

Chapter 2

IMO Institutional Structure and Law-Making Process

2.1 Introduction

The International Maritime Organisation (IMO) has a very distinctive process of facilitating adoption and amendment of international legal instruments for the prevention of marine pollution from ships. The actors who influence the process of IMO law-making are also diverse, including both state and non-state actors. Nevertheless, IMO is one of the most successful organisations in developing international law for the conservation and protection of the marine environment, particularly in preventing vessel-source marine pollution. This chapter will present a brief overview of the IMO law-making process and institutional structure of the organisation.

Section 2.2 of this chapter discusses the various state and non-state actors involved or influential in the law-making process in IMO. They include Member States, United Nations and other intergovernmental organisations and international non-governmental organisations. Together these actors represent different types of interests, including coastal, port, shipping, cargo, international business, security and environmental, amongst others. IMO's Institutional framework and institutional politics is another important factor in the law-making process. Section 2.3 of this chapter covers this issue by presenting an overview of the institutional structure of the organisation and the role of different organs in the law-making process. Section 2.4 of this chapter highlights the IMO law-making process with a particular emphasis on the specialised character of IMO law-making and its uniqueness. This foundation discussion will help to contextualise the discussion in the subsequent chapter dealing with specific marine environmental issues.

2.2 Actors in the IMO Law-Making Process

The IMO Convention of 1948 created room for three types of entities to participate in the IMO law-making process. These are member states (including associate members), inter-governmental organisations as observer organisations, and international non-governmental organisations as organisations with consultative status.

2.2.1 Member States

Presently, IMO has 170 Member States¹ and three Associate Members² representing all regions of the world. Subject to the relevant provision of the IMO Convention 1948, all States are eligible to become Members of the organisation.³ United Nations members are allowed to become members of the organisation by joining as a party to the IMO Convention 1948. There is an elaborate mechanism for gaining membership for the countries which are not members of the United Nations.⁴ Any Territory or group within a Member State may be an associate member if it is a territory to which the Convention has been made applicable under Article 72, by the Member having responsibility for its international relations or by the United Nations. Member States of the IMO may be divided into different groups depending on their interest in the organisation.

2.2.1.1 Port, Coastal and Flag States

The first dynamic of IMO members' interests is the conflict between the interest of port or coastal and flag States. However, this type of binary division is practically impossible because a country may be a port state while simultaneously being a coastal or flag state. Nevertheless, a State may consider one of these roles more important than the other due to its economic, geographical and environmental interests. For example, a State with a huge merchant fleet may largely represent the interests of its shipping companies because revenue from this sector is a major source for national income. This is particularly true for 'flag of convenience' (FOC)

¹ IMO, Member States, <http://www.imo.org/About/Membership/Pages/MemberStates.aspx>, last accessed on 14 June 2014.

² They are: Faroes; Hong Kong, China; and Macao, China. Ibid.

³ *Convention on the International Maritime Organization*, opened for signature 6 March 1948, article 1(a), 289 UNTS 48 (entered into force 17 March 1958) (hereinafter the IMO Convention 1948 or the IMCO Convention 1948), art 4.

⁴ IMO Convention, arts 5 and 5.

countries.⁵ As of 2011, around 69.7 % of the total global merchant fleet operates under FOCs.⁶ FOC has been defined as the “flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever the reasons, are convenient and opportune for the persons who are registering the vessels”.⁷ Under international law, an owner has full liberty to choose the flag for his or her ship. Consequently, every State has the right to set its own regulation and standards for registration of ships. Both the 1958 Geneva Convention on High Seas and UNCLOS (articles 91 and 94) impose a condition of ‘genuine link’ between the ship and the flag State, without precisely defining the term. This seems to be an incomplete provision which creates more problems than it solves. Its ambiguity has led scholars to interpret the term in a variety of different ways with divergent results. Most scholars come to the conclusion that a mere administrative act such as registration is sufficient to fulfil the condition of “genuine link”.⁸

Moreover, there is strong support for the opinion that lack of a ‘genuine link’ is not sufficient to refuse nationality of a ship. As observed by the International Tribunal for the Law of Sea (ITLOS) in the *M/V “SAIGA” (No. 2) Case*:

...there is nothing in article 94 to permit a State which discovers evidence indicating the absence of proper jurisdiction and control by a flag State over a ship to refuse to recognize the right of the ship to fly the flag of the flag State. The conclusion of the Tribunal is that the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.⁹

All these shortcomings open up the profitable business of FOC at the cost of environmental protection and safety. FOC countries may consider environmental protection is not an important issue for them.

In contrast, a country may consider its role as a coastal state is very vital. Australia is a good example. With its large pristine marine areas, such as the

⁵ “The following 34 countries have been declared FOCs by the ITF’s Fair Practices Committee (a joint committee of ITF seafarers’ and dockers’ unions), which runs the ITF campaign against FOCs: Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Bolivia, Burma, Cambodia, Cayman Islands, Comoros, Cyprus, Equatorial Guinea, Faroe Islands (FAS), French International Ship Register (FIS), German International Ship Register (GIS), Georgia, Gibraltar (UK), Honduras, Jamaica, Lebanon, Liberia, Malta, Marshall Islands (USA), Mauritius, Moldova, Mongolia, Netherlands Antilles, North Korea, Panama, Sao Tome and Principe, St Vincent, Sri Lanka, Tonga, Vanuatu.” International Transport Workers’ Federation, FOC Countries, <https://www.itfglobal.org/flags-convenience/flags-convenience-183.cfm>, last accessed on 21 June 2014.

⁶ ISL, Shipping Statistics and Market Review 55 (11) (2011) 5.

⁷ Boczek (1962), p. 2.

⁸ See generally Tan (2006), pp. 47–57; Tetley (1993); Dempsey and Helling (1980); Egiyan (1990).

⁹ ITLOS decision in *M/V “SAIGA” (No. 2) case* (St. Vincent and Grenadines v Guinea) 38 ILM 1323. Also see Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organisation, I.C.J. Reports 1960, p. 150, 171.

Great Barrier Reef, Australia considers its role as a coastal State as vital. Indeed, Australia has advocated for more robust international regulation for the protection of the marine environment from vessel-source pollution, having submitted a proposal in 1990 urging MEPC to establish the Great Barrier Reef Particularly Sensitive Sea Area (PSSA)¹⁰ for the introduction of a system of pilotage and mandatory ship reporting. The Great Barrier Reef PSSA is the first PSSA approved by IMO.

2.2.1.2 Developed, Developing and Least Developed States

Like other international organisations IMO Member States are also deeply divided into developed, developing and least developed States; a division which has existed from the very beginning of the organisation. There is an assertion that “the developed-developing state dynamics underlying much of international discourse in the 1970s have largely dissipated. The more relevant tussle at IMO today is one between coastal and port states seeking greater control over foreign ships and maritime states seeking to uphold the freedom navigation”.¹¹ In fact the north–south divide is still a dominating factor in the IMO discourses. The presence of issues like the implementation of the principle of Common but Differentiated Responsibilities (CBDR) is more apparent than ever in current IMO discourses. As will be discussed in Chaps. 5 and 6 dealing with the issue of shipbreaking industry and reduction of emissions of greenhouses gases from international shipping, there is a serious divide and ongoing conflict between developed and developing States. This debate is playing a catalyst in profoundly resurfacing relatively older north–south debates, like the issue of technology transfer and assistance. Recent negotiations in MEPC, particularly in the context of climate change, show developed and developing countries are debating with each other as groups. That is a clear sign of serious north–south divide, like in other areas of international law-making. However, despite serious interest involved particularly in the areas of climate change and shipbreaking, least developed countries are not playing an active role in the debate as a group. For example, the 48 nations comprising the Least Developed Countries group work together in the intergovernmental negotiations under the UN Framework Convention on Climate Change (UNFCCC).¹² However, they do not work together in the IMO negotiations relating to climate

¹⁰ For definition of Particularly Sensitive Sea Areas (PSSA) see Chap. 3.

¹¹ Tan (2006), p. 74.

¹² About the LDC group, <http://ldclimate.wordpress.com/about-the-ldc-group/>last>, accessed on 13 June 2014. These countries are: “Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People’s Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sudan, Tanzania, Timor Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, and Zambia.” LDC Group at UN climate change negotiations, <http://ldclimate.wordpress.com/ldc-country-pages/>last>, accessed on 13 June 2013.

change and international shipping. This may be due to their divergent interests regarding the maritime sector.

Nevertheless, IMO is still mainly dominated by developed countries despite the scope for equal participation in most of the IMO organs. As will be discussed later in this chapter, there is a role of non-governmental actors behind this domination.

2.2.2 United Nations and Other Intergovernmental Organisations

IMO is a specialised agency of the United Nations in the fields of shipping and the effect of shipping on the marine environment.¹³ The IMO Convention 1948 provides that IMO shall cooperate with any specialised agency of the United Nations on matters of common concern.¹⁴ The IMO Convention 1948 also provides that IMO may cooperate with other intergovernmental organisations whose interests and activities are related to the purpose of the organisation.¹⁵ In accordance with these provisions IMO has signed agreements of cooperation with 63 intergovernmental organisations.¹⁶ Some of these organisations are specialised organisations from the maritime sector or regional organisations active in maritime sectors. These organisations, particularly some regional organisations, may have and exert serious influence on the Member States' opinions regarding marine environmental issues under IMO's consideration. For example, the European Commission as the executive body of the European Union is an observer organisation in IMO. The European Union has serious influence on other Members because a regulation adopted by the European Union may be binding for the Member States. Therefore, Member States of the European Union may try to impart the European Union's view on the IMO negotiation process.¹⁷ There is even a discussion on whether the European Union should take full membership of IMO, although this is in fact impossible without amending the IMO Convention 1948.¹⁸

IMO works cooperatively with other organisations and programs in the United Nations system for matters related to marine environment. One such example is IMO's interaction with United Nations Environment Program.

¹³ IMO Convention, art 59.

¹⁴ IMO Convention, art 60.

¹⁵ IMO Convention, art 61.

¹⁶ IMO, Intergovernmental Organizations which have concluded agreements of co-operation with IMO, <http://www.imo.org/About/Membership/Pages/IGOsWithObserverStatus.aspx>, last accessed on 14 June 2014.

¹⁷ See generally, Nengye and Maes (2010).

¹⁸ Nengye and Maes (2012).

2.2.3 *International Non-governmental Organisations with Consultative Status*

International non-governmental organisations (INGOs) play a significant role in the IMO law-making process despite not having any voting rights in IMO organs. IMO Convention 1948 empowers IMO to make suitable arrangements after consultation and cooperation with non-governmental international organisations on matters within the scope of IMO.¹⁹ In 1961, in accordance with a provision, the IMO Assembly approved the *Rules for Consultative Status of Non-Governmental International Organizations with the International Maritime Organization*. IMO Council developed Guidelines in this regard in 1978. The Rules and Guidelines were amended several times.²⁰ According to these the IMO Council, with the approval of the IMO Assembly, may grant consultative status to an INGO if that organisation is able to make a substantial contribution to the work of IMO. Seventy-seven INGOs have been granted consultative status in IMO.²¹ INGOs represent a variety of interests in the IMO marine environmental discourses, including different types of shipping interests (for example ship-owners and operators), cargo interests (for example cargo owners and charters), seafarers and other labour organisations, environmental organisations, research organisations, training organisations, classification societies, organisations representing marine-related industries, protection and indemnity insurance clubs and other marine insurers.

Among these organisations, those representing ship-owners and operators appear to be the most powerful. They even have the capacity to influence the Member States with vested shipping interests. Another very vocal group is cargo owners and charters, particularly big oil companies. Classification societies, protection and indemnity insurance clubs and other marine insurers are also active participants in the IMO marine environmental law-making process. Environmental NGOs also actively participate in the MEPC meetings and make regular submissions.

Non-governmental organisations do not just influence the law-making process merely by their submissions and participation in the meetings of MEPC and other IMO organs. Their main influence comes via IMO Member States who also share similar interests. The presence of FOC countries in the leading position of IMO created a further avenue for shipping companies to exert influence on the IMO law-making process, as they virtually have a client–service–provider relationship

¹⁹ IMO Convention, art 62.

²⁰ IMO, Rules and Guidelines for Consultative Status of Non-Governmental International Organizations with the International Maritime Organization, <http://www.imo.org/About/Membership/Documents/RULES%20AND%20GUIDELINES%20FOR%20CONSULTATIVE%20STATUS.pdf>, last accessed on 14 June 2014.

²¹ IMO, Non-Governmental international Organizations which have been granted consultative status with IMO, <http://www.imo.org/About/Membership/Pages/NGOsInConsultativeStatus.aspx>, last accessed on 14 June 2014.

with those countries. The participation of non-governmental organisations in IMO is more apparent than many other similar international organisations. These issues will be elaborated further in subsequent chapters with practical examples.

2.3 IMO Institutional Framework and Institutional Politics

As noted in the previous chapter, IMO has gone through many structural changes in respect of its institutional framework for marine environmental issues. The IMO mainly consists of an Assembly, a Council, a Maritime Safety Committee (MSC), a Legal Committee, a Marine Environment Protection Committee (MEPC), a Technical Co-operation Committee and a Facilitation Committee. These main organs are supported by a number of sub-committees. Although MEPC plays the most vital role in environmental matters, other IMO organs have a critical role to play in respect of the prevention of marine pollution from ships. Initially, IMO had only four organs: the Assembly, Council, Maritime Safety Committee and Secretariat. Other committees have gradually developed to deal with growing issues and complexities surrounding international shipping (Fig. 2.1).

2.3.1 Assembly

IMO Assembly consists of all members of the organisation.²² Assembly is the supreme body of the organisation. It has a role in the election of other organs of IMO, approval of budget, approval of work programme of the organisation, and overall control of the activities of the organisation.²³ The Assembly has a specific role in recommending Members States' adoption and amendment of the regulations and guidelines for the prevention and control of marine pollution from ships.²⁴ However, the Assembly usually passes resolutions on the basis of the recommendations from other organs of the organisation with specific responsibilities. Assembly recommendations are not legally binding. However, it is common that these recommendations are incorporated in national law as they are treated as international standards. The Assembly's function also includes taking decisions for convening international conference or following any other appropriate procedure for the adoption and amendments of international conventions which have been developed by the MEPC or other organs of IMO.²⁵

²² IMO Convention, art 12.

²³ IMO Convention, art 15.

²⁴ IMO Convention, art 15(j).

²⁵ IMO Convention, art 15(l).

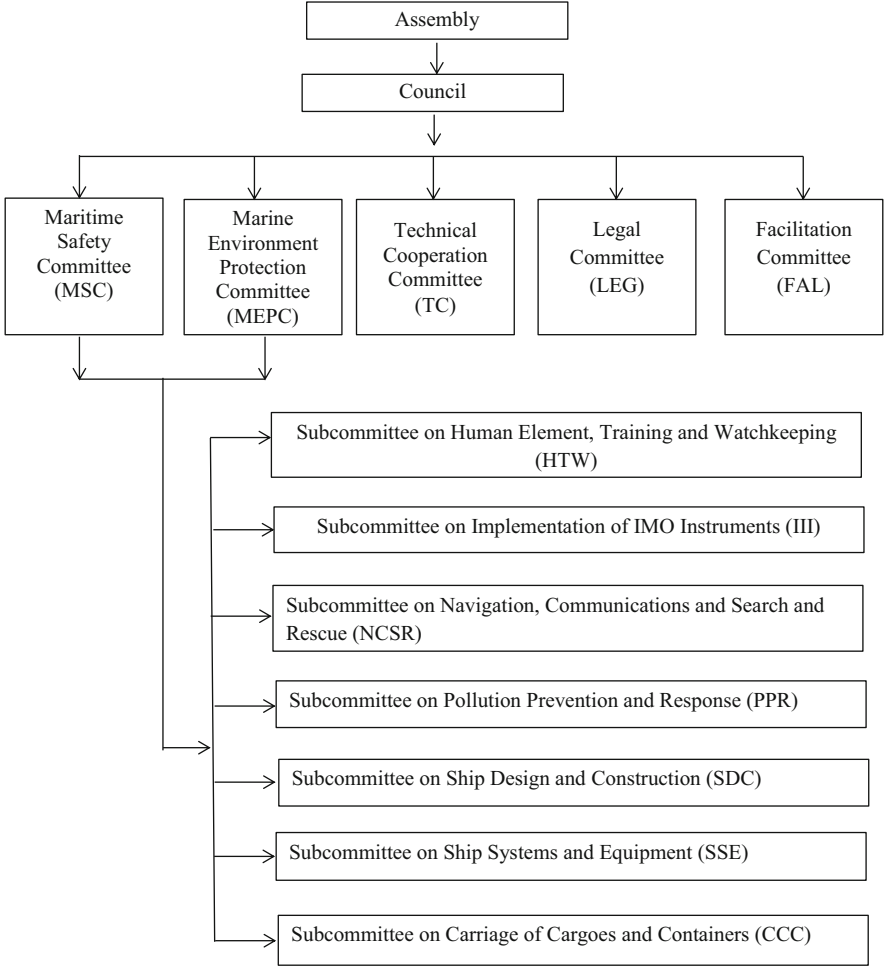


Fig. 2.1 IMO institutional structure

2.3.2 Council

The Council is the second organ in the IMO hierarchy. There were many amendments regarding membership of the Council. Initially, this executive organ of IMO was mainly dominated by developed maritime States. However, gradual expansion of membership somewhat changed the dynamic. As will be discussed in the subsequent chapters, the expansion of membership in itself is not enough to ensure greater participation of developing countries, particularly least developed coastal States. At present, the Council consists of 40 members elected by the Assembly. In electing the Council members, the Assembly must ensure the representation of the following members: ten members with “the largest interest in providing

international shipping services”; ten members “with the largest interest in international seaborne trade”; and 20 members with “special interests in maritime transport or navigation” ensuring the representation of all major geographic areas of the world.²⁶ There is a tension between developed and developing countries regarding the election in the Council. There was a controversy regarding election of the Council members in the 24th Assembly held in 2005 because despite the provision for ensuring the representation of all major geographic areas of the world, Assembly did not elect members from West Africa, Central Africa, Latin America and Eastern Europe.²⁷

The Council is responsible for all the functions of the IMO Assembly between sessions of the Assembly, except making recommendations under article 15 (j) regarding adoption of regulations and guidelines.²⁸ The Council is entrusted with the responsibility of considering budget estimates and work programmes of different IMO organs, and with submitting those to the Assembly.²⁹ The Council is also responsible for receiving reports, proposals and recommendations from other IMO organs and transmitting the same to the Assembly and, if the Assembly is not in session, to the Members for information with comments and recommendations.³⁰ The Council is empowered to appoint the Secretary-General subject to approval of the Assembly.³¹ It is also responsible for appointment of other administrative and technical staff members of the organisation.³² It is also responsible for establishing relationships with other organisations.³³

²⁶ IMO Convention, article 17. “Council members for the 2014–2015 biennium: Category (a): ten States with the largest interest in providing international shipping services: China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States. Category (b): ten other States with the largest interest in international seaborne trade: Argentina, Bangladesh, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden. Category (c): 20 States not elected under (a) or (b) above which have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world: Australia, Bahamas, Belgium, Chile, Cyprus, Denmark, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey.” Structure of IMO, <http://www.imo.org/About/Pages/Structure.aspx>, last accessed on 7 June 2014.

²⁷ Ademun-Odeke (2007).

²⁸ IMO Convention, art 26.

²⁹ IMO Convention, art 21(a).

³⁰ IMO Convention, art 21(b).

³¹ IMO Convention, art 22.

³² Ibid.

³³ IMO Convention, art 25.

2.3.3 *Maritime Safety Committee (MSC)*

Although MSC's work revolves mainly around maritime safety and security, its work also has some relevance for the prevention of marine pollution. MSC consists of all Members of the organisation.

Initially, the MSC was constituted by 14 Members. According to the original article 28(a) of the IMCO Convention, MSC shall consist of 14 members elected by the Assembly, including at least 8 of the largest ship-owning nations. The IMCO Assembly in its first meeting, held from January 6 to 19, 1959, elected the United States, United Kingdom, Norway, Japan, Italy, Netherlands, France and Germany as the largest ship-owning nations. Liberia and Panama seriously objected the inclusion of France and Germany because both Liberia and Panama have larger ship-owning interests than France and Germany. Against this backdrop, on 19 January 1959, the IMCO Assembly decided to request the International Court of Justice to give an advisory opinion as to whether the election of MSC was in accordance with the IMCO Convention. The main argument of the nations who were opposing inclusion of Liberia and Panama is that both of these countries are FOCs and they do not have a 'genuine link' with the vessels flying their flags. However, the International Court of Justice decided that the committee elected by the Assembly was not constituted in accordance with the IMCO Convention and stated that:

... the determination of the largest ship-owning nations depends solely upon the tonnage registered in the countries in question, any further examination of the contention based on a genuine link is irrelevant for the purpose of answering the question which has been submitted to the Court for an advisory opinion.³⁴

This controversy demonstrates the north-south tensions inhering in the organisation from the very first meeting of the Assembly. However, representation of a FOC country in an important organ of the organisation does not necessarily ensure participation of developing or Least Developed Countries. A FOC country may ultimately be used as a rubber stamp of large shipping companies beneficially owned by developed countries. In 1974, in the fifth extraordinary session of the IMO Assembly, the IMO Convention was amended to include all members of the organisation in MSC.

MSC is historically linked with IMO's activities regarding marine pollution. The first marine pollution-related organ of the organisation, the Sub-committee on Oil Pollution (SCOP), was established in 1965 as a sub-committee of MSC. Marine pollution-related IMO activities were undertaken through MSC after this and, in 1973, SCOP was renamed as the Sub-committee on Marine Pollution (SCMP). After the establishment of MEPC as a separate organ, marine environment-related works were transferred to it. Nevertheless, MSC is still relevant for marine

³⁴ Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, ICJ Reports 1960, p. 150, 171.

environment because many of its activities are directly or indirectly relevant for the prevention of pollution from ships. These include aids to navigation, construction and equipment of vessels, the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, navigational records, salvage and rescue.

2.3.4 Marine Environment Protection Committee (MEPC)

MEPC was established as a permanent subsidiary organ of the Assembly in 1973 in its 80th session. The ninth session of the IMO Assembly in 1975 institutionalised MEPC as an organ of IMO through an amendment of the IMO Convention. This amendment came into effect in 1982.

MEPC is at the forefront of IMO's activities for the prevention of pollution of the marine environment from ships. The establishment of MEPC as a separate organ of the organisation has been termed as the formal recognition of marine environmental protection in the same status of maritime safety.³⁵ MEPC has the power to consider any matter concerning the prevention and control of marine pollution from ships within the scope of IMO. The committee is entrusted with the responsibility of performing functions conferred upon the organisation under international legal instruments for the prevention and control of the marine pollution from vessels. In particular, MEPC is responsible for functions related to the adoption and amendment of regulations or other provisions stipulated in those legal instruments. It is also responsible for promoting measures for facilitation of enforcement of international marine environmental conventions. MEPC also gathers scientific, technical and any other practical information regarding marine pollution and, if needed, makes necessary recommendations and guidelines for combating such pollution. It also promotes cooperation with regional organisations in respect of marine environmental matters.³⁶ Presently, virtually all negotiations for the legal instruments and amendment of existing legal instruments concerning marine environment and within the competence of IMO are facilitated through MEPC.

The workload of MEPC is growing enormously. For example, MEPC 66, held from 31 March to 4 April 2014, had 21 agenda items. Amongst others, these included harmful aquatic organisms in ballast water; recycling of ships; air pollution and energy efficiency; reduction of GHG emissions from ships; identification and protection of Special Areas and Particularly Sensitive Sea Areas; inadequacy of reception facilities; harmful anti-fouling systems for ships; promotion of implementation and enforcement of IMO legal instruments; technical co-operation activities for the protection of the marine environment; and noise from commercial shipping and its adverse impacts on marine life.³⁷ To deal with such an enormous

³⁵ M'Gonigle and Zacher (1979), p. 48.

³⁶ IMO Convention, art 38.

³⁷ Report of the Marine Environment Protection Committee on Its Sixty-Sixth Session, IMO Doc. MEPC 66/21 (25 April 2014).

workload MEPC regularly establishes working groups, inter-sessional working groups, review groups and ad hoc expert working groups for dealing with specific issues.

2.3.5 Technical Cooperation Committee (TC)

The Technical Cooperation Committee was established in 1969 as a subsidiary body of the Council to facilitate technical cooperation for implementation of IMO instruments. In 1977, the tenth session of the IMO Assembly adopted a resolution amending the IMO Convention to include this committee as one of the principal organs. All members have membership in this committee. The committee is responsible for reviewing the Secretariat's activities concerning technical cooperation. It oversees the implementation of technical cooperation projects funded by the United Nations and other sources and matters related to the organization's activities in the technical cooperation related activities of IMO.³⁸ The role of the Technical Cooperation Committee is more important than ever because IMO's marine environmental activities are gradually expanding to issues where north-south tension is high. For example, IMO's activities regarding the reduction of GHG emissions from international shipping involves serious debate between developed and developing countries as to the implementation of the principle of Common But Differentiated Responsibilities. Ensuring technical cooperation with developing countries may be one possible mechanism for implementation of this principle in a way that is universally acceptable. Moreover, IMO has expanded its work to areas like shipbreaking. This is, in fact, controlling an industry which is predominately located in the developing world. Technical cooperation may be a vital issue in this regard.

2.3.6 Legal Committee (LEG)

The establishment of the IMO Legal Committee is historically linked with marine environmental protection. The Legal Committee was established in 1967, as a temporary committee under the IMO Council, after the Torrey Canyon oil spill to identify the relevant legal issues surrounding this incident.³⁹ The Legal Committee played an instrumental role in adopting IMO legal instruments to establish a comprehensive legal framework for compensation for vessel-source marine pollution damage. These legal instruments will be discussed in the next chapter. In its

³⁸ IMO Convention, art 25.

³⁹ Balkin (1999), p. 291.

ninth session in 1975, the IMO Assembly institutionalised this Committee as a major organ of the organisation through adoption of an amendment to the IMO Convention. After the entry into force of this 1975 amendment in 1982, the legal Committee became a permanent organ of the organisation. The committee consists of all IMO members.⁴⁰ The Committee is authorised to consider any legal matters, including environmental legal matters, within the scope of IMO.⁴¹ The Legal Committee meets at least once a year.⁴²

2.3.7 Facilitation Committee (FAL)

In 1968, IMO established the Facilitation Committee to advise the IMO Council on matters related to facilitation, particularly with respect to the implementation of the 1965 Convention on Facilitation of International Maritime Traffic, which came into effect on 1967.⁴³ This Committee was established as a permanent subsidiary body of the IMO Council in 1972. In 1991, the IMO Assembly institutionalised this committee as one of the main permanent organs of the organisation through adoption of an amendment to the IMO Convention. This amendment came into force in 2008, making this committee one of the main permanent organs of the organisation. The Committee consists of all members and is empowered to consider any matter within the scope of the IMO related to the facilitation of international maritime traffic. There is some indirect relevance of this committee's activities for the prevention of marine pollution from ships.

2.3.8 Sub-committees

The IMO also has seven subcommittees to assist the work of MEPC and MSC including the following:

1. Subcommittee on Human Element, Training and Watchkeeping (HTW);
2. Subcommittee on Implementation of IMO Instruments (III);
3. Subcommittee on Navigation, Communications and Search and Rescue (NCSR);
4. Subcommittee on Pollution Prevention and Response (PPR);
5. Subcommittee on Ship Design and Construction (SDC);

⁴⁰ IMO Convention, art 32.

⁴¹ IMO Convention, art 33.

⁴² IMO Convention, art 35.

⁴³ *Convention on Facilitation of International Maritime Traffic*, opened for signature 9 April 1965, 591 UNTS 265 (entered into force 5 March 1967).

6. Subcommittee on Ship Systems and Equipment (SSE); and
7. Subcommittee on Carriage of Cargoes and Containers (CCC).⁴⁴

Among these subcommittees, the subcommittee on Pollution Prevention and Response (PPR) is the most significant for the prevention of marine pollution. The PPR is entrusted with the duty to consider technical and operational matters related to:

- prevention and control of pollution of the marine environment from ships and other related maritime operations;
- safe and environmentally sound recycling of ships;
- evaluation of safety and pollution hazards of liquid substances in bulk transported by ships;
- control and management of harmful aquatic organisms in ships' ballast water and sediments, and biofouling; and
- pollution preparedness, response and cooperation for oil and hazardous and noxious substances.⁴⁵

The activities of the Subcommittee on Implementation of IMO Instruments is also very important as many IMO marine environmental instruments lack the proper implementation at the national level, particularly in developing and least developed countries. Before the recent restructuring of subcommittees, there were nine subcommittees assisting the MEPC and MSC.⁴⁶ The recent structuring clearly reflects the changing pattern of IMO activities related to the marine environment.

2.3.9 *Secretariat*

The Secretariat is one of the original organs of IMO. It consists of a Secretary General and such other personnel as may be required. Presently, the IMO Secretariat is supported by about 300 international personnel.⁴⁷ The Secretariat is responsible for the overall administrative activities of the organisation, including record keeping.⁴⁸

⁴⁴ IMO, IMO Sub-Committee restructuring agreed by MSC, <http://www.imo.org/MediaCentre/PressBriefings/Pages/26-restructuring.aspx#.U5pVnRCtRek>, last accessed on 13 June 2014.

⁴⁵ Ibid.

⁴⁶ These include: “the Sub-Committee on Bulk Liquids and Gases (BLG); Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC); Sub-Committee on Radio communications, Search and Rescue (COMSAR); Sub-Committee on Navigation (NAV); Sub-Committee on Ship Design and Equipment (DE), Sub-Committee on Fire Protection (FP), Sub-Committee on Stability, Load Lines and Fishing Vessels Safety (SLF); Sub-Committee on Flag State Implementation (FSI); and Sub-Committee on Standards of Training and Watchkeeping”. Ibid.

⁴⁷ IMO, Structure, <http://www.imo.org/About/Pages/Structure.aspx> last accessed on 13 June 2014.

⁴⁸ Apart from these organs IMO also oversees the activities of the Consultative Meeting of Contracting Parties to the London Dumping Convention.

2.3.10 IMO Funding and Influence

IMO committees and sub-committees are mainly dominated by developed countries. Unlike the United Nations Security Council, it is not because of any deficiency in the institutional framework of the organisation. Developing countries, particularly least developed countries, are simply not able to send big delegations like some developed countries do, and with proper expertise in the countless meetings of different IMO bodies. FOC least developed countries may be represented regularly, but it is questionable how independent their voices are. Until recently, IMO was a club of developed countries with serious shipping interests. However, because of the expansion of IMO's works into issues like climate change and shipbreaking, some leading developing countries such as China, India and Brazil are showing a growing interest in participating in IMO committees.

Interestingly, despite the domination of developed countries, some developing countries have become major contributors of the IMO Budget. Financial statements of IMO in the year ended 31 December 2012 included the top ten assessed contributions of the member states (see Table 2.1).

Other international and regional organisation and Member States play a significant role in IMO funding through donation for specific activities. These sources of funding arguably influence those organisations in the IMO law-making process. Table 2.2 taken from the 2012 IMO financial statement shows the top ten donors of IMO.

Tables 2.1 and 2.2 show that, despite the higher assessed contributions of some developing countries, developed and some leading developing countries are still major contributors of IMO's revenues through assessed contributions and donations. However, the top three contributors of assessed contributions to the organisation's revenue are FOC countries. How far these three countries represent the least developed countries is doubtful; their ability to differ from ship-owners who take the registration service is highly questionable. Therefore, despite some least developed countries' presence as the major contributors to IMO's budget, the participation and influence of least developed countries is marginalised in IMO like in other international organisations.

2.4 IMO Law-Making Process

The IMO law-making process is very complex. The organisation is entrusted with the duty of drafting conventions, agreements, or other suitable instruments for the prevention of the marine environmental pollution from ships. However, IMO's role in the development of the international legal framework for the prevention of the marine pollution from ships goes far beyond just drafting legal instruments for the consideration of State parties. As will be discussed in this section, IMO is the

Table 2.1 Top ten assessed contributors in 2012

Rank	Country	Amount GBP	% of total assessment
1	Panama	5,404,125	18.63
2	Liberia	2,940,450	10.14
3	Marshall Islands	1,776,527	6.12
4	United Kingdom	1,366,318	4.71
5	Bahamas	1,325,700	4.57
6	Singapore	1,289,838	4.45
7	Malta	1,087,966	3.75
8	Greece	1,082,943	3.73
9	China	1,038,805	3.58
10	Japan	964,989	3.33
Total		18,277,661	63.01

This table is taken from, IMO, International Maritime Organization Financial Statements Year Ended 31.12.2012, http://www.imo.org/Documents/IMO_Financial_Statements_for_the_year-ended_31_12_2012.pdf, last accessed on 14 June 2014

Table 2.2 IMO top ten contributors to donor revenue in 2012

Rank	Donor	Amount GBP	% of total donor revenue
1	European Commission	2,211,431	27.44
2	Norwegian Agency for Development Cooperation (NORAD)	740,773	9.19
3	Government of Republic of Korea	733,099	9.10
4	United Nations Development Programme (UNDP)	644,302	7.99
5	United Nations Environment Programme (UNEP)	531,911	6.60
6	World Bank	487,562	6.05
7	Government of Denmark	443,993	5.51
8	Korea International Cooperation Agency (KOICA)	377,999	4.69
9	Government of the United States of America	327,368	4.06
10	Government of Japan	229,980	2.85
Total		6,728,418	83.48

This table is taken from, IMO, International Maritime Organization Financial Statements Year Ended 31.12.2012, http://www.imo.org/Documents/IMO_Financial_Statements_for_the_year-ended_31_12_2012.pdf, last accessed on 14 June 2014

competent organisation for the prevention of marine pollution from ships under UNCLOS. UNCLOS includes a number of rules of reference for the competent organisation that created a very distinctive role for IMO in the international law-making process by providing an indirect law-making or standard-setting power to the organisation.⁴⁹ IMO also introduced a system called ‘tacit acceptance

⁴⁹ Sommer (1996), p. 656.

procedure' which virtually created a quasi-legislative power for the organisation.⁵⁰ This section discusses these aspects of IMO's law-making competence.

2.4.1 *IMO Mandate Under UNCLOS*

To understand the law-making competence of IMO it is pertinent to consider the context of the vessel-source marine pollution law-making process. This issue is critically linked with the jurisdiction of States to take action against marine pollution. Jurisdiction of States can be broadly divided into two categories: prescriptive or legislative jurisdiction and enforcement jurisdiction. Prescriptive or legislative jurisdiction is a State's competence to prescribe substantive standards.⁵¹ On the other hand, the power to prevent or punish any violation of substantive standards is its enforcement jurisdiction.⁵²

Generally, a State enjoys an unrestricted prescriptive or legislative jurisdiction over its internal and territorial waters.⁵³ In these areas, States can prescribe national environmental standards. In the territorial sea, this right is limited by the right of innocent passage of other States. For the exclusive economic zone, national standards must be in conformity with the "generally accepted international standards".⁵⁴

Part XII of UNCLOS imposes a general obligation to protect and preserve the marine environment.⁵⁵ It gives States a sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.⁵⁶ The convention requires States to take all measures necessary for prevention, reduction and control of pollution of the marine environment from all sources.⁵⁷ The convention also imposes an obligation for environmental monitoring and assessment.⁵⁸ According to some scholars, UNCLOS brings some basic reforms in to international marine environmental law.⁵⁹ Most significant of these, pollution can no longer be justified under freedom of the seas and states have a general obligation to prevent marine pollution.⁶⁰ Secondly, with some limitations it brings a balance of power between

⁵⁰ Ibid, 646.

⁵¹ Tan (2006), pp. 176 and 177 and M'Gonigle and Zacher (1979), pp. 200 and 201.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ UNCLOS, art 192. See generally Boyle (1985).

⁵⁶ UNCLOS, art 193.

⁵⁷ UNCLOS, art 194 (1).

⁵⁸ UNCLOS arts 204 and 206.

⁵⁹ Birnie et al. (2009), p. 383.

⁶⁰ Ibid.

flag states and coastal states.⁶¹ Finally, UNCLOS changes the focus from State's responsibility for environmental damage to international cooperation for the protection of the marine environment.⁶²

Article 211 of the UNCLOS in particular deals with vessel-source pollution. This article imposes a general obligation on States to establish international rules and standards for prevention, reduction and control of vessel-source marine pollution.⁶³ The convention also obligates the State parties to adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall have at least have the same effect as that of "generally accepted international rules and standards".⁶⁴ This indicates that "generally accepted international rules and standards" is a minimum level of control. Flag States can make more stringent laws for the ships which are entitled to fly their flag.

Like previously adopted legal instruments, UNCLOS mainly relies on flag States' prescriptive jurisdiction and enforcement power. This is one of the main causes of the present unsatisfactory status of the implementation of international marine environmental conventions. Many ships, particularly those from FOC countries and land-locked countries, never visit their own country. Most of the flag States do not see any benefit in making stringent regulations. On the other hand, coastal States have a genuine interest to protect their marine environment; although UNCLOS gives them a very restricted prescriptive and enforcement jurisdiction.⁶⁵

However, in the exercise of their sovereignty within their territorial sea, coastal States may adopt laws and regulations for the prevention, reduction and control of marine pollution.⁶⁶ The convention affirms the right to innocent passage for vessels of all countries in territorial seas of other countries.⁶⁷ Nevertheless, any act of 'wilful and serious pollution' is illegal while a ship is in innocent passage.⁶⁸

The term 'wilful and serious pollution' severely limits coastal States' ability to control vessel-source marine pollution while a ship is in innocent passage. The coastal State can take action only if there is wilful and severe pollution; no preventive action can be taken, even if the vessel is not equipped with the necessary equipment for pollution prevention. For control of ship-generated-pollution a coastal State may enact laws for controlling innocent passage through the territorial sea, provided that the national laws are in conformity with international law.⁶⁹

⁶¹ Ibid.

⁶² Ibid.

⁶³ UNCLOS, art 211(1). See generally Bodansky (1991), Kindt (1984), and Dziedzornu and Tsamenyi (1991).

⁶⁴ UNCLOS, arts 211 (2) and 94.

⁶⁵ See generally: Molenaar (1998), Johnson (2004), pp. 2 and 3; and Hakapää (2005).

⁶⁶ UNCLOS, art 211(4).

⁶⁷ UNCLOS, art 17. On innocent passage see generally Agyebeng (2006) and Hakapää and Molenaar (1999).

⁶⁸ UNCLOS, art 19.

⁶⁹ UNCLOS, art. 21.

Moreover, “such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards”.⁷⁰ These provisions are somewhat ambiguous. It is clear that a coastal State can enact national laws to give effect to international law regulating design, construction, manning or equipment of ships. However, it is not very clear whether a coastal State can take action against a foreign ship not conforming to these requirements but not engaged in any wilful and severe pollution while in innocent passage.

Finally, the Convention grants the coastal States a right and jurisdiction for protection and preservation of the marine environment in Exclusive Economic Zones (EEZ).⁷¹ The convention limits the prescriptive jurisdiction of coastal States in the EEZ to giving effect to international law and enacting national laws which are in conformity with international law and standards.⁷² If the international rules and standards are inadequate to meet the special conditions of certain areas, coastal States can declare defined areas of their respective EEZs as a special area and adopt special mandatory measures for the prevention of pollution from vessels after consultations through the competent international organization.⁷³ The UNCLOS also provides that ships in transit passage in straits used for international navigation shall comply with generally-accepted international environmental rules and procedures.⁷⁴

The Port State enforcement jurisdiction is the most innovative provision of the UNCLOS. The UNCLOS, for the first time, provided power to port States to investigate or prosecute any violation of international standards outside their jurisdictions; namely, internal waters, territorial seas and EEZ. But the vessel must be voluntarily within its port.⁷⁵ As will be seen in the next chapter, MARPOL 73/78 granted jurisdiction to coastal States only to take action against any discharge within its jurisdiction. Providing ample jurisdiction only upon flag States created some practical problems. As noted earlier, a huge number of ships operate with FOCs registered in the open registries. Many of these open registry countries have no meaningful connection with the ships entitled to fly their flags. Moreover, FOCs ships very rarely or never visit their own marine area. These countries find no incentive to prescribe stringent national regulation or proper implementation of international instruments.

The issue of vessel-source air pollution has been handled separately to pollution from or through the atmosphere. The UNCLOS imposed an obligation on both

⁷⁰ UNCLOS, art. 21(2).

⁷¹ UNCLOS, art. 56.

⁷² UNCLOS, art. 211(5). See generally Dzidzornu (1997) and Berret (1995).

⁷³ UNCLOS, art. 211(6). See generally Molenaar (1998), pp. 402–418.

⁷⁴ UNCLOS, art. 39(2)(b). See generally Beckman (1998).

⁷⁵ UNCLOS, art. 218. See generally McDorman (1997), Legatski (1977), Anderson (1999), and Kasoulides (1997).

coastal and flag States to create a national legal framework for prevention of vessel-source air pollution taking into account internationally agreed rules, standards and recommended practices and procedures.⁷⁶ The phrase ‘taking into account’ requires coastal States to exercise a minimum level of measures against vessel-source air pollution. That means this article provides a prescriptive jurisdiction which is subjected to international rules and standards.⁷⁷ Again, article 222 of the UNCLOS imposes an obligation on the States to implement and enforce international rules and standards for the prevention of vessel-source air pollution.⁷⁸

UNCLOS does not prescribe a large set of new standards for the prevention of vessel-source pollution. Instead, it mainly incorporates within its ambit standards prescribed in other international legal instruments. The IMO’s official position is that “while UNCLOS defines flag, coastal and port State jurisdiction, IMO instruments specify how State jurisdiction should be exercised so as to ensure compliance with safety and shipping anti-pollution regulations”.⁷⁹ In this regard, UNCLOS introduced some rules of reference which vary depending on the subject of the rules of reference, particularly with respect to the “generally accepted international rules and standards” (GAIRS). This phrase has been frequently used. UNCLOS often uses some rules of reference, including: “generally accepted international regulations”, “applicable international instruments”, “generally accepted international regulations, procedures and practices”, and “generally accepted international rules and standards” (GAIRS). There is a serious debate among scholars on its precise meaning in Part XII of UNCLOS while elaborating on the obligations towards marine environmental protection.⁸⁰ Nevertheless, it is widely recognised that GAIRS indicate IMO conventions.

These issues are very important in implementing international conventions as a flag, coastal or port State. Firstly, a coastal or port State may prescribe and enforce some standards contained in a particular IMO marine environmental convention which has attained ‘sufficiently general acceptance’, even if the flag State of a particular foreign ship is not a party to that convention. Finally, the country must ensure that ships flying its flag adhere to similar types of standards contained in some international instruments, whether the country subscribes to those conventions or not. This makes the role of IMO so critically important. As observed by a study published by IMO:

Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of Annex VIII), several provisions in the Convention refer to the “competent international

⁷⁶ UNCLOS, art. 212 (1).

⁷⁷ Molenaar (1998), p. 501.

⁷⁸ UNCLOS, art 222.

⁷⁹ IMO, *Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization*, IMO Doc LEG/MISC.7 (19 January 2012) at pg 12.

⁸⁰ UNCLOS, arts 211(2), 211(5), 211(6) and 226 (1). See generally Tan (2006), Oxman (1991), Sohn (1986), Adrianov (1990), Dempsey (1984), Boyle (1985), Lee (1983), and Molenaar (1998).

Organization” in connection with the adoption of international shipping rules and standards in matters concerning maritime safety efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping... In such cases, the expression “competent international organization”, when used in the singular in UNCLOS, applies exclusively to IMO, bearing in mind the global mandate of the Organization as a specialized agency within the United Nations system established by the Convention on the International Maritime Organization...⁸¹

By using the term ‘rules and standards’, these provisions widened the scope of the application of the IMO instruments. For example, the IMO Assembly or the MEPC may adopt a resolution introducing certain technical rules and standards not included in IMO treaties. According to a report published by IMO, ‘These resolutions are normally adopted by consensus and accordingly reflect global agreement by all IMO Members. Parties to UNCLOS are expected to conform to these rules and standards, bearing in mind the need to adapt them to the particular circumstances of each case. Moreover, national legislation implementing IMO recommendations can be applied with binding effect to foreign ships’.⁸² On the other hand, IMO treaties are binding to contracting parties like any other legally binding international instruments. However, there is scope for national legislation implementing IMO treaties to apply with binding effect to foreign ships, even if the flag State is not party to a particular treaty. This is because these treaties represent generally-accepted rules and standards in certain circumstances and is possible where UNCLOS creates a scope for application of generally-accepted rules and standards to foreign vessels. UNCLOS created a dynamic opportunity for IMO to develop international regulations for the protection of the marine environment. Over the years, IMO showed a clear indication to make proper use of this scope. As observed by Rüdiger Wolfrum:

The Relationship between the UN Convention on the Law of the Sea and the IMO is not static but, rather, dynamic. The Convention establishes a legal framework for States (flag States, port States and coastal states) and international organizations to fill. The IMO has made use of this opportunity most effectively. It was particularly successful in designing its decision-making process in a manner which allowed it to exercise prescriptive powers and to respond effectively and flexibly to the current challenges of marine safety and protection of the marine environment.⁸³

However, IMO’s innovative approach in the international law-making process is not wholly inspired by or governed by UNCLOS. The principle that a port State can enforce the requirement of an international legal instrument against a foreign ship voluntarily visiting its port has been recognised by IMO legal instruments even before the adoption of UNCLOS.⁸⁴ The *1969 International Convention on Civil Liability for Oil Pollution Damage (CLC)* included a provision that a port State

⁸¹ Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization, IMO Doc. LEG/MISC.7 (19 January 2012).

⁸² Ibid.

⁸³ Wolfrum (1999), p. 234.

⁸⁴ Mensah (2007), p. 57.

party of this convention must ensure that foreign vessels visiting its port must have insurance or other security required by this convention.⁸⁵ This approach was further expanded in the MARPOL Convention in 1973.⁸⁶ This approach initially faced fierce opposition from some States because an international treaty cannot impose obligations on third parties or adversely affect the rights of third parties or non-party States.⁸⁷

2.4.2 *Tacit Acceptance*

Most of the IMO technical conventions now have a provision for ‘tacit acceptance’. IMO pioneered this concept in the international environmental law-making process, although this concept is not entirely new.⁸⁸ Through the ‘tacit acceptance’ process, amendments to technical annexes of a convention come into force after a certain period if a certain number of State parties do not oppose the adoption of the amendment within that period and it is deemed to have been accepted by parties who do not oppose the amendment within a time limit.

Initially, it was very difficult to enforce technical regulations in any IMO instruments. This was despite the need for rapid change in the technical standard stemming from the emerging threats to the marine environment and emerging maritime safety issues. Many of the initial amendments to the IMO instruments never came into effect because, in most cases, ratification or acceptance of at least two-thirds of the parties was needed. This prompted IMO to introduce the system of ‘tacit acceptance’ in the early 1970s. This procedure ensured prompt entry into

⁸⁵ *International Convention on Civil Liability for Oil Pollution Damage*, opened for signature 29 November 1969, 973 UNTS 3 (entered into force 19 June 1975) (this convention is being replaced by 1992 Protocol). According to article VII(11) of this convention “Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.”

⁸⁶ *International Convention for the Prevention of Pollution from Ships*, opened for signature 2 November 1973, 12 ILM 1319 (1973) as modified by the Protocol of 1978 to the 1973 Convention, opened for signature 17 February 1978, 1341 UNTS 3 (entered into force 2 October 1983) (MARPOL 73/78). For most recent version see MARPOL: Consolidated Edition 2011 (IMO, London, 2011) (hereinafter MARPOL 73/78). According to article 5 (4) of this convention “With respect to the ships of non-Parties to the Convention, Parties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships.”

⁸⁷ Mensah (2007), p. 58.

⁸⁸ The International Civil Aviation Organization (ICAO), the International Telecommunications Union (ITU), the World Meteorological Organization (WMO) and the World Health Organization (WHO) had process to amend technical and other regulations. IMO, Introduction, <http://www.imo.org/About/Conventions/Pages/Home.aspx>, last accessed on 19 June 2014.

force of technical regulations contained in IMO legal instruments. However, the legality of this procedure has been hotly debated in IMO.⁸⁹ The ‘tacit acceptance’ procedures also created a major challenge for least developed countries. Due to lack of resources and technical expertise, it is very difficult for least developed countries to keep pace with rapid development in international regulations. As observed by A. O Adede:

Certain technical amendments may require the performance of certain acts or the assumption of certain obligations which a developing State may not be able to accept readily, because of technical, financial, or manpower reasons. For example, a series of amendments might require that ships be maintained according to more stringent standards, that certain ships be manned by a certain caliber of crew and personnel, or that certain new and more sophisticated equipment be made available in either ships or ports. In each of these instances, a developing country must evaluate thoroughly its financial, technological, and manpower capacities before it can consent to be bound by the obligations flowing from such amendments. . . . It does not seem reasonable to bind that State to such amendments by default through the tacit acceptance procedure.⁹⁰

Despite these problems over the years, it has been proved that ‘tacit acceptance’ procedures are very useful in expeditiously updating technical regulations contained in the IMO conventions, particularly the IMO conventions concerning the marine environment. However, this rapid development of international regulations has not been supported by uniform worldwide implementation. This vertical development in fact created a double standard in developed and developing countries. As will be discussed in the subsequent chapters, many IMO legal instruments have not been properly implemented in developing countries. It is not unusual for government officials in developing countries to be fully unaware about recent amendments in IMO instruments.⁹¹

Conclusion

IMO started its journey in 1958 and almost without any mandate for the protection of the marine environment. However, in the last six decades its mandate, institutional structure and role in the development of international law for the protection of the marine environment from vessel-source pollution expanded gradually. It has expanded its activities in regulating associated areas like shipbreaking, which is mainly a land-based industry. In expanding its activities concerning the marine environment, the organisation took a very dynamic and innovative approach. Many State and non-State actors played a major role in this development. Many outcomes in IMO negotiation processes are ultimately a compromise between different types of inserters.

(continued)

⁸⁹ See generally, Shi (1988–1999) and Adede (1977).

⁹⁰ Adede (1977), p. 208.

⁹¹ Karim (2009), p. 75.

Nevertheless, the organisational development and reform of IMO is truly remarkable. The organisation's expanding competence in the field of marine environment is not only achieved through internal organisational expansion and development, but also greatly influenced by external factors like the adoption of umbrella legal instrument UNCLOS and the inclusion of the IMO as the competent international organisation responsible for further development of international standard for the prevention of marine pollution.

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