1 The IMO and Global Ocean Governance: Past, Present, and Future

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Past, Present, and Future

A. Origins and Establishment of the IMO

In the closing years of the Second World War and in its immediate aftermath, a sequence of bodies was established to consider matters relating to maritime transport, culminating in the creation of the United Maritime Consultative Council (UMCC). Its advice was sought by the UN Secretary-General regarding the possibility of establishing a universal inter-governmental organization dealing with technical matters. The role of such a body was expressed in such a narrow way because of the well-known opposition of some states to the possible interference by a body of this nature in issues they regarded as of domestic and commercial concern.

The UMCC was to have a limited life span until the end of October 1946 but, at its last session in that month, it recommended the establishment of an inter-governmental consultative organization in the terms appended. Mindful of the concerns of many states that the institution might adopt an interfering role in matters they regarded as of domestic concern, the UMCC made it quite clear that the new institution was to be a consultative and advisory body to enhance cooperation amongst its members.

The Convention for the creation of the International Maritime Organization (IMO)\(^1\) was adopted at a diplomatic conference held in Geneva in 1948 under the auspices of the United Nations Economic and Social Council (ECOSOC). However, the twenty-one ratifications required by Article 60\(^2\) to bring the Convention into force were slow in coming, due in large measure to the continuing concerns of some states that the treaty would lead to interference with their own national shipping industries and their domestic legislation, particularly in matters of a purely commercial or economic nature. This led a number of states to register reservations or declarations together with their instruments of ratification. The cumulative effect of this was to restrict the IMO’s areas of activity and to ensure that, when the Convention eventually entered into force on 17 March 1958, the IMO was effectively precluded from engaging in such matters. Hence, its activities were to be confined to issues involving international shipping, in particular those concerning maritime safety and the efficiency of navigation.

B. Mandate and Purposes of the IMO

The IMO derives its mandate from several sources, including Article 1 of the Convention, paragraph (a) of which stipulates that among the purposes of the IMO are:

To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting international shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters of maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related thereto.

This provision might suggest that the IMO, in light of its original title, should operate mainly as a consultative body. Article 3(c) of the Convention is similarly limited in what the IMO is entitled to do in requiring it to ‘provide machinery for consultation among members and the exchange of information among Governments’. However, the subsequent expansion of the IMO’s role was foreshadowed in Article 3(b) of its constitution, whereby it was to
provide for the drafting of conventions, agreements or other suitable instruments, and to recommend these to Governments and to international organizations, and to convene such conferences as may be necessary’.

It became apparent over time that the IMO was playing an increasingly regulatory role. By 1975, it was clear that the IMO had outgrown not only its original name but also its function solely as a consultative body. These changes were given official recognition by the Assembly of the IMO in Resolution A.358(IX); IMCO had come of age and henceforth was not only to be known as the IMO but was also endowed with full capacity to develop and adopt regulations designed to secure the aims and objectives of the IMO, in particular, the safety of international shipping and the protection of the marine environment.

So far, the IMO has developed over fifty conventions, nearly all of which are in force and which regulate not only safety and navigational matters but also matters such as the control of marine pollution from ships, liability and compensation, and maritime security. Many of the main safety and environmental conventions cover over 90 per cent of world commercial shipping in terms of gross tonnage of the world’s commercial fleet. In addition to these multilateral treaty instruments, the IMO has developed a host of so-called ‘soft law’ instruments, including codes, guidelines, resolutions, best practices and the like, which supplement its treaty framework and which are, in the main, widely observed and which have, in no small measure, made a positive contribution to global ocean governance.

In line with Article 1 of the IMO Convention, the IMO does not purport to regulate all shipping activity but confines its regulatory activities to ‘international shipping engaged in international trade’. Accordingly, many of its conventions stipulate that they do not apply to warships or to other government vessels not engaged in international trade. Nor do the IMO instruments purport to apply to inland waterway vessels or those operating solely within internal waters, which remain subject to national law. States parties may nonetheless elect to apply these conventions to other vessels and (p. 3) several have done so where this has fitted in with their national policy. In addition, the IMO has on occasion and at the express request of a member state, undertaken needs assessment missions within that state aimed at assisting the government of that state to improve its safety system in internal waters.

The IMO’s mandate also derives in part from UNCLOS, many provisions of which direct states to work through and with the IMO as the ‘competent international organization’ and to ‘take account of’, ‘give effect to’, ‘conform to applicable international rules and standards’, ‘internationally agreed rules, standards and recommended practices and procedures’, or ‘applicable international Instruments’. While, somewhat curiously, UNCLOS does not expressly mention the IMO by name in all but one of these provisions, there can be no doubt that they were drafted with the IMO in mind.

So, for example, IMO member states bordering straits routinely present their proposals for sea lanes and traffic separation schemes (TSSs) in those straits to the IMO for approval in accordance with the requirements of Article 41(3) of UNCLOS; similarly, coastal states proposing ‘special mandatory measures’ to prevent pollution in a ‘clearly defined area of their respective exclusive economic zones’ will present their case to the IMO in accordance with Article 211(6) of UNCLOS. Indeed, this Article is now recognized as providing the legal basis for states to establish a particularly sensitive sea area within their EEZs and also to establish the associated ‘special mandatory measures’ needed to protect the area. Since the designation in 1990 of parts of Australia’s Great Barrier Reef as the first particularly sensitive sea area (PSSA), some fifteen other PSSAs have been declared. The IMO’s
relationship with UNCLOS is more fully explored by Dr Blanco-Bazan in Chapter 2 below, entitled ‘The IMO: Working within the UNCLOS Framework and Global Ocean Governance’.

As a UN specialized agency, when developing treaties and other regulatory instruments, the IMO scrupulously operates within the UNCLOS framework. If necessary, it will seek creative solutions (not inconsistent with UNCLOS) in cases where the UNCLOS provisions are regarded as too narrow. One example is to be found in dealing with the problem of piracy. Article 101(a)(i) and (ii) of UNCLOS limit the definition of piracy to illegal acts of violence, detention or depredation taking place ‘on the high seas’ and those ‘outside the jurisdiction of any State’. To cope with the fact that many such acts occur in the territorial seas or indeed the ports of member states, the IMO uses the terminology ‘piracy or armed robbery’ when dealing with this subject (see Assembly Resolution A.1025(26) for the definition of ‘armed robbery’). This has enabled the IMO to devise measures consistent with UNCLOS to deter acts of violence against shipping whether they occur on the high seas or within a state’s territorial waters.

The IMO’s mandate is also partly derived from the UN itself. Some of the IMO’s area of activities are not covered either by the IMO Convention or UNCLOS. This was the case, for example, in relation to the IMO’s development of the International Ship and Port Facility Security (ISPS) Code which entered into force under SOLAS chapter XI-2 on 1 July 2004 as well as its development of the Convention for the Suppression (p. 4) of Unlawful acts Against the safety of Maritime Navigation 1988 and its Protocol for the suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988 and their Protocols of 2005 (SUA treaties).

The ISPS Code and the SUA treaties were developed in response to the concerns expressed by member states about acts of terrorism directed against shipping, both at sea and in ports. The 1988 SUA treaties were occasioned by the 1985 Achille Lauro incident in which Palestinian terrorists attacked an Italian flagged cruise ship on the high seas, killing and throwing one wheelchair-bound passenger overboard. The 2005 Protocols, which substantially revised these treaties, were occasioned by the 9/11 terrorist bombings in the US, during which passenger aircraft were employed by the terrorists as the instruments of terror and destruction. The concern expressed by the IMO member states in the IMO fora after 9/11 was that ships might be commandeered by terrorists and employed in similar fashion to attack other ships or ports and other marine installations. Revision of the SUA treaties also enabled the IMO to consider what additional measures might be adopted to strengthen them, such as empowering law-enforcement vessels of one state to board and search a foreign-registered vessel on the high seas, and if necessary to detain the vessel or individuals on board, subject to strict conditions.

The fact that security issues, as distinct from safety issues, were not included in the IMO Convention or in UNCLOS did not deter the IMO Assembly in 1985 from agreeing to a proposal by the United States (US) that the IMO should develop measures to prevent terrorist acts directed against shipping. The matter was consequently included in the work programmes of the Maritime Safety Committee (MSC) and the Legal Committee. A similarly vigorous attitude was adopted in 2001 following the 9/11 terrorist bombings. A more detailed discussion of the IMO’s anti-terrorism strategy is presented by Jan Engel de Boer in Chapter 7 below entitled ‘IMO: Maritime Terrorism/Security and Global Ocean Governance’.

In this connection, it should be noted that the IMO was the first of the UN specialized agencies to tackle threats to international shipping posed by acts of piracy and terrorism. It was the first specialized agency to bring the problem of modern-day piracy to the attention of the UN Security Council. It did so through informing the Council in writing of the action proposed to be taken by the IMO in relation to the threat to international shipping posed by piracy off the coast of Somalia followed by a personal presentation by the IMO.
Secretary-General to the Security Council, in which he set out the scale of the problem and urged greater involvement on the part of the UN. Thereafter, in view of the escalation of acts of piracy, particularly in the waters off the coast of Somalia and acts of terrorism at the global level, the actions taken by the IMO have not only been sanctioned but indeed they have been actively supported (p. 5) and encouraged by the UN General Assembly in several of that body’s resolutions and in the annual reports of the UN Secretary-General on Oceans and the Law of the Sea. Security issues now routinely form an integral part of the IMO’s work programme.

It should also be noted that, following the action initiated by the IMO, both the UN General Assembly (see UNGA Resolution 62/215 of 22 December 2007) and the Security Council itself became actively involved in attempting to alleviate the dire situation that had developed in the case of piracy off the coast of Somalia (see UNSC Resolutions 1816 (2008); 1897 (2009); 1950 (2010); 2020 (2011); 2077 (2012); and 2125 (2013)). A full discussion on the manner in which the IMO has tackled the problem of piracy is contained in Hartmut Hesse’s Chapter 6 below entitled ‘The IMO: Adoption of Counter-piracy Measures to Promote Global Ocean Governance’, while Chris Trelawny in Chapter 5 below entitled ‘The IMO: Maritime Security—An Essential Feature for Sustainable Maritime Development and Global Ocean Governance’ examines what the IMO is doing to enhance civil maritime security and global ocean governance in its widest sense and how that can contribute to sustainable development.

C. Membership

As with all inter-governmental organizations, full membership of the IMO is restricted to states (IMO Convention, Article 4). At the present time, it has 173 member states. The first to join was the United Kingdom of Great Britain and Northern Ireland (UK) in 1949, while the most recent was Armenia in 2018. States which are member states of the United Nations may join the IMO simply by accepting the IMO Convention. Non-member states of the United Nations, such as the Cook Islands, which became an IMO member on 11 August 2008, may also join; however, the Cook Islands’ application to join the IMO required the approval of two-thirds of the then current membership, in accordance with the special procedure set out in Article 7 of the IMO Convention. Moreover, there are no restrictions on membership based on geographical criteria and, indeed, several member states are land-locked countries. The fact that they have chosen to become members illustrates the relevance of seaborne trade to all corners of the world, which in turn serves to highlight the need for effective global ocean governance.

The IMO has three associate members, namely Hong Kong, China; Macao, China; and the Faroe Islands. They have the same rights and obligations as full members except that they may not vote and are not eligible for membership of the IMO Council.

The IMO has concluded agreements of cooperation with a number (sixty-four at present) of other inter-governmental organizations (IGOs) and has granted consultative status to a wide variety of non-governmental organizations (NGOs), which (p. 6) enables them to participate fully (albeit without a vote) in IMO meetings and deliberations of interest to them.

The benefits are mutual: the expertise that these IGOs and NGOs are able to bring to the table has undoubtedly enriched the regulation-making processes within the IMO. The IMO membership and the various IMO committees are able through the participation of IGOs and NGOs not only to acquaint themselves with the attitudes, capacities and facilities available within the industry and professional bodies concerned but also to harness their skills and knowledge and in this way to arrive at fully rounded solutions to the problems under discussion. The process of consultation at the committee stage has also been found to be of benefit to the quality and general acceptability of the IMO’s rules and regulations and in this way has contributed to their implementation. Government administrations are more
likely to accept IMO regulations where these have not only been approved by relevant IGOs and NGOs but also where those same IGOs and NGOs have participated actively in their development. For example an NGO such as the International Chamber of Shipping (ICS), which is the principal trade association for merchant shipowners and operators, representing all sectors and trades and over 80 per cent of the world’s merchant fleet, is bound to exert significant influence in matters relating to the safety of shipping, while the Comité Maritime International (CMI), an NGO established in 1897 with the objective of contributing to the unification of international maritime law, has over the years assisted the Legal Committee through its background research into many of the conventions developed under the aegis of the Committee. It should be stressed however that the role of IGOs and NGOs, however valuable, is a purely consultative one; the taking of decisions remains the prerogative of IMO member states.

D. Structure of the IMO

The IMO is the only UN specialized agency to have its headquarters in London. Its principal organs are its two governing bodies, the Assembly and the Council, and five standing committees, namely the Maritime Safety Committee (MSC), the Marine Environment Protection Committee (MEPC), the Legal Committee (LEG), the Technical Cooperation Committee (TCC), and the Facilitation Committee (FAL). There are also a number of specialist sub-committees which report to the MSC and the MEPC.

The Assembly, which is composed of all IMO member states, is the highest governing body. It meets in regular session once every two years and is responsible for approving the work programme, voting the budget, determining the financial arrangements of the IMO, and electing the Council.

The Council is the executive organ of the IMO. It meets twice annually in regular session and is responsible, under the Assembly, for supervising the work of the IMO between Assembly sessions. It was originally composed of twelve members, being six member states with the largest interest in providing international shipping services (known as Category A) and six member states with the largest interest in international seaborne trade (known as Category B). The 1960s saw the emergence of many new nations with an interest in maritime affairs and to reflect this reality, in September 1964, at the 2nd Extraordinary Session of the Assembly, the IMO Convention was amended to introduce a third category, namely six member states with ‘special interests in maritime transport or navigation and whose election to the Council would ensure the representation of all major geographic regions of the world’ (known as Category C). The Council has continued to expand in size over the years and is today comprised of forty member states. It is a reflection of the shifting geopolitics of global ocean governance that Category C is comprised of twenty member states, double the number of the other two categories. Elections in Category C, in particular, are always vigorously contested and each election sees a slight change in the Council membership, which helps to ensure that new ideas and different country perspectives are put forward. However, the core membership of the IMO Council in Categories A and B has remained largely unchanged over the years. While this has undoubtedly had the benefit of providing stability within the IMO, it is fair to say that many member states, which fulfil the criteria required to join these categories, have not been successful in their attempts to do so. On the other hand, every member of the Council has equal standing. Once elected, to whatever category, the rights of each Council member are the same as all the others. So, while there seems to be some perceived cachet in belonging to Categories A and B, in reality there is no disadvantage in belonging to Category C, apart from having greater competition in the election process.
Decisions in the governing bodies and committees are made by the representatives of the member states. While each of these has formal rules governing voting, it is one of the strengths of the IMO that most decisions are taken by consensus. This applies also to decisions taken at IMO diplomatic conferences to adopt new treaty instruments. The process involved in arriving at consensus may on occasion be an arduous one. Nonetheless, it has been supported by the IMO on the basis that states that freely arrive at a consensus during the process of negotiation, rather than have decisions imposed on them by formal vote, are more likely subsequently to ratify and implement IMO regulations. The mechanics of the decision-making process at the IMO is well illustrated by Turid Stemre in Chapter 10 below entitled ‘The IMO, the Polar Regions, and Global Ocean Governance: Newly Accessible Maritime Environments’.

E. The IMO’s Relationship with the UN

The IMO, as a specialized agency of the UN, operates as part of the UN system. In practical terms, this translates into cooperating with the UN and its other agencies and programmes in promoting the broad objectives of the UN in economic, social, and related matters as set out in the UN Charter. To this end, the IMO consciously aligns its work programme with the relevant policies, objectives, and procedures developed by the UN. This alignment is stated in express terms in the IMO’s High-level Action Plan\(^\text{11}\) and is clear, for example, when viewing the IMO’s activities in the area of technical cooperation where, as discussed below, the agenda of the IMO has been (p. 8) heavily influenced by the UN Millennium Development Goals (MDGs) and, in turn, by the Sustainable Development Goals (SDGs). This alignment is also illustrated by the over-arching effect exerted by UNCLOS in the development of IMO rules and regulations.

The relationship between the IMO and the UN and the procedures by which this relationship operates in practical terms is governed by Part XV of the IMO Convention, Article 59 of which brings the IMO ‘into relationship’ with the UN and its subsidiary bodies as a specialized agency contemplated by Article 57 of the UN Charter. The relationship has been made effective by a formal Agreement between the IMO and the UN as foreshadowed in Article 63 of the UN Charter. The agreement was approved by the 3rd UNGA in November 1948 and by the 1st IMO Assembly on 13 January 1959, which was also the date it came into effect. The agreement covers matters such as reciprocal representation at meetings; the possibility of items proposed by the UN to be included on the agenda of the IMO’s governing bodies and its committees; agreement by the IMO to submit UN recommendations to the IMO Assembly and Council; exchange of documents and information; the IMO’s agreement to cooperate with the UN Security Council, the General Assembly, and the International Court of Justice (ICJ), including an authorization by the UN General Assembly for the IMO to request advisory opinions of the ICJ;\(^\text{12}\) and agreement to develop common personnel standards and budgetary arrangements.

Part XV of the IMO Convention also governs the relationship of the IMO and other UN specialized agencies (Article 60) and specific individual agreements have been entered into between the IMO and a number of these agencies. The IMO has, for example, cooperated with:

- the UN Food and Agricultural Organization (FAO) on safety of fishing vessels and illegal, unregulated, and unreported (IUU) fishing;
- the International Atomic Energy Agency (IAEA) on the carriage by sea of nuclear fuels and cargoes;
the International Labour Organization (ILO) on a range of issues concerning seafarers, ship recycling and the development and promotion of the International Maritime Labour Convention (IMLC);
• the International Civil Aviation Authority (ICAO) on search and rescue;
• the International Telecommunications Union (ITU) on radio-communications;
• the World Bank as the implementation agency for development projects;
• the World Health Organization (WHO) on health of seafarers; and
• the World Meteorological Organization (WMO) on environmental issues.

(p. 9) The IMO also has a good track record of cooperating with other organs of the UN on a wide variety of issues of mutual concern, including:
• the United Nations Cooperation, Trade and Development (UNCTAD) Agency on statistics and training;
• the United Nations Development Programme (UNDP) as the executing agency for development projects;
• the United Nations Environment Programme (UNEP) on environmental issues affecting shipping;
• the United Nations High Commissioner for Refugees (UNHCR) on stowaways, people rescued at sea and mass migrations at sea;
• the United Nations Office on Drugs and Crime (UNODC) on piracy and international terrorism;
• the World Food Programme (WFP) on piracy; and
• the UN Secretariat, principally the Division for Ocean Affairs and the Law of the Sea (DOALOS) on treaty law matters pertaining to the IMO, UNCLOS, and piracy.

Through the UN Economic and Social Council (ECOSOC) and the Chief Executives Board for Coordination (CEB), a number of other joint undertakings occur, including with:
• the Environment Management Group, which deals with issues such as the green economy;
• GESAMP, which deals with scientific aspects of marine environment protection;
• HLCP Working Group on Climate Change;
• the UN Globally Harmonized System, which deals with the classification and labelling of products;
• UN-Oceans, which deals with ocean and coastal issues; and the
• UN Regular Process, which deals with the state of the marine environment.

While the above-mentioned activities are cogent examples of the cooperation that exists between the IMO and the UN, all of which have contributed in no small measure to global ocean governance, the IMO nevertheless remains a sovereign organization, and is legally and financially independent of the United Nations. It has its own separate constitution, the IMO Convention; its own distinctive membership (which is composed both of UN and non-UN member states); and its own internal structure (p. 10) and work methods. The IMO budget is established independently of that of the UN and is only marginally related to the UN budget.
F. The IMO as a Standard-setting Organization

If one major factor could be identified as underpinning the establishment of the IMO, it would be the recognition by governments of the importance of shipping to the welfare of individual nations and to the world economy in general. It is estimated that approximately 90 per cent of global trade is carried by sea, making this method of transportation of goods indispensable and the need for proper regulation of the shipping industry vital. Added to this is the recognition of the essentially international character of the shipping industry; while some cargo ships may operate within and around the coasts of the states whose flag they fly, most are engaged in international voyages and some may never enter the waters of their state of registry. Consequently, despite the centuries old intensive rivalry among trading nations, governments have come to understand that shipping can be regulated effectively only through cooperation at the international level. Global ocean governance here encompasses cooperation not only among those governments which are major suppliers of shipping services but also among those governments which are major consumers of those services. This, in effect, entails the involvement of all states.

Global standards are needed for a number of reasons. First and foremost is the fact that, to be effective, safety standards have to be uniformly applied at the global level. In the case of shipping, safety is not divisible. Badly constructed ships or those insufficiently manned or manned by insufficiently trained personnel or those too poorly equipped to handle emergency situations are high-risk enterprises. Not only might they be prone to running into difficulties at sea, putting those on board as well as their cargoes in danger, there is also the possibility that they might put at risk those ships and crew that come to their assistance.

Secondly, a sub-standard or carelessly managed or operated oil tanker or cargo ship, especially if involved in a grounding or collision, has a high risk of causing serious and lasting damage to the marine environment. The same considerations apply in the case of ships carrying other types of hazardous cargo, especially if carried in bulk. Uniformly high international standards and regulations, provided they are also applied uniformly, are the best way to prevent such accidents from occurring.

Thirdly, uniform international regulations are needed to help avoid unfair trade practices and to help avoid unfair commercial advantages flowing to shipping companies that fail to adopt global regulations. The adoption of international standards, uniformly applied, is seen to create a ‘level-playing field’ and to establish a healthier basis for competition. It also assists in lessening the problems associated with (p. 11) ‘flag-shopping’, that is, the practice of changing the place of registration of a vessel in order to avoid the application of IMO regulations.

As provided for in Article 1 of the IMO Convention, the IMO’s role in this process is to provide the appropriate ‘machinery for cooperation among Governments’ to enable them to adopt ‘the highest practicable standards’ in matters concerning maritime safety, efficiency of navigation, and protection of the marine environment. It does this through providing an international forum at its headquarters building in London where governments can meet on a regular basis to discuss the issues of the moment and to seek mutually acceptable solutions. To this end, Article 2 of the IMO Convention, which sets out the functions of the IMO, expressly provides for:

• The consideration of matters remitted to IMO by its Member States, the UN and its other specialized agencies or other Intergovernmental International Organizations;
The drafting of conventions, agreements and other suitable instruments (such as codes and guidelines) which, once agreed upon, should be recommended to Governments for adoption; and to this end
- The convening of diplomatic conferences as may be necessary;
- The provision of machinery to enable consultation among Member States and the exchange of information among Governments; and
- The facilitation of technical cooperation within the scope of the Organization with the objective of promoting truly global instruments of ocean governance.

The platform that the IMO provides through its standing committees, each with an agenda advertised well in advance of the committees’ sessions and each dedicated to a different aspect of promoting global ocean governance, and to the oversight provided by the IMO’s governing bodies (the Assembly and Council) is an indispensable part of the ‘provision of machinery’ required by Article 2. Without this platform the adoption of international rules and regulations would be difficult, if not impossible, to achieve.

It should also be noted that the IMO’s role is essentially that of a facilitator. Shipping rules and regulations, while negotiated and developed under the auspices of the IMO, are not imposed by the IMO upon governments. Rather, it would be more accurate to say that governments are the main players, aided and abetted in the regulation-making process by interested IGOs and NGOs and the highly qualified and dedicated members of the Secretariat. Similarly, it is essentially the task of governments, not the IMO, to implement the regulations they have adopted.

G. Early Concerns of the IMO

The initial overriding concern of the IMO was clearly focused on the technical aspects of safety of international shipping. This is reflected by the fact that the IMO Convention, as originally drafted, did not include protection of the marine environment amongst the aims set out in Article 1. That Article merely listed ‘matters concerning maritime safety and efficiency of navigation’. It is further reflected by the fact that, among the initial tasks of the IMO, was the assumption of the responsibility for the continued development of the International Convention for the Safety of Life at Sea (SOLAS), originally adopted in 1914 in response to the Titanic disaster. The IMO also assumed responsibility for the continued development of several other safety-related instruments, one of these being the International Convention on Load Lines (LL), the first version of which was adopted in 1930. And in 1972, the IMO adopted the Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), which updated and replaced the international shipping regulations, the original version of which had been drawn up by the British Board of Trade in consultation with the French government and which dated back to 1863.16

The SOLAS had been revised in 1929 and 1948 and then again by the newly formed IMCO in 1960 but these revised versions were slow to come into force, largely due to the ponderous processes involved in implementing treaties into national law. As a result, much-needed changes to ship construction and ship safety were slow to materialize. In 1974, the IMO worked on the idea of amending treaties using a procedure that has come to be known as the ‘tacit acceptance procedure’, which it incorporated into the 1974 revision of SOLAS. This procedure in effect by-passes the need for states parties to go back to their respective parliaments with each new amendment to SOLAS and enables amendments to enter into force on a date specified in the Convention unless, before that date, a certain number of objections to the amendment have been lodged with the IMO as the depositary of SOLAS.

The ‘tacit acceptance procedure’ has since been incorporated into several other conventions adopted under the aegis of the IMO, including the COLREGs and the

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International Convention for the Prevention of Pollution from Ships 1973 (MARPOL). Its use has thus far been confined to amending so-called technical provisions of these Conventions, leaving general treaty provisions to be amended by more conventional treaty processes. The ‘tacit acceptance procedure’ has been justified on the basis that its use allows the international community to keep abreast of, and to benefit from, changes in shipping technology in order that the seas and oceans of the world remain safe for international shipping.

Amendment by the ‘tacit acceptance procedure’ has allowed the MSC to amend SOLAS on a regular basis, thereby ensuring that the Convention stays responsive to the concerns of member states and the shipping industry. The major objective of the Convention is to specify minimum standards for the construction, equipment, and operation of ships, compatible with their safety. The SOLAS today is an omnibus treaty, comprising a core convention setting out general obligations and an Annex divided into twelve chapters, covering all possible aspects of ship safety. It has been ratified by 163 states, representing 99.15 per cent of gross tonnage of the world’s merchant fleets.

The early focus of the IMO on the technical aspects of safety-related matters was also evident from the fact that the IMO, as originally established (and apart from its two governing bodies—the Council and Assembly) was comprised of only one committee, namely the Maritime Safety Committee (MSC). Its function, as its name suggests, was essentially to promote maritime safety in accordance with its mandate as set out in Article 28(a) of the Convention, namely

\[\text{to consider any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigations, salvage and rescue and any other matters directly affecting maritime safety.}\]

Article 28(a) apart, the MSC, being at that point in time the sole technical committee of the IMO then in existence, and despite its mandate then being limited to maritime safety and efficiency of navigation, was also initially given responsibility for marine environmental matters when these eventually became an issue that could not be avoided. One of its earliest tasks was to assume responsibility for the International Convention for the Prevention of Pollution of the Sea by Oil, which had been adopted in 1954 by an International Conference held in London. The MSC did so through a sub-committee especially established for this purpose. With the expansion of the IMO and the creation of other IMO committees, responsibility for the development of this Convention, which was the forerunner of the modern-day International Convention for the Prevention of Pollution from Ships 1973 and its Protocol of 1978 (MARPOL), was shifted to the newly established Marine Environment Protection Committee (MEPC) even prior to its formal establishment in 1975 (by IMO Assembly Resolution A.358(IX)).

The MSC nevertheless remains the senior technical body of the IMO dedicated to advancing global ocean governance through the development and promotion of safety-related maritime conventions and a myriad of other regulatory instruments. These days, in light of its heavy agenda, much of the preparatory work has been given over to a number of standing sub-committees, which report to the MSC (and also to the MEPC). These include the Sub-Committee on Ship Design and Construction (SDC); the Sub-Committee on Human Element, Training, and Watchkeeping (HTW); the Sub-Committee on Pollution Prevention and Response (PPR); the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR); the Sub-Committee on Ship Systems and Equipment (SSE); the Sub-
Committee on Implementation of IMO Instruments (III); and the Sub-Committee on Carriage of Cargoes and Containers (CCC). The names of these sub-committees are indicative of the range of issues discussed by the IMO. It may confidently be said that every aspect of safety at sea is covered and that the IMO has the capacity and expertise necessary to handle new maritime safety-related issues as they arise.

By way of further illustration of the broad canvas that comprises the safety-related aspects of the IMO’s work, at the 97th meeting of the MSC in November 2016, the Committee adopted amendments to a number of IMO instruments, including:

- Amendments to SOLAS on protection against noise; firefighting; damage control drills for passenger ships; and a new regulation XI-1/2-1 on harmonization of survey periods of cargo ships not subject to the 2011 International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers (ESP Code).

- Amendments to the STCW Convention and Code to include mandatory minimum training requirements for masters and deck officers on ships operating in Polar Waters; and an extension of emergency training for personnel on passenger ships.

- Amendments to the 2008 International Code on Intact Stability (IS Code) relating to ships engaged in anchor handling operations and to ships engaged in lifting and towing operations, including escort towing.


- Amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code) aligning the wheelhouse window fire-rating requirements in the Code with those in SOLAS chapter II-2.

MSC 97 also considered:

- The way forward with regard to developing new mandatory requirements for the safe carriage of industrial personnel aimed at ensuring the safe and efficient transfer of technicians serving and servicing installations in the growing offshore alternative energy sectors.

- Proposals to amend the goal-based standards (GBSs) Verification Guidelines, based on experience gained during the initial verification audits. This built on work at MSC 96 at which the Committee confirmed that ship construction rules for oil tankers and bulk carriers submitted by twelve classification societies conform to the goals and functional requirements set by IMO in Resolution MSC.287(87). The role of the classification societies is elaborated on by Ismael Cobos Delgado’s Chapter 12 below entitled ‘The IMO: The Role of Classification Societies in Promoting Global Ocean Governance’.

- Amendments to the General provisions on ships’ routeing (Assembly Resolution A.572(14)) recommending that governments take into account safety of navigation when planning multiple structures at sea, such as wind turbines. In particular, sufficient manoeuvring space extending beyond the side borders of traffic separation schemes should be provided to allow evasive manoeuvres and contingency planning by ships making use of routeing measures in the vicinity of multiple structure areas.

- Amendments to the International SafetyNET and the NAVTEX Manuals. SafetyNET is the international automatic direct-printing satellite-based service for the promulgation of maritime safety information (MSI), navigational and meteorological forecasts, and other urgent safety-related messages to ships, as well as search and rescue (SAR). NAVTEX provides coastal shipping, via terrestrial means, with similar
messages. These manuals were developed with the assistance of the World Meteorological Organization (WMO), the International Hydrographic Organization (IHO), and the International Mobile Satellite Organization (IMSO) with the intention of being issued as joint IMO/WMO/IHO/IMSO publications.

(p. 15) H. Expansion of the IMO’s Activities and Mandate

While safety of shipping has always remained a top priority for the IMO, within a decade of the commencement of the IMO’s operations, other issues affecting international shipping began to emerge and were taken on board by the IMO. As indicated above, this led ultimately to the creation of several new standing committees and to the structure of the IMO in its current form.

The undoubted catalyst for this was the grounding of the Torrey Canyon oil tanker on Seven Stones Reef off the south west coast of England on 18 March 1967. As the 117,000 tonnes of crude oil it was carrying as cargo continued to spill from the tanker, the UK government and that of France took the unprecedented step of calling for an extraordinary meeting of the (then) IMCO Council to help deal with the situation.

The problem, as set out in a submission by the UK Government, was that the scale of the disaster was such that it needed to be resolved by the international community acting in concert and that this would necessitate changes in international law. The wreck of tankers on the high seas had

[n]ot hitherto had such significant repercussions on the coasts bordering those seas. As a consequence the International Law governing such matters does not adequately take into account the interests of countries which may have no direct interest in the ship or its cargoes but the territory of which may be affected by the accident to the ship. In future accidents it may well be that, in order to protect its coasts from pollution, the Government of the coastal State may wish to take certain measures which might cut across the rights of owners, salvors and insurers and indeed the Government of the flag of the vessel.17

The submission went on to suggest that the increase in the size of oil tankers raised questions concerning the liability for damage caused to third parties and that this might necessitate changes to the normal rules of liability. In particular, the IMO should consider:

(a) whether some form of insurance might be made compulsory and
(b) whether special principles should be agreed to enable Governments and other injured persons to recover costs of fighting pollution in the sea, cleaning polluted beaches and so on. 18

The Council agreed that the IMO should look into these issues. As a consequence, it decided to establish the Legal Committee, initially on an ad hoc basis, which met for the first time in June 1967.19 The Committee’s consideration of the legal issues led ultimately to the adoption of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (Intervention Convention). The (p. 16) main principles of the Intervention Convention are now incorporated into UNCLOS, in particular, the right of coastal states to take preventative measures on the high seas against foreign-registered vessels in order to prevent, mitigate or eliminate danger to their coastlines or related interests from pollution following a maritime casualty (see eg UNCLOS, Part XII, Article 194).
Another immediate outcome of the Legal Committee’s work was the adoption in 1969 of the International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund Convention). These Conventions, which together form the cornerstone of the IMO’s liability and compensation regime for oil pollution damage from tankers, revolutionized the law in this area. Previously, quite apart from the difficulties of establishing jurisdiction over such incidents on the high seas, in order to successfully prosecute its claim for compensation under national jurisdictions, the victim would have had to prove fault on the part of the tanker owner, no easy task as was readily acknowledged. The Civil Liability/Fund regime established the legal basis for jurisdiction and introduced the concept of strict liability on the part of the shipowner. It also made sure that sufficient funding was made available for the payment of such claims, through the requirement that the shipowner take out compulsory insurance in the amount covered by the Conventions.

These Conventions are kept under review by the Legal Committee (closely working in this connection with the International Oil Pollution Compensation Funds) and have been amended and updated by the IMO. They have also provided a model for the development by the Legal Committee of other liability and compensation regimes involving damage to the marine environment. Notable amongst these is the International Convention on Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention), which regulates liability and compensation for pollution of the sea by oil from ships’ bunkers; the International Convention on the Removal of Wrecks 2007 (Nairobi Wreck Removal Convention), which as well as regulating liability and compensation, also provides the legal basis for coastal states to remove shipwrecks that may have the potential adversely to affect the safety of lives, goods, and property at sea as well as to pose a threat to the marine environment; and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (HNS Convention) and its 2010 Protocol, which regulate liability and compensation for pollution of the sea by chemical spills. All bar the HNS Convention and its Protocol have since entered into force. The result has been the creation of a comprehensive regime designed to enhance global ocean governance by putting in place a web of liability and compensation treaties covering all aspects of marine pollution from oil tankers and other ships. All of these Conventions are premised on the principle of strict, that is, ‘no-fault’ liability coupled with compulsory insurance, and all are aimed at ensuring that victims of such pollution incidents, be they governments or private individuals, receive compensation for their claims in the shortest possible time, preferably without the need to resort to costly and lengthy litigation. The 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL Convention) has also been revised in line (p. 17) with these principles by a Protocol adopted by the IMO in 2002. A full discussion of these Conventions is to be found in Chapter 3 below by Måns Jacobsson entitled ‘The IMO: Liability, Compensation, and Global Ocean Governance’.

The marine environmental issues that came to the fore as a result of the Torrey Canyon incident were initially dealt with by a new sub-committee of the MSC (which eventually acquired independent status as the Marine Environment Protection Committee (MEPC) in 1975 by IMO Assembly Resolution A.358(IX) (the same Resolution that gave the Legal Committee de jure status and which changed the name of the IMO from IMCO to IMO). Its aim was to develop international regulations for the control of environmental contamination of the sea by ships.
A major aspect of its early work was the development of the International Convention for
the Prevention of Pollution from Ships 1973 and its Protocol of 1978, collectively known as
the MARPOL, which together entered into force in 1983. The MARPOL, at that point in
time, comprised the core Convention and two Annexes, both aimed at preventing and
minimizing accidental and operational pollution from ships. Annex I consists of regulations
for the prevention of pollution by oil, while Annex II consists of regulations for the control of
noxious liquid substances carried in bulk. The 156 states (comprising 99.42 per cent of
world tonnage of commercial shipping) which are parties to MARPOL are automatically
bound by these Annexes.

Since then, a number of other Annexes to MARPOL have been developed, each aiming at
preventing and controlling different aspects of pollution of the sea by ships. Annex III,
containing Regulations for the Prevention of Pollution by Harmful Substances Carried at
Sea in Packaged Form, entered into force in July 1992; Annex IV, containing Regulations for
the Prevention of Pollution by Sewage from Ships, entered into force in September 2003;
and Annex V, containing Regulations for the Control of Pollution by Garbage from Ships,
entered into force in December 1998. As opposed to MARPOL Annex IV, which deals
essentially with the discharge of raw sewage from ships that could constitute a health
hazard, Annex V deals with the discharge of most forms of victual, domestic, and
operational wastes, including plastics, generated during the normal operation of the ship.

The most recent Annex to be adopted was Annex VI, containing Regulations for the
Prevention of Air Pollution from Ships. Strictly speaking, air pollution from ships might be
not be classifiable as pollution of the sea as it does not have the same direct cause and
effect that oil spills or sewage or garbage might have. Nevertheless, this did not prove to be
a barrier to the development of the Annex in view of the growing recognition by the IMO
membership that the cumulative effect of air pollution from ships can lead to a significant
harmful impact on the atmospheric environment and on human health, particularly for
those people living in port cities and coastal communities. On the contrary, following the
entry into force of Annex VI on 19 May 2005, the MEPC agreed to significantly strengthen
the emission limits in light of technological improvements, leading to the revised Annex VI
and its associated progressive reductions in emissions of NO\textsubscript{x}, SO\textsubscript{x}, and particulate matter.
For an in-depth discussion of these issues, see Chapter 9 below by Dr Edmund Hughes
entitled ‘The IMO: Ship-sourced Emissions, Climate Change, and Global Ocean
Governance’.

(p. 18) The anti-pollution regime created by the MARPOL has been supplemented by the
adoption of the International Convention on the Control of Anti-fouling Systems on Ships,
2001 (AFS Convention), which entered into force on 17 August 2008. The aim of the AFS
Convention, which has seventy-four states parties, comprising 93.61 per cent of gross
tonnage of the world’s commercial shipping, is to eradicate the use of toxic anti-fouling
paints containing metallic compounds, such as tributyltin (TBT), which are employed to coat
the underside of ships to prevent sea life such as algae or molluscs from attaching
themselves to ships hulls, thereby slowing down the ships and increasing fuel consumption.
The problem with these compounds is that they persist in the water, killing sea-life, and are
themselves harmful to the marine environment and possibly also harmful to the food chain.

Other significant conventions developed by the MEPC include the International Convention
for the Control and Management of Ships’ Ballast Water and Sediments (BWM Convention)
2004, which entered into force on 8 September 2017, having acquired the requisite number
of ratifications. It is designed to eradicate the global spread of harmful aquatic organisms
and pathogens carried in ships’ ballast water and subsequently released into non-native
environments, resulting in serious damage to the local marine ecosystem. Together with the
Hong Kong International Convention for the Safe and Environmentally Sound Recycling of
Ships 2009 (Hong Kong Convention), which has not yet entered into force, and the aim of
which is to ensure that ships, when being recycled after reaching the end of their
operational lives, do not pose any unnecessary risks to human health, safety, and to the environment, the BWM Convention has the potential to contribute significantly to the furtherance of global ocean governance. Much will depend on the vigour with which they are implemented and enforced. This in turn will depend on the political will of member states to take the necessary legislative and administrative steps to turn the IMO vision into a reality. In the case of the Hong Kong Convention, given that much of the world’s ship recycling at present is carried out by so-called third world countries, at least part of the challenge will be to reform practices that are unsafe both to human health and to the environment whilst, at the same time, safeguarding the continuation of ship recycling industries in these countries in order to ensure the continued viability of their economies. Read more about the IMO’s work on marine environmental protection in Professor Aldo Chircop’s Chapter 8 below entitled ‘The IMO’s Work on Environmental Protection and Global Ocean Governance’.

Another major aspect of the work of MEPC was the adoption in 1990 of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and its Protocol of 2002 relating to pollution incidents caused by other hazardous and noxious substances. The OPRC was developed by the IMO following a call from a conference of leading industrial nations in Paris that the IMO develop further measures to prevent oil pollution from ships. This is essentially a technical convention which obliges states parties to establish measures for dealing with pollution incidents. Along with other measures to avert and clean up oil spills at sea, it is discussed more fully by Dr Karen Purnell in Chapter 4 below entitled ‘Major Oil and HNS Spills: Measures Taken by the IMO to Promote Global Ocean Governance’.

(p. 19) I. Implementation of IMO Regulations

1. FAL Convention and FAL Committee

As the number of IMO conventions and other regulatory instruments continued to burgeon over the years, it became apparent that simply developing and adopting such instruments, while undoubtedly necessary, was not sufficient to ensure global ocean governance. The sheer volume of new conventions and instruments created implementation problems not just for developing economies but for most administrations charged with implementing them.

One such problem related to the formalities with which ships entering ports are obliged to comply. This was due in part to the many IMO conventions which contain provisions relating to the carriage of insurance certificates and other certificates of compliance required to be carried on board by vessels engaged in international trade. Another aspect of the problem was due to the inherently international character of shipping: different ports developed their own customs, immigration, and other standards independently of each other, so the same ship visiting different ports in the course of a single voyage could expect to encounter demands for the same information, but to be presented in a different format. To the variety of forms and the number of copies (often excessive) required could be added other burdens such as local language translations, consular visa requirements, variations in document size and format, and the necessity for authentication by the ship’s master of the information submitted.

The challenge was, and continues to be, to harmonize the paperwork so as to simplify the administrative burden placed on port administrations in particular, and to facilitate the entry into and departure from ports of such vessels and so to promote efficiency in international trade. An important early step was the adoption, on 9 April 1965, by the International Conference on Facilitation of Maritime Travel and Transport, held under IMO auspices, of the Convention on Facilitation of International Maritime Traffic (FAL Convention). The main objectives of the FAL Convention, as stated in its preamble, are ‘to
facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages’. To this end, Article I requires the contracting governments to ‘undertake to adopt ... all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board’. Article III obliges the contracting governments to ‘cooperate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures’, while Article IV requires contracting governments to ‘co-operate with each other, or through [IMO] ... in [such matters]’.

The Convention deals not only with formalities relating to the arrival, stay, and departure of the ship, its cargo, and persons on board, but also such matters as stowaways and public health and quarantine, including sanitary measures for animals and plants. One of its main achievements has been to confine the number of declarations which can be required by public authorities. The FAL Convention entered into force on 5 March 1967, barely two years after its adoption, a sign of how necessary this (p. 20) Convention was. It currently has 118 states parties, the combined merchant fleets of which amount to 93.79 per cent of the world’s fleet by tonnage.

The Facilitation Committee of the IMO originated from an ad hoc Working Group on Facilitation, which met for the first time in September 1967. It was established in May 1972 as a subsidiary body of the IMO’s Council, in recognition of the satisfactory work done and due to the membership’s wish to broaden the facilitation activities of the IMO. It thereafter functioned as the FAL Committee, albeit without being institutionalized under the IMO Convention. In 1991, the IMO Council agreed to a proposal for its institutionalization ‘so as to ensure the complete legal reflection of the IMO’s structural activities’, which in turn led to an amendment of the IMO Convention (see Assembly Resolution A.724(17) of 7 November 1991) that eventually came into force in 2008.

Apart from administering and developing the FAL Convention, the FAL Committee has also been responsible inter alia for developing principles relating to the administrative procedures for disembarking persons rescued at sea (see FAL.3/Circ.194), in this way complementing the ongoing work of the MSC relating to the provision of assistance to persons in distress at sea. Included among its recent activities is the development of a new stowaway module in the IMO’s Global Integrated Shipping Information System (GISIS) intended to facilitate reports of stowaways; the promotion of the long-awaited online access to certificates and documents required to be carried on board ships; and the adoption of new mandatory requirements on Electronic Data Interchange, whereby Public authorities will be obliged, by 8 April 2019, to establish systems for the electronic exchange of information.

2. Technical cooperation, the TCC, WMU, and IMLI

The IMO is primarily a regulatory agency. That is to say, its basic function is to adopt international shipping regulations. The implementation of these regulations has always been, and remains, the responsibility of IMO member states. This responsibility is fully in line with general principles of international law whereby, once a state expresses its consent to be bound by a particular treaty (usually through the deposit of an instrument of ratification or accession, or in the case of the IMO ‘tacit acceptance procedure’, by not taking positive action to inform the IMO of its intention not to be bound by the treaty), it thereby publicly signifies its intention to undertake in good faith the legal rights and obligations contained in the treaty upon its entry into force.20
Nevertheless, in recognition of the fact that not all member governments have the technical capacity either to pass the legislation necessary to implement the treaty into national law or to take the necessary administrative action required by the treaty, the IMO through its integrated technical cooperation programme (ITCP), provides assistance to these governments through the transfer of maritime skills and technologies with a view to enabling them to operate their shipping industries safely and efficiently in line with the required international standards. To this end, the Mission statement (p. 21) of the ITCP provides that its objective is to help developing countries improve their ability to comply with international rules and standards relating to maritime safety and the prevention and control of marine pollution, giving priority to technical assistance programmes that focus on human resources development and institutional capacity-building. The provisions of advisory and training services, especially the ‘train-the-trainer’ element, which aims to help developing countries in their turn to help themselves, are major elements of the programme.

In the years following the Millennium Declaration adopted by UN General Assembly, the IMO consciously aligned its work on technical cooperation with the objectives of the Declaration and the Millennium Development Goals (MDGs). Following the demise of the MDGs in December 2015, the IMO took steps to implement activities related to the United Nations Sustainable Development Goals (SDGs), in particular, Goal 7 to ‘Ensure access to affordable, reliable, sustainable and modern energy for all’; Goal 9 to ‘Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation’; and Goal 14 to ‘Conserve and sustainably use the oceans, seas and marine resources for sustainable development’. The ITCP is now compatible with the UN’s 2030 Agenda for Sustainable Development.

The IMO’s Technical Cooperation Committee (TCC), which although operating as a subsidiary body of the IMO Council from 1969, was finally institutionalized by means of an amendment to the IMO Convention (Assembly Resolution A.400 (X)), which entered into force in 1984. The TCC is the body responsible for administering the ITCP and for setting its agenda in line with the IMO’s strategic plan and the SDGs. The IMO’s technical cooperation activities are more fully discussed in Chapter 14 below by Jonathan Pace entitled ‘The IMO, Technical Cooperation, and Global Ocean Governance’. The often-overlooked role of the importance to global ocean governance of the active participation and the need for the promotion of women in the maritime sector is explored by Pamela Tansey in Chapter 13 below entitled ‘The IMO: Gender Equality, the Promotion of Women in the Maritime Sector; and Global Ocean Governance’.

Any note on the IMO’s technical cooperation activities would, however, be incomplete without a mention of the two training institutions established by the IMO, namely the World Maritime University (WMU), located in Malmo, Sweden, which opened its doors to students in 1983 and the International Maritime Law Institute (IMLI), located on the premises of the University of Malta, which began offering its courses in 1989. Both institutions offer high-quality post-graduate professional education, mainly to students from the developing world, with WMU concentrating on providing training for men and women involved in maritime administration, education, and management, while the IMLI programme, as its name implies, is addressed mainly to lawyers, legal advisers, judges, and legal draftsmen and women whose duties encompass maritime issues and who are seeking specialization in international maritime law. The aim of both institutions is, in part, further to enhance the objectives and goals of the IMO through education, research, and maritime capacity-building to ensure safe, secure, and efficient shipping on clean oceans. The WMU and IMLI
now offer a joint master of philosophy degree in international maritime law and ocean policy and an LLM in international maritime law.

(p. 22) 3. Audit

The mandatory IMO member state audit scheme, which came into effect in 2016, is seen by the IMO as a key tool not only for assessing member states’ performance in meeting their obligations and responsibilities as flag and port states under the relevant IMO conventions but also as a means for the IMO to offer member states the necessary assistance, where required, for them to meet their international obligations fully and effectively.

The scheme is in no way intended to derogate from the sovereign rights of member states or to alter in any manner any treaty obligations they may incur; indeed quite the opposite. This is clear from the provisions of the two documents that establish the operative framework for the scheme, namely the IMO Instruments Implementation Code (III Code), which provides a global standard to enable states to meet their treaty obligations and the Framework and Procedures for the IMO Member State Audit Scheme, which clarify that:

Under the general provisions of treaty law and of IMO conventions, States are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect.

The scheme was first introduced into the IMO on a voluntary basis in 2003 but became mandatory following the general consensus of the IMO membership that it was both workable and effective, as demonstrated in a number of IMO Assembly resolutions. It is modelled on the International Civil Aviation Organization universal safety oversight audit and is intended to provide an audited member state with a comprehensive and objective assessment of how effectively that state administers and implements those key IMO conventions and other instruments which are covered by the scheme (essentially SOLAS, the International Convention on Standards of Training, Certification and Watchkeeping 1978 (STCW), the Seafarers’ Training, Certification and Watchkeeping Code (STCW Code), the International Convention on Load Lines 1969 (LL) and its 1988 Protocol, the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs), the International Convention on Tonnage Measurement of Ships 1969 (TONNAGE), and MARPOL). The scheme, its evolution, and its implications are discussed in depth in Chapter 11 below by Lawrence Barchue entitled ‘The IMO, the Audit Scheme, and Its Role in Global Ocean Governance’.

4. Port state control

A fundamental premise underpinning the IMO’s regulatory function is that the states under whose authority or within whose jurisdiction shipping-related activities are undertaken are the parties ultimately responsible for ensuring that these activities comply with international regulations. These may be either the so-called flag states or the so-called port or coastal states. As now codified in UNCLOS, flag states have the right under international law to fix conditions for all ships that are registered under their flag and that operate under their authority. The same states are also under a corollary obligation at international law to assume jurisdiction and control over the ship and all personnel on board, to take whatever measures are necessary to ensure that the ship is seaworthy and able to navigate safely, to carry out investigations in cases of marine casualties or other incidents of navigation, and generally to ensure that all measures taken for exercising jurisdiction and control over ships flying their flag conform to international rules and practices. Flag states have the primary responsibility for regulating the operations of the ship, regardless of where the ship happens to be at any particular point in time and, to this
end, the IMO Conventions place the responsibility for technically and environmentally safe ships primarily on the flag state.

But a ship, especially one engaged in international trade, must of necessity travel from port to port and thus from state to state and, once it enters a foreign port, it also becomes subject to the jurisdiction of and regulation by, that state. This is borne out, for example, by Article 25(2) of UNCLOS, which allows a port state to deny access to foreign vessels and to set conditions for entry. Port state control has the potential to benefit not only the national interest but also to promote the wider interests of the international community by ensuring, through the process of inspection both of the physical condition of the ship itself and of the certification required to be carried on board (and if necessary detention until the standards are met), that foreign-registered visiting ships comply with the international safety and environmental standards agreed by organizations such as the IMO.

The IMO view is that effective regulation of shipping operations involves a combination of measures taken by both the flag and the port or coastal state. It is also agreed that this regulation can be effective and fair only if it is undertaken by reference to well-considered and generally agreed international standards applicable uniformly to all ships and shipping operations, regardless of where in the world they may take place. In line with these considerations, it is commonplace nowadays for the IMO Conventions to contain a port state control element. Examples include:

- SOLAS 74, regulation I/19; regulation IX/6 and regulation XI/4;
- Load Lines 66, Article 21;
- MARPOL, Articles 5 & 6; regulation 8A of Annex I; regulation 15 of Annex II; regulation 8 of Annex III and regulation 8 of Annex V;
- STCW 78, Article X and regulation I/4; and
- Tonnage 69, Article 12.

Typically, SOLAS prescribes a number of certificates to be carried on board as proof that a ship is compliant with the safety standards set out in the Convention. The control provisions are designed to allow port state control officers of that state to ensure that foreign-registered ships calling at their ports carry valid certificates. The control provisions also allow contracting governments to carry out inspections of the ships themselves if there are clear grounds for believing that the ship and its equipment (and crew) do not substantially comply with the requirements of the Convention. Port state control not only has the immediate benefit of ensuring that individual vessels comply with IMO safety standards, it also offers the prospect, as different port state control secretariats continue to gather and exchange information and data, of substantially increasing knowledge about sub-standard shipping and providing the international maritime community with the opportunity to analyse the causes of incidents and casualties better, thus pointing the way to prevention of similar incidents in the future.

It has also been IMO practice to include in its technical conventions a clause which provides that ships flying the flag of non-party states shall receive ‘no more favourable treatment’ than ships flying the flag of states that are parties to the convention. This clause has the effect of imposing an obligation on states parties to a particular convention to treat ships of non-party states which seek entry into their ports in a manner which is ‘no more favourable’ than the manner in which they would treat other foreign-registered vessels entering their ports. In this way the control provisions included in the convention become applicable also to ships of non-party states. The effect of the ‘no more favourable treatment’ clause is thus two-fold. In the first instance, it substantially reduces the risk of shipowners ‘flag shopping’ in order to have their ships registered with administrations they perceive would apply IMO
regulations more leniently; and, secondly, it serves to enhance port state control and to promote global ocean governance.

J. Some Concluding Remarks

The IMO’s engagement with what might be labelled the ‘technical’ aspects of international shipping has in no small measure contributed to the success story it undoubtedly is. This focus has enabled member states to concentrate on fixing the problems bedevilling international shipping, problems that are understood by and are common to all engaged in the industry, largely free of political overtones. State delegations to IMO’s numerous working committees are not politicians, rather they are composed largely of individuals with the requisite technical knowledge who, together with their counterparts from the industry and relevant IGOs and NGOs, have been able to generate sensible and practicable solutions to the many issues that have arisen over the years.

This is not to say that political issues never surface in IMO; with its diverse membership composed of 173 member states and three associate members, it is inevitable that political issues occasionally will become a factor; and where they have done so the debates have been intense and sometimes heated. In those instances where political (p. 25) concerns have been allowed to dominate the debate, the IMO has become the poorer for it; one recent example being the effective reversal by the IMO Council of the Legal Committee’s decision to include in its agenda the possible development of a liability and compensation regime for marine pollution occasioned by spills from offshore oil rigs. Given the proliferation of offshore oil rigs at ever-increasing depths in the ocean, there is a very great likelihood of another blowout such as the Deepwater Horizon drilling rig explosion and the subsequent fire on the Deepwater Horizon semi-submersible mobile offshore drilling unit (MODU). The same blowout that caused the explosion leading to the deaths of seventeen workers, with many others seriously injured, also caused a massive offshore oil spill in the Gulf of Mexico, and is regarded as the most serious environmental disaster in the history of the US. It is a truism to say that not all governments are powerful as the US government in exerting pressure on the oil company responsible for the spill and, should a similar disaster occur elsewhere in the world’s oceans, it is entirely possible that no or insufficient compensation will be available.

On other occasions however, such as IMO’s response to climate change, the IMO has been able eventually to put to one side the differing political perspectives of individual member states and consequently has been able to adopt measures which should contribute to global ocean governance by further reducing greenhouse gas emissions from ships.

While it is the case that technical issues remain a primary concern of the IMO even today, at the same time it is undoubtedly true that the scope of its activities has expanded significantly over the years and is no longer restricted to maritime safety and the efficiency of navigation. This expansion of its mandate has had a major, positive, impact on global ocean governance, particularly with regard to the security of the world’s seas and oceans. Maritime terrorism and acts of piracy have been contained, if unfortunately not eradicated, by the prompt action taken by the IMO, making the seas and oceans safer to travel on for seafarers and passengers alike. However, because of the changing nature of these illegal activities, the IMO cannot say that its task is over and these issues must remain as standing items on the agendas of the IMO’s various committees.

Certain issues, such as the mass migration of people by sea, often in entirely inadequate and unseaworthy vessels, remain problems that are difficult of resolution. This particular issue, like many others is not, however, a matter that the IMO alone is able to resolve. The root causes of such mass migrations are several and varied and the IMO’s role in resolving them is of necessity just a small part of the overall equation. In this and other politically motivated crises, the best way forward is undoubtedly for IMO as the UN specialized agency with responsibility for international commercial shipping, to continue to work with
the United Nations and its other specialized agencies in seeking sensible and practicable resolutions.

The IMO’s record of success in developing and adopting over fifty international conventions, to say nothing of the numerous codes, guidelines, recommendations, uniform interpretations, and the like that supplement its body of rules and regulations, owes much to its consensus-based and inclusive approach to regulation-making. All the committees and sub-committees, where the regulation-making process takes place, meet on a regular basis and have well-structured work programmes, as well as agendas that are published well in advance of the meeting dates. This ensures that member states have sufficient time to make written submissions and to prepare their delegations for the debates ahead. The presence and active participation at these meetings of IGOs and NGOs also serves to ensure that the views of the shipping industry and other interested parties are heard and can be taken account of, leading to regulations that are balanced, pragmatic, and affordable, making member states in turn more inclined to accept and to implement them. While the process is not perfect and while more remains to be done, especially with regard to implementation, it remains the case that the rules and regulations created under the aegis of the IMO are regarded by the international community as necessary for effective control of the shipping industry, for safer and more secure seas and oceans, and for the protection of the marine environment. This realization will always be the IMO’s greatest strength and asset.

Footnotes:

1 Convention on the Inter-Governmental International Maritime Consultative Organization (IMO Convention).
2 Now art 74.
3 See www.pssa.imo.org.
4 IMO Assembly Resolution A.584(14) on ‘Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews’. See also MSC/Circ.443 on ‘Measures to prevent unlawful acts against passengers and crews on board ships’.
5 See IMO Assembly Resolution A.1002(25) on ‘Piracy and armed robbery against ships operating in waters off the coast of Somalia’, which requested the IMO Secretary-General to transmit the Resolution ‘to the Secretary-General of the United Nations for consideration and any further action he may deem appropriate’.
6 This may be accomplished by the deposit of an instrument of ratification with the Secretary-General of the United Nations, who acts as the depositary for the IMO Convention. See arts 5 and 71 of the IMO Convention.
7 See art 9 of the IMO Convention.
8 These are provided for by art 61 of the IMO Convention.
9 See art 62 of the IMO Convention, the Guidelines on the Grant of Consultative Status, and the Rules Governing Relationship with Non-governmental International Organizations.
10 Assembly Resolution A.69 (ES.II).
11 See Assembly Resolution A.1012(26), High-level action 1.1.2 (cooperate with the United Nations and other international bodies on matters of mutual interest) and its related planned outputs.
An Advisory Opinion from the ICJ has been sought by the IMO on only one occasion, in 1960, on the constitution and membership of the Maritime Safety Committee, following the IMO Assembly’s failure to elect Liberia and Panama to the MSC, despite their then respective rankings as third and eighth among the world’s ‘largest shipping nations’. Membership of the MSC was restricted at that point in time: see Constitution of the Maritime Safety Committee of the Inter-Governmental Consultative Organization, Advisory Opinion [1960] ICJ 150.

This is a body that meets annually to discuss policy matters affecting the UN and its specialized agencies. It is chaired by the UN Secretary-General and is attended also by the heads of the specialized agencies. There are similar regular meetings of the legal advisers of the UN system and of the UN-wide chief administrative officers.

One example being the Cook Islands, which became an IMO member state following the deposit, on 18 July 2008, of an instrument of acceptance of the IMO Convention with the UN Secretary-General (the depositary for such instruments).

The main component of the IMO budget (87.5%) is based on the tonnage of the merchant shipping fleets of member states, as determined by Lloyd’s Register of Shipping. The second component comprises a minimum assessment, calculated as 2.94% of the total IMO budget divided equally among IMO member states. The third component comprises a basic assessment based on each member state’s annual contribution to the UN.


Document C/ES. III/3, para 14(1).

Document C/ES. III/3, para 14(2).


See Assembly Resolution A.946(23) on ‘Voluntary IMO Member State Audit Scheme’.

So-called because UNCLOS does not provide definitions of these terms.

UNCLOS, arts 90 and 91.

UNCLOS, art 94.


ibid 1.

See eg art 3 of the Ballast Water Management Convention, which provides that: ‘[w]ith respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships’.