclude on any measures [Reports Dataset]. The time allowed for debate was short, and the participants were aware that the debate would be continued the following week in a working group under MEPC 74. Thus, none of the proposed measures were excluded and no priorities were decided (*MEPC 74/WP.6*, 2019). The intersessional was thus mainly a preparation of the "impact on states" issue, and not a lead-up to a measures debate in MEPC.

At MEPC 74 the chair's 10 approaches were sent to the working group, but as mentioned on page 111, the scope of debate was limited by the terms of reference. This limitation was the result of a repeated back-and-forth between the chair of MEPC and essentially a small group of large countries, that were negative towards initiating a debate on the actual measures: Brazil,

China, Saudi Arabia and the United States. This left the next debate to ISWG-GHG 6 in November 2019, where there was still no evaluation by the group of the merits of any proposal, despite the wider mandate given to the group. Instead, at that meeting the proposals were explained, and although preferences were expressed the outcome was merely a summary table of key technical aspects, and a request from the chair that the primary proponents of the two approaches: technical/ EEXI (Japan Norway) and operational: SEEMP (Denmark et. al + China). work together to create a compromise or a consolidated proposal with the central elements from each approach. The debate on the Thursday of ISWG-GHG 6 was generally held in a tone suggesting that the week's work was done, and enough progress had been achieved so that a report could be made. But in fact, no real progress had been made in progressing the debate on measures. For the next meeting (ISWG-GHG 7) the chair undertook to prepare a document on the legal structure, that would allow a decision to be taken at MEPC 75, if there was agreement on the content of the measure [Reports Dataset]. It thus seemed that the chair intended to allow MEPC to decide on a combined or compromise proposal at its next meeting. This did not happen, as the Covid pandemic intervened to delay the formal meetings for 11 months.

The first official meeting after the cancellations due to Covid, was ISWG GHG 7 on October 19th, 2020. Working hours were very limited (from 11.00 to 14.00 BST) and much of the available time at ISWG-GHG 7 was spent on determining how to consider the impact of proposals on the most vulnerable states. This can be seen as in continuation of the chair's previous management of the process to advance this issue before working on the content of the short-term measures.

When introducing the meeting, the traditional welcome by the Secretary General of IMO was read by the head of the environment division, Mr. Yamada. Both he and the chair of the ISWG-GHG 7 described that task of the meeting as implementing the Initial Strategy goal to "reduce CO2 emissions per transport work as an average across international shipping by at least 40% by 2030". This was, however, only one of several ambitions of the strategy. Others were to peak GHG emissions as soon as possible and to reduce the total annual GHG emissions by at least 50% by 2050 (*MEPC 72/17/Add.1 Annex 11*, 2018). The widely co-sponsored combined document ISWG-GHG 7/2/26, that was the basis for discussion at ISWG-GHG 7 used only the carbon intensity as an instrument but did not limit its goal to the 40% ambition, and the SHAC members, who cosponsored the document included the further ambitions in their arguments and their original proposals. However, the practical outcome of the informal series of meetings was to allow the chair/secretariat to focus on the CII as an instrument. And this focus allowed the aim of the measure to become limited to the target of 40% reduction.

Despite the wide co-sponsorship of the combined document, the debate at ISWG-GHG 7 again showed a significant split between high and low ambition, with a majority of delegations emphasizing the difficulties in implementing any mandatory measures, and a minority expressing the necessity of rapidly incentivizing lower GHG emissions. Looking at the delegations of nations and ignoring INGOs the ratio of high-ambition to low-ambition was 20/31 (Table 7). If INGOs are included in the count, the ratio of high-ambition to low-ambition

was 24/43, indicating that most of the INGOs present were in the low-ambition group [Notes Dataset]. After the initial round of interventions from the active delegations, the chair concluded that the split was almost even, which indicates that he was avoiding a decision by a 20/31 vote. The low-ambition group was broad and included developed and developing countries from every continent, whereas of the 20 high ambition countries only 6 were non-European and only two were LDCs and SIDS. As mentioned, the chair designated a small group of named states to craft a single compromise.

Avoiding a decision according to the majority, the working method chosen by the chair was to invite informal contacts between the proponents of measures to find some common ground. The chair's initial summary of the first round of interventions invited "the focal points" (which were named) to work together to find a solution. In a normal physical negotiation in the IMO headquarters in London, delegates could have found each other without pre-agreement. For any informal talks that would take place in the coffee breaks (see: Figure 6 on page 61) access would be possible also for those not invited. In this case the informal debates were conducted in 3 online groups, led by France, China, and Japan respectively, and with these delegations as contact points between each of the "likeminded" groups [Notes Dataset]. The contact points were de facto a small negotiating group that was selected by the chair, and the 3 members were asked to liaise with their co-sponsors to find common ground. The composition reflected the split with a low ambition majority. As previously mentioned, this was an innovation. Unfortunately, these talks were therefore in practice open only by invitation. There was no presence of the Pacific SIDS in the informal groups (own observation), which meant that the highest ambitions were absent. Several intermediate documents were said to be circulated within these groups parallel to the official meeting but were not made available to the non-participating delegates. By choosing the delegations that were to coordinate, the chair in practice gave them a mandate to elaborate a compromise. It was made clear that if they could not succeed, the chair would be obliged to take responsibility and propose one [Transcripts Dataset]. From previous experience (see page 142 on the initial strategy) delegates would realise that such a proposal from the chair of the ISWG-GHG, in the absence of a consensus, would go forward to the plenary of MEPC as the only option.

As already mentioned on page 114, a compromise consolidated text agreed outside the meeting was presented by France and China on the morning of the last day of ISGH-GHG 7. This text used mostly the low ambition options from the combined document and included a onetime minimum efficiency requirement for all existing ships (EEXI), and a mandatory operational carbon intensity indicator (CII), for which an annual reduction factor and a reference value were later to be defined in guidelines. Implementation or enforcement was to use the SEEMP (Ship Energy Efficiency Management Plan) defined in previous Guidelines, but now to be made mandatory. The compromise included a surprising downward revision of several of the proposed EEXI reduction factors. The text was without any significant enforcement provisions for operational emissions. It is unclear whether the chair and secretariat had any direct hand in drafting this compromise. The result was presented in a "J" paper, and it was thus not clear who exactly were the authors or how this result was arrived at, but since the contacts were informal and personal it may be assumed that the negotiating skills of the individuals and the national

preferences of each person's home government may have been among the major determining factors. It was a decision by the chair that these particular central points were given this role. It was also the chair's decision to present the "J" paper as the only option. The package still did not include the crucial numbers that would define the level of ambition. Nevertheless, this outcome was widely accepted as the best that could be done, although a few delegations expressed with varying degrees of strength that the result was unsatisfactory. These were: Bangladesh, Solomon Islands, the Marshall Islands, New Zealand, Belgium, and the Netherlands.

The compromise text was presented to MEPC 75 which took place on a virtual platform (KUDO) 4 weeks after the intersessional, from 16th – 20th November 2020. The report from ISWG-GHG 7 was adopted on the 2nd day after a round of interventions where, as mentioned, most delegations, actively supported the ISWG-GHG 7 results. The outstanding issue concerning fixing the reduction rates for the Carbon Intensity Indicators (CII), was delegated to an intersessional correspondence group set up at MEPC 75. The group was led by China, Japan and the European Commission (*MEPC 75/18*, 2020, para. 7.47). This was very similar to the France, China, and Japan group that had engineered the compromise at ISWG-GHG 7. It may be worth noting, however, that the EU was no longer represented by France, but by the European Commission, an observer in the IMO, not a member state. As mentioned, the chairs of correspondence groups are appointed by the secretariat/chair. In this case the choice of three coordinators for a correspondence group is atypical but aligns with the decision to ask those same delegations to craft a compromise at ISWG-GHG 7. Giving preferential influence to China, Japan and the EU/France on the measure was thus a consistent decision by the chairs of ISWG GHG 7 and MEPC 75. Alternative choices could have been to exclude Japan, thus giving the higher ambition of the EU more relative weight, or to select the United States or Brazil. This selection by the chairs was not random, nor was it neutral, it was a deliberate choice which resulted in a single coherent option, acceptable to the low ambition group that could be presented as a take-it-or-leave-it choice.

Fixing the reduction rate at BAU

The report of the CII correspondence group was presented to ISWG-GHG 8 in 2021 as MEPC 76/7/5 (China et al., 2021). It presented in its Annex 3 (page 6), possible values in carbon intensity from 2019 to 2030 resulting in either a 10% or an 11% improvement from the 2019 level by 2030. The range of opinion expressed in the intersessional working group on how much improvement should be required was, however, much wider, stretching from 11% (16 states) through 22% (Japan) to various numbers somewhat higher than 22% (9 states), 31% (3 states), higher than 31% (6 states), and the highest ask of 75% from two Pacific SIDS. These numbers thus indicated that a total of 21 states rejected the correspondence group recommendations as too low, while 16 accepted the higher of the two almost identical options. (*MEPC 76/WP 4*, 2021, para. 38) The latter was, however, the largest group – not a majority but a plurality. The difference in requirements also reflects that those with higher asks were not limiting the desired effect to the 40% ambition but wanted the measure to contribute to all the ambitions of the strategy (see page 117 on the limitation of the aims).

The chair of the intersessional working group attempted an alternative proposal of a phased reduction starting at 5% in 2023, rising to 11% in 2026, with the option of either remaining at 11% until 2030 or increasing the requirement at that point. This was consistent with the decisions by the chairs at ISWG GHG 7 and MEPC 75 to give influence to the low ambition group. The concept of the phased approach was supported by many, but the low figures proposed were not accepted by either the high ambition majority or the low ambition group. In reality the proposal would have guaranteed only the 11% improvement of the correspondence group proposal, but not excluded a higher level. The chair included the idea in the report to MEPC, but only as a suggested alternative to the correspondence group result, which was forwarded to the MEPC as the proposed decision. As one of the majority of delegations that found the 11% insufficient, it was instructive to see the preference of the minority prevail, as a clear example of how the chair's proposals were crucial for the end result. The lowest figure supported by the majority was 22%. If the chair had proposed a choice of between 22% or 11% it seems likely the 16 low ambition states would have supported the 11%, but 20 higher ambition states would certainly have opted for the higher figure. This choice was not presented. The report of ISWG-GHG 8 to MEPC acknowledges that a majority considered a 22% reduction rate until 2030 to be the absolute minimum to achieving at least 40% carbon intensity reduction by 2030 (*MEPC 76/WP 4*, 2021, para. 38). However, absent a specific majority decision text, the proposal of the correspondence group was the only one that could be selected. Active membership, and indeed leadership, of the correspondence group had thus been crucial for gaining influence on the final result. This leadership had been selected by the chair. The absence of a specific proposal from the chair that could gather the support of the majority, allowed the correspondence group result to be put forward as the single option.

A prolonged process at MEPC 76 on the CII regulation included statements of preference by 84 delegations on the proposal from ISWG-GHG 8. Each was up to 3 minutes long, but no genuine negotiation was involved. This was again an online meeting. Every delegation was allowed one intervention, which was for the most part prepared in advance, which meant that only the late interventions could reflect on the earlier ones. It was in effect a drawn-out vote. 39 delegations rejected the 11% result of the ISWG-GHG 8, and 45 accepted it [Reports Dataset]. This was a small majority (6 delegations), some of whom expressed that they were not satisfied by the result. There was no alternative text available with a higher ambition, that could have been adopted by those delegations that only reluctantly accepted the unambitious result. Such a decision would have required finding an alternative solution, which might well not command a much larger majority, and probably would not have achieved a consensus. Instead of presenting any such alternative, the chair of MEPC chose to conduct at least one informal conversation about the situation. I was invited to such a conversation along with representatives of the United States, New Zealand and the Marshall Islands, the chair and vice chair of MEPC, and the chair of the intersessional as well as the IMO secretariat. It seems certain that similar conversations must have been held with European participation, and with participation of China, Brazil and Argentina. This process did not lead to a more widely acceptable result and the chair concluded in plenary by referring to a "majority" of delegations supporting the compromise proposal forwarded by ISWG-GHG 8, but "some" supporting this outcome only in a spirit of

compromise, while "other" delegations were not able to support it and "some" rejecting the outcome (*MEPC 76/15*, 2021, para. 7.53-56). This differentiated description of the majority is an indication that it was not a "clean" decision and certainly not a consensus. The guidelines for the short-term measures were thus adopted by a narrow majority of 6 delegations: 39 to 45, leaving a large group dissatisfied. The chair of MEPC could have chosen to avoid a closely split decision calling for a spirit of "inclusiveness" and avoided the narrow vote that IMO delegates profess to shun. This had been done previously⁴³ under another debate at the same meeting. Instead, the preference of a minority (plurality) at ISWG-GHG 7 was given as a single option for MEPC, where a slight majority then accepted it. Had the preference of the slight majority from ISWG-GHG 7 been presented a similar slight majority at MEPC could have been expected to accept this. The choice of which (small) majority would prevail was made by the chairs of the two groups.

Mid-term measures Levy, standard or feebate

The opposition from a large group to concrete, effective measures had led to weak short-term measures. And despite the wish of quite a large majority to embark on the discussion of mid-term measures this transition was blocked by the chair. The agreed timeline (Figure 10) required consideration of mid-term measures to begin at MEPC 74 in 2019. The arguments from states for not initiating the process as agreed were that the Committee should focus on finalizing technical guidelines for the short-term measure and perform a comprehensive impact assessment for the short-term measure before considering additional measures. The mid- and long-term measures are still under discussion in 2024.

In November 2020, as MEPC 75 was deciding on the short-term measures, the same meeting saw a discussion on initiating work on revising the Initial IMO GHG Strategy, as well as appeals to progress towards debates on mid- and long-term measures. A submission (Marshall Islands & Solomon Islands, 2020) called for urgent action based on the Fourth the IMO GHG Study (*MEPC 75/7/15*, 2020). It contained a request to initiate discussions on mid- and long-term candidate actions, in particular market-based measures, and to enhance the levels of ambition in Initial GHG Strategy so that it would be more in line with recent climate science. This point of view was supported by others in the context of adopting the short-term measures and the 4th greenhouse gas study. The Pacific document, MEPC 75/7/17, also called for putting in place robust working arrangements that would enable the organisation to address the findings in the Fourth IMO GHG Study with urgency. This general request was actively supported in its call for urgent future work on the revision of the strategy and the mid- and long-term measures by 18 countries⁴⁴ but opposed explicitly by 7 [e-mails Dataset]⁴⁵. The chair nevertheless merely concluded "some against, some for". A possible motivation for this could be that the 18

⁴³ During the debate at MEPC 75 where on the issue of rapidly starting the discussion of mid-and long-term measures the chair did not conclude in favour of a 19 to 7 division of positions (see page 124)

⁴⁴ Belgium, Canada, Croatia, Cyprus, Denmark, France, Germany, Ireland, Italy, Kenya, Malta, Marshall Islands, Mexico, the Netherlands, Poland, Solomon Islands, Sweden and Spain

⁴⁵ Argentina, Brazil, China, Cook Islands, Russia, Saudi Arabia, South Africa

countries included 12 EU members and 6 non-EU countries. It is possible that the chair was counting the EU as one so it would be 7 vs. 7. However, the IMO is usually adamant that the EU is not a member. The report reflects the disagreement as "a number of delegations" supporting the proposals put forward by the Pacific SIDS and "a number of other delegations" who did not support document MEPC 75/7/17. The report gives reasons for the latter group but not the former, which indicates some bias on the part of the author. The proposal was thus not acted on despite a majority in favour of it. This episode shows the chair's ability to decide which question is being asked, and how the chair may construe a majority opinion. A chair who had wanted to advance the discussion on mid-term measures would not have been limited by these considerations, but they could be used to furnish a justification for a decision not to advance the discussion.

A separate agenda item at MEPC 76 was a proposal from the ICS for a small fuel levy to finance an international maritime research and development board (IMRB). This debate was discontinued for lack of time, and the chair decided that the discussion would be resumed at the next session, which would be MEPC 77 – 5 months later. The chair did not formally conclude on the proposal, but before suspending the discussion gave a tentative summation that mentioned divergent views including concerns and inviting further documents that the committee could consider among other mid-term measures. If this had been the final summing up the proposal would in effect have been rejected [Transcripts Dataset]. The chair's allocation of time thus prevented a decision but foreshadowed a rejection.

A proposal for another measure was on the table at MEPC 76. It was a GHG levy at the level of 100 US\$/ ton of CO₂⁴⁶ proposed as a mid-term market-based measure. This proposal (Marshall Islands & Solomon Islands, 2021) was placed under the agenda item "Proposals on the development of mid- and long-term measures". The chair did not invite any detailed discussion of this proposal, and the debate was not even as detailed as the IMRB debate had been. The document received support from a small majority that agreed that urgent measures must be taken, and therefore supported that the levy proposal should be further debated, even though they might not actually favour adopting it. By my count there were more delegations (29)⁴⁷ who favoured sending the proposal to the working group "for further consideration" than there were delegations (21)⁴⁸ who rejected speaking about it [Reports Dataset]. The chair's initial summary was, however, to have no conclusion on the levy proposal, but that, similar to the IMRB issue, the proposal should be further considered in future sessions together with possible future proposals for market-based measures. This wording would in effect be a rejection of the proposal in spite of a clear support. Since this was a procedural decision to send the document to the working group, not a material decision on the content of the proposal there was no

⁴⁶ corresponding to more than 300 US\$/ton of fuel for heavy fuel oil.

⁴⁷ Belgium, Canada, Croatia, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Lithuania, Luxembourg, Malta, Marshall Islands, Monaco, the Netherlands, New Zealand, Poland, Portugal, Romania, Solomon Islands, Somalia, Sweden, Tonga, Tuvalu, UAE, United States

⁴⁸ Argentina, Bangladesh, Brazil, Chile, China, Cook Islands, Cuba, India, Indonesia, Iran, Liberia, Malaysia, Palau, Panama, Philippines, Rep of Korea, Russian Federation, South Africa, Trinidad and Tobago, Turkey, Vanuatu,

justification for requiring a large majority or even unanimity on the issue of opening the discussion. Outside the meeting my delegation and at least one other pointed out to the chair that this was not acceptable. In written demarches to the chair of the MEPC the two delegations pointed out the inconsistency of adopting guidelines for the short-term measures by a narrow majority of 6 delegations: 39 to 45, leaving a large minority dissatisfied (see page 119) and yet accepting a request for delay from a minority delegations (7) when a majority (19) favoured opening the discussion [e-mails Dataset]. On both sides of the issue were states from a mix of developing status and geography. The Committee chair finally concluded that the Committee "noted" the various proposals for measures and invited the intersessional working group (ISWG-GHG 10) to further consider these "in the context of phase I of the work plan". This work plan was adopted at the same meeting (*MEPC 76/15 Add 2 Annex 14*, 2021). The reference to phase I alludes to the fact that the work plan, did not include any phase where measures are finalized and adopted. This had an effect very similar to the chair's initial summary and was in effect a premature rejection of the possibility of an agreement on the proposal.

The premature rejection of both the Pacific GHG levy and the ICS small fuel levy were decisions by the chair, that prevented any decision on the only two concrete proposals for a mid-term measure. Had they both gone forward before any other proposals were made. MECP would possibly have been confronted with a relatively simple choice of a 5\$ or 100\$ levy or no decision, which would have implied a significant chance that a levy of some size would gather a (small) majority.

Despite the inconclusive outcome and the shifting treatment of majorities and minorities, the session did show that the meeting was generally split into two almost equal groups on most issues. The chair chose to let this split prevent any possible progress towards a solution by not allowing contentious items to be debated. This is a clear example of the chair's ability to override states' expressed wishes. The majority of 29 who favoured sending the proposal to ISWG-GHG "for further consideration" included the United States, Japan, and many EU members. The chair was overriding a majority that included major states.

Mid-term measures at ISWG-GHG 10

The possibility of negotiating compromises was postponed by a firm structuring by the chair.

The 10th intersessional was the first opportunity discuss the mid-term measures. The first days were, however, still focused on the short-term measures. For the mid-term measures the chair had set out a number (9) of "overarching key issues" that he proposed to structure the debate. Most delegations preferred to mention their own general views and specific comments, so not all of the chair's issues were addressed by all – or even most – delegations. The chair stuck firmly to the limited task of the intersessional. This was to remain within phase 1 of the work plan, which was "collation" not "selection" of measures. There was thus no conclusion on any preferences, even though they were expressed. The chair's conclusion was that "discussions had provided a solid foundation for further work to better understand and compare the main features and implications of the various proposals for measures" and that proponents of measures should engage in an active dialogue with each other (*MEPC 77/WP.7*, 2021, para. 57). No proposals

were excluded or prioritized. The ambition of the chair seemed thus to be to focus the discussion on generalities or crosscutting issues and to avoid the differences that specific measures would bring up.

Intermezzo mid-term measures

The online format of negotiations had not resulted in movement. This section investigates some informal talks and the outside pressure from the COP 26 meeting in the UNFCCC forum.

On invitation by the IMO Secretary-General a series of "informal" conversation involving France, Spain, China, Argentina, Chile, Singapore, Brazil, Japan and UAE started in September 2021. This so-called "Trust Group" met regularly until at least November 2021 [Notes Dataset]. This informal and external group was similar to the "friends of the chair" that are sometimes used also in other fora. They are considered in some detail by Tolba (2008). Unlike the prototype "friends of the chair", this group did not attempt full coverage of the differences of opinion. There was no United States representative, no African voice, and the group did not invite the Pacific SIDS or any LDCs to join. During a conversation with the secretariat I raised the issue that it was inappropriate to exclude from this work the most climate vulnerable, and those (i.a. the Solomon Islands) who had until then made the only specific proposal of a mid-term measure (the levy). The response from a senior level of the secretariat was that the informal group, was characterised as not a negotiation forum, but was, however chosen from those who seemed willing to compromise (personal communication 13). This conversation took place shortly before COP 26 in Glasgow, which was widely expected to express disappointment with the IMO and urge higher levels of ambition. The response indicated that the IMO was not overly concerned with pressure or criticism from COP (personal communication 11)..

The expectation from shipping media was that COP 26 would increase the pressure on the IMO to strengthen the level of ambition⁴⁹. Reports vary in their evaluation of what was expected and what actually happened. At COP 26, and in the margins of this event a number of declarations and adoptions were made, including requests on increased effort to decarbonise shipping. This included support for a zero by 2050 target for shipping by 14 countries including Panama, the United States and the Marshall Islands, and a call from the 58 member countries of the Climate Vulnerable Forum to the IMO for establishing a mandatory GHG levy on international shipping, as well as a statement from the 47 member of the High Ambition Coalition that included taking more ambitious climate action in shipping and aviation. While this would seem to potentially influence the IMO negotiations, there was in fact no such effect (*COP26 Momentum*, 2021; *UN Foundation*, 2021). Since these proposals were supported by many states that one would normally assume to be influential in the IMO (large flag states, the USA, the EU) one might expect the same states to apply pressure in the IMO for similar policies. One could expect all the states supporting these declarations to take the same stance in the MEPC meeting held only a month later. But in fact, very few did. One could also expect the IMO to be sensitive to pressures of this kind from the positions taken at COP, but as mentioned conversations with the

⁴⁹ See: (*How Big of an Impact Will COP26 Have on the Shipping Industry?*, 2021; *Shipping Faces COP26 Pressure on Carbon*, 2021; *Time for Shipping to Join the Race to Zero*, 2021)

IMO secretariat indicated that IMO did not feel pressure from COP resolutions (personal communication 11). None of these declarations from external fora led to significant changes in the positions at MEPC.

Mid-term measures at MEPC 77

In November 2021 at MEPC 77 (held "remotely" i.e. online), the chair avoided any conclusion and dedicated most of the meeting to other issues than the possible measures.

The first 1½ day of MEPC 77 were spent on a proposed resolution on "zero by 2050" (MEPC 77/7/3) that obviously had no chance of success. Reports from preliminary contacts in the "trust group" and conversations with the secretariat indicated that only the Pacific SIDS would support a resolution, with even the most positive other nations indicating that they would express that while zero by 2050 was desirable, a resolution would be "premature" (personal communication). After a prolonged rejection of the resolution, the chair then moved on to the outcome of the two last ISWG-GHG (9 and 10). This debate included several proposals with very different and quite technical content such as the mandatory levy proposed by the Pacific, and a proposal by Norway for a fuel GHG intensity limit and an emissions cap and trading system. The issue also included some submissions providing general principles, proposing a number of criteria for assessment and comparison of carbon pricing measures. The chair only allowed one round of comments limited to 3 minutes on all of these.

The severe limitations of time imposed by the chair combined with numerous technical issues with the internet connections did not improve the ability of delegations to reach intermediate positions. On the third day the original time limit of three minutes was tightened to two minutes and after one hour of debate the chair summarised the debate up to that point and asked delegation to accept this as a final summary and submit any statements not yet made to the secretariat in writing for inclusion in the report. This represented a significant break with previous practice. The chair had already introduced a new policy of ignoring INGOs (with consultative status) until all states had spoken. In this case the putative advisors were not even heard until after the chair had suggested a conclusion. Some delegations had already submitted longer statement than they had actually made because the time limitation had forced them to condense the prepared statement. But this suggestion by the chair to include statements not made but only submitted after the debate was closed, would potentially include information in the report that was not available to the Committee when deciding. The practice of allowing delegations only one intervention, which in many cases was a pre-prepared statement, had already changed the dynamic of the physical meetings eliminating interaction of delegates so that much of the "remote" meetings were essentially an exchange of formal statements from capitals. The delegation of Spain had previously (at MEPC 74) protested that time limitations had resulted in not all delegations that had been asking for the floor being allowed to speak (MEPC 74/18/Add.1, 2019, p. 9). The phenomenon was thus not entirely new, but an inclusion of statements not made must be considered an exacerbation of the shortcomings previously encountered.

The chairs summary was non-conclusive and consisted of three points: Point 1 - All documents considered under this part of agenda were sent to ISWG 12 for further consideration "in the context of phase 1". The use of the phrase "in the context of phase 1" alludes to the point that as described, the phase 1 "collation", would not involve any decisions or choices. Point 2 – all delegations were invited to continue their constructive discussions of both a technical and political nature, with a view to advancing to phase 2 in spring 2022, in accordance with the work plan. And Point 3 – to invite proponents and other delegations to engage in an active dialogue with each other on approaches, and to further consider impacts on states of the proposals (MEPC 77/16, 2021, para. 7.56). The wording of the chair's conclusion was consistent with previous decisions but did not advance the process. This conclusion could easily have been written even before the meeting began. The chair thus avoided progressing the debate, rather than allowing a confrontation of views.

Result implementing decisions

The mid-term measures are still under debate in 2024. The timeline of the Initial Strategy allows only for "progress" on the mid-term measures until MEPC 80 in 2023, and the revised strategy foresees adoption of mid-term measures in Autumn 2025. These milestones have not yet been missed and can still be achieved.

In term of ambition the implementation of the short-term measure was a success for the "laggards" and a failure for the higher ambition states that had managed to achieve a certain measure of success in the development of the Initial Strategy. This success was stimulated by the ICS initiative of calling for "private" meetings and the decision by the ISWG chair and the chair of MEPC to endorse them and select a low ambition slight majority over a possible high ambition slight majority for the content of the measures.

The short-term measures result has been characterized as no significant improvement on Business-as-usual. In order to compare the result to initial positions, the groupings at the time of the 10 "Approaches" (see page 116) should be analysed for their levels of ambition or their main aims. The same rough division in ambition groups used before leads to the areas of focus set out in Table 8:

Groups	Preferences
Norway, Japan, Cyprus, Greece, ICS, BIMCO, INTERTANKO, INTERCARGO and IPTA, Norway, Denmark, Germany and Spain	Use SEEMP / EEDI to Improve energy efficiency
ICS, France, CSC	optimization of speed
Norway, ICS, BIMCO, INTERTANKO and IPTA	Include other GHG emissions
China and Singapore, Norway, ICS, BIMCO, INTERTANKO and IPTA, Republic of Korea, Norway, CESA and EUROMOT	Other (voluntary) means / Incentives
ICS, BIMCO, INTERTANKO, CLIA, IPTA, and WSC	Research

Table 8 Short-term measures preference groups

Source: own tabulation based on submissions

These preferences do not correspond exactly to ambition levels. In a simplified manner ambitions, including the preferences observed at MEPC 75 and ISWG-GHG 7 could be tabulated as:

Group	Countries	Proposals	Preferences /Aims
I. High	Denmark, Finland, France, Germany, Netherlands, Solomon Islands, Spain, Sweden, the Marshall Islands, UK, CSC, Pacific Environment	Regulating ship speed SEEMP reductions	Urgent, immediate, more than 40% reduction, Enforcement, increasing stringency with time, use SEEMP
II. Medium	Bahamas, Japan, Norway, USA, Vanuatu BIMCO, ICS, INTERTANKO, IPTA	EEXI Other GHG emissions	One time change, Minor change in BAU for fossil fuelled shipping, use EEXI
III. Low	Argentina, Brazil, Chile, China, Cook Islands, Cyprus, Greece, India, Norway, Republic of Korea, Russia, Saudi Arabia, Singapore BIMCO, CESA , EUROMOT, ICS, INTERTANKO, IPTA	Rating mechanism Other voluntary means / Incentives	No change, no enforcement, Delay, use CII indicator

Table 9 Ambition levels short-term measures

Source: own tabulation based on submissions

The results – if tabulated as in the case of the strategy – were of limited value to the high ambition group who achieved basically only a rapid entry into force of an indifferent mechanism:

	Ambition Group		
Result of short-term measures	I. High	II. Medium	III. Low
SEEMP	+		-
EEXI		+	-
Rating (CII)			+
Max 40%	-	+	+
Min 40% - (50% + by 2050)	+		-
Enforcement	+		-
Rapid entry into force	+		

Table 10 Short-term measures results, by ambition group

Source: own tabulation

This might be remedied by later decisions, but as the result stands, the Low Ambition had the greater influence. The compromise on the short-term measures was arrived at by an external group whose composition was unclear. Only the coordinators were visible, and the highest ambition states were not invited to these groups. The decision of whom to include was made by the chair.

However, the numbers that could be noted during the first online round of comments at ISWG-GHG 7, seemed to show that a vote would carry the low ambition proposal, which most delegations then accepted, though some only reluctantly. The size of the groups (high-ambition 20 – low-ambition 31) and thus the predictable outcome of a formal vote will have influenced any high ambition states that participated. The resulting package was widely accepted as the best

that could be done, but a few delegations expressed with varying degrees of strength that the result was unsatisfactory. In their interventions most of the assenting high ambition states explained their acceptance with sentiments of "something is better than nothing" [Notes Dataset].

The result of the short-term measures decision (*MEPC 76/15*, 2021 Annex 1) can be summarised as:

- Introduction of an "EEXI" in a new regulation that imposes a requirement to all existing ships regardless of the year of build, similar to the Energy Efficiency Design Index (EEDI) that applies to new ships.
- The Ship Energy Efficiency Management Plan (SEEMP) is modified to include a mandatory attained annual operational Carbon Intensity Indicator (CII) for ships above 5,000 GT based on the existing data collection system. The actual quantity for the CII was not agreed.
- Guidelines referenced in the MARPOL text containing the main technical elements will be adopted at the same time as the MARPOL amendments and will be integrated into a "Carbon intensity Code".

The reduction factors of the EEXI are similar to the EEDI (which applied to new-built ships) reference lines and vary for ship types and sizes. They are in some cases more lenient than those of the EEDI. They can be implemented by various technical means, but the generally foreseen method is by reducing the maximum power output of the main engine. It will, however, also be possible to achieve the reduction by energy-saving devices or retrofits including installing wind assistance on existing ships. For ships with an EEDI no new certification is needed as the EEDI may be used instead, but older ships with no EEDI certificate must be surveyed. The EEXI is a one-time requirement - there is no strengthening over time.

The implementation of the SEEMP will indicate whether a ship's carbon intensity indicator – relative to a required CII – shows a performance level that is a "major superior", "minor superior", "moderate", "minor inferior", or "inferior" level, which will be indicated by ratings A to E. The method of determining CII and the thresholds between ratings was left to guidelines to be adopted. For ships that only achieve a D rating for three consecutive years or an E rating in a single year, a corrective action plan must be developed as part of the SEEMP and a revised SEEMP must be approved – also in accordance with guidelines to be adopted. It was expected that the CII ratings would be made public, but no provision for this was adopted. In the case of continued D or E ratings even after a corrective plan has been set up, the plan must be revised, but no mechanism was adopted to ensure that the plans are executed. The amendments thus basically required a plan but did not ensure the actual implementation of the plan much less an actual reduction in emissions. The reduction rates for the CII were to be defined later and strengthened over time.

The decision on ambition was thus in reality taken at ISWG-GHG 7, which was where delegations could influence the result. Unlike the situation of adopting the Initial Strategy the major influence came mainly from one side – the low ambition. This was not correlated with any change in the preferences, the power or the activity of the most active states. The most significant differences between the two situations were that:

- in one (the Initial Strategy) the outcome was not legally binding on ships,
- the structure of the debate changed with the COVID pandemic, and
- the chair of ISWG-GHG 7 invited specific proponents to create a compromise

The outcome can be argued to marginally fulfil a 40% efficiency improvement – one of the ambitions of the strategy. But this target, which was a minimum in the agreed strategy is a maximum in the result. It can be said to contribute to the ambitions but does not attempt to fulfil them. The requirements of the CII are estimated to generate an improvement in energy efficiency at about the same rate as in the period since 2015 (MEPC 75/7/15, 2020, p. 4, Annex 1). By the same token, this does nothing to advance the other ambitions (1.5°, peaking of GHG, 50% absolute reduction by 2050). All in all, the short-term measures cannot be taken as evidence that the IMO has advanced the transition of shipping to low-GHG. The decision was approximately a codification of Business-As-Usual, including the expected future improvements in efficiency, but did not require any reduction of absolute emission of GHG.

Conclusion chair

The outcome was decisively influenced by the chairs of the intersessional working group and of the MEPC by their understandings of where the majority was to be found. This included independently deciding with structural power and through hierarchical position to reduce the scope of the effort to the one carbon intensity target of 40%, to schedule the work of the committee to avoid discussing the ICS and SIDS levy proposals and choosing to give the initiative of creating a compromise to named delegations ensuring a low ambition outcome. This process was also shaped by the establishment of the private forum by the ICS that created the basis for the consolidated low ambition proposal. While the ICS was thus influential in the process, this did not lead to any increased support for their own proposal, and the specific outcome was only possible with the decisive and independent actions of the chair.

The consolidated proposal and the solid cooperation behind the 11% "compromise" allowed the chair of ISWG-GHG 8 to send it to MEPC in accordance with the plurality view of accepting the correspondence group's recommendation. This entailed perceiving the alternative grouping as several disagreeing factions, not as one high ambition group. The chair of MEPC could then select the 11% reduction rate outcome of the 8th intersessional as the only option. At each stage of this decision an alternative majority existed, and there was no consensus for the solution that was adopted. The chair did not formulate a solution, but selected those who could.

Conclusion case 2

The short-term measures are so far the only material results that to implement the Initial Strategy. The influence of the process during the negotiations on these measures was significant, and the shipping industry initiative was both significant and visible, but not in favour of the ICS preferences. The content of the decisions avoided the high ambition regulation that ICS opposed, but as implemented is not supported by the ICS or any shipping organisation (CLIA et al., 2024). In the approach to the level of stringency the chair leaned towards inclusiveness of the low ambition group, but not of the high ambition. The decisions were dominated by the ability of the chair to select which single possible outcome could be put to the show of hands.

The content of the debate on measures was severely affected by the limitations of time that were imposed as a consequence of the Covid pandemic. The chair limited the scope of negotiation and delegated the development of compromise to a few proponents. For the structure of the short-term measure, the compromise corresponded to a majority preference of the group. In fleshing out the structure with a numerical requirement, the chair chose to let an unambitious minority view prevail over a split ambitious majority. It is probable that other compromises could have achieved the acceptance of the majority, but the choice given was a single take-it-or-leave-it result.

The level of ambition of the outcomes rested on the choices of the chair. As in the case of the Ballast Water Management convention, the industry did not achieve its own proposal (the research fund) but had significant influence on the result (or lack of result). The chair chose an outcome that the majority ultimately accepted. The conclusion was put on the table by the chair as a Hobson's choice.

Chapter 6. case 3 – The Initial Greenhouse Gas Strategy⁵⁰

Demauthocracy⁵¹" gets results

Introduction

This case concerns negotiations on formulating a MEPC decision on a strategy that was to function as a framework for future decisions on measures to reduce the GHG impact of shipping. The issues addressed include the relationship with UNFCCC decisions, the allocation of responsibility for reducing climate effects from shipping and whether specific numerical binding targets should be included, as well as the level of ambition and time frame for any measures that would implement the strategy.

The Initial Strategy adopted envisages a reduction in total GHG emissions from international shipping which, should peak as soon as possible and it envisages a total annual GHG emissions reduction by at least 50% by 2050 compared to 2008, while, at the same time, pursuing efforts towards phasing them out entirely. The agreed text calls for short-term measures, which could be agreed between 2018 and 2023, mid-term measures, which could be agreed between 2023 and 2030, and long-term measures, which could be agreed beyond 2030. These measures were pledged to improve energy efficiency and reduce CO₂ emissions per transport work, by at least 40% by 2030, and 70% by 2050. The Initial Strategy also provides that the impacts on States of a measure should be assessed and taken into account before adoption of the measures.

On 13 April 2018 during the final treatment of the Initial IMO Strategy on reduction of GHG emissions from ships, the representative of the United States took the floor, stating that "there are elements of the Initial Strategy that are unacceptable to the United States." These elements included an absolute reduction target and references to the Paris Agreement (*MEPC 72/17/Add.1 Annex 16*, 2018, p. 30). The previous Monday, the Marshall Islands (a large flag state nation in "free association" with the United States) had explicitly warned that it would "very publicly dissociate" itself from an IMO Strategy on reduction of greenhouse gas emissions that did not contain an "explicit quantified level of ambition consistent with a possibility of achieving the Paris Agreement temperature goals" (*MEPC 72/17/Add.1 Annex 16*, 2018, p. 2). Considering the economic strength of the two countries and the relations between them, expectations would suggest that the view of the USA would prevail. It did not.

Instead the Marine Environment Protection Committee noted "overwhelming support" for the strategy and subsequently adopted it in the form of a MEPC resolution (*MEPC 72/17/Add.1 Annex 11*, 2018). The study of this case shows that the claim to "overwhelming support" elides that this consensus was achieved without widespread agreement on the content. 33 delegations explicitly supported the strategy out of 163 nations or organisations, including the IMO secretariat, whose Secretary General warmly praised the decision. There were 8 who opposed it.

⁵⁰ Much of the text of this chapter is based on "Climate strategy in the balance who decides?" in *Marine Policy* (Prehn, 2021)

⁵¹ I have created this term as translations of the useful Danish word 'demokratur'

The chair of the working group assigned to develop the strategy text, had submitted a "chair's text" rather than a negotiated compromise. The decision was a result of management of the negotiating process.

Timeline

Like the measures of case 2, the Initial Strategy was elaborated over a series of MEPC sessions, and a series of "intersessional" meetings of a working group under the MEPC (ISWG-GHG). This procedure of plenary meetings that leave most negotiation to working groups is typical of IMO practice, see also Figure 5. Six meetings at the IMO are examined below: 3 MEPC meetings in July 2017 and in April 2018 as well as 3 intersessional working group meetings, the two first in June and October 2017 and a two-week meeting of ISWG-GHG 3 in April 2018.

In the first intersessional that was held in June 2017, the week before the MEPC 71 meeting, 50 delegations were active, including both states and observers. The main issues debated were the "levels of ambition and guiding principles for the strategy".

Meeting	Date	Main issues and outcome
MEPC 70	24 October 2016	General submissions, Roadmap decided
ISWG GHG 1	26 June 2017	levels of ambition and guiding principles. J-papers
MEPC 71	3 July 2017	outline of the structure in J-paper
ISWG GHG 2	23 October 2017	"Vision statement" and a definition of a "level of ambition"
ISWG GHG 3	3 April 2018	chair's working document - not debated or adopted
MEPC 72	9 April 2018	Final negotiation and adoption

Table 11 Timeline GHG Strategy

Source: own tabulation

At all MEPCs after ISWG-GHG 1, a working group was established chaired by Sveinung Oftedal, from Norway, who also chaired the meetings of the intersessional working groups. The secretariat of the working group meetings was the same for all working groups and the Vice-Chair of MEPC chaired MEPC 72.

The case shows that traditional major economic powers and the largest flag states all had low levels of success. The decision taken did not reflect the preferences of the most powerful nations (however defined), nor those of the largest organisations of ship owners, despite the ability commonly ascribed to them to control the IMO. This calls into question common assumptions about power of states and commercial influence and shows that the result was not desired by anyone.

The first section of this case briefly describes the background and the most active parties and their groupings. The main section follows the outline of the other cases by analysing the actions of the participants including the chair, in sections that focus first on INGO influence, then on states and finally the chair/secretariat.

Background

The process leading to the Initial Strategy could be seen as initiated at many points in the preceding decades. In 1997 the Conference of Parties to MARPOL 73/78 adopted "Resolution

8" on CO₂ emissions from ships, which among other things invited the Marine Environment Protection Committee of the IMO to consider feasible GHG emissions reduction strategies (A.963(23), 2003). The Kyoto Protocol from 1997 contains provisions for reducing GHG emissions from shipping (IMO Secretariat, 2022), but many members of the IMO considered any regulation of GHG emissions from ships to be an exclusive IMO responsibility, while some considered greenhouse gases to lie outside the scope. This was the subject of some controversy. The IMO Assembly adopted a resolution on greenhouse gases in 2003 (A.963(23), 2003) which requested MEPC to identify and develop mechanisms to limit or reduce GHG emissions from international shipping, but in fulfilling this task, the MEPC was mired in a lengthy dispute where particularly the delegations of China, India and Saudi Arabia claimed that the principle of "common but differentiated responsibilities" agreed in the UN Rio Conference (UNCED) 1992 and enshrined in UNFCCC should be embodied in the work of the IMO in so far as it might relate to the emission of GHG. These states and some supporters were opposed to even discussing the subject of reducing or limiting the emission of greenhouse gases from ships (MEPC 51/WP.6, 2004, para. 4.3). When a majority nevertheless continued the conversation, China maintained that the IMO's role should concern only technology related to reduction of GHG emission from ships, whereas the political, legal and economic matters should be decided by UNFCCC (MEPC 59/24 Add.1, 2009, p. 2 of ANNEX 13). The initial IMO work on greenhouse gases was therefore recast as "energy efficiency" requirements, to assuage those delegations that refused to regulate climate impacts in the IMO (MEPC 60/22, 2010, p. 2 of Annex 4). An Energy Efficiency Design Index (EEDI) was made mandatory for new ships and a Ship Energy Efficiency Management Plan (SEEMP) for all ships (MEPC 63/23, 2012). These were the first mandatory greenhouse gas regulations of the IMO. This historical difference of view is still reflected in the unwillingness of these same delegations (and others) to adopt regulation of GHG emissions. It serves as evidence of possible policy preferences of these states even if they accept majority decisions to regulate GHG.

However, the idea of the strategy itself goes no further back than MEPC 70, held from 24 - 28 October 2016, that had agreed and adopted a "roadmap" for developing a comprehensive the IMO strategy on the reduction of GHG emissions from ships, including terms of reference for the first intersessional meeting (MEPC 70/18, 2016, para. 7.19). The background to this decision included the adoption of the Paris agreement on climate change, which neither specifically included, nor specifically excluded shipping (or aviation) (Paris Agreement, 2015). The relationship between the IMO process and the UNFCCC negotiations culminating in Paris was not clearly settled (MacNeill-Weir, 2018).

The "road map" foresaw the adoption of an Initial Strategy at the 72nd session of MEPC and a Revised Strategy at MEPC 80 in the spring of 2023 (MacNeill-Weir, 2018). This plan was adhered to.

Preferences and Process

The Initial Greenhouse Gas Strategy was adopted at MEPC 72 held from 9 - 13 April 2018. Process tracing shows that this was not a democratic decision, even though a majority did accept

it. A better term could be demaurocratic – the use of democratic institutions to impose a choice selected by a leader, but not negotiated between the members.

There were 20 submissions on the agenda of the first meeting of the intersessional. To facilitate a structured discussion, the Secretariat undertook a provisional analysis of the documents submitted and sorted them under 5 headings (*ISWG-GHG 1/1/1*, 2017 Annex 1, page 1). The submissions include proposals that allow the preferences to be grouped as high, medium or low level, as indicated in the following tables:

Submitter – High level of ambition	Brief Resume/ Key Words
The Marshall Islands and Solomon Islands (ISWG-GHG 1/2/2)	1.5° ambition in 2018
IMarEST and RINA (ISWG-GHG 1/2/10)	reduction opportunity
Belgium, Denmark, France, Germany, the Marshall Islands, the Netherlands, Solomon Islands, Tonga, Tuvalu and ICHCA	2°-1,5°
Antigua and Barbuda, Belgium, Denmark, France, Germany, Kiribati, the Marshall Islands, Solomon Islands, Sweden, Tonga, Tuvalu, IAPH and ICHCA (ISWG-GHG 1/2/13)	Zero in 2 nd half century, quantified pathway Paris Agreement. 2°C - 1.5°C
Belgium, France, Germany, Kiribati, the Marshall Islands, the Netherlands, Solomon Islands, Tonga, Tuvalu and ICHCA (ISWG-GHG 1/2/12, ISWG-GHG 1/2/14)	Consider impacts on States
Belgium, Denmark, France, Germany, the Marshall Islands, the Netherlands, Solomon Islands, Tonga and Tuvalu (ISWG-GHG 1/INF.2)	peak in 2025, reductions 2050, zero 2 nd half century
Belgium, Denmark, France, the Netherlands, Solomon Islands, Sweden (MEPC 71/7/13)	quantified level of ambition
Greenpeace International, WWF, Pacific Environment, CSC (MEPC 71/7/14)	50% by 2050, zero 2 nd half century

Table 12 SHAC group preferences

source: Own tabulation, from the IMO submissions

Submitter – Medium level of ambition	Brief Resume/ Key Words
Norway (ISWG-GHG 1/2/1)	Procedural. Requirements determined in 2022, "if any, are required"
Japan (MEPC 71/7/11, ISWG-GHG 1/2/4)	Paris Agreement goal of 2°C. 40% carbon intensity in 2030
Canada (ISWG-GHG 1/2/11)	1.5°
Republic of Korea (MEPC 71/7/2)	"No more favourable treatment"

Table 13 Medium Ambition preferences

source: Own tabulation, from the IMO submissions

Submitter Low/No of ambition	Brief Resume/ Key Words
BIMCO (ISWG-GHG 1/2/3)	emission projections are compatible with Paris Agreement goal = well below 2°C.
Japan (ISWG-GHG 1/2/5)	least-cost 2°C scenarios policy actions in the later revised IMO Strategy (2023).
BIMCO, IPTA and WSC (ISWG-GHG 1/2/6)	below 2°C. to facilitate, discover and develop for commercial application the most carbon- and cost-efficient
Singapore (ISWG-GHG 1/2/7)	below 2°C – CBDR
Brazil (ISWG-GHG 1/2/8)	Improving efficiency best way. Third IMO GHG Study is not sufficient basis for reduction targets
ICS, BIMCO, INTERTANKO and INTERCARGO (ISWG-GHG 1/2/9)	Non-binding Objectives in 2023. No binding cap
China, India (MEPC 71/7)	No binding cap, CBDR, technology transfer, capacity building and financial resources
Argentina, Brazil, China, Ecuador, India, Nigeria, Saudi Arabia, South Africa, Turkey (MEPC 71/7/6)	CBDR, Delay fixing level of ambition until after 3-step approach

Table 14 "BRICS" group preferences

source: Own tabulation, from the IMO submissions

The result of the negotiation on the Initial Strategy was not one that can be attributed to any of these preferences. The resulting compromise aligns with the Norwegian wish for a "compromise" and created a mandatory numerical obligation that did not seriously alter the Business-As-Usual scenario. It did not accommodate those who wished for development aid. This result was not achieved by striking a balance between the conflicting desires. The largest and most vocal states did not achieve their goals. My analysis indicates that the EU achieved most of its priorities, whereas the SIDS who were in the same group as EU achieved little. The low ambition states achieved mainly that the target was not set at 1.5°.

The preferences of states can be categorised as falling into the following 3 groups:

I. High Ambition,	Antigua, Barbuda, Belgium, Denmark, France, Germany, Kiribati, the Marshall Islands, the Netherlands, Singapore, Solomon Islands, Sweden, Tonga, Tuvalu
II. Medium ambition	Canada, Republic of Korea, Norway, Japan
III. Low/No ambition or delay	Argentina, Brazil, China, Ecuador, India, Nigeria, Saudi Arabia, South Africa, Turkey

Table 15 Initial Strategy ambition groups

source: Own tabulation, from the IMO submissions

The High Ambition Group I consisted principally of EU countries and a number of Pacific Small Island Developing States, with support from Singapore. The group has 14 states as members and 5 observers, so 19 in total. Group III, consisting of South American states, supported principally by Saudi Arabia and China, favoured not introducing mandatory goals. This group has 9 state members and 6 observers, so a total of 15. The Medium Ambition Group

It would, if counted as "Low", make the split even. Otherwise, there was a clear majority for a "High" ambition.

Unlike in the ballast water case the INGO observes were not very active. Counting only states the split was even more clearly in favour of "High" ambition.

INGOs

The e-INGOs were naturally focussed on the climate issue as they consider themselves as representatives of the main climate interest, but few of the e-INGOs were present and active in these meetings and most active INGOs were B-NGOs in the low-ambition group. This can be seen as an indication of the fact that the IMO observer group is mainly populated by B-NGOs and not e-NGOs or other types of broader civil society group. However, the opposition to high ambition from B-INGOs was not forceful, possibly because even the high ambition was not alarming (personal communication 1). The activity of INGOs was thus not as significant in this case as in the ballast water case. As noted by Hendriksen (2020, p. 215) the proposals and interventions of INGO's in the climate discussions changed from being material to being procedural in nature, and dwindled in number and length. At GHG 1, CSC suggested a limitation on speed. This was widely rejected but gained some support later. The e-INGOs Greenpeace International, WWF, Pacific Environment and CSC continued with factual documents to ISWG-GHG 2 as did IMarEST.

On the issue of impacts on States, IMarEST and, CSC, were active. IMarEST submitted to the 1st ISWG, as did ICS, BIMCO, IPTA, INTERTANKO and INTERCARGO. The ICS proposed "aspirational goals" which were described as ambitious but were understood as intended to be non-mandatory. BIMCO presented ISWG-GHG 1 with an updated or alternative to the Third IMO GHG Study showing far lower projected CO₂ emissions from shipping than the official IMO estimate. During the oral negotiations INGOs were quite silent. At MEPC 71 only 3 INGOs spoke, (SYBAss, ICS, BIMCO) and each only briefly (all three totalling less than a minute according to the imodocs audio). At the intervening ISWG-GHG 2 and 3, as in the MEPC Working group, most were restrained and inactive. At MEPC 72 when the strategy was finalised and adopted there were more INGO interventions (WWF, CSC, INTERTANKO, INTERCARGO, ICS, CESA, BIMCO, ASEF). In a modification of the ICS' original opposition to restrictions, ICS now requested a clear signal that the GHG limits would eventually reach zero in order to encourage ship-owners to invest [Notes Dataset][Sv-Reports Dataset].

At ISWG-GHG 2, IMarEST provided information to the effect that the carbon intensity of international shipping had started to decrease such that the figure for 2015 was 34% lower than that for 2008. This statement carried authority due to the expertise of the organisation and was possibly important to the final result of setting one carbon intensity target at 40%. The establishment of a target level only slightly above that already achieved would be less daunting to those apprehensive of excessive constraints (Szymanski, 2017).

Conclusion INGOs

In the highly politicised debate on the strategy the INGOs were reticent and did not have much influence. At the working group of MEPC 72, at the very last phase, the ICS pressed for a clear

decision with quantitative goals that shipping could plan for. This may have helped the result but was not indicative of influence to achieve an ICS preference. It shows only that in the situation where the options were reduced to a choice between a strategy with quantitative goals and no decision. The ICS opted for a decision. This is consistent with the general norm that I claim is shared by most IMO members; that regulation of shipping should be done by IMO.

States

The capacities and potential power of the most interested countries as well as their level of activity, varied. Some major maritime nations were notably absent from centre of the debate, including Panama and Liberia, the largest flag states. China, Korea and Japan are major economies and have important maritime companies, but only China was very active in the strategy debate. The United States kept a low profile, possibly due to the change in administration in January 2017, when Donald Trump took office.

Positions and preferences of the states quickly migrated into two main opposite views. One, primarily voiced by South American countries led by Brazil, and with support from India and China [Reports Dataset][Sv-Reports Dataset], argued that the IMO debate and decisions should be subordinate to the UNFCCC process, and particularly that the principle of "Common But Differentiated Responsibility and Respective Capabilities" (often abbreviated to CBDR⁵²) should be included in the IMO strategy. Adherence to this principle relative to the flag or registry of ships would imply that developing countries' ships (ships under developing countries' flag) would not be affected. Since approximately 70% of the world fleet is registered in developing countries (China & India, 2017) and Table 1, the principle would in actuality eliminate any but voluntary efforts and rely on "bottom up" commitments.

The opposing view, mainly voiced by European countries, Pacific islands and Canada, referred to the IMO 's principle of "No More Favourable" treatment or flag neutrality, and would be structured in a "top-down" manner with binding targets. Any differentiation of obligations on states would not rely on the "North/South" distinction used in UNFCCC. These goals were expressed as a preferred reference to the Paris Agreement rather than the UNFCCC.

The difficulty of movement towards a consensus stemmed at least in part from the lack of a common mental model shared by the two sides of the debate (Liu et al., 2012, p. 271). A number of those countries who were represented by UNFCCC experts (mainly South American states and Saudi Arabia and India) were adamant in their resistance to concrete requirements or goals [Reports Dataset][Sv-Reports Dataset]. This stance rested on an apparent belief that they could prevail in the negotiations by resisting consensus in the intersessional working group. This view was part of the "sense of the game" that the negotiators with UNFCCC backgrounds brought to the very different IMO negotiating field.

The high ambition side was represented mainly by negotiators with an IMO background, the low ambition side by delegates with UNFCCC experience. In most delegations the climate issue was

⁵² In naval terms CBDR stands for "Constant Bearing Decreasing Range" and denotes a risk of collision or less formally, an impending disaster!

handled in both the intersessional working group and the MEPC by the usual head of the IMO delegation. For a few, including Brazil, Saudi Arabia and the United States, however, the climate issue was addressed by UNFCCC diplomats. As in the previous cases there seemed to be no coordinated action by the largest flag states.

The pressures the individual states and groups could bring to bear on the negotiations were very different. China of course can use its major economic power status, but also its large fleet, particularly its major container shipping company, to give China prestige and possibly influence. China's position as the major shipbuilder does not in the climate context seem to be a factor of influence. China can also, in the role of defender of the developing world, criticise initiatives from the global North, and claim that its opinions represent an alternative to those of the industrialised states that have caused the climate crisis. Brazil has similar possibilities and can with the assistance of other Latin American countries claim to speak on behalf of a continent. India can like China speak from a position of representing a significant proportion of the human population. These countries can exploit the existing cooperation in UN context between developing countries and thus potentially align 130 members of the G-77 behind their position. The delegations of Brazil and China enjoy high hierarchical positions in the MEPC, due to their high level of activity and their importance to international trade.

The European Union members of SHAC can as a major trading partner apply general commercial pressure, and a threat of unilateral action by the EU has previously compelled the IMO to act. Many major shipping companies are based in the EU, as are many of the INGOs present in the IMO. This allows EU delegates to speak with some authority of expertise. The fact that the negotiations take place in London allow smaller EU members to participate more fully than similar sized states who have to send delegates longer distances from other time zones.

Japan and the Republic of Korea can as large shipping nations speak with some authority of expertise. The PSIDS have the Marshall Islands as a prominent flag state, but otherwise little leverage except the "high moral ground" of the existential risk that climate change presents for them. Nevertheless, this and a consistently high level of activity gave the PSIDS a higher hierarchical position and a better position for being heard than similar small states from other regions, such as Africa. Those nations that are prominent in shipping can rely on a common understanding that the "level playing field", and by implication the competitive status quo, should be preserved as far as possible in any new regulation.

Norway is a special case. The chair of the working group in which much of the negotiation took place is from Norway, which is a major shipping nation, and oil exporter and a European country that is not a member of the EU. Norway has a high hierarchical position in the IMO due to its consistent high level of activity in most issues, and as a major shipping nation, has a large capacity to participate in negotiations combined with a high level of interest both in the issues on the table, and in the IMO as such.

It is remarkable that the United States did not speak at all at the first plenary that debated the issue, MEPC 71, nor submit any document. This may be ascribed to the change in

administration as Donald Trump entered office on January 20, 2017. The climate negotiator for the United States under the new administration was a relatively junior climate negotiator from the U.S. Department of State and not – as previously had been the case – the head of delegation (from the United States Coast Guard) who has participated in IMO meetings for 35 years (*Federal Register / Vol. 50, No. 151, 1985*).

The debate was mainly between states, and very few observer delegations took the floor. There were only few attempts to compromise. Vanuatu (a Pacific SIDS) and Panama (a South American flag state) attempted a compromise between "common but differentiated responsibilities" and the IMO principle of non-discrimination by flag. This initiative was not accepted by the group but was reflected in the final document [Reports Dataset][Sv-Reports Dataset].

Conclusions states

The result of the negotiation on the Initial Strategy was not one that can be attributed to preferences of any states. It created a mandatory numerical obligation that did not significantly alter the Business-As-Usual scenario. This result was not achieved by striking a balance between the conflicting desires. The largest and most vocal states did not achieve their goals. My analysis indicates that Europe achieved most of its priorities, whereas the SIDS who were in the same ambition group as EU achieved little. The low ambition states achieved mainly that the target was not set at 1.5°. The preferences were thus generally not achieved, and each side can be said to have lost without winning.

Chair/Secretariat

This section describes how positions migrated into two main opposite views, the methods used to gain influence by the groups, and the process by which the chair sought to find a solution. The chair's working method was the presentation of a series of documents that reflected the chair's view of the stage of the negotiation, but were not debated in detail or adopted by the group. Instead, the result presented the MEPC with a single choice: either to adopt an unsatisfactory Strategy or to admit failure. As the outcome was not negotiated in detail, the result was not systematically influenced by any group or hegemon, and possibly not desired by anyone.

There was considerable continuity in the leadership of the meetings, particularly of the working group. This continuity and leadership were pivotal to achieving a result. The strong differences between these groups were never overcome, but the chair of the working group manoeuvred the debate so as to reach a result that was accepted although it was unsatisfactory to many.

The chair of the working group guided the debate via a series of so-called J-papers. The first J-paper was a "preliminary summary of discussions" issued on the second day of the first intersessional meeting followed in the next days by several "chair's summations" and a concluding document. Each of these documents was presented to the group but the chair did not allow detailed debate. The differences of approach between the two main groups were therefore not included in written reports, but demonstrated in general, and somewhat confrontational, statements.

The debate continued between the same groups at MEPC 71 the following week, but in a less confrontational manner. During this debate the mainly active delegations were the Cook Islands, Brazil, Saudi Arabia, Argentina and Japan, in that order. The high ambitions delegations of Tuvalu, Kiribati, Solomon Islands, the Marshall Islands and Fiji had fewer and shorter interventions.

At the second intersessional the debate was again confrontational. The focus was on both a "Vision statement" and a definition of a "level of ambition and the guiding principles" with no clear indication of their purpose and interrelationship. No agreement was reached. The debate was again driven by a succession of J-papers; a "Compilation of draft text proposals", prepared before the meeting, and 6 documents issued by the chair during the week. The final J-paper, issued on Thursday 26/10/2017 and entitled "Initial the IMO Strategy on Reduction of GHG Emissions from Ships", was, in spite of the title, not an agreed or consensus document, but merely the latest working paper, and one that again was not debated in detail. Many delegations held views that they did not consider fully reflected in the document, and contested its presentation as a result of the meeting. This document was nevertheless the basis for future work and was presented to MEPC 72 as a "Progress Document" annexed to the report from ISWG-GHG 2. It was also transformed into the chair's working document for use at the third intersessional meeting in April 2018 (*MEPC 72/7, 2017*) [Reports Dataset]

Document ID	Content
ISWG-GHG 2-J-2	Compilation of draft text proposals
ISWG-GHG 2-J-4	Possible approaches to set the ambition for the initial IMO strategy on reduction of GHG
ISWG-GHG 2-J-4-Rev.1	Possible approaches to set the ambition for the initial IMO strategy on reduction of GHG...
ISWG-GHG 2-J-5	Possible format for adoption/approval of initial IMO strategy on reduction of GHG emissions...
ISWG-GHG 2-J-6	Possible approaches to set the guiding principles for the initial IMO strategy on reduction...
ISWG-GHG 2-J-7	Draft text proposals for a vision
ISWG-GHG 2-J-8	Progress Document entitled "Initial IMO strategy on reduction of GHG emissions from ships"
Table 16 Presented J-papers at ISWG-GHG 2 <i>Source : own tabulation from submissions</i>	

The main controversy at ISWG-GHG 2 was between the High Ambition group arguing for a target consistent with the Paris agreement target of 1,5°, which would imply a 70-100% absolute reduction of emissions by 2050), and on the other side the Low/No ambition group, arguing for non-mandatory language or delay. It is an indication of the divisiveness of the debate that countries had now essentially split into two confrontational groups instead of three, and each group had hardened their positions (Szymanski, 2017); [Reports Dataset][Sv-Reports Dataset].

During this process the chair noted concerns but did not bridge them by proposing compromise. The J-8 paper draft strategy or Progress Document was written entirely as the chair's own statement. It was contested by many.

For ISWG-GHG 3 the chair had prepared a J-paper, based on the contested "Progress Document" from the previous intersessional meeting. No agreement was reached on this new paper either, but the chair continued to issue a series of J- papers. On the penultimate evening of the intersessional a broad informal discussion led by Canada and Panama sought to find acceptable text concerning the principles and the goals [Reports Dataset][Sv-Reports Dataset]. The result was, however, not generally accepted. The final J-paper issued on the last day (Friday) of the intersessional was supported in principle – but not in detail – by a majority (36 delegations out of 64) [Transcripts Dataset]. There was notable opposition from Brazil, Iran, India, Indonesia, Malaysia and Saudi Arabia, who did not agree to forward any text at all to MEPC 72. The chair nevertheless decided to let the latest text go forward as his own reflection, since the alternative would be no text. The 6 opposing delegations mentioned issued a formal statement that included the phrase that "nothing is agreed until everything is agreed" (*MEPC 72/WP.5*, 2018 Annex 2). This is the UNFCCC principle that these delegations apparently believed would entitle them to block a comprehensive proposal from the chair based on a majority opinion. A similar number of other delegations also stressed that the document did not represent a consensus but did not seek to prevent it being forwarded to the parent body. This demonstrates that the majority of delegations shared a view of decision-making in the IMO that differed from the 6 low ambition delegations. In accordance with such a view, the chair concluded that a comprehensive document would be placed before MEPC the following week.

In working groups votes are not usual, but the chair will conclude on the basis of those who speak. Of those who did 36 were in favour, 12 opposed and 16 were neutral. It was therefore probable that if the issue were to be decided by majority voting the chair's text would be adopted. Thus, with no other option available, and the necessity of adopting a report to MEPC on the week's work, the Friday report invited the Committee to forward to a Working Group the comprehensive draft text, "noting that further work was required for finalization, with a view to adoption by the Committee". This effectively made this – the chair's text – the base document.

Document ID	Content
ISWG-GHG 3-J-3	Compilation of proposed draft text amendments to annex 1 of document ISWG-GHG 32 submitted...
ISWG-GHG 3-J-4	Guiding Principles
ISWG-GHG 3-J-5	Indicative suggestions from the chair to assist ISWG-GHG 3 in finalizing the draft initial...
ISWG-GHG 3-J-6	Resolution MEPC.Xxx(Xx) Adopted On [Xx April 2018]Initial IMO Strategy on Reduction of GHG...
ISWG-GHG 3-J-7	LEVELS OF AMBITION AND GUIDING PRINCIPLES
Table 17 Presented J-Papers at ISWG GHG 3	
<i>Source : own tabulation from submissions</i>	

MEPC 72 opened with a number of formal statements (*MEPC 72/17*, 2018, para. 1.8). As mentioned, the Marshall Islands made it clear in uncharacteristically undiplomatic language that it, home to the second largest flag registry in the world, would "very publicly dissociate" itself from an outcome that did not contain an "explicit quantified level of ambition consistent with a possibility of achieving the Paris Agreement temperature goals". The Environment Minister,

David Paul, stressed that it was necessary to work with the text from the previous week as a package or risk having no outcome at all – and having the second largest flag state walk out.

Other statements were more tactful, and almost all praised the chair of the working group for the very result that many had rejected the previous Friday. This is a clear example of the difficulty in determining the actual interests and goals of negotiating states and organisations.

The working group established during MEPC 72 was a continuation of the intersessional group from the week before and worked on the bases of the chair's comprehensive draft text. The chair started with the less contentious parts, which allowed a number of small compromises to be made, for instance on a wish from Saudi Arabia to include a reference to "socio-economic progress and development". The group broke many times to allow consultations. During these breaks, the chair was absent from the room and groups formed for informal discussions. Unlike what is often seen in such working group breaks, each informal group included only "like-minded" delegations rather than representing a venue for consultations across the major fault lines in the debate [Reports Dataset]. This difference may have been produced by delegations that were used to UNFCCC negotiations where "nothing is agreed until everything is agreed" and that were thus holding out until the last minute prevents consensus and gain an advantage. The deep rift and the lack of negotiation between the blocks meant that the chair did not have intermediate position to work with and could probably not bring the opposite sides informally together to find such positions.

The chair ultimately proposed a way forward to the group (in a 'J-Paper') but did not permit a line-by-line debate on the text. Most delegations were positive to the general tenor of the proposal, but several refused to comment on the substance in general without a promise of subsequent detailed discussion. The chair nevertheless concluded that the group agreed to forward the consolidated draft text to the Committee and to invite the Committee to adopt it as the Initial the IMO Strategy. This process was severely criticised by several delegations (11 according to the Swedish official report) that specifically indicated a lack of confidence in the process and an absence of consensus on the result (*MEPC 72/WP.7*, 2018, para. 15); [Sv-Reports Dataset].

A final unofficial meeting took place before the 13th of April Morning session of the MEPC. Participants included the Marshall Islands and Solomon Islands⁵³, several EU members, the United States, the chair of MEPC, the chair of the Working Group and the Secretary General. From a number of participants, it appears that the two Pacific SIDS were presented with the option of accepting this initial strategy on the understanding that it would be revised in 2023 or no strategy at all (personal communication). They acquiesced.

In the final Plenary of MEPC 72 the vast majority of the delegations who spoke supported the adoption of the Initial Strategy as presented by the working group chair. Many were not fully satisfied by the text but were prepared to accept it. The opposition was nuanced in that Saudi Arabia and the United States reserved their positions, whereas others who had opposed it

⁵³ Not myself at the time.

explicitly, now accepted the compromise, while maintaining their concerns (*MEPC 72/17*, 2018, para. 7.19). No vote was requested. The common memory of previous "divisive" votes may have influenced the critical delegations in accepting the final text, and the fact that so many supported the chair's text was a clear indication that a vote would expose a very small minority to a public judgement.

Conclusions chair

The chair's use of J-papers to avoid detailed discussion but gradually eliminate options thus led to presenting states with a single option that was no longer open to amendment. The J-papers had some support in principle – but not in detail – by a majority, many of whom had serious concerns. The content of the J-papers reflected the chair's perception of where the outcome should lie, and did not allow delegates to participate in the wording. The use of structural power and executive influence allowed the chair to place texts on the table that were not rejected, and could not be rejected, since they were not debated in detail. The chair wielded decisive and independent influence on the outcome, that presented states with a Hobson's choice.

Conclusion case 3

The strategy adopted (*MEPC 72/17/Add.1 Annex 11*, 2018) can be seen as a success for those who wanted a result to be achieved by the IMO, and as a failure for those who were opposed to any

	Ambition Group		
Strategy Result	I. High	II. Medium	III. Low
Decision in 2018	+		-
Reference to IMO decisions only	+		-
IMO not implementing UNFCCC.	-		+
Reference to the UNFCCC	-	+	+
Reference to Paris	1,5°	Reference to 2°	-
impacts on LDCs and SIDS.	+	Impact on all	-
numerical goals.	+	-	-
2030 40%	70%+	40%	-
2050 50%	100%		-
2099 100%	100%		-
CBDR and NMFT	NMFT	CBDR and NMFT	CBDR

Table 18 Result of strategy negotiation

Source: Own tabulation, from submissions and the Initial Strategy

binding solution. The "Initial Strategy" imposes no requirement to reduce GHG emissions but is in fact only aimed at "identifying actions to be implemented" (*MEPC 72/17/Add.1 Annex 11*, 2018, para. 1.7). It identifies "Levels of ambition" but reserves implementation schedules for the Revised the IMO GHG Strategy. This demonstrates that absent a consensus on a specific regulation, a procedural decision can be taken in its place. The result shows that the divergent opinions were balanced but that the result was not aligned with any group but chosen by the chair in what can be seen as opposition to all the groupings.

A comparison of the result to the initial preferences of the three groups of delegations listed in Table 12, Table 13 and Table 14 with the final text, can be taken as an indication of which delegations most influenced the result. In Table 18 the proposals have been simplified for the sake of clarity. A plus sign indicates that the element was supported, a minus sign that it was opposed. Green indicates a "win" and red a "lose" for the group in question. It would therefore seem that a certain balance was struck. The "high ambition" group achieved a "win" on the principle of a decision with numerical goals but did not get the numbers they wanted. The LDCs and SIDS seemed to lose with respect to impact on states generally, but the wording "in particular LDCs and SIDS" mitigates that loss. This analysis indicates that Europe achieved most of its priorities, whereas the SIDS who were in the same group achieved relatively little. The low ambition states achieved only that the target was not set at 1.5°.

The Strategy text was submitted in the chair's own name and was the only option on the table. It only allowed a take-it-or-leave-it decision. In spite of protests, it was accepted by a majority that was close to unanimity.

The decision did not to reflect the preferences of the most active nations, nor the largest organisations of ship owners. The influence of major powers - United States, Russia and China - was not significant. The largest flag states: Panama, Liberia and the Marshall Islands had similarly low levels of success, and corporate preferences as represented by ship owners organisations were demonstrated to be unable to block decisions, despite this ability being commonly ascribed to them. Europe had some success but did not achieve a reference to the 1.2° - 2° target. The lack of influence of the "laggard" states should be seen in the light of the non-binding nature of the strategy. – It does not need ratification at the national level. The acceptance, although reluctant, of the final result of a proposal by the chair shows that the result was not random. The effect was to ensure that "everybody was equally unhappy".

The influence of the chair and the secretariat in bringing about a situation where a decision could be taken, is demonstrated by the series of "J" papers that were not adopted, but also never debated in sufficient detail for them to be rejected. They gradually conveyed the idea of where an agreement might lie. This process ensured that a decision could be taken. It is clear that the content of the proposed decision was influenced by the delegations, but there was no working group or informal forum that brought delegations together (personal communication 37). The acceptance of the final document depended on it being more acceptable to the majority than a failure of the IMO to act. Many other options might have been just as acceptable, but in the end only one option was on the table as an alternative to no solution. Once it appeared that a majority was willing to pass this result by vote it became politically desirable for most delegations to accept the result rather than lose a vote. The crafting of the proposal led to almost unanimous acceptance, where a different solution might have had to be carried by a majority vote. This result may be seen as a "win" for the institution.

In this instance neither the preferences of powerful nations nor the commercial weight of corporations can account for the result. The responsibility for the specific result must lie with the chair who submitted a take-it-or-leave-it decision.

Conclusion Cases

In each case the outcome was determined by a "Hobson's Choice" offered by the chair of a single possible outcome, as the only alternative to failure. In the ballast water case failure would have implied an entry into force of the convention with no solution to the problem of availability and no agreement on whether there even was a problem of availability. The entry into force was already certain when the single outcome was proposed, and there was no time to construct an alternative. In the short-term measures case, the time limitation was entirely due to a scheduling decision taken by the IMO and could in principle have been disregarded. However, the structural and political pressures of moving towards a solution were sufficient to allow an unambitious numerical result to be adopted against the wishes of a majority. The fact that the outcome was split into two separate decisions of which the first created a structure, and only the second the unambitious particulars may have made the outcome less transparent and thus more palatable. The clearest case of the Initial Strategy shows an outcome that was not negotiated in detail but constructed by the chair/secretariat.

Chapter 7. Discussion

The cases illustrate a number of episodes that demonstrate the independent influence of chairs and secretariat and question a number of widely held assumptions. Due to the close cooperation and the impossibility of clearly distinguishing them, the chair/secretariat should be seen as one level of analysis.

Preferences and results

Finding a solution that has a specific desired effect is not a trivial problem. The case of the Ballast Water Management Convention shows that neither the ICS, the interested states, the chair of MEPC, nor the Secretary General were able to propose a legal text that would solve the conflict between the elimination of invasive species and the protection of ships from responsibility for equipment, whose effectiveness they could neither ensure nor perceive. It was apparent that the problems that were raised by the ICS, and later by many states and other B-INGOs, were taken seriously and exerted strong pressure on the IMO, but these influences were not converted into the content of the decisions. The decisions taken were of a nature to postpone implementation, not resolve the problems. These postponements can be seen as signals sent to states that the convention should not retroactively penalize ships, but the postponements did not give ships the certainty of that effect. Any outcome that would materially and legally satisfy everyone, would have had to ensure that invasive species were avoided and that ships should have a clear way to comply, and also to change the convention before or at the moment of its entry into force. This squaring of the circle did not succeed. The preferences of the delegations were too incompatible.

For some observers the consequences of the actions of the ICS in the ballast water case are an indication of the power of industry. However, in my use of the concept of power it is a potential that may or may not be exercised, and influence is the result whether intended or not of actions. With that understanding the ICS does indeed have power, but the way it was exercised led to an outcome that was not determined by the ICS. The outcome did not reflect the preferences of the ICS, even though the states and chairs that did determine the outcome were reacting to the capacity that the ICS has to elicit actions.

As indicated in the conceptual overview, I consider authority to be the legitimate use of power, and influence to be a result of the use of power. Hierarchy can allow also illegitimate use of power, and this may also result in influence. If power is directed towards a desired outcome the resulting influence may include both intended and unintended consequences. I therefore include as influence both successful and failed or ineffectual attempts.

The importance of the chair/secretariat is not only in crafting outcomes that solve the problem. An inept chair equally has a major influence on outcomes. If no method of work is found that accommodates negotiation and there is no exchange of information about preferences, no agreement can be found. However, an outcome may result as it did in Case 2 where measures were adopted which had serious shortcomings now acknowledged by most, including those who supported them at the time (*MEPC 81/16*, 2024, para. 6.23; CLIA et al., 2024).

My identification of the preferences in each of the cases was influenced by Frieden's use of the distinction of interests from preferences. However, I have chosen not to deduce the preferences but to consider the stated proposals to be reflective of preferences. This has the weakness of neglecting the fact that negotiators consider the effect of their proposals on adversaries and adjust their claimed preferences accordingly (Blavoukos & Bourantonis, 2014; Raiffa, 1982; O. R. Young, 1991).

The fact that expressed preferences may not reflect true interests or intentions may distort the evaluation of the degree to which certain parties have had influence. That this is sometimes a reality is confirmed. One prominent delegate related to me that he had as a matter of policy made proposals that he did not wish to see adopted and that he did not think could possibly pass, merely in order to lose on that issue to other delegations and avoid charges of dominance. I have myself made a contention with the specific purpose that it should be defeated, in order to ensure that a precarious situation was resolved in a particular manner⁵⁴. Thus, preferences identified in this way must be viewed with some caution, and I do interpret the stated preferences in this light. As noted by scholars, preferences may change during the process of negotiation, including via feed-back from the negotiators (Adler-Nissen, 2015; Odell, 2009). This is in fact a central purpose of negotiation – to allow or ensure that your opponent's reports will result in new instructions. Nevertheless, like others I have for analytical reasons considered preferences to be stable within each case.

In the cases studied the assumed preferences split along clear lines. Some delegations in the negotiations on the BWMC were focussed on a high standard for the elimination of possibly invasive species, others had as a higher priority the assurance that there would be a certain path to compliance. All the states had an environmental interest, but some with a higher priority than others. Some had an additional hesitation about enforcement, which was however mostly less important to them than their main concern. In all three cases Brazil, China and the ICS were consistently low ambition, whereas most of the EU members were high ambition. The United States and Japan generally took a middle to low line. Each of these delegations are considered "powerful" in general or specifically in the IMO context. The general political lines taken by them in public align well with my categorisation of High, Medium or Low ambition in the issues concerned. I therefore feel confident that my assumed preferences are roughly correct.

The low ambition states who largely wish to preserve the status quo, benefit from the usual difficulty of introducing change. There can be observed a tendency towards inertia in all institutions and policies (Greener, 2005). This tendency generally requires proponents of change to justify their proposals, with the corollary that an insufficient justification will result in the maintenance of the status quo. This may also be a factor in explaining the relative success of the

⁵⁴ In connection with a convention of prohibition of a particular anti-fouling compound, a proposal had been made that a mandatory provision should be included requiring the safe disposal of waste generated from the removal of restricted anti-fouling systems. At that time IMO had never required any actions from shore-based industry, and it was likely that a legal argument could be made against such a provision. Even though my organization supported the requirement, I opposed it, but with an argument designed to incite a rejection of my position. This in fact happened and the proposal was incorporated in the convention text (*MEPC 46/23*, 2001, para. 5.7-5.9)

low ambition states. However, in the climate related discussions, the premise is that the status quo will not continue, and thus the requirement is to select from different options for the future, not to choose change or no change.

Preferences are not necessarily mutually exclusive, even when they do not coincide. It can therefore be difficult to determine which delegation's preference prevailed over another. In the ballast water case, the ICS and other shipping organisations were the main actors that were interested in reducing the liability or uncertainty for ships, but they had no particular interest in or knowledge of the biological aims of the convention. The main preference of the ICS was to avoid the expense of – and responsibility for – equipment that the shipping sector did not trust and could not efficiently monitor. Environmental INGOs had the mirror image preference of implementing the convention but had no real interest or insight in the liability or uncertainty issues for ships. There was no real dispute about the way to solve the problem of invasive species. It was generally agreed that until the necessary technology could be developed, ballast water exchange should be mandatory and as soon as possible installation and operation of treatment systems should be mandatory. There was agreement among most states that equipment was being developed and would be available. These preferences do not seem necessarily incompatible. Nevertheless, no solution was found that satisfied all of them.

The result of the long process of originally drafting the ballast water convention and attempting to adjust the way it would enter into force, did not finally embody any of the preferences of the actors. During the 13½ years where the convention was not in force, there was no mandatory reduction of possibly invasive species, and even after the entry into force no sanctions will be universally applied against non-functioning systems. This non-sanctioning does not amount to full non-enforcement and is counteracted by the option of local enforcement which both port states and flag states have, which means that there is still no assurance even for a well-intentioned ship owner or operator, that the vessel will be in compliance, even with a certified and operational system.

The efforts of the ICS did not lead to the convention being amended to the satisfaction of ship owners or operators, but only to a long delay, ending in a situation where the obligation to install equipment was retained, and although non-functioning of this equipment would not necessarily result in sanctions, there is still a risk of costs or delays being imposed by port states even on ships that have acted in good faith. The result thus differs from the preferences even of the ICS, whose challenges the IMO obviously wanted to alleviate. This is an indication that the ICS had power – the potential to influence – and a hierarchical position that could give influence, but did not use its authority towards a specific outcome that would solve the problem. The influence of the ICS was therefore more of an unintended consequence. Nor was the outcome in line with the intentions of the states who wanted to limit or ideally eliminate invasive species in ballast water. They successfully avoided a formal decision that technology was unavailable, and successfully avoided removing obligations in the convention, but accepted a recommendation to renounce implementing actions that they presumably considered necessary. There is still no enforcement of the basic requirement of the convention – the number of viable organisms. It thus seems that no one's primary preferences were met, and that the

unsatisfactory solution was not even a compromise that partially fulfilled some of the actors' preferences.

The implementing measures debates was characterised by a split, where the high ambition climate group was confronted by those opposed to constraints. The United States was under a new administration and more on the high ambition side. There was more overlap between the low ambition preferences and outcomes, as summarised on page 126 ff., The interests that have been working to delay substantive decisions have so far prevailed and the "laggard" states achieved a result that is close to their assumed preference for business-as-usual. They have, however, not succeeded in submitting the IMO process to the UNFCCC. They did not succeed in avoiding a structure that can later be strengthened into higher ambition targets with effective implementation. The low ambition group prevailed through the chairs' use of hierarchical position, rather than legitimate authority to differentially treat majorities and minorities depending on the ambition level of the positions. However, the outcomes were praised as successes even by the disregarded majority, which obscured the low ambition of the result. Since the adoption the measures have been criticised by the shipping industry and by states in the low ambition group that supported them, because they have a number of undesirable unintended consequences. The lack of success and the chairs responsibility for it were apparent mainly to the participants, which shows the value of an ethnographic approach. That chair no longer leads the negotiations, which may bode well for the future.

The same split was also apparent in the negotiation of the Initial Strategy. The low and high ambition countries were similar, although the United States under the Trump administration was on the low ambition side. One group showed little interest in advancing the IMO negotiations as such but focussed on gaining advantages in UNFCCC deliberations progressing at the same time, and the other group aimed at introducing regulations independently of negotiations in other fora, preferring rigorous binding numerical targets for ships. As indicated on page 144, only the EU achieved most of its objectives. The two groups did in fact have incompatible preferences. The negotiation positions, which for one side consisted of insisting on a reference to CBRD, and for the other side of insisting on a reference to "no more favourable treatment", were proxies for a view of the hierarchy of IMO decisions in relation to the UNFCCC. There was no resolution to this. Those who desired a strategy were attempting to ensure that IMO would act to implement mandatory measures, not merely as is the case in many UN resolutions, to endorse a policy that states could follow. The result of the IMO strategy discussion was not binding but the decision to adopt binding IMO rules must be seen as a success for the independence of the IMO. It is possible to view the result on the levels of ambition as a compromise, but the apparently intermediate result was not the desired outcome of anyone and can legitimately be considered a loss for everyone. An often repeated saying in the IMO is that a good compromise leaves everyone equally unhappy, but evenly distributed dissatisfaction is no guarantee of a useful solution. Even though you are breaking eggs, you may not get an omelette. Mapping the delegations that have cooperated in submissions produces a picture of many "camps", as shown in Figure 13, with many connections across the camps.

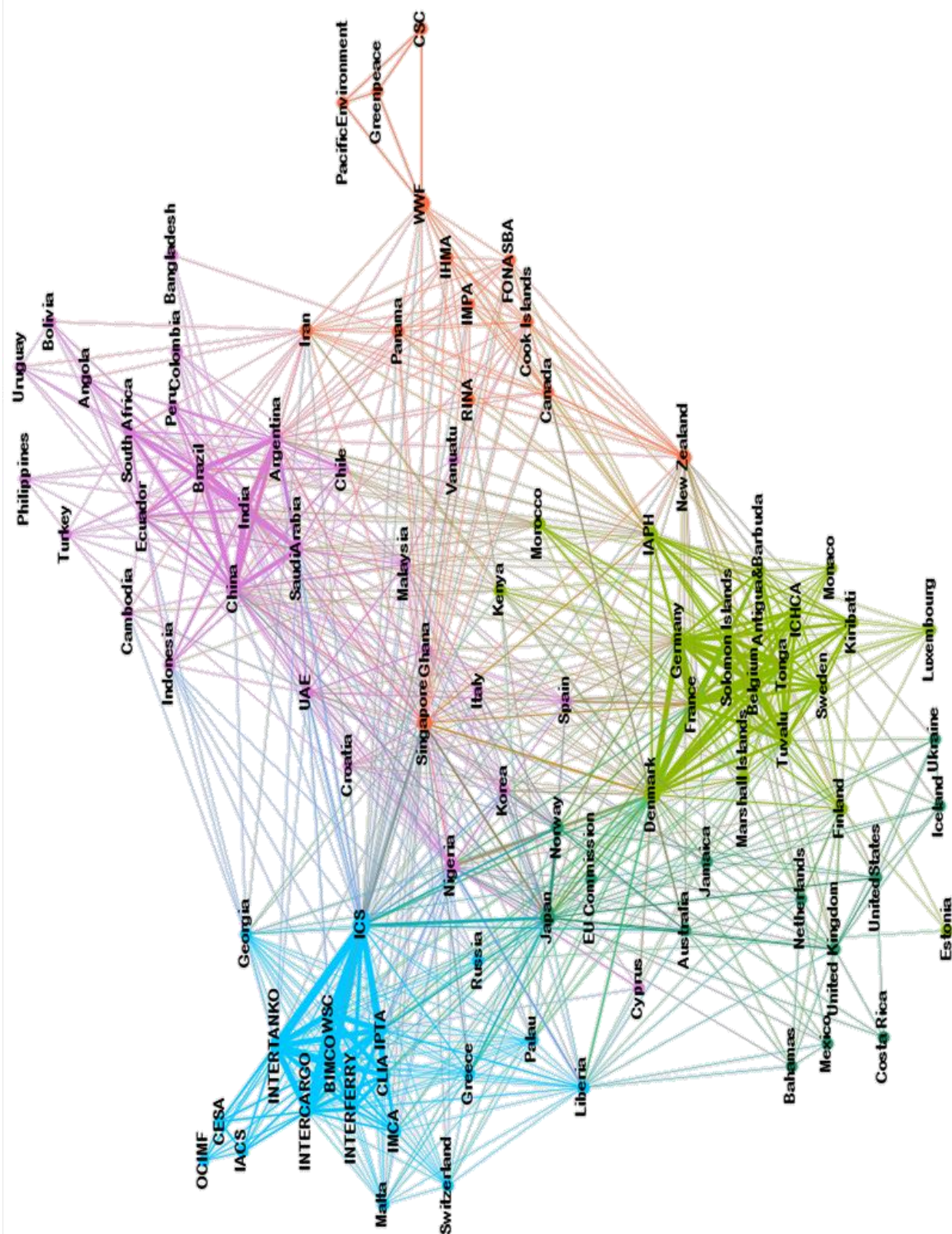


Figure 13 Groupings of delegations that have co-sponsored

Source: Own graph based on proposals to MEPC and ISWG–GHG

The graph depicting the delegations that have co-sponsored submissions on climate issues since the first intersessional in 2017 shows apparent groups of "green" delegations centred on the SHAC and "blue" B-INGOs that each seem tightly connected internally but weakly attached to the purple states and pink that includes e-INGOs.

The pink colour in the graph does not seem to represent a coherent group although it includes the e-INGOs. But connections between the tighter groupings can be seen both in this graph and in the negotiating forum. The "split" that is often referred to in the debates is roughly between the purple and blue groups on one side, and the green and some of the pink group on the other. It is by no means apparent that the closer or more frequent collaboration between the delegations in each of these shows closer policy preferences or results in greater influence on the result. There are consistent groupings, but no consistent influence of any group.

There is in these cases no clear evidence that the concerted actions of the states in the IMO lead to results that are actually desired by any of the states or of any private actors. In the ballast water case the final outcome was basically identical to one which was initially rejected and which allegedly prevented ratification. In the initial GHG strategy the aims established were not adhered to in the adoption of the short-term measures. If the outcome had been determined by real intentions, they would be expected to do so.

The three cases show that the outcomes do not systematically correlate with the preferences or intentions of any country or group. The individual cases demonstrate that the outcomes in each do not align closely with any one actor. The result of a negotiation is not necessarily desired by anyone. So, while the outcome must be acceptable to most, it need not be anyone's preference.

The cases thus challenge the common belief that commercial interests, or states' economic interests determine the outcomes of international negotiations to the benefit of these interests. The outcomes of these negotiations and the decisions taken were in each of the three cases narrowed down to a choice between a single option or no decision. These outcomes would have been different if other options had been presented as the single option, or if there had been a choice between two or more options. The influence of the chair was very apparent in the presenting of choices and in steering the process and path of the decision making. The choices of the chair depended not only on the preferences and positions of delegates and were only partially constrained by sometimes a very flexible interpretation of the rules, limitations and institutions of the IMO.

As shown on page 41 above the nature of the maritime sector ensures that most ships will in practise need to follow a rule that allows them access to any port. This provides pressure on the IMO process to generate a rule, even one that may not solve the problem. Absent a rule from the IMO, ships will act, and if by no other means, then by a Darwinian selection process, a workable course of action will emerge that ports will accept, and ships can follow. There is of course no guarantee that this course of action will solve any specific problem or maintain a level playing field, and it may entail unforeseen detriment to other interests. It is therefore not only in the institutional interest of the IMO to keep regulation of shipping, but in the interest of the members, to accede to solutions, even if they seem unacceptable. In compromise decisions no

one achieves complete success, but this analysis goes further in showing that at least in some cases a result that gives no one satisfaction is only accepted because an alternative of no decision is not an option, and no other alternatives are made available. The culture and practices of the IMO limit the perceived possible outcomes, and favours retaining the status quo of commercial practices, but the status quo is not guaranteed.

As I have shown, the chair of a group, be it an informal gathering or a formal meeting of the MEPC, has considerable structural power to choose the time of a decision and the alternatives presented. This gives great power to promote specific decisions, and also to delay or to select either a procedural decision or a material one. The skill of the chair in selecting an option that will gather sufficient support is of importance to the result. As has been shown in the section "Fixing the reduction rate at BAU" the conclusion (on page 129) is that even if several alternative solutions may exist, the chair can navigate to a specific one, leaving other options unexplored. The restraints that Blavoukos and Bourantonis (2011) find for chairs, are thus not as restrictive for IMO chairs as they appear to be in other parts of the UN system.

The chair's/secretariat's ability to shape outcomes in the IMO rests on the problem structure, or the nature of shipping, that effectively excludes the possibility of not reaching an agreement at all. Adler-Nissen notes that in the EU Council of Ministers, problem-solving is prevalent and that is it the normal practice to exclude that no agreement is reached. This, which is merely a practice in the EU, is in the IMO a practical necessity imposed by the global nature of shipping. As soon as an issue is raised, that might cause problems for some ships in some ports, a practical solution must be adopted by ships in anticipation of the possibility that a requirement may be applied in a future port of call. The members of IMO therefore prefer that regulation of shipping is done by the IMO.

The cases also suggest that delegates do not even necessarily realise all the implications of a decision. It is not often that a single proposal is elevated as the final outcome. Decisions may be based on a coherent proposal by an expert from a member state or an INGO, but are usually a compromise based on several options and on the exclusion of some options during a debate, and as we have seen this debate is not always based on scientific or technical insight and may be based on misunderstandings. This was the situation in Case 1, the Ballast Water Management Convention, where inserting fixed dates did not ensure rapid control of invasive species but contributed to an extended delay. In Case 2, the measures decision, where the outcome was crafted in a small group, the numerical disagreement about the reduction level was not supported or even argued on the basis of which number would fulfil the requirements of the strategy or alleviate the climate change problem, and the technical implementation of the CII has turned out to be an unforeseen burden on shipping. Agreement may also be spurious, as when the Initial GHG Strategy was adopted with targets that a majority turned out to be willing to ignore. This provides evidence that not all agreements accurately reflect the intentions or assumed interests of those who are parties to them.

Process

The path dependency of outcome is apparent in case 1, where the opinion of the IMO Legal Office (*BLG 11/4/3*, 2007) that the amendment procedure of the BWMC Convention could not be applied before the convention entered into force, was accepted at an early stage, and thereby prevented any attempt to eliminate the source of the concerns – the specific requirements imposed on the ships. This is an example of the authority that the IMO secretariat has in delimiting the options available to states. Despite the rather clear rejection by the Legal Office of any solution other than a protocol, the use of non-binding resolutions was introduced by the intercession of the Secretary General, and these were thereafter consistently used. These resolutions are not in a legally binding form, and the ultimate result therefore does not eliminate the problems posed by the legal requirements of the convention. In the end – in contradiction of the legal opinion, the solution was taken of seeking to eliminate by a non-binding resolution some of the requirements imposed on the ships. An agreement to delay or not to implement any part of the convention, would of course, if it were legal and effective, be an amendment of the convention. However, this feigned amendment was introduced when the legal opinion prohibiting it had receded into the past.

In case 2 the use of time during ISWG-GHG 5 and at MEPC 74 delayed the debate on mid-term measures and ensured that no discussion of specific measures was undertaken before the "impact on states" issue was treated. This management of the process also prevented an early consideration of a measure based on the similar proposals from the ICS and the Pacific SIDS. The later initiative from the ICS allowed progression of the short-term measures and promoted coordination between some states. In case 3 a major part of the initial debate concerned the relationship with another regime – that of the UNFCCC. The overlap of mandate and the "chessboard politics" of the BRICS group prevented serious negotiations of content. The major process was, however, not one of negotiation between participants, but a series of general comments on the J-papers issued by the chair.

The IMO structure of week-long meetings with a conclusion on Friday of the week's work, leads to some sort of result in every meeting. This is one source of the power of the chair, and also a source of pressure on the members and the chair to arrive at an outcome. Even though topics continue across sessions, the Friday full report cements any partial results obtained. If even a slight material advance cannot be made, it is possible instead to agree a procedural or purely apparent one, thereby retaining initiative and jurisdiction. This process can be used by the chair/secretariat to drive the IMO to advance slowly even against wide opposition.

The stages of this process can gradually cut off some lines of development and in so far as the process is not deliberately governed, the result will depend on the sequence of events. In the case of the Initial Strategy this was a deliberate process as the chair put forward successive J-papers each narrowing the options. It was less deliberate in case 1, when it was accepted to use resolutions rather than a protocol to amend the Ballast Water Management Convention before it entered into force.

The changes introduced as a reaction to the Covid pandemic included shortening of the time available to delegates and taking states' interventions before INGOs with consultative status. The overall timing was a central decision, but the conduct of the online meetings was decided by each chair. This led to inefficient use of the time in the official meetings of the MEPC, but much more efficient work in ISWG-GHG. The difference must be attributed to the chair/secretariat and is part of the agency of the IMO as an organisation.

INGOs

The successful attempt by a B-INGO to capture the negotiation by organising informal meetings with an own agenda testifies to the possibility of influence by the shipping industry. This clearly happened during the Covid pandemic, but as in the ballast water case, the shipping industry's own proposal was not adopted, and the actual unambitious result was negotiated by only a few states.

The Ballast Water Management Convention was perceived as an injustice by the shipping industry, and also by some flag states. The outcome seeks to accommodate the ICS's wishes but the attempts of the shipping industry to avoid the requirements were not successful. The decisions of the IMO were obviously intended to alleviate the concerns of the shipping industry, but not at the cost of abandoning the convention. It was apparent that a central desire from the ICS was not just to avoid a requirement to install expensive equipment, but rather to avoid an objective prohibition against discharging ballast water containing specific numbers of viable non-indigenous species in ports, which would be impossible for the ship to determine. The technical knowledge and skills available to the ICS did not consistently identify this problem nor generate any proposal that would eliminate it. The ICS thus did not have the power to reach its goal.

For the short-term measures the ICS hosted meetings that consolidated some proposals among selected like-minded delegations. Having the chair of this meeting allowed focus on the issues that the ICS preferred. The original ICS activism was then expanded to include others, but not all. On that basis the IMO secretariat initiated informal meetings specifically in continuation of the ICS initiative. However, the content of the decisions taken in the aftermath of the private ICS meetings, was not proposals that originated with or were supported by the ICS. The present regulation is not one that meets the requirement of the shipping industry, as public statements have shown (CLIA et al., 2024).

States

The cases described here do not support the idea that a hegemon or group of "great powers" or the economic power of industry can usually determine outcomes or can block or distort the process. The putative hegemon or commercial interest may have been at work on the chair and on the members outside or inside the IMO, but this is not the certainty that some theories suggest. However, when the chair subscribes to the idea, that "important" states have or should have more power than minor ones, this can be reflected in conduct and summing up of the meetings, and thus become self-fulfilling. Such an effect may have been at work in case 2, where the chair requested France, China, and Japan to lead an informal consultation and China,

Japan and the European Commission to lead a correspondence group. Both of these two similar groups had significant impact on the outcome. It was the chair's choice of who should find the solution that allowed this impact. It was not a choice imposed by the states themselves. The necessity for this kind of external work sprang from the changed working conditions introduced as a reaction to the Covid pandemic. However, the exact nature of the external work and the efficient or inefficient use of the time in the official meetings must be attributed to the chair/secretariat as part of the agency of the IMO as an organisation.

In much theory a hegemon or group of strong states are presumed to dominate decisions. This is not supported by the cases. Some states and organisations do have more influence than others, Nevertheless, they do not consistently determine outcomes. In the ballast water case, a putative hegemon (the United States) influenced a central decision, when the Secretary General's proposal for a relinquishing the requirements for ships built in 2009 was turned into a postponement rather than a permanent exemption. However, the objective for the US was damage control, and the fundamental premise for the decision was not what the US wanted. Also, in many other situations the US does not determine outcomes. This fact, that the US is not in every situation a hegemon, does not of course exclude the possibility that some powerful states, possibly not always the same, may influence outcomes. However, the fact that the chair can override the preferences even of majorities that include powerful states, does weaken the theory of a hegemon.

In the case of the Ballast Water Management Convention the purported preferences of all states was to avoid invasive species, but this did not materialise, and even after the convention is now in force, the lack of sanctions may well reduce the effectiveness of the requirement to install equipment. If a non-sanctioned regulation had been adequate, it would have sufficed to update the pre-existing guidelines and recommendations. The convention was introduced as a solution to the problem of invasive species because some states believed it to be necessary. It was supported very actively by the United States, who also introduced their own national legislation when they could not sufficiently advance the IMO regulation. Nevertheless, the US wishes were not successful, despite its size and status as putative hegemon.

In the case of the short-term measures the decision also did not implement the proposals of many of those commonly considered "strong" states or groups. The chair of the MEPC built on the ICS initiative, and requested specific proponents to negotiate with each other, thus effectively excluding other delegations, and for the short-term measures this resulted in a single low-ambition result. The result included the dissimilar ideas put forward by China and Japan (which held the chair), but did not accommodate the United States nor the EU or even the Pacific SIDS, whose ideas dominated the debate. The outcome was unambitious, and the "laggard" group of states had the largest influence, but neither the largest flag states nor the majority decided. Neither Japan nor China fully achieved the main elements of their proposals, which was, respectively, introducing engine power and a rating system as proxy for emission reductions. Instead, modest reductions were introduced. The more influential delegations were indeed major economic powers in shipping, but the proposals of these states required the active

support of the chair. It was apparent that the chair could have chosen to let other delegations dominate, and that it was thus a choice of the chair to select the low ambition outcome.

In the Initial Strategy case the influence of "major" powers - United States, Russia and China - was not significant. The largest flag states: Panama, Liberia and the Marshall Islands had similarly low levels of success. The EU had some success but did not achieve the numerical target that was its main objective. The INGOs were not active and corporate preferences, as represented by ship owners' organisations, were unable to avoid a decision, despite this ability being commonly ascribed to them. No dominant power imposed its preference on the outcome, which was shaped by the chair. The chair used what was a great extension of "the chairs summary" to present an outcome that did not reflect any major power and imposed a text that was not negotiated in any detail to a take-it-or-leave-it decision.

The support that China seems to get contrasts with the appearance that the United States does not seem to have significant influence. The exception of the first Assembly resolution shows that only by taking the role of a chair could the United States limit the undesired effect of the Secretary General's proposal. Similarly, the EU members have not yet achieved adoption in the IMO of any of the climate policies they recommend. The Pacific SIDS have apparently been run over completely. Even though they have dominated the debate far more than could be expected, the measures do not so far show any effect of this activity. Possibly this will change when the mid-term measures are adopted.

We have seen in case 2 that the proposal for a resolution on "zero by 2050" failed at MEPC 77 (see page 125). This demonstrates that political will outside the IMO at a general and high level, in for instance the US, Panama, and EU member states, did not translate into support for similar positions in MEPC. This example challenges the view of states as unitary actors with consistent positions based on their interests. If even secretaries of state and heads of state that supported such a resolution at COP 26 do not ensure a similar position from their own delegations in IMO only two weeks later, the idea that some states can consistently dominate outcomes loses some persuasive power. The inconsistency between the aspirations of the initial strategy and the outcome of the short-term measures decision, also indicates that positions are not necessarily based consistently on stable preferences even at the level of whoever decides IMO policies in capitals.

The interests that have been working to delay or dilute substantive decisions have so far prevailed. This may be due to the systematic difficulty encountered by those who seek change. Since it seems that these preferences in fact reflect an overall majority, a case could be made that this is merely democratic decision-making. However, the different treatment of majorities and minorities undermine this view.

Chair

For the mid-term measures (that are still under consideration), the chair consistently accepted (small) low ambition majorities but equally consistently required (small) high ambition majorities to compromise with a low ambition minority. This seems to lead to a prediction of a low ambition outcome at the end of the process. The chair of MEPC is now from Liberia, which

may change the way in which consensus is construed. The strengthening of the strategy that was adopted in 2023 may have altered the point of intersection between low and high ambition as the chair may see it. The influences of states and INGOs were channelled through the chair and worked to limit the possible choices the chair could present to the groups. In the case 2 the measures were developed by states, but the states in question were chosen by the chair, and the chair selected a numerical solution supported by a plurality, but originally rejected by a majority. By allowing only one option for decision, the "Hobson's choice" given determined the outcome.

My observations confirm in the terms of Cox, that chairs are or can be brokers and controllers par excellence. However, I observe that additionally, that the chair can propose solutions which do not correspond to any overlap of preferences. The chair can choose to promote or limit other brokers and controllers from determining outcomes. Whether this is effective in furthering whatever ideas the chair may have, depends on the expertise of the chair, but in any event the actions of the chair will influence outcomes. Incompetent chairs' hindrance is just as fully influence as competent chairs' backing of a particular view. It is therefore useful to distinguish unintended impact from (intended) influence.

As shown in all the cases, decisions in the IMO are taken essentially by a voting process. This presupposes that at least one solution is available for adoption. It does not ensure that all available majority preferences are tested. The questions posed and the possible alternatives to be chosen, as well as the method and time of counting are very much in the hands of the chair. The chair must select from proposals that will normally be based on submitted documents, but also on occasion originating with the chair. In the absence of a proposal that even putatively solves the problem, no influence or power will avail. The pressure to adopt rules may come both from states and from INGOs, as shown particularly in the ballast water case. Whatever pressure exists is, however, not in itself sufficient to ensure that a decision is taken that solves any given problem. The "solution" chosen so frequently of "kicking the can down the road" is of course no solution.

It is manifest that the ISWG meetings, that were led by the long-time chair of that group were efficient and came to conclusions that were shaped either as in Case 2 by two similar groups chosen by the chair, or as in Case 3 by the chair. Conversely the MEPC discussions in Case 2 were inefficient as negotiations with delegations merely making prepared statements. This difference must be attributed mainly to the differences between the two chairs. It was the chair's choice to delegate finding a solution to specific named delegation that in case 2 allowed a specific solution (the 11% CII reduction) to be chosen. Had another constellation been chosen a more ambitious solution of 22% would have been possible. This was not a choice imposed by the states themselves, but of the chair of the ISWG-GHG. Also in case 2, the initial discussions in the ISWG-GHG, before the Covid restrictions were introduced, were apparently deliberately steered away from considering specific measures for several meetings. This may have been only due to preoccupation with other matters, but it may also have been influenced by the fact that the only measures that were mature for discussion were two structurally similar proposals for a levy on fuel, that were at the time widely considered unrealistic. The two differed mainly in the

quantum of the levy – one 5\$ the other 100\$. A chair that did not consider it likely that IMO would impose a tax on shipping, might well wish to delay a discussion of measures until more strictly technical measures were proposed. This use of structural power and executive influence determined the selection of which measures could be implemented first.

The possibility of individual impact of social relation and personal status of negotiators on the resolution of issues is exemplified by the adoption in case 1 of the last-minute postponement that was introduced by INTERTANKO. This demonstrated that the previous head of the US delegation with long IMO experience and consequent high personal credibility could suggest an alternative. It also demonstrated that this was accepted only with the active support by the chair, who has as an alternative only a procedural solution that would have dissatisfied most delegations.

Chapter 8. Conclusion

General observations

The cases show that outcomes are determined in the IMO by sequences of interactions that are limited by the process and by perceptions – particularly the chair's perceptions – of what is possible. In this connection the chair/secretariat should be seen as one level of analysis. Limitations can flow from the practice of reporting on Fridays even on partial outcomes. This practice tends to ensure that something will be decided eventually. Sometimes conclusions are worded by the chair/secretariat without consensus, that can focus debates on ever narrowing choices. Conclusion of the chair can exclude minorities but not necessarily accept majorities. Outcomes are not limited to results that are desired by delegations. The chair can choose to present states with a take-it-or-leave-it choice between political failure or an outcome that can be construed as success even if it fails to meet the original intentions and even if it does not correspond to any preference of any party.

One of the IMO's practices is the creation of plans, strategies, three-step approaches and other non-material decisions. As pointed out by Dimitrov (2020) empty institutions can be designed not to deliver, in order to hide failure at negotiations, by creating a public impression of policy progress. In the world of shipping a completely empty institution would not prevent an (undesired) alternative material rule from emerging. The IMO plans and strategies will therefore be effective only if they are not empty in this sense. This does not, however, mean that the IMO decisions must always solve the problems they address.

In all three cases, agreements have been arrived at that do not in practice solve the problems, and that do not have the effects that seem to be intended. In some cases, this mismatch between a decision and the actual subsequent events may be intended, but in others it may not be. In the ballast water case for instance, the original convention was most likely assumed by most to be an effective instrument to reduce invasive species. When this turned out not to be the case the various postponements were adopted as stopgaps, not solutions to the underlying problem, which was that although the necessary technology was under development, it could not become operational and effective without extensive practical experience, which could not be expected without a mandatory requirement to install and operate such equipment. Similarly, the Initial GHG Strategy does not clearly fulfil the requirements of the Paris Agreement, and the short-term measures do not fulfil the requirements of the Initial GHG Strategy.

So, while the IMO will tend to reach an agreement it is not certain that it will find a solution.

Role of the chair

In all three cases the chair/secretariat was central to the process of determining the outcome and did not only act as a broker between diverse views. While states, INGOs and individuals did have influence on the outcomes, the influence was channelled through the chair. The chair/secretariat of MEPC and the chair/secretariat of the ISWG had in each case the option of selecting another preference than the one actually chosen, or of configuring another majority. In some cases, the chair/secretariat demonstrated the ability to override even a majority of states. I

therefore argue that the influence of states or organisations on outcomes must be channelled through the chair/secretariat to succeed.

The cases show that process was important for the outcomes, and moreover that the decisions could be limited by previous choices. However, in each case the process had eliminated only some possible outcomes. If the preferences of INGOs and states were to have influence the route to selection of the final single choice had to go through a chair/secretariat that could also at times override states' wishes. In each of the cases the result did not mirror the preferences of any one state or group. Even when most or all states accepted the suggested outcome as inevitable, this did not mean that they changed their preferences. This was apparent both in the ballast water case and in the case of the initial GHG strategy. Despite an almost unanimous agreement among states, some states subsequently resisted implementing the agreed outcomes. In accepting "Hobson's Choice" the states were only agreeing to keep the decision-making in the IMO.

Decisions in the IMO are taken essentially by a voting process, according to "the majority of those who spoke" (personal communication 34, see also page 57 on consensus in the IMO). Nevertheless, the summation of views and the questions put to this "poll" as well as the method and time of counting are in the hands of the chair. We have seen the chair in case 2 – Implementing Greenhouse Gas Strategy – choosing to take the view of an unambitious plurality over a split ambitious majority (page 119). It cannot be excluded that some chairs may have the view that, while all states are equal, some states are more equal than others. This will give some states' opinions more weight. However, when the chair/secretariat does not give priority to "important" states, decisions that are more democratic – reflecting the positions of a wider range of delegations – can be taken even in contradiction of "important" states. Whom to listen to is a choice that depends on the chair/secretariat. The chair will normally give the floor to any delegations asking for it. However, it is not given that every opinion expressed will be reflected in the chair's summary or conclusion. Therefore, the choices manifested in the chair's concluding remarks are a means of granting influence. These concluding remarks can be established as conclusions in the report that is adopted on the Friday, and thus determine future developments. Sometimes influence may be granted only to those delegations who are a party to the convention that is expected to incorporate the decision being taken (personal communication 14); at other times all delegations and even INGOs may be included in the count. The cases have even shown situations where the chair has granted influence to specific delegations, for instance those that represent some traditional "great powers" (as in case 2 – see page 118), or to individuals with personal status as in the case of the compromise ballast water text suggested by INTERTANKO (see page 97).

Moreover, we have seen the same chair adopt different criteria for different situations. As we saw during the MEPC 75 debate about the short-term measures, which is described on page 121ff, it was clear that the chair's judgment as to when a sufficient majority had been reached for a material decision (where 39 delegations rejected, and 45 accepted), was not the same as the same chair's judgment on the procedural request for debate, which was rejected although supported by 18 and opposed by 7.

In effect, a chair can under some circumstances change what counts as consensus, apparently depending on the chair's sense of the issues and of the room. In the end it is the chair who selects the one(s) who decide. This includes the possibility of a solution proposed by the chair. Thus, the chair can also define outcomes and craft agreements that lie outside the preferences of any of the participants.

The influence of the chair/secretariat flows partly from institutional processes that give structural power, executive influence and hierarchical position. When a chair sums up, a decision must be made. The chair can present the group with either material, procedural or symbolic decisions. Especially if no clear consensus exists, procedural or symbolic decisions can be relatively easy to adopt. In the same situation the chair can alternatively suggest a material option as the only alternative to failure. This choice between a procedural, a symbolic or a material decision is up to the chair/secretariat. The choice of the content of the decision is also up to the chair/secretariat.

The influence of the chair/secretariat flows also from the political economy of shipping. In the absence of a material IMO regulation a rule will eventually emerge covering all ships that must trade globally. The risk associated with this will usually generate sufficient pressure for the proposal from the chair to be accepted by most states because inaction is, in the long term, not viable. Such decisions will then invariably be presented as successes.

Answering the research question

The research question:

How are outcomes determined in international organisations like the International Maritime Organization, that have both state and non-state participants?

Is answered:

Outcomes are determined in the IMO by a process of reduction of alternatives to a single take-it-or-leave-it option or failure, and the chair/secretariat has a central role in determining which alternative to present. The chair/secretariat is not limited to finding median views but can impose a single choice of an outcome even one that is not desired by any delegation. The process has its own dynamic that ensures that decisions will usually be reached. Negotiations in the IMO thus have the potential to break through the stalemates that impede many other international negotiations on climate issues.

Implications

My observations have shown that active creation of outcomes by chairs is possible and actually occurs. My conclusion that the chair can override the preferences of states and independently generate proposals for outcomes, that do not coincide with any delegations' preferences, should encourage examination of how general such a phenomenon could be. In the IMO it is associated with the firm general agreement among the participants, that regulation of shipping should take place in the IMO. This follows from the characteristics of shipping that ensure that for any generally recognised problem some rule will have to emerge if no regulation is adopted in the IMO. There is thus a practical impossibility of states (and ships) to opt out of the IMO as the

regulating body for shipping. The fact that IMO can generate rules that anyone may implement against any ship creates an endogenic enforcement mechanism, and the fact that no unanimity is required to adopt these rules, gives power to the organisation and thus the chair.

Methodological conclusions

My combination of participant observation with analysis of the statements and submissions to the committees and working groups has shown that this method has advantages that are similar to those of the methodology for systematic analysis of delegates and delegations used by others such as for instance Block-Lieb & Halliday in "Global lawmakers: International organizations in the crafting of world markets" (2017). They noted that only a small core of high-attendance delegations and delegates actually draft the legal texts and observed that these active delegations were weighted toward the Global North that has the material resources necessary. They also observed the role of the secretariat in informal talks and that of the chair in making decisions about when consensus is reached. Block-Lieb & Halliday note that the "best chairs guide the group to a consensual resolution of contested issues". However, even unsuitable chairs can achieve resolution of issues. The processes by which either form of outcome was created in these cases were similar, and in some instances not the process would not have been easily discernible from outside the negotiation. This has shown that the central position of the chair and secretariat can be obscured by the more obvious actions of states, so that observations of interactions of delegations with the chair and secretariat are desirable to ascertain how the specific outcomes are arrived at. My observations were facilitated by my presence as an active negotiator in one of the most active delegations which afforded me corresponding access.

My methodology rests on a long period of observation and active participation in the negotiations, initially as a CESA delegate. Later, as Solomon Islands delegate, I was included in informal negotiations to a greater extent than I had been as CESA delegate. However, I still did not have access to all of the informal fora, as some informal contacts are limited to delegations that are aligned on the issue in question. As CESA, I was considered neutral and had an equal access to all delegations, but only for issues where the expertise of my delegation was considered important. Other observers with wider expertise – notably IACS and IMarEST – will have a neutral observer's access to more delegations on more issues and might be aware of activity that I may have overlooked. An added factor for the active participant observer, is that most of the personal effort and time must be put into aspects that are central to the delegation one is part of. This can result in more superficial consideration of issues that are important to other delegations and may result in a misreading of the negotiation. It was apparent to me as I changed delegation that the changes in access and perspective that I experienced confirmed that the process looks different for every observer. It would thus seem to be desirable to have multiple simultaneous close observations of negotiations, preferably from within active delegations. By focussing on the actions of active delegations, the conclusions are likely to be generalisable to several international organisations as well as also revealing the impact of the actions of individuals.

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Annex A. Abbreviations

BRICS	Brazil, Russia ⁵⁵ , India, China, South Africa
B-INGO	Business International Non-Governmental Organisation
BWMC	Ballast Water Management Convention
BWMS	Ballast Water Management System
CBDR	Common but Differentiated Responsibilities
CO ₂	Carbon Dioxide
COP	Conference of the Parties of UNFCCC
CSC	Clean Shipping Coalition
ECOSOC	Economic and Social Council
EEDI	Energy Efficiency Design Index
e-INGO	Environmental International Non-Governmental Organisation
EU	European Union
GHG	Greenhouse Gas
IMO	International Maritime Organization ⁵⁶
INGO	International Non-Governmental Organisation
IPCC	Intergovernmental Panel on Climate Change
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPC	Marine Environment Protection Committee
MSC	Maritime Safety Committee
INGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PSIDS	Pacific Small Island Developing States
SEEMP	Ship Energy Efficiency Management Plan
SIDS	Small Island Developing States
SOLAS	Safety of Life at Sea Convention
UNCLOS	United Nations Convention on the Law of the Sea

⁵⁵ The Russian Federation, is referred to as 'Russia', which fits better into the tables and figures

⁵⁶ When the word 'organisation' appears in a name I spell it with 'z' if the organisation itself does. When I use the word, I spell it with an 's' in accordance with British English rules.

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Annex D. List of INGOs

List of Business INGOs

Acronym	Name
ACOPS	Advisory Committee on Protection of the Sea
AMPP	Association for Materials Protection and Performance Inc.
ASEF	Active Shipbuilding Experts' Federation
BEMA	Ballastwater Equipment Manufacturers' Association
BIMCO	BIMCO
CEFIC	European Chemical Industry Council
CESA	CESA
CIRM	Comité International Radio-Maritime
CLIA	Cruise Lines International Association
DGAC	Dangerous Goods Advisory Council
EUROMOT	The European Association of Internal Combustion Engine and Alternative Powertrain Manufacturers
FONASBA	The Federation of National Associations of Ship Brokers and Agents
IADC	International Association of Drilling Contractors
IBIA	International Bunker Industry Association
IBTA	International Bulk Terminals Association
ICC	International Chamber of Commerce
ICOMIA	International Council of Marine Industry Associations
ICS	International Chamber of Shipping
IEC	International Electrotechnical Commission
IICL	Institute of International Container Lessors
IIMA	International Iron Metallics Association Ltd.
ILAMA	International Life-saving Appliance Manufacturers' Association
IMCA	International Marine Contractors Association
INTERCARGO	International Association of Dry Cargo Shipowners
INTERFERRY	INTERFERRY
InterManager	International Ship Managers' Association
INTERTANKO	International Association of Independent Tanker Owners
IOGP	International Association of Oil & Gas Producers
IOI	International Ocean Institute
IPCSA	International Port Community Systems Association
IPIECA	IPIECA Limited
IPTA	International Parcel Tankers Association
ISSA	International Shippers' & Services Association
ISU	International Salvage Union
ITTC	International Towing Tank Conference
IUMI	International Union of Marine Insurance
IVODGA	International Vessel Operators Dangerous Goods Association, Inc.
IWMA	International Water Mist Association
IWSA	The International Windship Association
OCIMF	Oil Companies International Marine Forum
SGMF	Society for Gas as a Marine Fuel Ltd.
SIGTTO	Society of International Gas Tanker and Terminal Operators Ltd.
SYBAss	Superyacht Builders Association

Acronym	Name
World Coatings Council	World Coatings Council
WSC	World Shipping Council
ZESTAs	Zero Emissions Ship Technology Association

Source: own selection from IMO website

<https://www.imo.org/en/OurWork/ERO/Pages/NGOsInConsultativeStatus.aspx>

List of most active civil society INGOS

Acronym/short name	Name
CSC	Clean Shipping Coalition
EDF	Environmental Defence Fund
FOEI	Friends of the Earth International
Greenpeace	Greenpeace International
ICC	Inuit Circumpolar Council
ICMA	International Christian Maritime Association
IFAW	International Fund for Animal Welfare
IFSMA	International Federation of Shipmasters' Associations
IHMA	International Harbour Masters' Association
IPEN	International Pollutants Elimination Network
ITF	International Transport Workers' Federation
Pacific Environment	Pacific Environment
RINA	The Royal Institution of Naval Architects
WWF	the World Wide Fund for Nature

Source: own selection from IMO website <https://www.imo.org/en/OurWork/ERO/Pages/NGOsInConsultativeStatus.aspx>

Annex E. IMO documents cited

IMO documents are listed in the bibliography under the name of the submitter, or if issued by the secretariat by their IMO identification number. Additionally, all the IMO documents cited are listed in this Annex by their IMO identification number.

Document	Content
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A 25/11/1	Implementation of the Ballast Water Management Convention. (2007, August 21). IMO Secretariat.
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A 25/Res.1005	Application of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004. (2007, November 29). IMO Secretariat.
A 25/SR.5	Summary Record of the Fifth Plenary Meeting of the IMO Assembly 25 th Session. (2007, November 29). IMO Secretariat.
BLG 11/16	Report to the Maritime Safety Committee and the Marine Environment Protection Committee. (2007, May 11). IMO Secretariat.
BLG 11/4/14	Implementation of the Ballast Water Management Convention. ICS. (2007b, February 23).
BLG 11/4/3	Legal opinion on certain issues concerning the Ballast Water Management Convention. (2007, January 25). IMO Secretariat.
BLG 11-WP.1	Draft Report to The Maritime Safety Committee and The Marine Environment Protection Committee (2007, April 20). IMO Secretariat.
BLG 17/18	Report to the Maritime Safety Committee and The Marine Environment Protection Committee. (2013, February 8). IMO Secretariat.
BLG 17/4	Implementation of PSC in absence of agreed IMO sampling guidelines. Bahamas, Greece, Japan, Liberia, Panama, ICS, BIMCO, INTERTANKO, SIGTTO, INTERCARGO, & InterManager. (2012, November 30).
BLG 17/WP.4	Report of the working group. (2013, February 8). IMO Secretariat.
BWM/CONF/14	Ballast Water Discharge Standards, Regulation D-2. United States. (2004, January 5).
BWM/CONF/36	International Convention for the Control and Management of Ships' Ballast Water and Sediments, Text adopted by the Conference. (2004). IMO Secretariat.
GHG-EW 3/3	Preliminary expert review of the technical and economic elements, and their possible combinations, of the proposals for candidate mid-term GHG reduction measures. UNCTAD. (2023, May 19).
ISWG-GHG 1/1/1	Annotations to the provisional agenda, provisional list of documents and provisional timetable. (2017, May 31).
ISWG-GHG 5/J/6	Collation of Information Regarding Candidate Short-Term Measures. (2019, August 5). IMO Secretariat.
ISWG-GHG 7-INF.1	List of Participants. (2021, March 18). IMO Secretariat.
MEPC 46/23	Report of the Marine Environment Protection Committee on Its Forty-Sixth Session. (2001, May 16). IMO Secretariat.

Document	Content
MEPC 51/WP.6	Report of the Working Group (Working Group). (2004, March 31). IMO Secretariat.
MEPC 53/24	Report of the Marine Environment Protection Committee on Its Fifty-Third Session (secretariat).pdf. (2005, July 25). IMO Secretariat.
MEPC 53/WP.1	Report of the Ballast Water Working Group. (2005, July 15). IMO Secretariat.
MEPC 54/2/4	Possible consequences of the review pursuant to regulation D-5 of the Convention at MEPC 55. ICS. (2006, January 13).
MEPC 55/23	Report of the Marine Environment Protection Committee on Its Fifty-Fifth Session. (2006, October 16). IMO Secretariat.
MEPC 55/WP.4	Report of the Ballast Water Review Group. (2006, October 11). IMO Secretariat.
MEPC 55/WP.9 Add.1	Draft Report of the Marine Environment Protection Committee on Its Fifty-Fifth Session. (2006, October 12). IMO Secretariat.
MEPC 56/23	Report of the Marine Environment Protection Committee on Its Fifty-Sixth Session. (2007, July 30). IMO Secretariat.
MEPC 56/WP.4	Report of the Ballast Water Review Group. (2007, July 11). IMO Secretariat.
MEPC 59/2/18	Consideration on the availability of Ballast Water Management System for ships constructed in 2010 subject to regulation B-3.3. Japan. (2009, April 9).
MEPC 59/24 Add.1	Report of the Marine Environment Protection Committee on Its Fifty-Ninth Session. (2009, July 28). IMO Secretariat.
MEPC 60/22	Report of the 60 th session of the MEPC. (2010, April 12). IMO Secretariat.
MEPC 61/2/18	Considerations for the Review Group. ICS. (2010, July 23).
MEPC 62/2/17	Considerations for the Review Group. ICS. (2011, May 6).
MEPC 63/23	Report of the Marine Environment Protection Committee on Its Sixty-Third Session. (2012, March 14). IMO Secretariat.
MEPC 63/INF.11	Preview of global ballast water treatment markets. IMarEST. (2011, December 23).
MEPC 64/2/10	Updated data and information on the status of ballast water management system installation. Japan. (2012, July 27).
MEPC 64/2/15	Monitoring and sampling of certain ballast water management systems. Germany. (2012, July 27).
MEPC 64/2/16	Considerations for a practical implementation of the BWM Convention (ICS). ICS. (2012, July 27).
MEPC 64/2/18	Challenges to effective implementation of the BWM Convention. Liberia, the Marshall Islands, Panama, BIMCO, INTERTANKO, CLIA, INTERCARGO, InterManager, IPTA, NACE, & WSC. (2012, July 27).
MEPC 64/23	Report of the Marine Environment Protection Committee on Its Sixty-Fourth Session. (2012, October 11). IMO Secretariat.
MEPC 65/2/11	Report of the Correspondence Group on the Assembly resolution on Application of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004. (2013, February 8). IMO Secretariat.
MEPC 65/2/18	Legal advice on the draft Assembly resolution on the application of the BWM Convention. (2013, March 8). IMO Secretariat.
MEPC 65/22	Report of the Marine Environment Protection Committee on Its Sixty-Fifth Session. (2013, May 24). IMO Secretariat.

Document	Content
MEPC 68/21	Report of the Marine Environment Protection Committee on Its Sixty-Eighth Session (Secretariat). (2015, May 29). IMO Secretariat.
MEPC 70/18	Report of the Marine Environment Protection Committee on Its Seventieth Session. (2016, November 11). IMO Secretariat.
MEPC 70/18/Add.1 Annex 14	Rules of procedure of MEPC adopted at MEPC 70. (2016, November 11). IMO Secretariat.
MEPC 71/7	Proposal on the development of the comprehensive IMO Strategy on reduction of GHG emission... China & India. (2017, March 31).
MEPC 72/17	Report of the Marine Environment Protection Committee on Its Seventy-Second Session. (2018, May 3). IMO Secretariat.
MEPC 72/17/Add.1 Annex 11	Initial IMO Strategy on Reduction of GHG Emissions from Ships, Resolution MEPC.304(72). (2018, April 13). IMO Secretariat.
MEPC 72/17/Add.1 Annex 16	Statements by Delegations and Observers. (2018, May 18). IMO Secretariat.
MEPC 72/7	Report of the second meeting of the Intersessional Working Group on Reduction of GHG emissions from ships (ISWG-GHG 2). (2017, November 3). IMO Secretariat.
MEPC 72/WP.5	Report of the third meeting of the Intersessional Working Group on Reduction of GHG emissions from ships (ISWG-GHG 3). (2018, April 9). IMO Secretariat.
MEPC 72/WP.7	Report of the Working Group on Reduction of GHG emissions from ships. (2018, April 12). IMO Secretariat.
MEPC 73/19/Add.1 Annex 9	Programme of Follow-up Actions of the Initial Imo Strategy on Reduction of GHG Emissions from Ships up to 2023. (2018, December 5). IMO Secretariat.
MEPC 74/18	Report of the Environment Protection Committee on Its Seventy-Fourth Session. (2019, June 9). IMO Secretariat.
MEPC 74/18/Add.1	Report of the Environment Protection Committee on Its Seventy-Fourth Session. (2019, June 9). IMO Secretariat.
MEPC 74/J/8	Revised terms of reference for the working group on reduction of GHG emissions from ships. (2019, May 15). IMO Secretariat.
MEPC 74/WP.2	Provisional terms of reference for the working and drafting groups to be established during MEPC 74. (2019, May 13). IMO Secretariat.
MEPC 74/WP.6	Report of the fifth meeting of the Intersessional Working Group on Reduction of GHG emissions from ships (ISWG-GHG 5). (2019, May 10). IMO Secretariat.
MEPC 75/18	Report of the Marine Environment Protection Committee on Its Seventy-Fifth Session. (2020, December 15). IMO Secretariat.
MEPC 75/7/15	Fourth IMO GHG Study 2020 – Final report. (2020, July 29). IMO Secretariat.
MEPC 75/7/17	Comments on the Fourth IMO GHG Study 2020 and Encouraging Further Ambitious Action to Reduce GHG Emissions. Marshall Islands & Solomon Islands. (2020, September 25).
MEPC 76/15	Report of the Marine Environment Protection Committee on Its Seventy-Sixth Session. (2021, July 12). IMO Secretariat.
MEPC 76/15 Add 2 Annex 14	Work Plan for Development of Mid- and Long-Term Measures as a Follow-up of the Initial Imo Strategy on Reduction of GHG Emissions from Ships. (2021, July 12). IMO Secretariat.
MEPC 76/7/12	Proposal for IMO to establish a universal mandatory greenhouse gas levy. Marshall Islands & Solomon Islands. (2021, March 10).

Document	Content
MEPC 76/7/13	Comprehensive impact assessment of the short-term measure approved by MEPC 75. (2021, April 14).
MEPC 76/7/5	Report of the Correspondence Group on the Development of Technical Guidelines on Carbon Intensity Reduction (TOR 2). China, Japan, & European Commission. (2021, March 10).
MEPC 76/WP 4	Report of the eighth meeting of the Intersessional Working Group on Reduction of GHG Emissions from Ships (ISWG-GHG 8). (2021, June 10). IMO Secretariat.
MEPC 77/16	Report of the Marine Environment Protection Committee on Its Seventy-Sixth Session. (2021, December 16). IMO Secretariat.
MEPC 77/WP7	Report of the tenth meeting of the Intersessional Working Group on Reduction of GHG Emissions from Ships (ISWG-GHG 10). (2021, November 15). IMO Secretariat.
MEPC 78/WP.6	Report of the twelfth meeting of the Intersessional Working Group on Reduction of GHG Emissions from Ships (ISWG GHG 12). (2022, June 1). IMO Secretariat.
MSC 97/22	Report of the Maritime Safety Committee on Its Ninety-Seventh Session. (2016). IMO Secretariat.
SSE 4/WP.5	Report of the Working Group. (2017, March 23). IMO Secretariat.

Annex F. Empirical material

These are my anonymised notes from IMO meetings, conversations and interviews: For each of the longer interviews I have sent the contents quoted below to the interviewee for confirmation.

N°	Date	Note main content	Anonymised Source
1	multiple	I would agree that with a smart combination of newbuilding, retrofitting incl. direct use of renewable energies and operational measures we can achieve a lot. And a potential bottleneck in shipyard capacity can be compensated by sufficient availability of alternative fuels, which could also be drop-in fuels not requiring new or modified ships.	longstanding representative of B-NGO
2	multiple	CESA (as any NGO) maintains relations with members as a high priority. It is important to be able to report successes in a manner that members can understand.	longstanding representative of B-NGO
3	10/04/2018	BWM systems do not work in reality. They require too much handling and adjustment. The rule makers are naïve, and thus it is difficult to implement them. I am at the IMO to observe, not to negotiate.	'industry'
4	20/10/2019	Climate negotiations have had a completely different dynamic where there may have been more tendencies that it is always the same who act together. differentiate if you are a big flag state – if there are some countries that need to implement this for a lot of ships, so it is very interesting. NGOs are formally only observers in the IMO, they can certainly have a big impact, but I would say their legitimacy depends a lot on how much expertise they bring someone who represents shipping - ICS BINCO INTERTANKO. someone who represents civil society. which are green NGOs. some that are very specific to us like IACS and IMarEST. They have different kinds of influences a case example: Sulphur was a regulatory technicality in reality the decision was made in 2008	national delegate
5	09/04/2021	ICS and WSC has their own voice in the deliberations, and has access to the secretariat and the chairs without needing any state as intermediary	senior member of secretariat
6	22/04/2021	I have been attending IMO meetings since 1991 and remember when Ian Finlay sat behind the Panama flag, but I don't recollect the details of his move to the Cooks. At that time there was a general push by IMO and the open registries to clean up their act and try and shake off the FoC tag. It's around this time I think that the flag state audits started, and I had always assumed that Panama just decided it was a better look to have nationals representing them. The Cooks are into offshoring of all sorts, so a FoC is quite a good fit!	leading representative of e-NGO
7	04/07/2021	Developing country must have an official document as the basis for any policy or policy change. Thus, a formal submission is necessary for even to ask to a mandate,	member of a Developing country Delegation
8	13/08/2021	My government does not always accept the evaluations of industry. Even when agreeing on preferable outcomes they may adopt different positions.	'industry'

Nº	Date	Note main content	Anonymised Source
9	20/08/2021	WSC and ICS do not always follow the high ambition goals of Mærsk.	'industry'
10	20/08/2021	The secretariat will prepare the chair for the meeting with speaking notes and often proposed conclusions	senior member of secretariat
11	21/09/2021	SG was not convinced that COP 26 would adopt a resolution to fully decarbonize by 2050. He felt no pressure from COP-Secretariat confirmed that Zero-by-2050 would be an issue.	very senior member of secretariat
12	21/09/2021	Votes should not be taken in MEPC, as the EEDI experience showed that progress was blocked for years after a divisive vote	very senior member of secretariat
13	21/09/2021	The secretariat was initiating 'informal' conversations involving a number of countries but indicated that SOLS (and RMI) did not come across as willing to negotiate but only as supporters of the European position, and this was – probably - why we were not invited by others.	very senior member of secretariat
14	22/09/2021	The secretariat will remind the chair if any state speaking is not a member of MARPOL.	former senior member of secretariat
15	22/09/2021	The secretariat will prepare the chair for the meeting with speaking notes and often proposed conclusions	former senior member of secretariat
16	22/04/2022	Decision making is getting difficult. You don't have enough time to discuss. It is very difficult to discuss details and keep everybody on the topic by the zoom, objectively speaking, that's 3 hours a day versus a full day.	leading representative of e-NGO
17	22/04/2022	On many occasions we have realized that ICS has access to the documents submitted before we do.	leading representative of e-NGO
18	22/04/2022	The personality of the delegate even for countries like China and Brazil who would normally be influential in their own right is important	leading representative of e-NGO
19	22/04/2022	The way I see it is there are national lines that are drawn. Before any debate. At the EU level, those national lines, I mean, those are drawn by the industry, by the industry or with the input of the industry	leading representative of e-NGO
20	22/04/2022	It seems like regardless of your conviction, your starting point is always the preference of your national industry and what they say, because it's the political process. If you do not promote their interests, you will not be elected next time.	leading representative of e-NGO
21	22/04/2022	IMO is fighting for its reputation. The logical consequence of it is that lowest common denominator approach is being favoured because they want to have a decision.	leading representative of e-NGO
22	27/04/2022	A common perception of why the IMO isn't progressing faster is that it is because industry is the principal obstacle. This is fundamentally wrong. The major challenges we see in the GHG debate is characterized by very fundamental differences among Member States in what approaches they consider appropriate in light of their national circumstances	'industry'

Nº	Date	Note main content	Anonymised Source
23	27/04/2022	As many delegates have observed meeting virtually makes it virtually impossible to negotiate during a given meeting.	former prominent national delegate
24	27/04/2022	Anyone that thinks it would ever be easy coming to agreement on a complex and sensitive issue with 80 plus governments in the world with massively different circumstances is failing to appreciate the very significant challenges involved. To suggest that agreement would unfold easily in these circumstances is simply detached from reality.	former prominent national delegate
25	27/04/2022	On the whole the IMO secretariat performs in a way that a UN secretariat should. They provide outstanding professional support and recognize that the decisions have to be made by the Member States.	former prominent national delegate
26	27/04/2022	Chairs that are skilled exercise the most influence in a given negotiation. This is both good and bad – if the chairman really is not very good, it's frustrating for all concerned. The role of chairpeople is huge in multiple ways. Arguably most important in this context is the ability of the chair to defuse a discussion that is simply a group of States stipulating positions, to a discussion that is characterized by a 'problem solving' approach that encourages the parties to work together in finding an effective global regulatory answer to problems that are inherently complicated – both politically and economically.	former prominent national delegate
27	27/04/2022	A number of the environmental NGOs have adopted an approach that many perceive as shrill and undiplomatic. This approach may be reinforced within a given organization, and it may even attract funding, but it does not encourage cooperative engagement in addressing the serious problems we must find solutions for.	former prominent national delegate
28	29/04/2022	The moment that a topic makes it to the agenda, you know, that there's going to be an outcome. Most of the time it is generally predictable	senior member of secretariat
29	29/04/2022	The secretariat will know which way the discussion is going to go and needs to provide options to the chair.	senior member of secretariat
30	29/04/2022	Some chairs have so much experience that the Secretariat can actually let the chair lead the meeting. We have other chairs where more help is necessary.	senior member of secretariat
31	29/04/2022	I have never really seen the flag states in the driver's sea	former prominent national delegate
32	29/04/2022	The Secretary-General is the only one that in the middle of a discussion can actually guide which way we go.	former prominent national delegate
33	29/04/2022	Personality makes a big difference. Without instruction delegates can sometimes intervene more freely, but when non-nationals are leading delegations, it seems not all comments are actually from the capital	former chair
34	29/04/2022	We avoid a formal vote. you don't call the interventions a vote. But basically, it is you go with the majority.	former chair

Nº	Date	Note main content	Anonymised Source
35	11/05/2022	A BWMC alternative text was developed during MEPC 70 by INTERTANKO, ICS and WSC. At an informal dinner hosted by INTERTANKO the UK and Norway (Sveinung Oftedal who chaired the relevant Sub-Committee) accepted to develop a compromise text between this and the (large) minority text.	prominent former delegate from industry
36	11/05/2022	Liberia ratified the Ballast Water Management Convention early. This was due to the ICS board believing that if the ballast water treaty came into force, then the U.S. would not go with unilateral action.	former prominent national delegate
37	08/08/2022	For the Strategy there was no working group or informal forum that brought delegations together.	chair
38	09/11/2022	We strive for consensus because you don't want anybody walking away from the table thinking they lost	former chair
39	09/11/2022	it's a good thing we don't have the kinds of blocks that we have in the U.N.	former chair
40	09/11/2022	I don't think the chair has that much influence unless the issue is split almost the same on both sides	former chair
41	09/11/2022	The chair can allow not to make a decision at one point, but to try to consider it further. There are times when that is inevitable because there will not be a good outcome. Then we will be better off trying to salvage something out of the situation	former chair
42	09/11/2022	you gain influence through your contribution to the work and then gradually you build some sort of respect from your colleagues.	former prominent national delegate
43	09/11/2022	it's never really between two countries	former prominent national delegate
44	09/11/2022	There is a core of members that keep themselves engaged in practically every conversation.	former prominent national delegate
45	09/11/2022	The good thing about working groups is that it allows people to be more informal to understand the rationale behind positions.	former prominent national delegate
46	09/11/2022	With virtual meetings you had very limited time. I think that was one of our biggest enemies, having 3 hours within which to do everything	former prominent national delegate
47	09/11/2022	There can be a difference in influence from in the constitution of delegations. But the size of the delegation doesn't have anything to do with it.	former prominent national delegate

Nº	Date	Note main content	Anonymised Source
48	25/07/2024	The IMO secretary general submitted a paper with a solution that we thought could not succeed. I got in touch with other governments, and we basically had agreed before the Assembly that we would just convene informally. We went from the small group of maybe 20 or 30, and when we had something, we opened an informal working group session where there were probably 200 delegates. We then took it to the Committee 2 to set up a formal working group. The secretary general had decided (for political reasons) to have an ambassador be the chairman of that working group. But there was a very clear support for me to present the solutions to the plenary and so to chair the working group. We had a solution, and I didn't want to allow for any debate if we could help it.	Former national delegate USA

Additional, not published data:

[E-mails Dataset] (2023) E-mails from IMO climate negotiations.

These emails were sent at the time of the negotiations and document the Solomon Islands' and the Marshall Islands' protests at the chair's differential treatment of minorities, and ability to override majorities.

Clean Shipping Coalition to IMO Secretary General Kitack Lim
Demarche to chair - progressing work in MEPC 76
Ishoda demarche to chair
author's email 2020 e-mail re: count in favour or against 7-17

Available at DOI: <https://zenodo.org/records/13925589>

[Notes Dataset] (2023) Michael Prehn Notes from IMO meetings, conversations and interviews.

These notes were taken in my role as a delegate but are similar to fieldnotes.

Michael Prehn notes on 3 days of ISWG-GHG 7
Michael Prehn Notes on the split at ISWG-GHG 7
Notes on the 'Trust Group'
Michael Prehn unpublished Notes from MEPC 56

Available at DOI: <https://zenodo.org/records/12923263>

[Reports Dataset] (2023) Michael Prehn unpublished Reports from IMO meetings.

These are reports sent by me initially to CESA and later to Solomon Islands as delegate.

Report from ISWG-GHG 1
Report from ISWG-GHG 2
Report from ISWG-GHG 3
Report from ISWG-GHG 4 and MEPC 73
Report from ISWG-GHG 5 and MEPC 74
Report from ISWG-GHG 6
Report from ISWG-GHG 7

Report from MEPC 75

Report from MEPC 76

Available at DOI: <https://zenodo.org/records/13925580>

[Transcripts Dataset] (2023) Transcripts of interventions in IMO meetings.

These are transcripts of excerpts from the audio files on the imodocs website.

ISWG-GHG 5 Transcript Levy-Rapoport

MEPC 74 Transcript Audio 15 May 2019 Afternoon Session 14.31 - Item 7- ToR

MEPC 74 Transcript Audio 15 May 2019 Morning Session 11.34

ISWG GHG 7 transcript Monday 19th October 2020

MEPC 76 Transcript Audio 15 June 2021 • Morning session 12.38

C-ES 34 Transcript Audio 8 November 2021 Agenda Item 15 External Relations

Chairs summary ISWG-GHG 7 Available at DOI: <https://zenodo.org/records/13925554>

[informal meetings Dataset] (2023) 'Informal GHG Meetings by ICS'.

Contains two reports and one agenda for informal meeting hosted by ICS

Informal GHG Meeting 1 - 03 June 2020 - report

Informal GHG Meeting 2 - 14 May 2020 - report

Informal GHG Meeting 3 - 11 June 2020 – agenda

Available at DOI : <https://zenodo.org/records/8271793>

[Sv-Reports Dataset] (2023) 'Reports of meetings in IMO received from Sweden'.

Contains official reports from Swedish negotiator at the IMO

Transportstyrelsen S 2017 Rapport från ISWG-GHG 1

Transportstyrelsen S 2017 Rapport från ISWG-GHG 2

Transportstyrelsen S 2018 Rapport från MEPC 72 samt ISWG-GHG 3

Transportstyrelsen S 2018 Rapport från MEPC 73 samt ISWG-GHG 4

Transportstyrelsen S 2020 Rapport från MEPC 74 samt ISWG-GHG 5

Sjöfartsverket Rapport MEPC t 55

Sjöfartsinspektionen, Rapport BLG 11

Available at DOI: <https://zenodo.org/records/13925543>

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TITLER I PH.D.SERIEN:

– *a Field Study of the Rise and Fall of a Bottom-Up Process*

2004

1. Martin Grieger
Internet-based Electronic Marketplaces and Supply Chain Management
2. Thomas Basbøll
*LIKENESS
A Philosophical Investigation*
3. Morten Knudsen
*Beslutningens vaklen
En systemteoretisk analyse af moderniseringen af et amtskommunalt sundhedsvæsen 1980-2000*
4. Lars Bo Jeppesen
*Organizing Consumer Innovation
A product development strategy that is based on online communities and allows some firms to benefit from a distributed process of innovation by consumers*
5. Barbara Dragsted
*SEGMENTATION IN TRANSLATION AND TRANSLATION MEMORY SYSTEMS
An empirical investigation of cognitive segmentation and effects of integrating a TM system into the translation process*
6. Jeanet Hardis
*Sociale partnerskaber
Et socialkonstruktivistisk casestudie af partnerskabsaktørers virkelighedsopfattelse mellem identitet og legitimitet*
7. Henriette Hallberg Thygesen
System Dynamics in Action
8. Carsten Mejer Plath
Strategisk Økonomistyring
9. Annemette Kjærgaard
Knowledge Management as Internal Corporate Venturing
10. Knut Arne Hovdal
*De professionelle i endring
Norsk ph.d., ej til salg gennem Samfundslitteratur*
11. Søren Jeppesen
*Environmental Practices and Greening Strategies in Small Manufacturing Enterprises in South Africa
– A Critical Realist Approach*
12. Lars Frode Frederiksen
*Industriel forskningsledelse
– på sporet af mønstre og samarbejde i danske forskningsintensive virksomheder*
13. Martin Jes Iversen
*The Governance of GN Great Nordic
– in an age of strategic and structural transitions 1939-1988*
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A study of the first fifteen years with special emphasis on genre and irony*
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– a Weberian Analysis of Three Formalised Horizontal Networks*
17. Lene Nielsen
Engaging Personas and Narrative Scenarios – a study on how a user-centered approach influenced the perception of the design process in the e-business group at AstraZeneca
18. S.J Valstad
*Organisationsidentitet
Norsk ph.d., ej til salg gennem Samfundslitteratur*

19. Thomas Lyse Hansen
Six Essays on Pricing and Weather risk in Energy Markets
 20. Sabine Madsen
Emerging Methods – An Interpretive Study of ISD Methods in Practice
 21. Evis Sinani
The Impact of Foreign Direct Investment on Efficiency, Productivity Growth and Trade: An Empirical Investigation
 22. Bent Meier Sørensen
Making Events Work Or, How to Multiply Your Crisis
 23. Pernille Schnoor
Brand Ethos
Om troværdige brand- og virksomhedsidentiteter i et retorisk og diskursteoretisk perspektiv
 24. Sidsel Fabech
Von welchem Österreich ist hier die Rede?
Diskursive forhandlinger og magtkampe mellem rivaliserende nationale identitetskonstruktioner i østrigske pressediskurser
 25. Klavs Odgaard Christensen
Sprogpolitik og identitetsdannelse i flersprogede forbundsstater
Et komparativt studie af Schweiz og Canada
 26. Dana B. Minbaeva
Human Resource Practices and Knowledge Transfer in Multinational Corporations
 27. Holger Højlund
Markedets politiske fornuft
Et studie af velfærdens organisering i perioden 1990-2003
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Om mellemværendets praktik i en transformation af mennesket og subjektiviteten
 29. Sine Nørholm Just
The Constitution of Meaning – A Meaningful Constitution?
Legitimacy, identity, and public opinion in the debate on the future of Europe
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1. Claus J. Varnes
Managing product innovation through rules – The role of formal and structured methods in product development
 2. Helle Hedegaard Hein
Mellem konflikt og konsensus
– Dialogudvikling på hospitalsklinikker
 3. Axel Rosenø
Customer Value Driven Product Innovation – A Study of Market Learning in New Product Development
 4. Søren Buhl Pedersen
Making space
An outline of place branding
 5. Camilla Funck Ellehave
Differences that Matter
An analysis of practices of gender and organizing in contemporary workplaces
 6. Rigmor Madeleine Lond
Styring af kommunale forvaltninger
 7. Mette Aagaard Andreassen
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 8. Caroline Aggestam-Pontoppidan
From an idea to a standard
The UN and the global governance of accountants' competence
 9. Norsk ph.d.
 10. Vivienne Heng Ker-ni
An Experimental Field Study on the

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| | <i>Effectiveness of Grocer Media Advertising</i>
<i>Measuring Ad Recall and Recognition, Purchase Intentions and Short-Term Sales</i> | | <i>An empirical study employing data elicited from Danish EFL learners</i> |
| 11. | Allan Mortensen
<i>Essays on the Pricing of Corporate Bonds and Credit Derivatives</i> | 20. | Christian Nielsen
<i>Essays on Business Reporting</i>
<i>Production and consumption of strategic information in the market for information</i> |
| 12. | Remo Stefano Chiari
<i>Figure che fanno conoscere</i>
<i>Itinerario sull'idea del valore cognitivo e espressivo della metafora e di altri trofi da Aristotele e da Vico fino al cognitivismo contemporaneo</i> | 21. | Marianne Thejls Fischer
<i>Egos and Ethics of Management Consultants</i> |
| 13. | Anders McIlquham-Schmidt
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