

**International Maritime Organization:**  
**Rethinking Marine Environmental Policy**

by

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Bachelor of Engineering in Marine Technology; Naval Architecture  
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Submitted to the Department of Ocean Engineering in Partial Fulfillment  
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As environmentalism has swept into political prominence, influencing the environmental policy of developed nations, the IMO– the UN dedicated legislator of the shipping industry– has been increasingly faced with challenges to its decision making process as well as to the effective fulfillment of its role. The current treatment of environmental matters, especially when it comes to negotiations for enacting universally accepted and implemented regulations seems to be in need for reconsideration. This is mainly the case because, the systematic adoption of unilateral/regional measures, at best, can undermine the status of the IMO and, at worst, may prove disruptive to international shipping.

The purpose of this thesis is to put concerns over the role of the IMO in international environmental regulations negotiations into a specific context and attempt to view the organization’s treatment of the issues it is faced with from a perspective which will reveal the strengths and the shortcomings of the IMO, so that credible remedies could be suggested.

In order to achieve this goal, three case studies were used namely the Member States, the Interest Group, and the Industry case study. These cases– selected to identify areas of improvement for the IMO– have demonstrated that the agency’s working procedures merit reassessment if the agency is to remain the industry’s legislator.

A close examination of the conclusions extracted from the three case studies reveals that the IMO is faced with the challenge of leveraging multiple types of initiatives which can emanate from powerful maritime nations, coalition/regional groups, interest groups, stakeholders, and the public. Consequently, if it is to serve its purpose effectively and efficiently, the IMO ought to develop the institutional mechanisms that will encourage policy innovations in the realm of international environmental negotiations whilst strengthening the agency’s status as the industry’s legislator. Similarly, in view of its evolving role, the agency has to act proactively so as to strike a balance between environmentally sound and sustainable shipping.

The closing chapter of the thesis indicates that judging the present and the future of the IMO should be done in the light of excessive pessimism, since some initiatives already underway may improve the current situation, but there is still a lot of room for improvement.

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# **Chapter I**

## **Thesis Introduction**

### **1.1 Problem Statement**

Since its institution in 1948, the International Maritime Organization, IMO, has been successful in substantially reducing both the loss of life at sea as well as marine environmental pollution. The IMO is the specialized body of the United Nations charged with the task developing international maritime Conventions and promoting cooperation between Member States in shipping matters. A reflection of this success is the fact that shipping remains the safest, cleanest, and cheapest mode of transport (IMO, 2004). But despite the IMO emphasis on the marine environment, it seems that role of the IMO pertaining to environmental issues will be seriously challenged in the nearby future. In fact, many Member States– despite objections from the IMO– have already resorted to unilateral measures. These measures, although designed to protect the maritime interests of Member States, have at best undermined the status of the IMO and, at worst, may prove disruptive to the shipping industry. In extreme situations this policy can have negative repercussions on the diplomatic relations between Member States.

Apparently, the latter trend cast doubts as to the effectiveness of the current treatment of environmental matters confronting the international agency and, perhaps provide an indication for Organizational changes. Worth stressing that international Organizations are not immune to industry dynamics. The increasingly important role of environmentalists in the domestic politics of many developed Member States in conjunction with the increasing prominence of Non-Governmental Organizations (NGOs), in the International arena, pose new challenges to the bargaining process administered by the IMO. At the same time the industrial lobby– the reason for the existence of the IMO– warrants a more serious participation in the decision

making process of the IMO. This is not surprising given the fact that shipowners are those who bear the costs following a decision from the agency in the name of protecting the environment. Worth noting that the IMO currently consists of 164 Member States members of the United Nations while it retains excellent relation with UN agencies, and Specialized Agencies e.g. UNEP, FAO, Inter-Governmental Organization (IGOs) e.g. the EU, OECD, and Non-Governmental Organizations e.g. Bimco, Greenpeace.

As the new environmental matters continue to populate the IMO agenda, important questions related to the functions of the agency arise. What will be the future role of the Organization in the context of environmental matters? What should the IMO do to stave off unilateral measures from powerful Member States? Should the agency treat the environmental and the industry lobby on an equal voting basis as Member States? How does the Organization promote innovation in environmental bargains? Does the IMO own the institutional mechanisms to counter incrementalism in environmental matters? How would the agency develop such mechanisms and what needs to be done for the IMO to present itself as the industry's legislator? Apparently, to explore the preceding questions in depth whilst identifying meaningful remedial measures for the IMO it is deemed appropriate to examine past environmentally decisions of the body. The issues at stake are framed in the context of three cases studies specifically developed to encompass the dynamics of environmental politics and the actors engaged in international environmental negotiations.

## **1.2 Contemporary Formulation of International Marine Environmental Policy**

Indisputably the shipping industry, under the leadership of the IMO, has attained considerable success in minimizing maritime pollution in the course of the 46 years since the Organization's establishment. And this despite the fact that the IMO does not bear the authority to adopt treaties, let alone enforce them on Member States. Instead the agency retains a consultative and advisory role promoting cooperation between governments while enacting,



amending, and monitoring compliance pertaining to international shipping regulations. Furthermore, the agency is poised to promote and retain excellent relations with interest groups, governmental and non-governmental Organizations which administer a plethora of interests and share a wealth of knowledge in a vast array of matters.

To tackle the numerous issues is faced with the IMO has developed numerous committees and sub-committees. One the most important committees is the Marine Environmental Protection Committee (MEPC) which is the dedicated group that handles environmental issues. Delving into the mechanics of enacting international Conventions when a proposal, from either a Member State or an IMO observer organization like Intertanko, reaches the MEPC– provided it acquires sufficient support– it is then referred to the Council (for more information see Chapter III), and as necessary, to the Assembly (IMO Conventions, 2004). Ultimately, and provided the proposal gathers enough support, a draft instrument is developed.

Subsequent work is undertaken by an authorized committee, or sub-committee, usually consisting of representatives of Member States. Intergovernmental Organizations (IGOs) and international Non-Governmental Organizations (NGOs), whose views and advice are welcomed in the MEPC sessions, participate actively in the working sessions of the Committee. Not surprisingly, drawing from their expertise, many of these Organizations are able (and willing) to assist the work of the IMO in pragmatic ways while influence its final decisions. Following then, a conference is convened to consider the draft for formal adoption. These truly global conferences are open to all Governments which participate on an equal footing. In addition, representatives UN and other specialized agencies, like OECD, IOPS Funds, are invited to send observers to the conference (IMO Conventions, 2004). Apparently, the IMO places great emphasis on consensus driven treaties but this does not prevent hegemonic Member States from utilizing their political, economic, or technical prowess to impose their positions.

Most often the debates that abound the IMO conferences arise between Member States.

In turn, Member States positions are governed by their foreign policy, international developments, environmental concerns, business interests, economic and political power, and security issues. Examining the contemporary formulation of environmental policy by the IMO one can assert that due to the observer status of NGOs, the industry, and the environmental lobbies their views and concerns do not enjoy equal footing in the bargaining process. This matter is considered in further detail in Chapter IV.

### **1.3 Problem Framing**

To explore the evolving role of the IMO in face of the rapidly changing industry dynamics and the increasingly importance of environmentally friendly shipping operations it is prudent to examine past and recent decisions of the agency. To investigate the effectiveness and ascertain whether there is a need for change in the current environmental decision-making process of the IMO, it is deemed appropriate to examine how these decisions are made, who the major actors are, what decision-making models are used, and which parties' positions prevail. This investigation will focus on already implemented international Conventions/Instruments and non-binding guidelines currently being drafted. Equally important is to investigate the possibility for the IMO to adopt a proactive rather than a reactive culture. The latter is of critical importance if one considers the extremely time consuming process of enacting an IMO Convention (see Section 3.1, Chapter III).

Particularly challenging for the IMO is the environmental lobby that continues to acquire increasing prominence in developed nations. The challenge being that the Organization is subject to unprecedented pressure from activists to promote higher quality (or more environmentally sound) marine transportation. Prime examples of this increasing power are the unilateral measures adopted by the US, in the 1990s, and more recently, by the EU, in 2002. In mulling marine environmental policy it will be insightful to investigate the IMO Organizational changes designed to strengthen its position as the industry's leader and legislator in matters

relating to the protection of the marine environment. It is hoped that such changes will stave off cases of unilateral measures.

One step further, it is vitally important for the agency to devise meaningful ways to leverage multiple types of initiatives that emanate from actors in environmental negotiations. Apparently, these proposals can serve as a major source of innovation in environmental regulations. Clearly, a plethora of benefits can be realized from environmental entrepreneurship if one considers the already overregulated marine industry. With these benefits in hindsight, in the context of the developed cases studies (Chapter IV), the preceding issues are investigated and appropriate recommendations are suggested.

#### **1.4 Thesis Objectives**

As it was previously mentioned the International Maritime Organization role in the marine industry has been instrumental since its institution in 1948. In view of the increasing challenges that confront the agency, in the area of environmental matters, the fundamental objectives of this study are to:-

- a. Explore the evolving role of the IMO in view of the changing industry dynamics and increasing eminence of environmentally sound shipping;
- b. Appraise the need for a change, if any, in the current treatment of environmental initiatives;
- c. Investigate ways through which the IMO could leverage multiple types of initiatives (or proposals) emanating from actors, such as Member States, IGOs and NGOs, and stakeholders in marine environmental bargains;
- d. Highlight Organizational changes designed to encourage policy innovations in environmental regulations, and
- e. Suggest meaningful steps intended to strengthen the agency's position as the industry's leader while acting proactively to strike a balance between environmentally

sound and sustainable shipping.

## **Chapter II**

### **A Review of Relevant Literature**

#### **2.1 Marine Pollution: A Historical Perspective**

In his book the “Wealth of Nations,” Adam Smith viewed shipping as one of the driving forces behind the world’s economic prosperity. Central to the wealth-creation of trade has been swift and inexpensive marine transportation. Following the eighteenth and nineteenth centuries’ Industrial Revolution, fueled by the economic growth of nations, the world experienced an upsurge in international commerce (Stopford, 2003). As a result, the quantity of commodities transported by sea increased dramatically. The demand for marine transportation increased further with the advent of internal combustion engines and automobiles. With increasing demand for oil— especially in the latter half of the twentieth century— the size of oil tankers increased substantially (Buxton, 2003). Concurrent with the escalation in oil tanker traffic the likelihood of environmental pollution became more apparent.

But in what form does marine pollution manifests itself? In principle, marine pollution may arise from both operational and accidental causes. Major sources of marine pollution include oil, chemicals, harmful substances in packed form, sewage, garbage, and air pollution from marine engines. Historically, oil pollution holds the longest record of international attention, having first become the subject of an international conference in 1926 (Mitchell, 1994). Although operational pollution associated with routine shipping operations originally accounted for the majority of oil pollution, accidental pollution has managed to attract far greater attention in recent decades. Oil pollution accidents are cited in the following section.

##### **2.1.1 Major Oil Pollution Accidents**

In 1967, the *Torrey Canyon* tanker ran aground in the Scilly Islands, spilling 119,000 tons of crude oil in what was then described as the biggest oil pollution incident (Intertanko, 2003). The next serious accident involved the *Amocco Cadiz*, which ran aground in 1978 off the coast of France, discharging 223,000 tons of oil and causing another major environmental catastrophe. Table 1 summarizes the 20 largest oil spills.

Another major milestone was the grounding of the *Exxon Valdez* in March 1989 in Alaska, with the release of 37,000 tons of crude oil into Prince William Sound. As the largest oil spill in US territorial waters, the *Exxon Valdez* grounding invoked extensive media coverage that raised public concerns with respect to the protection of the marine environment. The resulting public furor exerted tremendous pressures on politicians, and the product of this unprecedented public response – the Oil Pollution Act (OPA '90) – made it mandatory for all tankers calling US ports to possess double hulls. In addition to the unilateral measures of OPA 90, the US demanded and succeeded in incorporating some of OPA90 provisions as part of the IMO major international anti-pollution instrument, the MARPOL 73/78 Convention.

More than a decade later, in December 1999, the Maltese registered *Erika* single hull tanker broke into two off the coast of Brittany in France, discharging more than 20,000 tons of crude oil and causing the pollution of more than 400 km of coastline. This incident revived the European Union's interest in the protection of the marine environment, whilst the ensuing political outcry decisively influenced the Union's marine environmental policy.

Finally, in a more recent development, the *Prestige* oil tanker, with 77,000 tons of crude oil onboard, sank off the Portuguese-Spanish coast on November 19<sup>th</sup> 2002, galvanizing environmental concerns for maritime pollution in the EU territorial waters. This incident stimulated activists who demanded and got almost immediate action from the EU. Prompt to respond, the EU resorted to unilateral measures which prohibited single hull tankers of calling European ports, established the European Agency of Maritime Safety, EMSA, to monitor the

Table 1. Oil Pollution: The 20 largest tanker oil spills (Source: Intertanko)

Ship Name	Year	Location	Oil loss (ts)
1 Atlantic Empress	1979	Off Tobago, West Indies	287,000
2 ABT Summer	1991	700 nautical. miles off Angola	260,000
3 Castillo de Bellver	1983	Off Saldanha Bay, South Africa	252,000
4 Amoco Cadiz	1978	Off Brittany, France	223,000
5 Haven	1991	Genoa, Italy	144,000
6 Odyssey	1988	700 nm off Nova Scotia, Canada	132,000
7 Torrey Canyon	1967	Scilly Isles, UK	119,000
8 Urquiola	1976	La Coruna, Spain	100,000
10 Hawaiian Patriot	1977	300 nautical. miles off Honolulu	95,000
9 Independenta	1979	Bosphorus, Turkey	95,000
11 Jakob Maersk	1975	Oporto, Portugal	88,000
12 Braer	1993	Shetland Islands, UK	85,000
13 Khark 5	1989	120 nm off Atlantic coast of Morocco	80,000
<b>14 Prestige</b>	<b>2002</b>	<b>La Coruna, Spain</b>	<b>77,000</b>
15 Aegean Sea	1992	La Coruna, Spain	74,000
16 Katina P.	1992	Off Maputo, Mozambique	72,000
17 Sea Empress	1996	Milford Haven, UK	72,000
18 Assimi	1983	55 nautical. miles off Muscat, Oman	53,000
19 Metula	1974	Magellan Straits, Chile	50,000
20 Wafra	1971	Off Cape Agulhas, South Africa	40,000
<b>(35) Exxon Valdez</b>	<b>1989</b>	<b>Prince William Sound, Alaska, USA</b>	<b>37,000</b>
<b>(NN) Erika</b>	<b>1999</b>	<b>Brest, France</b>	<b>20,000</b>

effectiveness of the EU maritime safety rules and— like the US with OPA90— demanded from the IMO the phase-out of single hull tankers.

## **2.2 Introduction to the IMO**

Whilst many countries acknowledged the idea of instituting an international organization as fundamental in the quest for safer shipping, still these hopes were not realized until the establishment of the United Nations. The foundations were laid in 1948, in Geneva, where an international forum adopted the Convention formally establishing the IMO; the original name being Inter-Governmental Maritime Consultative Organization, or IMCO. In practice, however, it was not until 1958 that the IMO became a reality (Conventions, 2004).

As summarized by Article 2(a) of the Convention the purposes of the organization are: “to provide machinery of cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.” Throughout its 46 years, the IMO has enacted a plethora of maritime Conventions addressing issues such as: safety, marine pollution, liability and compensation, communications, maritime education, and even on the “human element.” With a staff of only 300 the IMO is one of the smallest UN agencies.

Apart from the responsibility of administering more than 40 Conventions, the IMO is also charged with the development of new Conventions and the amendment of existing ones in response to technological and other changes in the marine industry. Albeit the IMO’s successful promotion of “safer shipping and cleaner oceans,” the organization possesses no authority to enforce, adopt, or amend conventions. Among the major challenges that remain with the IMO is the universal, consistent, and effective enforcement and implementation of existing conventions. Equally important, the IMO has to ensure that shipping— the world’s workhorse— remains safe, competitive, sustainable, and environmentally sound. Thus, in its capacity as the UN institution for international bargains pertaining to shipping the IMO, is tasked with the critical responsibility of translating numerous interests— often of conflicting nature— from



Member States, interest groups, the shipping and oil industry, and non-governmental organizations (NGOs) into consensus enacted regulations.

In view of the rapidly evolving nature of shipping, the expectations of its 164 Member States and stakeholders, and the rising environmentally friendly shipping the IMO faces unprecedented pressure to act proactively rather than reactively.

### **2.3 The History of Marine Environmental Regulations**

With the escalation in the volume of cargo transported by sea, and the development of bulk shipping in the nineteenth century, large amounts of noxious substances started to transit the oceans. Recognized as a major hazard to the marine environment, oil became the first substance to attract attention at the international level in 1926. At the same time various countries attempted to protect their territorial waters through the introduction of national regulations (Conventions, 2004). Despite the fact that operational pollution was the prime source of marine pollution, maritime nations chose to combat accidental oil spills instead. This is not surprisingly if one considers the scale of large oil spills and— most importantly— the ensuing impact on marine life, especially the effect on birds which sensitize the public to demand remedial action (Young, 1993)

Initial attempts to regulate oil pollution from ships, in 1926, failed as many countries did not perceive oil pollution as a major threat. It was not until 1954 that the first major milestone was laid down with the adoption of the International Convention for the Prevention of Pollution at Sea by Oil (OILPOL). Further progress came with the establishment of the IMO and the genesis of the International Convention for the Prevention of Pollution from Ships in 1973, commonly referred to as MARPOL 73/78. Ever since, the latter Convention remains the most important international anti-pollution instrument. Acting as a catalyst to the introduction of new counter-pollution measures, marine accidents provided the impetus for addressing a plethora of deficiencies to the existing environmental regulations. In addition, new annexes

provided the basis for tackling diverse sources of contamination such as chemicals, harmful substances in packaged form, sewage, garbage, and aquatic ballast water pollution. Another contentious environmental matter that currently attracts ample attention is that of ship scrapping.

Following a spate of tanker accidents, the IMO held a conference in 1973 which adopted measures affecting tanker design and operation. This initiative led to development of MARPOL 73/ 78. In principal, MARPOL 73/78 is based on basic legal control strategies and various technological measures like tanker design specifications and penalties (Ketkar, 1995). In 2003 and 2005 respectively, the IMO succeeded in ratifying Annexes IV and VI of MARPOL 73/78, which guard against the pollution from sewage and air pollution from ship operations respectively.

#### **2.4 Environmentally Friendly Shipping and the Role of the IMO**

The appearance of Green parties in the 1970s in Western democracies and their increased significance in the 1980s clearly reflects the increased public attention to environmental degradation (Young, 1993). Placing emphasis on environmental issues, the Green phenomenon has succeeded in entering national parliaments of countries such as Germany, Sweden, Finland, and Austria. Parallel to this, non-governmental organizations (NGOs) that supported ecological causes made their appearance. Thus, as the green movement attained more public support, the international and domestic policies of many countries became more environmentally sensitive. Not surprisingly, pollution from ships was one of the areas that attracted immediate attention.

In fact the two factors that prompted governments to take international action are:- activism by non-governmental organizations and dramatic tanker accidents (Mitchell, 1994). Taking leadership roles, the United Kingdom in the 1950s, and later the United States in the 1970s, succeeded in changing the status quo concerning marine pollution. Ever since numerous

counter-pollution measures have been adopted by the IMO and ratified by Member States. Furthermore, the success of environmental regulations is reflected by the IMO's accomplishment of substantially reducing marine pollution (see Figure 1) in conjunction with the universal acceptance of the MARPOL 73/78 convention with more than 97 signatures.

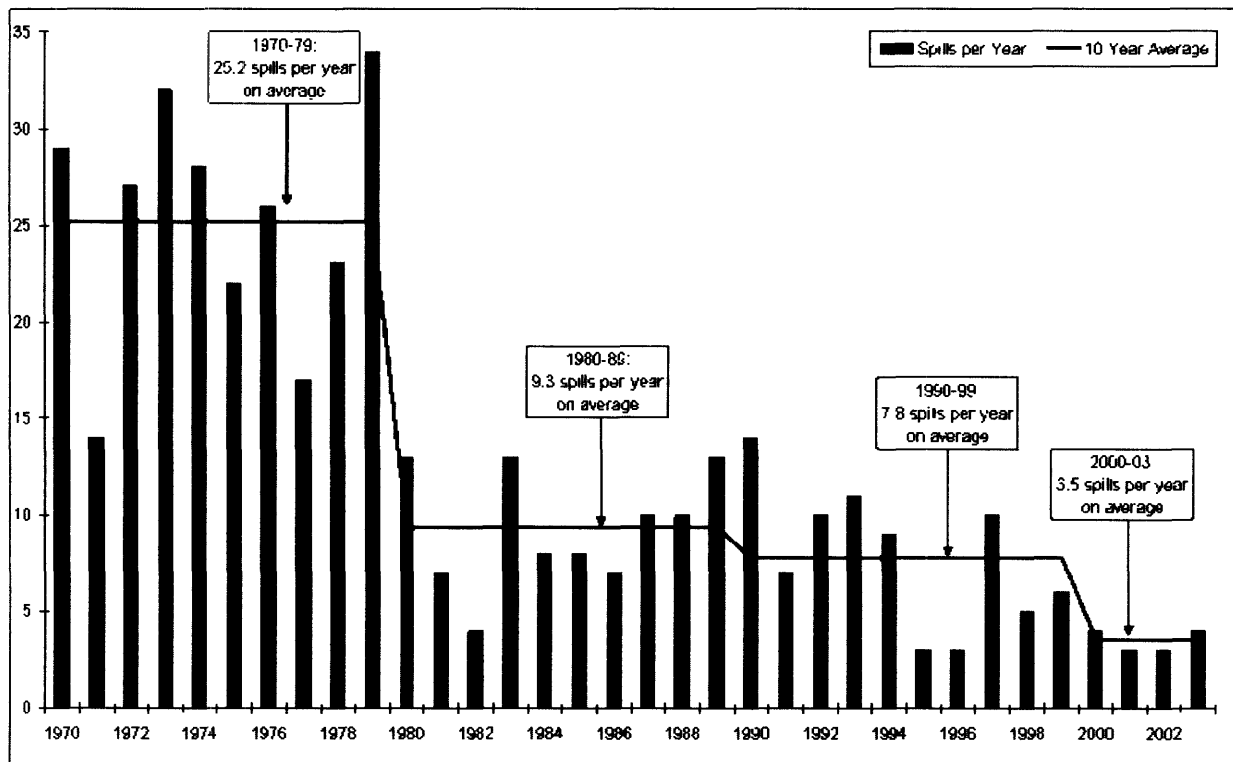


Figure 1. Number of Oil Spills over 70 tons (Source: ITOPF).

But given the dynamic nature of environmental politics one may argue that future success cannot be based on past achievements. Especially issues related to the protection of the marine environment from shipping accidents have proved to be a major source of disagreement between maritime nations. This tendency therefore puts increased stress on the IMO and warrants new treatment of different types of initiatives representing widely diverse positions. Being one the central theme of this study, this challenge is scrutinized in Section 2.5.

## **2.5 Rethinking Marine Environmental Policy**

As environmentalism, in developed countries, has swept into political prominence Green parties have started to increasingly affect the foreign environmental policies of State

actors. Nowhere is this more apparent than in the realm of marine environmental policy. Major actors of this move have been Green Parties and Non-governmental Organizations (NGOs). Perhaps oil pollution is the best example. The dramatic loss of oil tankers has prompted environmentalists which, although relatively small in numbers, can exert an unusually disproportionate influence on their Governments. In turn, States like the US and the EU frustrated by the slow response of the IMO have resorted to unilateral measures. Prime examples being the US (OPA90) and the EU (Erika I & II) unilateral initiatives.

Clearly, in the absence of any authority to implement, let alone enforce, any regulations, this phenomenon justifies the revision of the IMO's current treatment of environmental regulations. The systematic adoption of unilateral/regional measures, at best, can undermine the status of the IMO and, at worst, may prove disruptive to international shipping. Besides staving off regional or unilateral tendencies, environmental politics merit revisiting the IMO procedures and practices with a view of changing the agency's constitutional and institutional structure pertaining to the enactment of environmental regulations. In appraising the need for change it is deemed appropriate to consider past Conventions and future trends in environmental legislation. The industry dynamics together with the changing role of interest groups like Non-Governmental Organizations (NGOs), Inter-Governmental Organizations (IGOs), and stakeholders' expectations is another important element of this analysis. Central to the formulation of effective policies is the notion of coalition-building in an effort to engineer consensus by reconciling diverse interests and aggregating sufficient strength among different interests to support them (Rosenbaum, 1995).

Put in a different way, the IMO is faced with the challenge of leveraging multiple types of initiatives which can emanate from powerful maritime nations, coalition/regional groups, interest groups, stakeholders, and the public. Equally important, the IMO ought to develop the institutional mechanisms that will encourage policy innovations in the realm of international

environmental negotiations whilst strengthening the agency's status as the industry's legislator. Similarly, in view of its evolving role, the agency has to act proactively so as to strike a balance between environmentally sound and sustainable shipping. The preceding considerations are explored in depth in the context of three case studies.

## **Chapter III**

### **Marine Environmental Regulatory Framework**

In order to get an insight into how the MEPC crafts marine environmental policy it is essential to have an appreciation of how the International Maritime Organization (IMO) enacts new or amends existing Conventions. Following the ratification of the IMO Convention, in 1958, the UN agency has undergone numerous changes to better serve the maritime industry. Indisputably, the most important task with which the IMO is charged is the development of international Conventions, the three most important categories being: (a) Maritime Safety, (b) Marine Pollution, and (c) Liability and Compensation.

The most significant of these Conventions comprise: the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships, (MARPOL73/78), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), and the International Convention on Civil Liability for Oil Pollution Damage (CLC). For the complete list of Conventions please refer to the IMO website at [www.imo.org](http://www.imo.org).



But how does the IMO and its Committees function? How does the agency formulate a new Convention when the need arises? What makes the Organization effective? What can be done to improve the performance of the Organization? In order, to answer these and other questions in subsequent Chapters it is prudent to outline the institutional principles upon which the IMO operates. Worth noting that most of this information presented in this Chapter is extracted from the “Conventions” handbook of the IMO (Conventions, 2004) and from the agency’s website.

### **3.1 The Process of Enacting International Marine Conventions**

Perhaps the most important task of the IMO is its responsibility of ensuring that existing International Marine Conventions are kept up-to-date while new Conventions are developed when it becomes necessary. Undoubtedly, the establishment of the IMO coincided with a period of tremendous change in world shipping. Ever since, the Organization is faced with increasingly challenging problems that confront the marine transportation industry. Concurrently, the agency has placed enormous emphasis on the universal and consistent implementation of its Conventions. Worth noting that although Member States which are party to a Convention ratify the same provisions when it comes to incorporate these into their national legislation and enforce them on their flag ships implementation varies dramatically (Smith, G., and McLean, D., 2003).

Currently the Organization bears the responsibility for more than 40 International Conventions and agreements together with numerous protocols and amendments. On top of that the IMO has in numerous occasions reconsidered its procedures to adapt to the marine industry dynamics. The process of enacting new and amending existing Conventions is arduous and time-consuming. It should be appreciated that for sound Conventions a plethora of parameters ought to be considered. Perhaps the repercussions on the industry and stakeholders from the introduction of a new regulation are the most crucial consideration. As to the parameters these may be safety, environmental, legal, economic, technical, implementation, feasibility, and effectiveness. Before examining the preceding aspects it is important to delve into the mechanics of the IMO decision making process.

#### **3.1.1 Adopting a Convention<sup>1</sup>**

This is the aspect of the process with which the IMO as an Organization is most closely

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<sup>1</sup> Most of the information related to IMO procedures, in Sections 3.1.1 to 3.1.5, was extracted from the IMO “Conventions” handbook and the IMO Website: [www.imo.org](http://www.imo.org)

engaged. The IMO consists of six main bodies concerned with the adoption or implementation of Conventions. The Assembly and Council are its main organs, supported by the Maritime Safety Committee (MSC), Marine Environment Protection Committee (MEPC), Legal Committee (LC), and the Facilitation Committee (FC). The structure of the Organization is presented in Figure 1. Developments in shipping and other related industries are discussed by Member States in these bodies, and the need for a new Convention or amendments to existing ones can be raised in any of them.

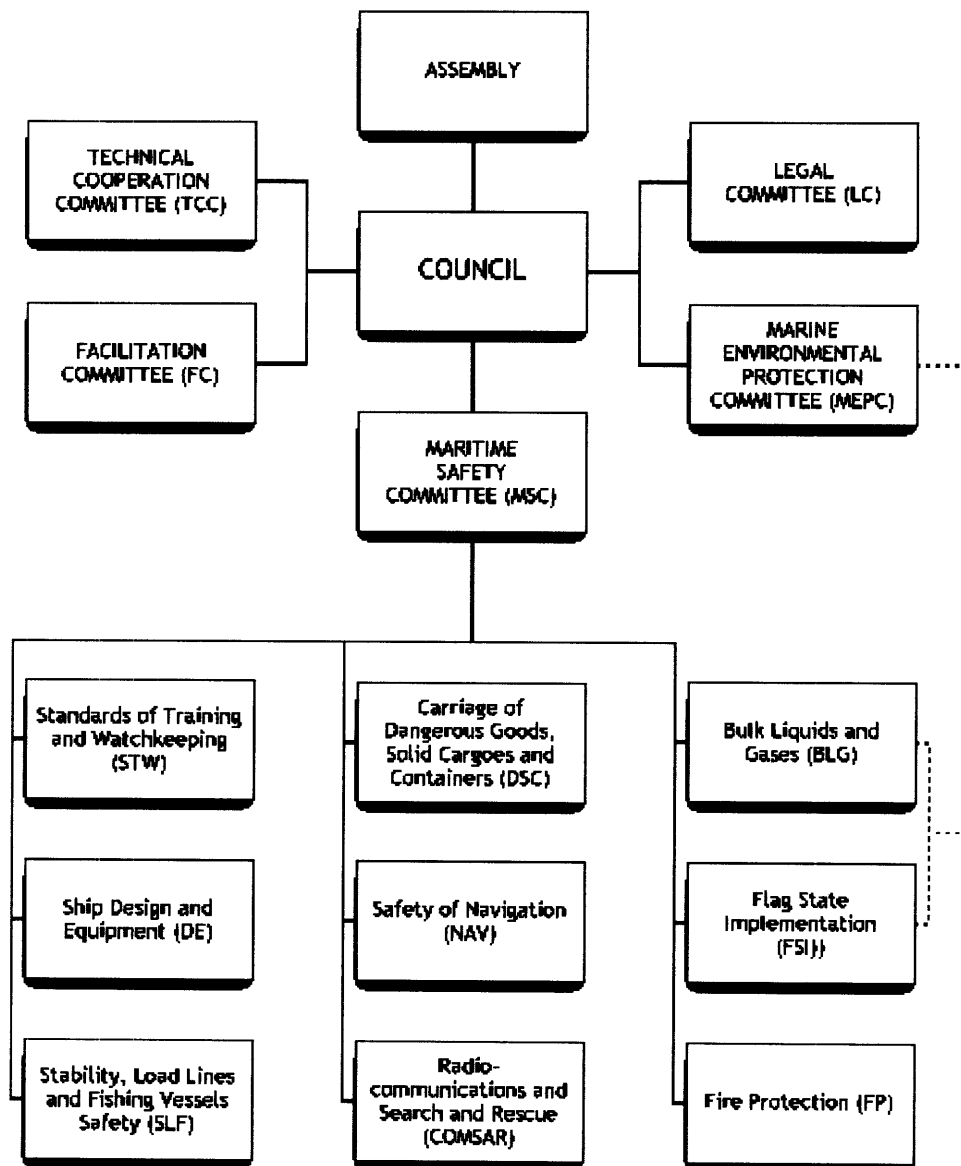


Figure 1. The Structure of the IMO (Source: Capt. Economides, 2004)



Normally the suggestion emanates from one of these Committees, since these meet more frequently than the main organs. If agreement is reached in the Committee, the proposal proceeds to the Council and, as necessary, to the Assembly. Subsequently, if the Assembly or the Council, depending on the proposal, gives the authorization to proceed with the work, the Committee concerned considers the matter in greater detail and ultimately draws up a draft instrument. In some cases the subject may be referred to a specialized sub-Committee for detailed consideration (Conventions, 2004).

Work in the Committees and sub-Committees is undertaken by the delegates of Member States at the Organization. The Organization headquarters are located in London, UK. The views and advice of IGOs and international NGOs, which have a working relationship with the IMO, are also welcomed in these bodies. Many of these organizations have substantial experience in a plethora of matters, and are therefore, able to assist the work of the agency in pragmatic ways.

The draft Convention which is agreed upon is referred to the Council and Assembly with a recommendation that a Conference be convened to consider the plan for formal adoption. Invitations to attend such a Conference are distributed to all Member States of the IMO, currently 164, and also to all States which are members of the United Nations or any of its specialized agencies. These Conferences are, therefore, truly global in nature open to all Governments who would normally participate in a United Nations Conference. All Governments participate on an equal footing. The IMO decisions are made on the “consensus” decision making model. In addition, organizations of the United Nations system and organizations in official relationship with the IMO are invited to send observers to the Conference to give the benefit of their expert advice to the representatives of Governments.

Before the Conference opens, the draft Convention is circulated to the invited Governments and organizations for their comments. The draft Convention, together with the

comments thereon from Governments and interest groups is then closely examined by the Conference and necessary adjustments are made in order to produce a draft acceptable to all or the majority of the Governments present. The Convention thus agreed upon is then adopted by the Conference and deposited with the Secretary-General who sends copies to Governments. Followed then, the Convention is opened for signature by States, usually for a period of 12 months. Signatories may ratify or accept the Convention while non-signatories may accede (Conventions, 2004).

The drafting and adoption of a Convention in the IMO can take several years to complete although in some cases, where a swift response is required to deal with an emergency matter, Governments have been willing to accelerate this process considerably e.g. the recently adopted Security Code supported by the US. Worth clarifying that the time it takes for the Organization to respond to a proposal is up to the willingness of Member States, not the Secretariat per se. After all the Organization provides machinery for cooperation between Governments but does not bear the authority of adopting, let alone enforce Conventions. Paradoxically, when Member States choose to delay the enforcement of a regulation, more often than not, it is not those Governments— in the eyes of the public— that appear slow and inefficient but the IMO itself.

### **3.1.2 Entry into Force**

The adoption of a Convention marks the conclusion of only the first stage of a long process. Before the Convention comes into force— that is, before it becomes binding upon Governments which have ratified it— it has to be accepted formally by individual Governments. Each Convention includes appropriate provisions stipulating conditions which have to be met before it enters into force. These conditions vary but generally speaking, the more important and more complex the document, the more stringent the conditions for its entry into force are. For instance, the International Convention for the Safety of Life at Sea, 1974, provided that

entry into force requires acceptance by 25 States whose merchant fleet comprise not less than 50 per cent of the world's gross tonnage; for the International Convention on Tonnage Measurement of Ships, 1969, the requirement was acceptance by 25 States whose combined merchant fleet correspond to not less than 65 per cent of world tonnage.

When the appropriate conditions have been fulfilled, the Convention enters into force for the States which have accepted it— generally after a period of grace intended to enable all the States to take the necessary measures for implementation. In the case of some Conventions which affect a few States or deal with less complex matters, the entry into force requirements are relaxed (Conventions, 2004). For example, the Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971, came into force 90 days after being accepted by five States; the Special Trade Passenger Ships Agreement, 1971, came into force six months after three States had accepted it.

As for the important technical Conventions, it is necessary that they be accepted and applied by a large proportion of the shipping community. It is therefore essential that these should, upon entry into force, be applicable to as many of the maritime states as possible. On the contrary, they would tend to confuse, rather than clarify, shipping practice since their provisions would not apply to a significant proportion of the ships they were intended to deal with.

Accepting a Convention does not merely involve the deposit of a formal instrument. A Government's acceptance of a Convention necessarily places on it the obligation to take the measures required by the Convention. Often national law has to be enacted or changed to enforce the provisions of the convention; in some case, special facilities may have to be provided; an inspectorate may have to be appointed or trained to carry out functions under the Convention; and adequate notice must be given to shipowners, shipbuilders, and other interested parties so they take into account the provisions of the Convention in their future acts

and plans. Currently, the IMO Conventions enter into force within an average of five years after adoption. The majority of these instruments is now in force or is on the verge of fulfilling requirements for entry into force (Conventions, 2004).

### **3.1.3 Accession**

The majority of multinational treaties are open for signature for a specified period of time. Accession is the method used by a State to become a party to a treaty which it did not sign whilst the treaty was open for signature. Technically, accession requires the same State to deposit an instrument of accession with the depositary. Article 15 of the Vienna Convention on the Law of Treaties provides that consent by accession is possible where the treaty so provides, or where it is otherwise established that the negotiating States were agreed or subsequently agreed that consent by accession could occur.

### **3.1.4 Amendments**

Today shipping, like other technology-driven industries, undergoes numerous technological changes within a short period of time. Adapting to the industry needs, not only new Conventions are required but existing ones need to keep pace with the times. For example, the International Convention for the Safety of Life at Sea (SOLAS), 1960 was amended six times after it entered into force in 1965– in 1966, 1967, 1968, 1969, 1971, and 1973. In 1974 a completely new Convention was adopted incorporating all these amendments, together with other minor changes, and which ever since has been through numerous modifications.

In early Conventions, amendments came into force only after a percentage of the Contracting States, usually two thirds, had accepted them. This normally meant that more acceptances were required to amend a Convention than were originally needed to bring it into force in the first place, especially where the number of States which are Parties to a Convention is very large! This percentage criterion, in practice, led to undue delays in bringing amendments

into force. To remedy the situation a new amendment procedure was devised in the IMO. This procedure has been used in the case of Conventions such as the “Convention on the International Regulations for Preventing Collisions at Sea,” 1972, the “International Convention for the Prevention of Pollution from Ships”, 1973, and SOLAS 1974, all of which incorporate a procedure involving the “tacit acceptance” provision by States (Conventions, 2004).

Instead of requiring that an amendment shall enter into force after being accepted by, for example, two thirds of the Parties, the “tacit acceptance” procedure provides that an amendment shall enter into force at a particular time unless before that date, objections to the amendment are received from a specified number of Parties. In the case of the 1974 SOLAS Convention, an amendment to most of the Annexes, which constitute the technical parts of the Convention, is deemed to have been accepted at the end of two years from the date on which it is communicated to Contracting Governments...” unless the amendment is objected to by more than one third of Contracting Governments, or Contracting Governments owning not less than 50 percent of the world’s gross merchant tonnage. This period may be varied by the Maritime Safety Committee with a minimum limit of one year.

As it was envisaged the “tacit acceptance” procedure has greatly accelerated the amendment process. The 1981 amendments to SOLAS 1974, for example, entered into force on the 1<sup>st</sup> of September 1984. In contrast to this, none of the amendments incorporated in the 1960 SOLAS Convention between 1966 and 1973 received sufficient support to satisfy the entry into force requirements.

### **3.1.5 The “Tacit Acceptance” Procedure**

The amendment procedures contained in the first Conventions under development by the IMO were so slow that some adopted amendments never entered into force. This situation changed with the introduction of the “tacit acceptance” procedure. Tacit acceptance is now

incorporated into most of the IMO technical Conventions. This procedure facilitates the swift and uncomplicated modification of Conventions so as to keep in pace with the rapidly evolving technological changes in the shipping world. Without the tacit acceptance provision, it would have been impossible to keep Conventions up-to-date and the IMO's role as the international forum for technical issues pertaining to shipping would have compromised (Conventions, 2004).

In 1967, in view of the extremely slow amendment process of the IMO, many were concerned about the Organization's structure and its ability to respond to the changes taking place in shipping. To tackle this problem, the IMO assigned a Working Group whose task was to investigate different ways to improve the agency's working methods. In November 1968, the Working Group reported back to the Council. It outlined a list of activities, far broader than the programmes undertaken by the IMO since then. This was approved by the Council, which also agreed that the IMO needed to improve its working procedures.

The working group was asked to report to the Council again at its 22<sup>nd</sup> Session, in May 1969. This time it put forward a number of proposals for improving the IMO's working methods, the most important of which concerned the procedures for amending the various Conventions that had been adopted under the IMO's auspices. The problem facing the IMO was that most of its Conventions could only be updated by means of the "classical" amendment procedure. Amendments to the 1960 SOLAS Convention, for example, would enter into force "twelve months" after the date on which the amendment is accepted by two-thirds of the Contracting Governments including two-thirds of the Governments represented on the Maritime Safety Committee. This goal was not difficult to satisfy when the number of parties to the Conventions was small. But as the parties to the treaties increased substantially it became impossible to obtain the necessary approvals for their amendment.

The next study undertaken on the same matter investigated the working procedures of

other UN agencies to conclude that: “any attempt to bring the IMO procedures and practices in line with the other (UN) agencies would entail a change either in the constitutional and institutional structure of the IMO itself or in the procedure and practice of the diplomatic conferences which adopt the conventions of the Organization.” The risks that faced the IMO were best communicated by a Conference note submitted by Canada which stated that: “unless the international maritime community is sufficiently responsive to these changed circumstances, States will once again revert to the practice of unilaterally deciding what standards to apply to their own shipping and to foreign flag shipping visiting their ports.”

The result was the adoption of resolution A.249(VII) which referred to the need for an amendment procedure: “which is more in keeping with the development of technological advances and social needs and which will expedite the adoption of amendments.” A few weeks later, the Legal Committee held its 12<sup>th</sup> Session. Among other documents prepared for the meeting was a report on discussions that had taken place at the MSC and a detailed paper prepared by the Secretariat. The paper analyzed the entry into force and amendment processes of various the IMO Conventions and referred to two possible methods that had been considered by the Assembly for speeding up the amendment procedure. Alternative I was to revise each Convention so that greater authority for adopting amendments might be delegated to the appropriate the IMO organs. Alternative II aimed to amend the IMO Convention itself and give the IMO the power to amend Conventions.

The Committee established a working group to consider Alternatives I and II which concluded that: “The remedy for this, which has proved to be workable in practice, in relation to a number of Conventions, is what is known as the ‘tacit’ or ‘passive’ acceptance procedure. This means that the body which adopts the amendment at the same time fixes a time period within which contracting parties will have the opportunity to notify either their acceptance or their rejection of the amendment, or to remain silent on the subject. In case of silence, the

amendment is considered to have been accepted by the party...”

The tacit acceptance idea immediately proved popular. The Council, at its meeting in May, decided that the next meeting of the Legal Committee should consist of technical as well as legal experts so that priority could be given to the amendment issue. The Committee was asked to give particular attention to tacit acceptance. By the time the Legal Committee met for its 14<sup>th</sup> Session in September 1972, there was general agreement that tacit acceptance offered the best way forward (Conventions, 2004). There were some concerns about what would happen if a large number of countries did reject an amendment and the Committee members agreed that tacit acceptance should apply only to the technical content of Conventions, which was often contained in annexes. The non-technical articles should continue to be subject to the classical (or “positive”) acceptance procedure.

The tacit acceptance amendment procedure has now been incorporated into the majority of the IMO technical Conventions and has been extended to some other instruments as well. Its effectiveness can be seen most clearly in the case of SOLAS 1974, and MARPOL 73/78 which have been amended in numerous occasions ever since. In the process, the Convention’s technical content has been almost completely re-written.

### **3.2 Actors, Interests Groups, and International Marine Negotiations**

The major actors of the IMO international negotiations are Member States which are the only parties granted the authority to enact legislation. Apart from negotiating the international legal instruments and creating global environmental regimes States decide which issues are placed top of the IMO agenda (Gareth, P., and Brown, J., 1996). Despite this, non-State actors increasingly influence global environmental politics. Although all Member States have equal footing during the IMO negotiations the roles States can adopt in global environmental politics may differ appreciably. According to Gareth and Porter, in negotiations for the enactment of international Conventions, a Member State actor may play one of the four possible roles: lead



state, supporting state, swing state, or blocking-state. Apparently, the role adopted in each case— to a large extent— is dominated by domestic political factors and national interests.

Another category active in the IMO international bargains is that of Inter-Governmental Organization (IGOs), like the EU and OECD, and Non-governmental Organizations (NGOs), like ICS and ISO. IGOs and NGOs influence the IMO agenda setting, draft contents and wording, and contribute to the development of the agency environmental policy. Through interest groups or NGOs the positions of environmentalists and organized shipping corporations, like Greenpeace and Intertanko, find their way to the IMO bargains. Besides retaining an observer status with the IMO interest groups actively participate into the IMO Correspondence and Working Groups. Thus their know-how and input shapes the decisions of the agency. Furthermore, NGOs have the power to influence the policies of individual Member State actors. It is interesting to note that the NGO influence on global environmental politics is predominantly attributed to three primary factors (Gareth, P., 1996):-

- NGOs specialist knowledge and innovative thinking about global environmental issues, derived from specialization in issues under negotiation;
- Dedication to goals that transcend narrow national or sectoral interests; and
- Representation of substantial constituencies within their own countries that command attention which sometimes influence tight electoral contests.

Apparently, the pluralistic culture that the IMO promotes helps bring together all parties and stakeholders affected by the IMO regulations while it strengthens the agency's position as the industry's regulator. With regard to the IMO international negotiations the agency makes its deliberations on the consensus decision making model. The logic behind the use of this model is that once a Convention has been enacted on consensus this ensures its wide implementation as required by the international nature of marine transportation (Charalambous, 2004). The major disadvantage of this model is the time consuming process of adjusting the wording of

different provisions in a regulation. Experience however has demonstrated that the time it takes to develop a regulation depends on the willingness of Member States and the politics involved.

### **3.3 The Politics of Environmental Marine Regulations**

The MEPC is the dedicated the IMO Committee that makes marine environmental deliberations. The decision making actors in the Committee are all Member States— currently 164— where as marine environmental policy is crafted on consensus. Although hegemonic nations are the major actors the equal footing status granted to all Members makes it possible for other Members to block a particular provision in a draft proposal. Perhaps, the best example was when the US tried to annex its OPA90 provisions into MARPOL 73/78. In the latter capacity politically and economically weaker nations, like Mexico and Liberia, opposed the US request making it impossible for the US positions to prevail.

Inherent to its nature marine environmental policy is in some respects fluid and temporary, always undergoing continuous metamorphosis. This transformation arises from the fact that it is much easier to defeat rather than enact new legislation. Not surprisingly, an appreciable amount of the time of the IMO Committees is spent in revisiting and changing draft proposals. In turn, this reflects the myriad considerations that the IMO has to take into account in reaching a particular decision. These considerations could be technical, scientific, legal, economic, efficiency, environmental, and social.

International political developments play an instrumental role on the MEPC deliberations. In the context of environmental legislation two other factors that have prompted the calls of governments to take international action: activism by non-governmental organizations and dramatic tanker accidents (Mitchell, 1994). But with an increasing prominence of the environmental lobby virtually nothing escapes unnoticed in today's shipping world. Some of the examples that prompted environmentalists to demand action from the IMO include: organotin (TBT) paint systems, the introduction of invasive marine species from ship's

ballast water, ship recycling, marine exhaust gas emissions, etc. Such has been the power of the environmental lobby that almost all of the matters considered by MEPC are politicized. Exerting an unusually disproportionate power, the Green parties in many developed nations, especially in North America and Europe, have been successful in influencing the position of several IMO Member States when it comes to environmental matters (Charalambous, 2004).

Prime examples of the above leverage have been the unilateral US (OPA90) and EU (Erika I & II) measures that have undermined the role of the IMO. But politics alone cannot develop environmentally sound marine legislation. Indeed an international organization, whose job is to develop legislation for the maritime industry, requires technical know-how that extends beyond political biases. Experience has shown that the IMO technical competency, together with its pervasive access to NGOs, that share a wealth of technical expertise, remains the Organization's greater strength. Nevertheless, both technical competency and politics should be taken into account for environmentally sound and sustainable shipping.

### **3.4 The IMO Decision Making Model**

Decisions of the IMO are taken on the Consensus Decision-Making (CDM) Model. Consensus is the process of group decision-making which involves serious treatment of every group member's opinion, and a collective trust in each member's discretion in follow-up action. That is, the input and ideas of all participants are collected and synthesized to arrive at a final decision acceptable to all (Saint, S., Lawson, R., 1994). Most importantly, consensus derived decisions— although use lots of resources prior the decision— create commitment to the decision and often facilitates creative decision-making. The element of commitment is of paramount importance to the IMO deliberations as it ensures their universal endorsement. This however, does not ensure their consistent implementation.

Compared to voting, which is a “zero-sum” process, consensus derived deliberations are qualitative rather than quantitative, focusing attention on differences and mutual understanding

among parties. Yet consensus does not mean that everyone thinks that the decision reached is necessarily the best, or is even sure that it will work. What it does mean, however, is that in progressing to that decision, merely none of the Member State felt that its position during bargains was misunderstood or that it was given a proper hearing. Most importantly no ideas are being lost, but instead each member's input is incorporated in the decision. It is widely accepted that collective, as opposed to individual, intelligence generates better solutions.

It should be appreciated that in forming a consensus proposal the original draft is amended and shaped through ensuing discussion or, withdrawal if it fails to gather sufficient support. The elemental responsibility of the consensus model is to ensure that all participating parties' voices have been heard and taken into account. Coercion and trade-offs can be replaced with creative alternatives and compromise. An important actor in CDM is that of the facilitator which in the IMO negotiations is normally undertaken by the president of the IMO Committee or the IMO Secretariat. The facilitator(s) defines decisions that need to be made, helps progress them through different stages of reaching agreement, focuses attention on the critical elements, keeps the discussion alive, and ensures that the position of all participating parties have been heard.

However, the CDM has its flaws as well. Besides being time consuming the process could yield no results if objecting parties do not reconcile on their positions. Various ways for Member States to express their opposition to a proposal comprise: non-support, reservation, standing aside, blocking, or withdrawing from the group (Saint, S., Lawson, R., 1994). Apparently, if settlement is not reached, the Committee stays with the previous decision on the subject, or nothing. To sum-up, the IMO consensus decision making model success depends on the willingness of individual Member States to find a solution. The fact that CDM is a "non-zero sum" model helps promote cooperation, mutual understanding, and creative thinking.

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## **Chapter IV**

### **Development of Case Studies**

#### **4.1 Rationale**

Shipping, like other technology-driven industries, has experienced numerous technological changes in the past half-century. To better serve the maritime transportation business the IMO, as an industry barometer, has adapted to these technological breakthroughs. Similarly, responding to the expectations of the international community, the IMO— in many occasions— had to revise its working procedures for amending and/or enacting new regulations. Prime example of this change has been the “tacit acceptance” procedure aimed at shortening the time it takes to amend existing Conventions. But given the dynamic nature of shipping one may argue that organizational change—most often, than not— aroused from the agency’s inability to attain its goals. Nowhere is this more evident than in the realm of international environmental regulations.

Nonetheless, as we move further in an era of complex interdependence, it is increasingly becoming apparent that international organizations cannot, and should not, confine themselves to technical roles (Young, 1993). That is, agencies that retain their focus on technical issues alone are running the risk of becoming obsolete as they fail to fulfill the expectations that led to their establishment, whilst taking into account the positions of interest groups and stakeholders.

Hence, the IMO should cater for the interests of:-

- Member States;
- Intergovernmental Organizations (IGOs); and
- Non-Governmental Organizations (NGOs)/Interest Groups

Apparently, the IMO is no exception to the preceding observation. Perhaps the unilateral

environmental measures taken by the US, and more recently the EU, in response to the *Exxon Valdez* and *Erika* accidents respectively, provide a good indication of the need for change. Although conventional wisdom teaches us that crises offer unique opportunities for radical changes in organizations still a proactive rather than a reactive approach yields superior results (Coughlin, 2003).

In exploring the need for change— in the context of environmental regulations— a set of cases studies is developed. These cases studies serve as the vehicle for identifying organizational weaknesses and areas needing improvement. Moreover, policy innovations and the evolving role of the IMO as the industry legislator are also examined. The first case study collectively examines two actual incidences of unilateral measures of a hegemonic nation and a regional initiative, that of the US and EU respectively. The second, case study is developed in the light of environmental regulations with Greenpeace being the major player. Finally, the last case study presents an interesting industry case study.

Carefully selected, each case study will present a different challenge for the IMO. In other words, by using information from the actual MEPC proceedings, kindly provided by the Cyprus Department of Merchant Shipping, the treatment of different proposals by MEPC is analyzed. Among other critical issues the case studies are designed to identify areas of improvement in crafting future environmental policy, the facilitation of policy innovations, the reconciliation of conflicting interests, and the development of the institutional mechanisms to translate proposals into policy decisions. To frame the issues at stake together with the dynamics of enacting new regulations the first case study gives details of an amendment already enforced, the second an international regulation at its genesis, while the third traces the development of an international instrument yet to enter into force.

## **4.2 Methodology**

Obviously if each case study is viewed from a different perspective different messages

can evolve. In order to make their direct comparison possible, each scenario will be analyzed from the same point of view or framework. Serving as a common platform a set of questions will filter critical issues through the same lens facilitating an equal basis comparison between all case studies. This framework comprises the elements of motivation, policy dynamics, the role of the IMO, and the final outcome of the proposal. First, the logic behind each party's decision to adopt the specific position will be examined. In essence, the motivation will concentrate on the uniqueness of a problem sufficient to propel it on the organizational or governmental agenda. As Clarence Davies, of EPA, observed: "new technical information by itself does not significantly influence the political agenda. It must be assisted by some type of political propellant" –an interest group, an industry lobby, or the president of a nation.

Subsequently, the policy dynamics are analyzed. This part will map the reasons which led the government, or interest group, to choose the specific path it has done so. Major sources of influence will be examined. For example, as environmentalism has swept into political prominence it will be particularly interesting to examine its impact(s) on the position of all three parties; Member States, the industry, environmentalists. One step further, an attempt is made to portray the role of the IMO in the light of its past and current treatment of similar problems. Central to this is the status of the Member State, or interest group in the international arena. Certainly, the agency is deemed to have little leverage over the decision of a hegemonic state but, conversely, it can fundamentally influence the decision of a developing nation. Thus the early involvement of the agency can play a decisive role on how the party translates its original intention to a specific policy course. Finally, the outcome of the original motivation of a government or a non-governmental organization will be presented.

### **4.3 The US-EU (Member States) Case Study**

By being members of the United Nations states are the only entities that enjoy the privilege to participate, on an equal footing, in the decision-making process of the IMO. On the

other hand, organized industry groups, like Bimco and ICS, have only been granted an observer status with the agency. Thus, in order to get an insight into the IMO's environmental policy making it is deemed appropriate to investigate the roles of the "major players." A striking feature of the composition of the 164 Member states to the IMO is that although hegemonic nations, like the US and UK, have both the political, economic, and technical prowess their world merchant shipping tonnage share is rather limited in comparison to developing nations, like Panama, Liberia, and the Bahamas, which have little political leverage.

Nevertheless the Member States case study is developed with a view of exploring the evolving role of the IMO in the context of environmental politics. The most challenging of those being unilateral measures that threaten to jeopardize the leadership role of the IMO as the industry's legislator. Emphasis is also placed on identifying areas of improvement for the agency and the need for change i.e. how the agency could improve its performance or strengthen its position as the UN shipping industry lawmaker. The latter consideration in conjunction with the increasing importance of environmentally sound shipping, in industrialized nations, makes the unilateral US and EU anti-pollution measures an excellent paradigm. To craft the Member States case study information is extracted from the actual proceedings of the MEPC 32<sup>nd</sup> and 50<sup>th</sup> Sessions during which the US and the EU have requested from the IMO to annex their unilateral demands in MARPOL 73/78.

Past experience has shown that oil pollution incidents have acted as catalysts towards stringent anti-pollution measures. The reason being that these incidents tend to attract ample media attention with sufficient momentum for Member states, and interests groups, to demand action from the IMO. Such an incident has been the grounding of the *Exxon Valdez* tanker off the coast of Prince William Sound, in Alaska, in 1989. Ensuing political pressure led to the adoption of the Oil Pollution Act of 1990 (OPA90) by the US Congress (Ketkar, 1995). The Act made it mandatory for all tankers calling at U.S. ports to possess double hulls. More



importantly, the US demanded from the IMO to pass some of OPA90 requirements as part of its main anti-pollution Convention; MARPOL73/79.

One step further, following the loss of the *Erika* tanker, in 1999, the EU has decided to unilaterally accelerate the phase-out deadline for single hull tankers while forbidding these vessels from trading with EU ports (European Commission, 2003). To tackle the problem of oil pollution from ships the EU drafted the Erika I and Erika II legislation whose provisions were imposed on all EU Members (Journal of the European Communities, 2002). The loss of the Prestige oil tanker, in November 2002, again in EU waters, came to galvanize concerns that single hull tankers are structurally and, hence environmentally, unsound. This incident provided the impetus for the EU to demand from the IMO to phase-out single hull tankers earlier than the 2015 deadline (Höfer, 2003). For this reason, the EU regional initiative is often quoted as the “Euro-OPA” initiative. Since both unilateral initiatives deal with double hull tankers, and share many identical provisions, this case study amalgamates both the OPA90 and the Erika I & II legislation.

#### **4.3.1 Motivation**

Both the OPA90 and the Erika I & II legislation were formulated in response to public concerns caused by the grounding of *Exxon Valdez* and the loss of the *Erika* tankers in 1989 and 1999 respectively. Central to the preceding measures has been the high standard of living of US and European citizens which in turn mirrors an environmentally conscious audience. That is, as environmentalism has swept into political prominence, becoming a major media preoccupation, the US and EU environmental lobbies became major players in domestic politics (Rosenbaum, 1995). Arising from the wide media coverage of the oil spills the increased public intolerance to marine pollution incidents makes marine natural resources more valuable to individuals (Ketkar, 1995).

Triggered by a climate congenial to aggressive approaches to pollution abatement both

the US and EU environmental lobbies demanded and got action from their political leaders. Although, deterrent measures could have taken the form of higher liability charges or fines, US politicians decided— primarily for purely political reasons— the phase-out of single hull tankers and demanded that newbuildings should be of the same specifications. These unilateral measures banned single hull tankers from trading with US ports. Beyond this, utilizing their hegemonic status, the US had gone one step further to demand from MEPC to incorporate some of the latter conditions into MARPOL 73/78; IMO's main anti-pollution instrument. More recently, EU has adopted a similar course of action.

Worth emphasizing that apart from its hegemonic political status the US continues to be the world's largest single crude oil importer country with 456 million tonnes or 31 percent of the world's total oil imports (BP AMOCO, 2001). Clearly, from this standpoint, one may argue that the US as a major oil consumer had the power to resort to unilateral measures but the question remains whether shipowners should have borne the entirety of these costs. On the other hand, the EU although is a major oil importer, did not unilaterally proceed to ban single hull tankers after the loss of Erika, in 1999, but the loss of the Prestige oil tanker 3 years later provided the impetus.

#### **4.3.2 Policy Dynamics**

From an environmental standpoint the OPA90 mirrors the increasing potency of the environmental lobbies in developed nations. The logic behind the adoption of the double hull concept was to focus the attention of the shipping industry far more rigorously on the inherent risks to oil pollution via legal and economic means (Stopford, 2003). Following the implementation of the OPA90 in US territorial waters the US delegation, at the IMO, demanded that similar provisions be incorporated in MAROL73/78. Prompt to respond the IMO assigned a Steering Committee, sponsored by the oil and tanker industry, to oversee the “Comparative Study on Oil Tanker Design” whose task was to investigate the mid-height and the double hull

tanker designs. In the meantime, it was agreed to amend MARPOL 73/78 at a critical MEPC Session in 1992.

Under the chairmanship of the United States the MEPC 32<sup>nd</sup> Session, with 51 participating States, 4 IGOs, and 18 NGOs convened in London in 1992. The preceding tanker designs and the enhanced tanker surveys as a means of eliminating sub-standard ships, framed the debate. Not surprisingly, the US expressed considerable support in favor of the double hull concept with the ultimate scope of phasing-out existing single hull tankers. However, the US proposals encountered significant resistance from Member States like France, Mexico, Liberia, and industry groups. Most importantly, other States, like Japan, Netherlands, and the UK or coalitions of States, like Germany, Denmark, Japan, Netherlands, the UK and Norway and Sweden proposed amendments, with a view of incorporating them in annexes 13F and 13G<sup>1</sup>. Despite the US attempt to eliminate the mid-deck oil tanker design the MEPC rejected the US position. Finally the MEPC adopted, by consensus, incorporated regulations 13F and 13G into Annex I of MARPOL 73/78. However, on the grounds of technical differences between the adopted 13F and 13G regulations and the OPA90 the US reserved its position to adopt these annexes (MEPC 32<sup>nd</sup> Session, 1992).

Notwithstanding, the most striking development of the US campaign on single hull tankers has been the fact that the US– the State that caused the furor for the phase-out of single hull tankers– did not become party to annexes 13F and 13G that entered into force in July 1993 (Status of the IMO Conventions, 2004)! Clearly, this case has demonstrated that the IMO has the potential to speed-up the process of adopting international Conventions. Similarly, the IMO philosophy of enacting consensus driven regulations has demonstrated that hegemonic nations cannot easily overcome the resistance of smaller nations during negotiations mainly because of their equal decision making status. It should be recognized, however, that during international

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<sup>1</sup> Annex 13F is referred to as “Prevention of Pollution in the Event of Collision or Stranding” and 13G as “Requirements for Existing Tankers.”

bargains conflicting parties should be willing to compromise for the sake of reaching an acceptable resolution.

Analyzing now the policy dynamics of regulations 13F and 13G it can be argued that Member States' reluctance to support the US proposals reflected their industry's concerns pertaining to the high costs of the US demands. Worth noting that the US proposal provisions incurred additional costs to the oil and tanker industry on top of those needed to replace single-hull tankers with double skin vessels. Despite the US disagreement the US primary proposal for the phasing-out single hulls prevailed, forcing shipowners to pay the replacing costs. Interestingly, the IMO decision has demonstrated that sanity can dominate in environmental negotiations provided that participating parties are willing to compromise for the sake of environmentally sound and sustainable shipping.

Adopting a similar strategy, after the loss of *Prestige* oil tanker, in 2003, the EU prohibited single hull tankers from calling EU ports on the grounds of being structurally and hence environmentally unsound. The EU, like the US, following its unilateral initiative demanded from the IMO to shorten the phase-out deadline for single hull tankers together while banning single skin vessels from transporting heavy grades oil (MEPC 50<sup>th</sup> Session, 2003). Not surprisingly, the original EU unilateral decision was declared illegal by the IMO (Oil Daily, 2003). Subsequent negotiations during the 50<sup>th</sup> MEPC Session, in 2003, helped bridge the gap and ultimately consensus was reached on the phase-out deadline. During the Committee meeting the EU proposals did not encounter considerable resistance from the international community as the US and other nations shared the EU concerns. In the meantime, the sinking of Erika and Prestige oil tankers in European waters has raised questions as to the seaworthiness of single-hull tankers.

Apparently, the EU marine environmental policy can be viewed as an "extension" of the original US campaign. Interestingly, as Regulations 13F and 13G paved the way almost a

decade earlier, tanker owners were credited with sufficient time to plan ahead changes in their existing and new tonnage. Therefore, from this perspective, it can be inferred that the new phase-out deadline of 2005 and 2010 from 2007 and 2015 for Category 1 and Category 2 and 3 tankers respectively, as requested by EU, was not disruptive to the shipping community. To sum-up, the Member States case study has revealed that the IMO has to reconsider its current treatment of environmental proposals as the need to stave off unilateral measures, that undermine the role of the IMO, becomes more pronounced. Apart from revisiting Conventions entry into force requirements, the agency– on top of its technical competency– has to invest on the development of institutional mechanisms for faster and more effective environmental policy decisions that will ensure its leadership role. This issue is investigated in greater depth in Chapter V.

### **4.3.3 The Role of The IMO**

Due to the truly international nature of marine transportation it has always been recognized that the best way to improve the safety and environmental performance of shipping is through the development of international regulations adhered to by all maritime nations (The IMO Website, 2004). Instituted on this underlying philosophy the success of the IMO is, to a large extent, attributed to consensus enacted regulations enjoying universal endorsement by the maritime community. On the other extreme, acknowledging the major risks associated with unilateral measures the IMO has invested heavily on establishing a culture among its members that denounce these types of intentions. Despite the agency’s efforts the OPA90 has been one of the most controversial measures ever adopted by a Member State (Stopford, 2003).

This in turn, is tied to both Members States and industry resistance. Corollary to the preceding stance were the costs of replacing existing single hull tonnage with double skin vessels in conjunction with doubts pertaining to the effectiveness of the proposed US measures. But even before the US intentions were made public the IMO had established uninterrupted

communication channels with the US delegation at the IMO. The agency had tried to influence the decision of the US government to proceed unilaterally by urging US officials to refer to the IMO committees for consideration (Costaras, 2004). These IMO efforts were intensified as the US proceeded to impose OPA90 at the State level.

To avoid catastrophic repercussions on the oil and tanker industry the IMO, within only 2 years, had obtained the results of its Correspondence and Working Groups and set the MEPC 32<sup>nd</sup> summit, in 1992, as the date for amending MARPOL 73/78 (MEPC 32<sup>nd</sup> Session, 1992). In the meantime, the agency had considered the US proposals during earlier MEPC meetings and encouraged other Member States, NGOs, and IGOs to come up with their proposals and studies in an attempt to reach consensus during the MEPC 32<sup>nd</sup> Session. Obviously, this policy is in line with the IMO philosophy of enacting consensus driven Conventions. Most importantly, the draft of resolutions 13F and 13G had been prepared within an extremely short time window.

Going one step further, the IMO through numerous presentations and reports of its Working Groups, tried to reconcile the conflicting positions of individual and groups of Member States, during the MEPC negotiations, in an attempt to bridge the gap between them. Critical role has also played the IMO Secretariat who devoted considerable resources and time to highlight the technical, economic, environmental, legal, and safety implications of the double hull concept (Charalambous, 2004). Although, it should be appreciated that the IMO officials have leverage on conflicting matters, on the contrary, for Member or coalition States with hegemonic status, arising from powerful political and economic power, one expects the agency's control on the final decisions to diminish. Surprisingly, the IMO is an exception to this. Under such circumstances the decision-making power of the agency resides with Member States. In turn, this leads to the "consensus" decision making model upon which the IMO decisions are made. At least for the US request the consensus model filtrated many of the

unpopular US provisions out of the final MEPC draft. Ultimately, this led to the US decision not to become party to the annexes!

Obviously the response of the IMO with regard to the OPA90 and Erika I&II demonstrated that the agency utilizes its wealth of technical know-how and unparalleled access to NGOs, such as classifications societies, industry groups, to come-up with technically and environmentally sound decisions. On the other hand, Member States that do not share the same technical knowledge, ignoring the inherent risks but surrendering to political imperatives resort to unilateral measures. Perhaps a good starting point for the IMO is to help Member States grasp the adverse impacts of untried and novel legislation that could prove potentially disruptive to shipping operations and their international affairs.

Despite the fact that the roles international organizations play in specific environmental negotiations are closely linked to broader political developments timing alone cannot justify the success of some organizations and the failure of others. Irrespective of the political climate the most important issue is that international organizations, like business organizations, should adapt to the dynamics of the industry they serve. Coping with these changes, and depending on the specifics of each proposal, the IMO could utilize different roles. Ideally the agency ought to act as a leader/regulator. However, since this is not always possible, the organization could act as a broker between conflicting parties, a consultative body or even an information provider when the circumstances permit it. Nevertheless, all maritime nations understand that international consensus-enacted regulations are not disruptive to shipping. Hence, the reason both the US and the EU after locally implementing their measures have turned to the IMO in an attempt to pass them internationally. In addition Member States, apart from protecting aquatic life, have an obligation to other nations, the oil companies, and their state flag tonnage.

#### **4.3.4 Final Outcome**

Following the unilateral banning of single hull tankers the US requested from the IMO

to implement OPA90 provisions as part of MARPOL 73/78. The final outcome of this effort was for MEPC to adopt regulations 13F and 13G that differed appreciably from the US position (Efstratiou, 2004). The concerns of the industry, arising mainly from the cost of retrofitting existing and building new tankers with double hulls, were reflected in the stance of Member States. Utilizing their equal footing in consensus negotiations some Member States, like France, and Liberia, did not endorse the US request (MEPC 32<sup>nd</sup> Session, 1992). Other Member and groups of Member States had alternative proposals. Eventually, based on the consensus decision model of the IMO, a compromise between conflicting parties was reached. Apparently, this verdict failed to satisfy the US which chose not to become party of the latter amendment despite being the major actor behind the amendment.

As regards the more recently adopted EU unilateral measures, although declared illegal by the IMO, the fact that OPA90 paved the way made it much easier for Europe to move unilaterally. Coincidentally the environmental damage caused by the *Prestige* and the *Erika* tankers were single hulled thus helping the EU defend its claims and actions. To sum-up, despite the fact that the IMO is not authorized to impose regulations on Member States unilateral measures that had wide repercussions on the maritime industry had been limited. Nevertheless, the IMO should direct its efforts to suppress other nations from following the same path. Together with the IMO, the Member States that recognize that unilateral measures can promote a chaotic situation in shipping should work with the agency.

Drawing on this principle a group of European maritime nations, including Greece and Denmark, have already started working on the idea of eliminating unilateral measures on behalf of the EU (Costaras, 2004). Obviously the IMO should support such initiatives which together with contemporary adaptation of the agency to the industry needs will eliminate, or make, unilateral measures completely a rare phenomenon.

#### **4.4 The Greenpeace (Interest Group) Case Study**



Reflecting a trend towards environmental awareness, in many countries, especially in developed ones, Green Parties have gained considerable momentum since the 1970s. Apart from the active involvement of the green movement in domestic politics in the name of protecting the environment these non-governmental organizations (NGOs) increasingly find themselves caught up with transnational environmental issues. In fact, aside from dramatic tanker accidents, the other factor that compels governments to take action at the international level are NGOs. An excellent, and perhaps a representative, example of an international environmental interest group is Greenpeace.

It therefore becomes evident that the IMO, apart from the industry lobby and Member States, it has to accommodate the views of international environmental groups. But to what extent does (or should) the IMO, in its decision-making process, take into account the environmental lobby position? In exploring the influence (or powerlessness) of environmental groups on the IMO decisions as well as the need for change— if any— for the IMO, it is deemed appropriate to confront the agency with an environmental issue. More importantly, it would be of paramount importance to identify areas where the IMO organizational performance could improve. For this purpose the contemporary issue of ship scrapping was selected. The reason being that ship breaking is a contentious matter that has attracted considerable attention in recent years. Given the fact that ship scrapping is nothing new it is worth highlighting the reasons which have led to the efforts to develop binding international regulations addressing concerns arising from ship disposal.

Obviously ship demolition is a natural outcome of ship obsolescence and is an essential step towards maintaining a healthy shipping industry as new tonnage is build to replace the vessels scrapped. In principle ship recycling is one of the basic principles of sustainable development (Res. A.962(23), 2004). In the last decades the ship demolition industry; noisy, dirty, and very labor intensive, has tended to gravitate to the developing world (Bimco, 2001).

Hence, a lot of ships are nowadays scrapped in countries like India, Bangladesh, China, Pakistan, and Turkey (Greenpeace, 2004). Typically, the main arguments that environmentalists cite when it comes to ship demolition revolve around concerns about health and safety of the workers and environmental hazards.

On the other hand, according to the IMO, ship recycling makes a positive contribution to the economies of developed nations, the global conservation of energy and resources (The IMO Press Release b, 2003). Virtually nothing goes to waste as materials and equipment are almost entirely reused. Steel and other non-ferrous materials, which make most of the value of the scrapped ship mass, are cut up into hand-sized bits and reprocessed, in steel mills, to make reinforcing rods or “rebars” for the construction industry (Bimco, 2001). Items like machinery, pipework, wiring, electric motors, accommodation fittings are sold for re-use in the local market. In addition, the process employs a large number of workers the majority of which is unskilled. It therefore becomes clear that, if ships are properly processed, ship recycling could be a “green” industry (The IMO Press Release b, 2003). However, this endeavor requires substantial capital investment while the question of who bears the costs remains to be answered.

As expected the debate for ship scrapping is predominantly between the industry and the environmental lobbies. At the international level, however, the IMO is the dedicated UN body that bears the responsibility for reaching consensus and developing legislation that addresses this contentious matter. To further scrutinize the impact of international environmental groups on the IMO resolutions it is appropriate to do so in the light of a real case scenario, namely that of ship scrapping. Worth emphasizing that the debate is currently under development and much needs to be done if consensus is to be reached. To frame the issues at stake information was extracted from the actual MEPC negotiations, namely the 47<sup>th</sup>, 48<sup>th</sup>, and 49<sup>th</sup> Sessions, kindly provided by the Cyprus Department of Merchant Shipping (DMS).

#### **4.4.1 Motivation**

Greenpeace as an environmental interest group is active in a wide spectrum of environmental matters that range from the extraction of fossil fuels to the trade of animal fur. Due to the sheer size of ships, ship demolition has not escaped unnoticed. Greenpeace justifies its position in the name of concerns related to the health of workers from exposure to toxic substances, asbestos, flammable and explosive substances (Greenpeace, 2004). Worth noting that the majority of ships are literally run aground on recycling yard beaches and dismantled on the spot whilst the technology employed is usually primitive (Bimco, 2001). In addition, Greenpeace worries about environmental pollution resulting from oil and rubbish released during ship scrapping operations.

The organization also accuses ship owners and scrapping yards of infringing the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (ICS, 2003). Essentially, Greenpeace perceives ship scrapping as a vehicle for exporting hazardous wastes from developed to developing nations. Another reason that makes the issue more pronounced is the accelerated phase-out of single hull tankers. With single hull tankers scheduled to exit the shipping business by 2005 many ship owners were compelled to scrap these ships earlier than their economic life-cycle. This means that on top of the usual annual tonnage scrapped these additional ships have increased the total number of vessels demolished in recent years. Obviously, due to the sheer size of ships, their demolition is an easy target for environmentalists given the scale of ship scrapping operations and easy access from the sea.

To substantiate the issues at stake Greenpeace has compiled the “Playing Hide and Seek” Report in 2003. In this publication the organization argues “that the ongoing export of pollution is happening with the implicit permission of some States.” Furthermore, the group demanded from the IMO to establish a mandatory regime intended to ensure that shipowners and scrapping yards comply with an agreed set of rules. The group believes that only a

mandatory regime would compel shipowners to take responsibility for the toxic waste onboard recycled ships and ensure their safe disposal before dismantling (Greenpeace, 2003).

#### **4.4.2 Policy Dynamics**

As it was previously mentioned, in Chapter III, the “Convention on the IMO” does not grant the agency the authority to make any decisions, binding for the shipping industry, at its discretion. In practice the organization operates as a negotiation forum where Member States, on the basis of consensus, have the power to amend existing and formulate new Conventions. On the contrary, non-governmental actors and interest groups, which administer mostly environmental and industry interests, retain a consultative role with the IMO. Unlike to Member States, NGOs do not have a say in the IMO Committees decision-making process. Concomitantly, in this capacity, in order to bring the desired outcome interests groups try to influence the position of individual Member States. Indeed this path is omnipotent and becomes even more powerful when it comes to hegemonic nations/groups of nations like the US, UK, and the EU. However, the ability to influence the stance of a nation is far from trivial and requires the overcome of resistance from opposing groups predominantly that of the industrial lobby.

Returning now to the specifics of ship recycling, although iron ships have been scrapped for almost a century it was not until the past two decades that concerns with regard to ship disposal have become a major environmental preoccupation. These concerns were first raised at the 44<sup>th</sup> MEPC (IMO) Session in March 2000. Following the growing concerns expressed by Member States, environmental groups, and the industry itself the IMO assigned a working party comprised of representatives from Bimco, Intercargo, Intertanko, ICS, ITOPF, ICFTU, OCIMF, and IPTA<sup>2</sup> to investigate the issues at stake (MEPC 47<sup>th</sup> Session, 2004). The “Industry Code of

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<sup>2</sup> Bimco is the acronym for the Baltic and International Maritime Council, Intercargo is the International Association of Dry Cargo Shipowners, Intertanko is the International Association of Independent Tanker Owners

Practice” adopted during the same summit acknowledged that working and environmental conditions in the yards lie with the nations where the scrapping yards reside.

Subsequently, the next MEPC (48) Session the Committee progressed with the development of the recommended guidelines with the view of incorporating them into an Assembly Resolution. During the same Session input was requested from the IMO sub-committees of DE, BLG, and FSI, whilst an intercessional correspondence group was established. Worth also noting that Greenpeace took the initiative to participate into the IMO workings.

Through the numerous studies, protests, diplomatic activities, and reports Greenpeace has tried to influence the work in progress with regard to ship recycling developed by the MEPC. During the MEPC 49<sup>th</sup> Session, in May 2003, the organization had submitted a report outlining compliance with the Basel Convention (The IMO Press Release c, 2003). Despite Greenpeace’s strenuous efforts to persuade the international community of the soundness of its position still more needs to be done. Nevertheless, the interest group, together with other interest groups sharing the same views, has succeeded in creating enough momentum for the IMO to finalize, at its 49<sup>th</sup> MEPC Session, in July 2003, the “Guidelines on Ship Recycling.” Ever since, Greenpeace relentlessly interacts with MEPC to amend these guidelines to reflect its positions.

More recently the environmental group has intervened with MEPC’s 51<sup>st</sup> Session, on March 29<sup>th</sup> 2004, to challenge the effectiveness of the “Guidelines on Ship Recycling” concerning the protection of workers and the environment. The report also communicated reservations with regard to the existing monitoring and compliance mechanisms while it criticized compliance with the Basel Convention (Greenpeace Press Release c, 2004). To sum-up, Greenpeace— within the past five years— has aggressively tried to influence the outcome of

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ICS is the International Chamber of Shipping, ITOPF is the International Tanker Owners Pollution Federation Limited, ICFTU is the International Confederation of Free Trade Unions, OCIMF is the Oil Companies International Marine Forum, and IPTA is the International Parcel Tankers Association.

MEPC on ship recycling mainly through reports, and diplomatic activities whilst the interest group has placed enormous emphasis on leveraging the position of individual Member States.

#### **4.4.3 The Role of The IMO**

Examining the treatment of Greenpeace proposals by the IMO it becomes evident that the agency, despite Greenpeace's consultative status, has taken its positions seriously. In turn, this reflects the organization's commitment to safe and environmentally sound shipping. However, this does not mean that the voice of the industry lobby was not taken into account. Seeing ship scrapping from a different angle it is obvious that the IMO has the greatest leverage when it comes to parties with conflicting views. Operating as a bargaining platform the organization has invested heavily on bridging the gap between the opposing groups (e.g. Greenpeace, Member States, and industry groups) while at the same time endeavoring for their mutual understanding.

On the one hand, the IMO recognizes that with the accelerated phase-out of single hull tankers the aggregate tonnage scrapped will undergo an unusual increase where as, on the other side, environmental concerns with regard to labor and environmental hazards could be alleviated. Apparently, the former consideration means that an already hefty burden stresses the shipping industry as shipowners will bear the costs of replacing ships earlier than their economic-life. In addition, the agency acknowledges the margin of improvement of the ship demolition industry and concedes that ship scrapping nations benefit substantially from ship recycling. Putting it in a different way in all environmental policy making, economics is the counterpoint to ecology.

Nonetheless, the IMO has responded promptly to the environmental and Member States demand to develop, in 2003, the Guidelines on Ship Recycling. Indisputably, Resolution A.962(23) laid down the foundations for a "green" ship recycling industry with a window for future amendments and new provisions. But as it is easier to defeat legislation rather than

enacting it, it is envisaged that future changes will be inevitable. In fact, environmentalists have already begun challenging the effectiveness of the preceding legislation. Not surprisingly, this is the area where the role of the IMO becomes crucial. In turn, this is tied to the ability of the organization to strike a balance between environmentally sound shipping that does impose undue costs to shipowners. Equally important the IMO should remain active in the area of ship scrapping acting as a broker between conflicting parties. Obviously, the latter role is a delicate one as few organizations are immune to pressure from interest groups.

The real test, however, will surface when Member States, especially those with considerable political power try to impose their positions, through international Conventions, which are in direct conflict with the developing industrial lobby interests. Such a scenario presupposes that the ship scrapping nations take the lead to encourage hegemonic maritime nations to utilize their leverage in propelling the issue on top of the international agenda. In practice, however, developed nations that benefit from ship recycling have few incentives to do so despite social and environmental concerns.

#### **4.4.4 Final Outcome**

Clearly ship recycling is an integral part of the shipping industry and ships should be recycled in a responsible way. The fact that ship disposal concerns both the maritime and land-based industries, including various other stakeholders, adds considerable complexity to the subject. With these issues in mind Greenpeace has tried to promote a more environmentally friendly ship scrapping. In doing so, the interest group has been aggressively active in MEPC negotiations through the submission of various studies and reports expressing its concerns and suggestions. Concurrently, apart from visibility, Greenpeace tries to influence the stance of individual Member States.

Although the NGO can exert pressure on developed nations when it comes to developing nations things vary dramatically. The problem being that the ultimate responsibility

for the conditions in ship scrapping yards lies with the countries in which they are situated. Nevertheless, Greenpeace has been successful from the perspective that an international instrument pertaining to ship recycling has been adopted by the IMO. Recognizing this as the stepping stone Greenpeace has already challenged the IMO's Guidelines on Ship Recycling. And this is because experts perceive the long term solution to be a mandatory regime or a binding international legal framework, possibly in the form of an international IMO Convention (MareForum, 2001).

Even though environmentalists pay particular attention to the social and environmental hazards from ship scrapping operations both shipowners and breakers challenged virtually all of Greenpeace's arguments with respect to ship recycling in the ship scrapping MareForum in 2001. For instance, Greenpeace representatives agreed with industry experts that it is impossible to completely "clean" a ship before delivering her for demolition. Activists also appreciate that ship breaking operations are easier to monitor when they are concentrated rather than dispersed. Finally, the fact that steel makes most of a ship's mass makes marine vehicles attractive for recycling. On top of this, ship demolition makes positive contributions to the economies of ship scrapping nations. The fundamental question, however, remains: who should pay for quality recycling?

Acting as a negotiator between the industry and environmentalists the IMO role is perceived as the industry regulator/leader. But what happens when the agency is subject to criticism from environmentalists that believe their positions are not satisfied? Under such circumstances the IMO could act proactively, perhaps by devising a special status for both the industry and the environmental lobbies.

### **The Anti-Fouling Systems (Industry<sup>2</sup>) Case Study**

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<sup>2</sup> The word industry lobby in the context of this case study refers to shipowners, irrespective of types of ships, which were affected economic or otherwise from the ban of TBT systems.



To get a more complete and balanced insight into the mechanics of crafting marine environmental policy by the IMO it is deemed appropriate to develop a case study dedicated to the industry lobby. This is not surprising given the fact that commercial shipping is the reason behind the existence of the IMO. Carefully selected to highlight the deficiencies of the agency with regard to the treatment of proposals emanating from different sources the anti-fouling<sup>3</sup> systems case study presents the entire work behind the banning of orantins in anti-fouling paints used on ships' hulls. By keeping track of the entire process, from the early concerns on the potential hazards of Tributyltin (TBT) compounds until their ultimate phase-out the role the industry lobby has played is assessed.

Thus by examining reports published by the IMO, the actual proceedings of the MEPC Sessions, kindly provided by the Department of Merchant Shipping of Cyprus (MEPC 30<sup>th</sup> Session, 1990), press reports, and submitted papers the degree to which the MEPC decisions were influenced by the business lobby is mapped. Despite the fact that business organizations (like Intertanko, Intercargo, Bimco) administering the industry views and interests hold a consultative status with the IMO almost always experience has shown that shipowners bear the costs from new legislation. Put it differently apart from taking the voice of the industrial lobby more seriously these efforts promote a pluralistic culture.

A striking feature of the TBT debate has been the fact that originally it was believed that these compounds were harmful to marine life but not adequate evidence justified their ban. To iron out any shadows of doubt the IMO urged Member States to individually examine these allegations whilst a Correspondence Group, consisting of 12 States and four NGOs, was charged with the task of investigating the issues at stake (IMO Anti-fouling systems, 2002). Another issue of critical concern were the unknown environmental risks, like the transfer of harmful aquatic species on ships' hulls, posed to the marine environment in the absence of

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<sup>3</sup> Fouling is the unwanted growth of biological material, on ships' parts immersed in water (hull), such as barnacles, algae, and molluscs.

substitutes to replace TBT paints.

To sum-up, the anti-fouling case examines a course of 13 years of negotiations and discussions at the IMO. This period encompasses all the major milestones that influenced the decisions of the agency emphasizing the views expressed by Member States, presenting the results of numerous studies, a Correspondence Group, interest groups, the industrial lobby, and environmentalists. More importantly, however, emphasis is placed on identifying areas of improvement for the crafting of future marine environmental policy. To expand the scope of the investigation, apart from identifying the IMO organizational defects, this case study investigates how the IMO could promote policy innovations in the realm of environmental regulations while concurrently promoting sustainable shipping.

#### **4.5.1 Motivation**

The primary motivation behind the enactment of international legislation to ban anti-fouling paints containing TBT were concerns that these compounds persist in water and in sediments killing sealife other than that attached to the hulls of ships, and possibly entering the food chain (IMO Anti-fouling systems, 2002). Worth noting that anti-fouling metallic paints are efficacious and cost-effective paints, developed by the chemical industry in the 1960s, which were used to keep ship's hulls smooth and clean. This is supported by the fact that a ship hull protected by a TBT system could sail for up to 60 months without dry docking! Anti-fouling systems are of paramount importance to shipping as just a small amount of fouling is held responsible for an increase in fuel consumption of up to 40 percent (IMO Anti-fouling systems, 2002)! On the contrary, a clean ship can sail faster and with less energy, therefore helping lowering costs and greenhouse emissions (MEPC 38<sup>th</sup> Session, 1996).

On the other hand, opponents of the use of TBT on the grounds that organotin paints cause deformations in oysters; sex changes (imposex) in whelks; and immune response, neurotoxic and genetic effects in other marine species demanded from the IMO to universally

ban organotin paints. One of the first instances during which scientists began to perceive organotins as harmful was, during the 1980s, in areas of high concentrations of leisure craft such as marinas, and ports, and harbors where damage to marine life was observed to be accompanied by high levels of TBTs. On the other hand, in open seas TBT contamination was initially seen as less of a problem. Nevertheless, the development of an international legally binding instrument to address the hazardous effects of TBT paints commenced in 1988, at an MEPC meeting. Member States including Germany, the United States, Japan, the Paris Commission, and environmentalists originally supported these proposals (MEPC 30<sup>th</sup> Session, 1990).

Later negotiations regarding the ban of TBT systems centered on producing sufficient evidence to substantiate their detrimental impacts to marine life. On the contrary, opponents of this suggestion— mainly shipowners and paint manufacturers— argued that the phase-out of organotin paints on ocean-going vessels, in the absence of acceptable alternatives, posed severe economic and ecological consequences to the shipping industry and the marine environment respectively.

Further negotiations and successive scientific studies sufficed to convene a Diplomatic Conference, under the aegis of the IMO, in October 2001, which reflected the importance of the issue and raised questions as to what extent the final decision took into account the positions borne by the industrial lobby. The industry lobby, although fragmented, raised questions as to the validity of detrimental impact of TBTs on the marine environment, who will incur the costs from the expensive and relatively inefficient alternative paints. Furthermore, shipowners asserted that leisure craft posed a greater threat to the marine environment, as opposed to large ocean-going vessels sailing in deep seas (Bruce, 1998).

#### **4.5.2 Policy Dynamics**

Beginning with the one of the first MEPC (30<sup>th</sup>) Sessions, in 1990, in the absence of

sufficient scientific evidence, the committee concluded with some general recommendations urging Member States to take precautionary measures to limit damage to the marine environment. The German and Japanese delegations presented before the committee the unilateral measures they adopted which limited the use of TBTs (MEPC 30<sup>th</sup> Session, 1990), while the US delegation took the initiative of preparing a draft resolution to ban the use of TBTs on marine craft under 25m in length. Speaking in favor of the use of TBT the European Chemical Industry Council (CEFIC) highlighted the tremendous annual economic savings— on the order of \$2,449 million— made by the use of anti-fouling paints. This translated into an estimated 7.6 million tonnes of annual fuel savings directly contributing to substantial reductions in exhaust gas emissions, helping thus reducing greenhouse effects and acid rain (MEPC 30<sup>th</sup> Session, 1990). CEFIC also claimed that under normal operating conditions seagoing vessels, sailing in deep-waters, should not have any impact on the marine environment.

The next major milestone was in 1998, at MEPC's 41<sup>st</sup> Session, where the final results of a Correspondence Group<sup>4</sup>, consisting of 12 countries and 4 NGOs, presented its results. Although this working team included representatives from the industry one can argue that their observed status with the IMO coupled with the political and economic power of Member States made it difficult if— not impossible— for these groups to considerably influence the outcome of these committees. Despite this, the shipping industry, as the party that bears the costs of these decisions, should be granted the right to examine alternative ways to alleviate the economic burdens. The latter group concluded that MEPC ought to begin drafting regulations to phase-out organotin compounds. Later the same year the MEPC's 42<sup>nd</sup> Session approved a draft assembly resolution which cited 2008 as the year for the complete prohibition of organotin

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<sup>4</sup> Correspondence Groups are teams, usually consisting of Member States and interest groups such as IGOs and/or NGOs, charged with the task of investigating a specific matter on behalf of IMO. The results of these studies are used by the IMO committees during international bargains.

compounds.

Justifying the preceding industry stance it is worth noting that MEPC decided to phase-out TBTs, in 2008, at the time when no acceptable alternative paint systems existed, hence, posing unknown environmental risks to the marine environment, premature and uncontrollable hull fouling endangered the structural integrity of ships due to corrosion with concomitant safety hazards (IMO Anti-fouling systems, 2002). In addition, the danger of the accumulation of organic biocides to the marine environment persisted. But it was not until 2001, at an IMO Diplomatic Conference, that the “International Convention on the Control of Harmful Anti-fouling Systems on Ships” was adopted. In the same year, during the IMO 22<sup>nd</sup> Assembly Session, the preceding resolution was adopted, which used January the 1<sup>st</sup>, 2003, as the phase-out date for the application of anti- fouling systems containing organotins.

One of the most important characteristics of the Convention is its entry into force criterion which states that it will enter into force 12 months after 25 States representing 25 percent of the world's merchant shipping tonnage have ratified it. Obviously, the 25 States requirement denotes that the Convention is of less importance or complexity in comparison to major treaties that require 15 Members; 50 percent aggregate tonnage. This coupled with the 25 Members criterion implies that countries with smaller merchant fleets could gather enough momentum to enforce it. Developed nations with strong Green parties are poised to ratifying it. However, despite the successful adoption of the Convention, which reflects the victory of developed Member States with strong economies, political power, and economies, and the environmental lobby, 3 years after its adoption only 8 Member States with approximately 22% gross tonnage have ratified (Status of the IMO Conventions, 2004).

But why did the Convention fail to gather enough support 3 years after its adoption? This is not surprising if one considers that the IMO Conventions, on average, take 5 years to enter into force after their adoption (The IMO Website, 2004). On the contrary, the IMO can act

fast when the need arises. A good example being the amendment of STCW which took only two years to enter into force. Returning to the anti-fouling Convention it appears that the industry lobby is partly responsible for the decisions of many Member States not to endorse the Convention. This is because the ban of TBT paints constitutes tremendous costs for shipowners who will be obliged to use alternative anti-fouling systems that are orders of magnitude more expensive and not as effective against fouling organisms. In addition, the costs for developing alternative anti-fouling systems for paint companies cannot be underestimated. Collectively, it can be inferred that Member States sharing the concerns of their flag ship owners and chemical companies together with the potential implications on the ships which trade with their ports choose not to become Members of the Convention until this becomes unavoidable.

#### **4.5.3 The Role of the IMO**

As explained in Chapter III the IMO decisions, including those of the MEPC, are taken by Member States which share equal footing during a vote. The decision of the MEPC to adopt the “International Convention on the Control of Harmful Anti-Fouling Systems on Ships,” was no exception to this. Notably, an important parameter that MEPC took into account in reaching its ultimate decision was the decision of Member States, like Japan and Germany, to unilaterally prohibit the application of TBT systems. Despite the fact that the majority of MEPC members shared the same views with the environmental lobby supporting the ban of TBTs one can argue that the industry voice had been influential to a smaller extent. Recognizing the potential implications— economic, environmental, technical, or otherwise— arising from the lack of low-cost effective alternatives to replace TBT systems the MEPC provided the industry with additional time before adopting the preceding Convention.

Another important feature of the IMO TBT decision was the time it took for the MEPC to adopt the anti-fouling Convention. Counting from the time when concerns were raised, at an MEPC Session in 1988, till the adoption of the Convention more than 15 years elapsed. This is

partly attributed to the uniqueness of the matter. Thus, in the absence of credible scientific evidence to justify the ban of organotopic compounds the IMO did not approve any premature measures. Instead, the agency has played a catalytic role by assigning a Correspondence Group and providing sufficient time to both opponents and advocates of TBT systems to generate plausible evidence upon which to base their position. In turn, extra time helped paint manufacturers focus their attention on TBT-free paint systems. Concurrently, they have directed their research efforts on reducing the cost of alternative anti-fouling systems.

In the context of environmental politics the IMO anti-fouling decision has demonstrated that the real battle took place between Member States. Corollary to this is the right of Member States to participate, on equal footing, in the consensus decision making model of the IMO. Apparently, from the MEPC decision it can be inferred that the industry lobby, although fragmented, has tried to influence the content of the Convention by utilizing its domestic leverage on Member States. Worth clarifying that the industry lobby pursues its interests at two different tiers. The first is through NGOs, like Intertanko and Intercargo, and second, but most important, through Member States. This is achieved through the advisors that organized businesses, like the Union of Greek Shipowners and the Danish Shipowners' Association, retain with Member States' delegations at the IMO.

To sum-up, the MEPC reconciling the conflicting interests of advocates of the phase-out of TBTs and the economic repercussions on shipowners the Committee investigated both the economic and technical feasibility of the proposals. Although, on one side the, the MEPC decision favored environmentally sound shipping, on the other side, the fact that the anti-fouling Convention has not satisfied the 25 States 25 percent of the world's merchant tonnage criterion mirrors the concerns of maritime nations and— perhaps more importantly— the adverse economic impacts on their maritime industries. Nevertheless, commitment to environmentally sound and sustainable shipping presupposes that the IMO retains its leadership role as the

industry regulator whilst proactively developing the institutional mechanisms to promote effective environmental Conventions through policy innovations.

#### **4.5.4 Final Outcome**

In the context of the IMO marine environmental policy the dynamics of the anti-fouling study were explored with particular emphasis on the influence of the industry lobby on the MEPC decisions. Renowned for the substantial controversy that has brought in the maritime community the ban of TBT systems offers ample food for thought. By examining the outcome of numerous negotiations between States it becomes evident that the IMO offers a fertile ground for the reconciliation of conflicting matters in an attempt to mitigate the impacts on regulated parties while promoting its position as the industry's regulator together with an environmentally friendly culture. Even though, the final outcome of the MEPC proposed the universal ban of organotoc compounds the limited authorities of the IMO restrict the agency from imposing these decisions on Member States.

However, the IMO restricted powers do not prohibit the agency from developing the institutional mechanisms to tackle complex environmental matters that require high technical competency but cannot avoid being politicized. Perfectly fitting into this category the anti-fouling proposal required both specialized technical and environmental input from a plethora of parties and stakeholders with the political element playing an instrumental role in the decision-making process.

As it turns out, the MEPC decision on anti-fouling systems showed that the IMO, capitalizing on its unique stature in the marine industry, can bring parties together to bear some of the world's most challenging problems. Apparently, striking a balance between environmentally sound and sustainable shipping is perhaps the greatest challenge. Equally important is for the IMO officials to promote a responsive agency adaptable to the industry needs exhibiting a responsible attitude.



## **Chapter V**

### **Discussion and Concluding Remarks**

The hypothesis developed in this thesis which argues that the IMO current treatment of environmental regulations warrants reconsideration was explored in the context of the three developed case studies, namely the Member States, the Interest Group, and the Industry case study. These cases– selected to identify areas of improvement for the IMO– have demonstrated that the agency’s working procedures merit reassessment if the agency is to remain the industry’s legislator. On one hand the unilateral measures adopted by Member States, like the US and fifteen at the time Members of the EU, that undermine the role of the agency and, on the other hand, the inability of the agency to expedite the development of marine environmental multilateral treaty instruments, for example the anti-fouling convention took more than 13 years to develop (The IMO, 2004), provide a clear indication for the need of change.

Furthermore, the preceding observations are also supported by the rapidly changing industry dynamics that challenge to make the IMO agency obsolete. Although this scenario looks remote at first the systematic adoption of unilateral measures cannot be ignored. Another major challenge for the Organization is the changing role of the environmental lobby and the increasing influence of activists on international environmental politics. With the power to influence their States’ foreign environmental policy activists are envisaged to be a major challenge for the IMO in the nearby future. The issues at stake are outlined in more detail in a set of questions framed around the abovementioned hypothesis

#### **5.1 What is the Evolving Role of the IMO in Environmental Regulations in View of the Changing Shipping Industry Dynamics?**

In order to answer this question it is prudent to identify future trends and challenges in the

shipping world. An increasing emphasis on maritime safety, the heightened security concerns, the risks brought by globalization that threaten to compromise shipping performance, the universal and consistent implementation of the IMO Conventions, the increasing emphasis on the human element, and more environmentally sound shipping are but few of the challenges that confront the IMO. Indisputably a more environmentally sound audience lies behind “cleaner” shipping.

Nobody could question that the increased pressure for more environmentally friendly shipping emanates from the increasing power of the Green Parties in developed countries. Nowhere is this more apparent than in the realm of pollution from oil or other noxious substances. Especially in the wake of an oil tanker accident held responsible for marine pollution Green Parties, capitalizing on people’s sensitivity and visibility, have been able to exert disproportionate political leverage— in relation to their size— on their Governments. Such powerful has been this influence that Member States do not hesitate to resort to unilateral measures. Apart from the OPA90, Erika I & II and the Prestige unilateral initiatives the environmental lobby has been the major actor behind the ban of TBT paint systems, ship recycling, and operational pollution.

It therefore becomes evident that the IMO has to act proactively in identifying and addressing the increasing expectations of environmentalists. Although the IMO could identify the potentially harmful to the marine environment activities the time it takes to develop the legislation to address them is the major test. It should be appreciated though that the current and future enactment of environmental legislation depends on Member States. This is because in the UN System the IMO Member States are the only entities that own the authority to adopt and implement treaty instruments and modify the IMO constitutional and institutional structure with a view of increasing the agency’s responsiveness and, making it a proactive Organization perhaps by granting the agency the authority to develop and enforce legislation on Member States.

Worth noting that possibility of delegating more authority to the IMO organs in developing legislation was proposed in 1972 when the IMO process of amending Conventions proved

inefficient (Conventions, 2004). Instead, States chose to amend the IMO working procedures so as to expedite the amendment process. Following the same line of thought it will not be surprising that States resist this option again. Alternatively, Member States may find it more convenient to amend the IMO constitutional and institutional principles. An interesting idea when for new regulations will be for the IMO to establish specialized Committees, consisting of independent experts and assisted by the IMO organs, whose task is to present recommendations to the IMO bargains with Member States given some authority to adjust them.

↳ Interestingly, the Member States case study has shown that the IMO has the potential to stave-off unilateral measures. Perhaps a good starting point for the agency will be to work more closely with its constituent parties; Member States, IGOs and NGOs. By investing on stronger links between nations the agency could find many allies to support its objective. Recognizing that unilateral measures can prove disruptive to shipping a group of European maritime nations, including Greece and Denmark, have already started working on the idea of averting the EU from resorting to unilateral measures in the future (Costaras, 2004). Furthermore, the anti-fouling and the ship recycling cases studies provide evidence that the IMO can expedite the time it takes to develop new treaty instruments.

Consequently, it is envisaged that the IMO ought to adapt itself to the dynamics of the industry it serves. Apparently, the IMO evolving role must revolve around the agency's technical competency due to the nature of shipping. Concurrently, this calls for a more conclusive approach to the environmental politics of the IMO bargains.

## **5.2 Is There a Need for Change in the Current IMO Treatment of Environmental Regulations?**

In the light of the developed cases studies the current treatment of environmental regulations by the IMO merits reconsideration. This is expected as environmental regulations differ appreciably from other IMO matters e.g. legal, safety, or security. The Members States case has demonstrated

that the systematic adoption of unilateral/regional measures, at best, can undermine the status of the IMO but, at worst, may prove disruptive to world shipping. Similarly, the Industry case study verified environmentalists' concerns that the IMO is slow responding and inefficient in addressing environmental concerns. However, one cannot ignore the uniqueness, complexity, and importance of individual environmental matters.

Worth clarifying that, although in the eyes of environmentalists and the public in general, the IMO as an Organization is treated with a unified image for the agency's decisions it is important to draw the demarcation line between the IMO Secretariat and the body's decision-makers. Obviously, in the absence of any authority to develop regulations, the IMO Secretariat can be mistakenly blamed for the IMO inability of tackle environmental problems. In practice the true source of this problem is not per se the agency's organs but rather the Member States themselves which do not endorse the proposals.

In identifying areas of improvement in the current treatment of environmental legislation by the IMO it is vital to examine the agency's prevailing decision-making model. Presently the agency derives its decisions on the Consensus Decision-Making (CDM) model. Clearly, the greatest advantage of this model is the element of commitment created during the bargain process. Commitment is of paramount importance to the IMO deliberations as it ensures the universal adoption of its Conventions. Major flaw of the model is its time consuming process that could yield no results if objecting parties do not reconcile their positions. Although the nature of shipping justifies the underlying philosophy of consensus enacted regulations the entry into force requirements seem to be the IMO Achilles' heel.

Despite productive negotiations in environmental matters, like those outlined in the anti-fouling case study, the entry into force criteria— more often, than not— make the IMO look obsolete. Even though a regulation may be adopted within an acceptable time window the entry into force criteria can appreciably delay its enforcement— if that happens. With an average 5 years from

amendment to the enforcement of a regulation these criteria merit reconsideration. Combining a number of Member States together with an aggregate merchant shipping tonnage requirement, e.g. 15 States; 50 percent of the world's fleet, it is not surprising it takes too long to satisfy. A good example being the anti-fouling case study which has not been enforced, 13 years after its development, and this due to the 25 States 25 percent of the world's merchant shipping obstacle. Obviously with a collective membership of 164 States the country requirement is relatively easy to satisfy. The major barrier is the aggregate merchant fleet requirement where currently the top 4 ship registries of Panama, Liberia, Greece, and the Bahamas, share 53.2 percent of the world's merchant tonnage (Lloyd's Statistics).

However, it is necessary to understand that the criteria for entry-into-force of a new treaty instrument need to be set in such a way so as not to distort competition when the instrument enters into force, to facilitate a stable and sustainable transition without creating adverse effects on the available ship capacity and to ensure wide long term acceptance.

### **5.3 Highlight Organizational Changes Designed to Encourage Policy Innovations in Environmental Regulations.**

Inherent to its nature marine environmental policy is in some respects fluid and temporary, always undergoing continuous metamorphosis. No exception to this is the IMO marine environmental policy. The MEPC is the IMO dedicated Committee that drafts environmental legislation. Participating Member States are the major actors in the IMO bargains. Negotiating on an equal footing Governments are the only entities that own the authority to develop Conventions. The pluralistic culture cultivated by the IMO is complemented with the active participation of other UN agencies, Non-Governmental Organizations (NGOs) and Inter-Governmental Organizations (IGOs).

As it has been described in Chapter III the proposals discussed during the MEPC

negotiations normally emanate from Member States delegates, IGOs or NGOs. However, considering the authorities delegated to States, it should be appreciated that the proposals originating from States have greater chances to prevail as opposed to those from NGOs. But what do NGOs, like the environmental and industry lobby, have to offer in terms novel proposals? Worth noting that the strengths of NGOs include specialist knowledge and innovative thinking regarding global environmental issues and dedication to goals that transcend narrow national or sectoral interests (Gareth, 1996).

Irrespective of the nature and origin of environmental proposals the IMO decision-making process is the key to promoting innovations in environmental legislation. Thus despite the limited authorities of the IMO Secretariat, in enacting legislation, this does not prohibit the administration from developing the institutional mechanisms to promote novelty in environmental matters. Perhaps the Secretariat could take the first step in that direction. But what does innovative thinking has to offer to the IMO environmental policy? Most importantly it can help alleviate incrementalism. Incrementalism is the process of enacting new regulations with incremental changes based on past decisions. The greatest danger being that it suppresses creative thinking and environmental entrepreneurship.

Clearly, a plethora of benefits can be realized from environmental entrepreneurship if one considers the already overregulated maritime industry. By keeping track of the entire process, content, and policy dynamics of the three developed case studies it becomes apparent that the disparity between them is rather incremental—and this despite the uniqueness of each problem. Similarly, it should be appreciated that policy innovations in environmental matters—more often—emanate from distant fields in relation to the problems being tackled. Therefore, it could be the case that actors in the IMO environmental bargains might need to look beyond the “marine boundaries” for solutions. Such a development would constitute a paradigm of a proactive approach, which will contribute greatly in the IMO’s efforts to prevent crises from erupting and having devastating

effects both on the workings of the agency as well as to shipping in general. Although conventional wisdom teaches us that crises offer unique opportunities for radical changes in organizations still a proactive rather than a reactive approach yields superior results (Coughlin, 2003).

#### **5.4 Concluding Remarks**

Notwithstanding the conclusions of the case studies it is worth taking an open mind look on the IMO's rule making process. Based on the current methods of work of the IMO, proposals for new work programme items, which may include innovative and thought provoking proposals for environmental action, need to be submitted by at least one of the Member States or by an NGO provided at least one Member State supports and cosponsors the proposal. Until November 2005 these proposals had to be in line of the IMO's Long Term Work Plan, which is revised every two years and covers a period of, usually, eight years. During its last Assembly, the IMO has adopted its first Strategic Plan which covers the period up to 2010 and as a result all new proposals have to be inline with the Strategic Plan. Whether a new proposal is to go forward and become a new treaty instrument or an amendment to an existing one, depends on whether the Member States are willing, at the first stage, to accept the proposal for further consideration and eventually elaboration.. Provided a new proposal is accepted then its handling has to be prioritized vis-à-vis the other work load of the IMO organ which would be assigned with its development.

Here political interests of Member States come into play and national positions are influenced by domestic politics and NGOs lobbying. Irrespective of how good a new proposal may be, it may be given the lowest priority because the Member States have so decided. The next hurdle is the actual development of the proposal. This depends to a large extent on the commitment and the skills of the proponents and primarily on the Member States behind it. It is a bargain process and a barter trade (Charalambous, 2004). If the decision making core (i.e. those few Member States who make the actual decisions) is committed to developing the proposal, things go smoothly and the most classical example is the development by IMO in 2002 within 9 months of the special measures

to enhance maritime security which entered into force 18 months later (although the period between adoption and entry into force could have been reduced to a year or less). However, if Member States have second thoughts about a new work item, things can go on and on and on for years. If a new issue arises, which the Member States feel that it deserves attention then work in hand may be assigned lower priority.

The bottom line of the issue is simple. In a nutshell, the IMO, as a United Nations Specialized Agency, can be as fast as its Member States want it to be. They are the ones which establish the methods and the priorities in the work of the Organization. They are the ones providing the funding required. They are the ones which have the sole right to put forward new and innovative ideas, to drive them forward and to make them, at the end, a reality. The IMO Secretariat is there to serve them based on the collective decisions of the membership.



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