Decision-making processes of ICAO and IMO in respect of environmental regulations

Study for the ENVI Committee

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Decision-making processes of ICAO and IMO in respect of environmental regulations

Abstract
This study provides an overview of the decision-making processes of the International Civil Aviation Organisation and International Maritime Organisations in respect of environmental regulations.

This study was provided by Policy Department A for the Committee on Environment, Public Health and Food Safety (ENVI).
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<th>Description</th>
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<tr>
<td>ACOPS</td>
<td>Advisory Committee on Protection of the Sea</td>
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<td>CNG</td>
<td>Carbon Neutral Growth</td>
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<td>CAEP</td>
<td>Committee on International Aviation Environment Protection</td>
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<td>CBDR-RC</td>
<td>Common But Differentiated Responsibilities and Respective Capabilities</td>
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<td>ETS</td>
<td>Emissions Trading Scheme</td>
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<td>EEDI</td>
<td>Energy Efficiency Design Index</td>
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<td>ENVI</td>
<td>Environment</td>
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<td>EAG</td>
<td>Environment Advisory Group</td>
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<td>EASA</td>
<td>European Aviation Safety Agency</td>
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<td>ECAC</td>
<td>European Civil Aviation Conference</td>
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<td>FOC</td>
<td>Flags of Convenience</td>
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<td>FOEI</td>
<td>Friends of the Earth International</td>
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<td>GLAD</td>
<td>Global Aviation Dialogues</td>
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<td>GMBM</td>
<td>Global Market-Based Measure</td>
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<td>GHG</td>
<td>Greenhouse Gas</td>
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<td>IATA</td>
<td>International Air Transport Association</td>
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<td>ICAO</td>
<td>International Civil Aviation Organisation</td>
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<td>ICSA</td>
<td>International Coalition for Sustainable Aviation</td>
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<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution from Ships</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<td>MEPC</td>
<td>Marine Environment Protection Committee</td>
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<td>MBM</td>
<td>Market-Based Measures</td>
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<td>MRV</td>
<td>Measurement, Reporting and Verification</td>
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NILOS  Netherlands Institute for the Law of the Sea
NGO  Non-Governmental Organization
PSC  Port State Control
REIO  Regional Economic Integration Organisation
SEEMP  Ship Energy Efficiency Management Plan
SCRC  Special Circumstances and Respective Capabilities
SARP  Standards and Recommended Practices
UN  United Nations
UNCTAD  United Nations Conference on Trade and Development
UNFCCC  United Nations Framework Convention on Climate Change
FAA  United States Federal Aviation Authority
WTO  World Trade Organization
EXECUTIVE SUMMARY

Parties to the 1992 Kyoto Protocol explicitly requested industrialised countries to pursue emission limitations from international transport working through the International Maritime Organisation (IMO) and International Civil Aviation Organisation (ICAO).

Both organisations pursue several core objectives, the challenge of which has been to reconcile these, including environmental protection, and to ensure non-discrimination between member states.

Both organisations have historically strong ties with industry, relying on technical expertise, knowledge and views of regulatory impact, and both have had traditionally strong government representation from aviation and maritime departments, but with increasing environmental representation. Cross-government departmental coordination on environmental issues can be challenging.

UN bodies operating on a consensus basis generally suffer from slow decision-making, and ICAO and IMO are no exceptions. However, in recent years, progress has been more evident on environmental work, with a mainstreaming of environmental consciousness into political decision-making.

In an international environment of nearly 200 states, views on transparency differ greatly, and this is reflected in the decision-making processes at ICAO and IMO, making it hard to transpose Aarhus Convention principles. Secretariats, in particular that of ICAO, must strive to achieve inclusivity in order to generate public confidence, as should member states, who acknowledge a difficult balance act of openness versus effective working processes and protection of commercially sensitive data.

Civil society plays an important role in expanding the conversation, providing specific expertise and challenging existing narratives. Resourcing challenges hinder this, but environmental organisations are improving their engagement and thereby opportunity for impact. Many developing countries also suffer from resourcing issues, which can also prevent an understanding of the benefits of GMBM schemes, although improved outreach is hoped to have a positive impact.

Decision-making power rests strongly in certain fora, particularly in Councils, as well as informal mechanisms, which requires these fora to be well-balanced in their representation. Both organisations will continue to face calls to improve this balance.

Ultimately, it is member states whom are in the strongest position to drive decision-making and progress, and the credibility of both organisations on environmental regulations lies with them.
1. **INTRODUCTION**

The 2014 Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPPC) notes that “Reducing global transport greenhouse gas (GHG) emissions will be challenging since the continuing growth in passenger and freight activity could outweigh all mitigation measures unless transport emissions can be strongly decoupled from GDP growth (high confidence).”¹

The United Nations Framework Convention on Climate Change (UNFCCC) framework sets legally binding obligations on greenhouse gas emissions and objectives on limiting future global warming (to well below 2.0 °C). Parties to the 1992 Kyoto Protocol explicitly requested industrialised countries to pursue emission limitations from international transport working through the International Maritime Organisation (IMO) and International Civil Aviation Organisation (ICAO) (Article 2.2).²

A 2015 study³ carried out upon request of the ENVI Committee concluded that:

- Due to strong growth in transport demand, CO2 emissions of international aviation and maritime transport were and are constantly growing despite considerable efficiency improvements.

- If, as in the past, the ambition of these sectors continues to fall behind efforts in other sectors and if action to combat climate change is further postponed, their CO2 emission shares in global CO2 emissions may rise substantially to 22% for international aviation and 17% for maritime transport by 2050 or almost 40% of global CO2 emissions if both sectors are considered together.

- Initiatives and actions taken by ICAO and IMO to address GHG emissions started late and have been insufficient from an environmental perspective to date: they do not take appropriate account of global decarbonisation requirements.

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² i.e. Parties included in Annex 1 to the Kyoto Protocol: http://unfccc.int/essential_background/kyoto_protocol/items/1678.php

Decision-making processes of ICAO and IMO in respect of environmental regulations

The Sixth Community Environment Action Programme set deadlines of 2002 and 2003 for ICAO and IMO respectively to agree actions to reduce greenhouse gas emissions from aviation and marine shipping, and for the European Commission to identify and undertake specific actions to do so if no such action was taken by such times. This study, conducted through interviews with nearly fifty representatives of member states, industry and civil society, henceforth examines the decision-making processes of ICAO and the IMO in respect of environmental regulations.

Source: Data on greenhouse gas emissions and removals, sent by countries to UNFCCC and the EU Greenhouse Gas Monitoring Mechanism, European Environment Agency.


**Timeline of actions so far**

1997: Kyoto Protocol asks developed countries to work through IMO and ICAO to reduce emissions

**IMO**

1998: MEPC decides to commission a study on GHG emissions from ships.

2000: Study commissioned by the MEPC presented.

2002: MEPC establishes a Correspondence Group to prepare an IMO Strategy/Policy on GHG emissions from ships.

2008: An internal IMO working group is established to develop the technical basis for a regime to control GHG emissions from international shipping


2013: New proposals on operational measures to improve efficiency – discussions on MRV of shipping emissions.

2014: Third GHG study shows that shipping emissions accounted for 2.2% of global GHG emissions in 2012. Despite the energy-efficiency measures adopted, they are expected to rise by 50–250% by 2050, mirroring world trade growth. If left unregulated, CO2 emissions could make up to 17% of global CO2 emissions by 2050, wiping out the energy efficiency gains obtained.

2015: The Republic of the Marshall Islands calls for a global CO2 target for shipping. MEPC does not adopt the proposal, but indicates that it could be further addressed in future. It continues work on technical and operational measures, in particular the data collection system. IMO argues that international shipping is already contributing to emissions cuts by improving energy efficiency of ships.

**ICAO**

2001: ICAO endorses the development of an emissions trading system for aviation.

2004: ICAO rules out establishing a global emissions trading scheme for aviation, instead advocating guidance to countries for the inclusion of international aviation emissions into national emissions trading programs.

2007: ICAO declares it is the lead UN agency in matters involving international aviation, urging ICAO members not to implement an emissions trading system on other members’ aircraft operators except on the basis of mutual agreement between those states.

2010: ICAO adopts guidance for international aviation in contracting states' emissions trading systems. ICAO agrees a global aspirational goal of Carbon Neutral Growth from 2020 onwards (with 51 reservations).

2012: ICAO establishes an expert group to evaluate the technical feasibility of a global MBM. ICAO Assembly adopts guiding principles for aviation MBMs and calls for the development by 2013 of a framework of MBMs.

2013: High Level Group fails to agree on any key issues relating to MBMs; no agreement to implement a global MBM at the Assembly. ICAO establishes a working group for developing a GMBM to achieve the CNG 2020 goal. According to its work program, the GMBM should be adopted in 2016 and come into force in 2020.
2. **IMO**

2.1. **Objectives**

2.1.1. **IMO Convention**

Article 1 of the IMO’s Convention establishes the purposes of the organisation, not only for trade and safety but also environmental objectives:

a. To provide machinery for co-operation 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 the maritime safety, efficiency of navigation and prevention and **control of marine pollution from ships**...

b. To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade...

d. To provide for the consideration by the Organization of any matters concerning shipping and the **effect of shipping on the marine environment** that may be referred to it by any organ or specialized agency of the United Nations;

The IMO has produced a number of conventions on environmental issues⁶ and in 2011 also adopted efficiency measures to address GHG emissions (the Energy Efficiency Design Index⁷ and the Ship Energy Efficiency Management Plan⁸).

2.1.2. **Universal standards**

The IMO aims to create standards that are “universally adopted and universally implemented” across an array of maritime issues⁹ in the pursuit of “safe, environmentally sound, energy efficient and secure” shipping¹⁰.

Universal standards¹¹ are important to ensure that all member states apply the same standards essential for safety and pollution prevention - sub-standard ships can cause pollution and damage marine environments of other states. Universal standards also help to avoid unfair advantage to ships of different states, otherwise application of strict standards

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⁷ The EEDI set compulsory energy efficiency standards for new ships built after 2013.

⁸ The SEEMP requires ships to develop a plan to monitor and possibly improve their energy efficiency.

⁹ i.e. design, construction, equipment, manning, operation and disposal, energy efficiency, new technology and innovation, maritime education and training, maritime security, maritime traffic management and the development of maritime infrastructure.

¹⁰ http://www.imo.org/en/About/Pages/Default.aspx

¹¹ Standards can take the forms of treaty instruments (legally binding on states that agree to be bound), as rules or regulations (that may be implemented by states in whole or in part), or as general statements of agreed objectives or criteria (which states are recommended to endeavour to pursue or apply, having regard to their requirements for their particular circumstances). Also, as Campe notes, “In order to speed up the amendment of existing conventions the “tacit acceptance” procedure was developed, where technical amendments automatically enter into force unless a third of the Member States object within twelve months. It has been judged a major advancement in combating marine pollution, granting IMO staff considerable influence, and IMO secretariat staff has reported that this opportunity has been used quite frequently to update regulations.”
in one state would be advantageous to those that apply relatively lower standards, leaving them commercially disadvantaged.

2.1.3. **Common But Differentiated Responsibilities (CBDR)**

IMO’s non-discriminative objective of universal adoption and implementation is complicated by the “Common But Differentiated Responsibilities And Respective Capabilities” (CBDR-RC) principle which arose out of the Kyoto Protocol:

“Recognizing that developed countries are principally responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of industrial activity, the Protocol places a heavier burden on developed nations under the principle of "common but differentiated responsibilities."”\(^{12}\)

Many developing countries argue that their lack of historical responsibility for climate change combined with their status as developing economies should result in different obligations on climate change measures than developed countries. The Paris Agreement removes the Kyoto separation of “Annex 1 versus non-Annex 1” countries, but preserves a sense of common but differentiated responsibility, partially tempered by the addition of the words “in the light of different national circumstances” (Article 2.2). IMO decision-making has been strongly affected by the CBDR principle\(^ {13} \), with a divide and conflict between and within developed and developing states, although there is debate as to its current influence, with some arguing that it is on the decrease, and others that its impact becomes apparent at crucial times of decision-making.

2.2. **Structure**

![IMO institutional structure diagram]

12 [http://unfccc.int/kyoto_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php)

13 See reports of MEPC 61/24, MEPC 62/24 and MEPC 63/23 for examples.
IMO’s structure is made up of an Assembly, a Council and five Committees. The Assembly is the highest governing body of the Organization, consisting of all member states and meets every two years. The Assembly approves the IMO’s programme and decides on its budget, and elects the Council. The Council is the executive arm of the organisation and consists of 40 states, and is responsible for the IMO’s budget estimates and work programmes, submitting reports and proposals from IMO organs to the Assembly. Other Council functions include appointment of the Secretary-General (subject to Assembly approval).

2.2.1. Council

Given the Council’s powerful role in the body in not only setting the strategic agenda and priorities of the organisation, but also in nominating the Secretary-General, membership is competitive. Formally the Council has three categories of members. Linné and Svensson argue that the conference originally establishing the IMO in 1948 set the dynamics of power and influence through strong representation on the Council of states with maritime interests as opposed to coastal states, whom it is argued tend to have more incentive to protect their environments. States with maritime interests were concerned that the users of shipping services would create safety standards that were “over-constricting and over-expensive”, and the eventual result was a restricted Council membership. Some interviewees suggested that that the Council, as the key governance structure making critical strategic decisions, should be widened and more inclusive in its membership.

2.2.2. Marine Environment Protection Committee (MEPC)

The MEPC focuses on the prevention and control of pollution from ships. Its workload has grown significantly and, to cope, the MEPC has established a variety of working groups for dealing with specific issues, and is assisted by specialised sub-committees. All member states are eligible to participate in the MEPC (and its sub-committees), which meets every six months in London, with typically over half the membership doing so, containing around 800-1000 delegates. Whereas member states dominate committee proceedings, non-governmental organisations (i.e. industry, environmental organisations) are able to have much stronger representation in working groups. In between subcommittee meetings, correspondent groups (including observers) work on draft texts trying to advance debate.

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14 Category A consists of 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 consists of ten other States with the largest interest in international seaborne trade (Argentina, Bangladesh, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden). Category C consists of twenty States not elected under A or B which have special interests in maritime transport or navigation and ensure geographic representation (Australia, Bahamas, Belgium, Chile, Cyprus, Denmark, Egypt, Indonesia, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey).

15 Originally established as the Inter-governmental Maritime Consultative Organisation.

16 Constituting an economic dependence on seaborne trade and transport, and subsequently the interests of several industries, such as ship owners, shipbuilders, cargo owners, shippers, brokers and insurers.


18 Chiefly the Sub-Committee on Pollution Prevention and Response.
2.3. **Voting**

As is the common practice amongst UN bodies, IMO operates on a consensus basis among its members (NB: only states can vote). Although it is widely acknowledged that this often can make progress difficult, voting is perceived as too divisional in the long run and to be avoided if possible, and that working by consensus ensures a better likelihood of compliance.¹⁹

"Although this search for consensus arguably increases transaction costs, it could also be considered to increase general acceptance of the standard, increase the willingness to implement it and in this way lower compliance costs. A consequence of the search for unanimity is deadlocks in some areas, in particular the application of market-based mechanisms to reduce CO2 emissions from ships."²⁰

Voting has however been resorted to, such as in the case of the EEDI²¹ where a minority of members had been felt to be blocking progress. In that case, technical cooperation measures were adopted to help smooth the process towards adoption.

2.4. **Implementation**

More generally, however, member state representatives commonly expressed the view that they must feel a sense of ownership when trying to agree standards, without which there can be reluctance to implement. Criticism was made by some states and industry representatives about agreements that suffer from a lack of or ineffective implementation. As examples, they point to the International Convention for the Control and Management of Ships' Ballast Water and Sediments (2004, almost in force), Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (which only 3 states have ratified), and management of sewage in the Baltic sea - Resolution MEPC.200(62), which entered into force in 2013.²² A number of reasons were given as to how this can happen.

One is that international expertise in certain areas (nitrogen oxide standards for marine engines, for example) is limited, including appreciation of technical application, which

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¹⁹ The comments by the Secretary-General during MEPC-60 are worth nothing: "Decisions made by consensus in this Organization stand good chances to be widely and effectively implemented. For the need and for the sake of succeeding in making decisions by consensus, sometimes it takes considerable time in making decisions, and this has, from time to time, given rise to people criticizing this Organization for being slow and, by implication, inefficient. In this Organization, we dislike taking a vote. Voting is divisive and one would ask what chances of implementation have the technical standards adopted in this Organization if the decision to introduce that standard has been made on a 51 to 49% basis. Sometimes, the decision, if consensus cannot be achieved, will have to be made in accordance with the Organization’s well established and well functioning Rules of Procedure, meaning that decisions are made on a majority basis, which leads to the conclusion that whatever people may think, this is a democratically based Organization.”


²² The Ships’ Ballast Water Convention requires a ship to have technology on board to ensure that ballast is treated so that, when released, it does not contain invasive species (so that other species are not destroyed). This implies that ports have capacity for sampling in a timely manner, and that ballast taken on board complies with the Convention. Industry has complained that those who crafted this Convention (they point to marine biologists and experts in risk management of invasive species) were more accustomed to installing frameworks for factories rather than ships (and the requisite need to operate complicated chemical plants to sterilise water in ballasts), and that member states didn’t appreciate the consequences involved. It required installation of technology not existing at the time which, although now does, it is felt that equipment guidelines are not good enough to ensure that the Convention’s requirements are fulfilled, which industry worries could be significant for compliance issues. This had led to a questioning by some of directing investment in unproven technology.
translates into high levels of uncertainty when only a limited number of governments can contribute to a technical discussion. In general, the level of government expertise varies.

Another is a perceived trend by some towards concern on obtaining an agreement per se rather than on implementation, particularly pronounced on environmental work because of technical reasons. Whereas previously standards (in safety and environment) involved issues like construction and equipment requirements, what has changed rapidly are costs and implications related to issues such as fuel and daily operating costs involving entirely different implementation and enforcement. One shipping organisation representative pointed to the increasingly high volume of work in the MEPC translating into less meaningful debate, with consequently faster decisions. Whereas this has led to more aggressive decisions environmentally, less well thought out decision-making is said to be the consequence in this delegate’s view.

2.5.  Actors

2.5.1.  Government representation

As a specialised agency, the IMO attracts delegates with mainly maritime interests. This enables the development of a network of well-established and listened-to professionals, particularly well-known permanent representatives. Strength of personality was mentioned by several interviewees as important in influencing debate and particularly in smaller countries. Historically it was not uncommon to see some member state seats taken by industry representatives, although this is less so the case now.

Unsurprisingly, strength of representation depends on member state capacity, with small delegations responsible for many issues stretched to cover different working and drafting groups simultaneously. One shipping industry delegate noted that within MEPC, the traditionally very well represented countries include Japan, Norway, the US, and to lesser degrees the UK, Netherlands and Denmark (i.e. states with strong maritime interests), that their effectiveness comes via technical preparation and large depth of staff available (with the EU a dominant force by virtue of coordinated positions). Linné and Svensson23 highlight the impact on decision-making:

“A primary reason for the influence of the developed states is their capacities to supply large delegations and high levels of expertise to participate in meetings. In contrast, developing states are often unable to be fully represented during IMO meetings. Due to lack of resources and high travel costs, developing states often have small delegations, affecting their abilities to cover multiple issues on the agenda or to participate in the different groups that constitute a substantial portion of the meetings. In addition, their delegations often lack the technical expertise and the accumulated experience and influence that the developed states have gained through many years of attendance.”

An assumption is made by some commentators that if a lead delegate attends from the transport ministry, that ministry’s priorities is reflected in that country’s position. This position, however, assumes that either cross or intra-governmental coordination does not take place or, even if so, that transport/maritime representatives’ priorities are focussed on economic or safety rather than environmental interests, given that their domestic duty is not only to regulate the shipping industry but also to promote it. This does not imply that those delegates are not synchronised with their own national administration’s climate policies, but that being less informed on these issues means that they do not act with an appropriate level of urgency.

23 Linné and Svensson, p107.
Delegation representation impacts on effectiveness of process to a certain extent. According to one member state delegate, when talking about GHG reduction measures, safety, shipping facilitation and administration burdens for ship-owners, viable solutions are more likely with input from maritime agencies, whereas environmental colleagues tend to “only look at the bottom line”, i.e. political targets. Some member state delegates report that high level objectives are set by their government with agencies left to their own devices to achieve those objectives. The level of cross-ministerial coordination varies, with some member state delegates expressing surprise that their environmental colleagues do not attend IMO or MEPC meetings, despite it being widely recognised as currently the most important committee at IMO, and subjects such as MRV being discussed in parallel in IMO and at EU level. European member states are viewed as representations which increasingly more than most contain delegates from environmental agencies (including the environment side of transport ministries), specifically in the MEPC, but despite this challenges remain in their (and EU level) cross-departmental coordination.

2.5.2. EU

“Europe’s economic power is reflected in the fact that European companies own 41 percent of the world’s total fleet and that 90 percent of EU international trade is conducted via shipping. Moreover, the high number of member states guarantees the EU considerable political power within the IMO, if Member States speak with one voice.”

The European Commission holds observer status in the IMO and has a permanent representative to the IMO. The Commission recommended to the Council of the European Union in 2002 that the EU should accede to the IMO as a full member, which received political support from the European Parliament, but not from EU member states.

There are significant internal and external challenges of an EU accession to the IMO. Externally, the EU would need to persuade two-thirds of IMO members to ratify the process of inserting an REIO (regional economic integration organisation) clause into the IMO Convention. It would also be difficult for the EU to persuade IMO members that it should acquire a further vote in addition to the votes of each of its member states (also with EU member states’ fears that their voting rights could be taken by the EU). Given that at IMO it is the plurality of voices that are important in a debate (the chair sees how many active and vocal member states are on each side of any particular argument before deciding), having many EU member state voices speaking up in harmony to support a particular issue to get it through is influential.

However, influence has already been achieved without the existence of EU membership. Van Leeuwen and Kern point out that through acting as a coalition represented by the EU presidency and using threats of unilateral action, the EU has managed to be successful in changing decision-making processes within the IMO. They give two examples: the

24 Measuring, reporting and verification.


26 including in its Resolution on Improving Safety at Sea (2003/2235(INI)).

27 One EU delegate pointed out that big fleets at EU level like Greece and Malta have more resistant positions on environmental issues. Fearful that ships might leave theirs flags, they prefer international rather than regional measures. Simultaneously, some northern EU states have big fleets but have a stronger environment culture.

requirements of double hulls for oil tankers\textsuperscript{29} and the revision of Annex VI of the MARPOL Convention\textsuperscript{30}.

Suggestions were made by interviewees for improving the EU’s unity of voice. For example, currently, before an amendment to a legal instrument such as the MARPOL Conventions is adopted, the position of EU member states has to be established by an EU Council Decision. A more general position on certain subjects of EU competence could be established at an earlier stage by a Council Decision, in order to determine the end goal(s). This would ensure from the start that objectives are clear and might provide greater flexibility for member states in achieving such goals, allowing different but contributing perspectives to be developed and expressed.

Mention was also made in regard to another aspect of EU coordination (decided in Brussels for important meetings such as MEPC and in London for the rest) that could be improved. Disconnects can sometimes exist between the perspective of Brussels transport attachés and that of London IMO maritime attachés, some of whom may be more independently minded and do not necessarily attend Brussels coordination meetings. In addition, while London coordination tends to take place over a lunch break at IMO, the Council Shipping Working Party can devote a whole day to debate proposed coordination positions for the main Committees, whereby all arguments and strategies can be fully debated.

\subsection*{2.5.3. Flag states, island states and least-developed countries}

In the early 20th century national shipping companies tended to register their vessels under their national flags, thereby being subject to national legislation. This situation changed later in the century, with the emergence of “flag” states and many shipping companies “flagging out” their ships to these open registries, based on favourable tax regimes and the avoidance of national regulatory control (and implied costs).\textsuperscript{31} Every state has the right to set its own standards for registration of ships (notwithstanding international obligations), which for some is interpreted as opening up the door to trading environmental protection for profits.

There is a view that the finance mechanism of the IMO brings the organisation closer to the interests of flag states (and thereby industry).

\textit{“The presence of FOC [Flags of Convenience] 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 with those countries.”}\textsuperscript{32}

Contributions to the IMO budget are based on a formula which is different from that used in most other UN agencies: the amount paid by each member state depends primarily according to the size of its registered merchant fleet in total gross tonnage. Panama, Liberia and the

\textsuperscript{29} The Prestige oil spill in 2002 caused the EU to reconsider the acceleration of the phasing out of single-hull tankers, not waiting for the IMO to adopt a global schedule, and adopted its own schedule in July 2003. At the MEPC meeting held the same month, Italy proposed to bring the global schedule in line with the EU legislation, and the MEPC responded by copying the EU legislation and transferring it to the global level in December 2003.

\textsuperscript{30} In the area of air pollution, the EU wanted to set stringent norms for the sulphur content of fuel and the SO2 emissions generated from shipping, adopting the Directive Relating to a Reduction in the Sulphur Content of Certain Liquid Fuels in 1999 (amended in 2005). Requirements went beyond those of in Annex VI of the MARPOL Convention. The EU pushed IMO to come up with a satisfactory revision of Annex VI by indicating that, otherwise, the EU would develop its own legislation by amending the 2005 Directive. Subsequently the IMO revised Annex VI between 2005 and 2009, containing a progressive reduction schedule for air pollutants among others, as a result of the EU’s call for stringent measures.

\textsuperscript{31} Merck, p88.

Marshall Islands - all flag states - were the top three contributors for the 2014 budget. These three ship registries account for approximately 40% of total tonnage. However, it would appear that even if the IMO was funded by ability to pay (the common approach in the UN), it would likely have little influence on decision-making since weight of opinion tends to be attributed to those whom legislation will impact most upon. As one environmental organisation described:

"The bigger your registry, the bigger clout you have at IMO - when new legislation is being negotiated, everyone is looking in the room to see what bigger registries are thinking and doing. You can design amazing environment legislation, but if the registers don’t want to play then it’s worthless."

This sentiment was echoed by other interviewees. Simultaneously, it was pointed out that port states retain power, given their ability to control who enters a port.

The notion that flag states operate on lower environmental standards has been challenged. A study by de Sombre concludes that in practice the economic advantage of lowered environmental, safety and labour standards is offset by collective action by international organisations and states. Yearly shipping industry flag state performance tables show that the main open registries, such as the Marshall Islands, Panama, Liberia, and Singapore, all have a positive score for their performance on Port State Control (PSC) indicators, as well as on the ratification of conventions.

Many interviewees pointed to a recent change in approach by some of the major flag states, whom are being affected by climate change. The Marshall Islands, most notably, submitted a proposal to the MEPC meeting in May 2015 for the international shipping industry to adopt a global emissions reduction target. Whereas previously it was felt that unless they received strong signals to pursue environmental objectives, ship registry interests dominated decision-making as part of a “seafaring shipping club atmosphere”, there has been an increased willingness to engage on environmental issues and requisite shipping industry commitments.

It remains to be seen how far and how much this translates in detail though. For example, the Cook Islands are “highly vulnerable to natural disasters and the effects of climate change”, according to the UN. In a recent IMO meeting, their representative spoke out against discussing climate targets for shipping, leading to accusations from another Pacific island state that the views of their delegate did “not actually represent the Cook Islands in a manner that realises or pushes for this issue to move forward” and from the Pacific Island Development Forum Secretary-General that “it is as if their representatives in London were disconnected from the climate negotiations and the Paris Agreement” (potentially reinforcing the impact of personality). In regard to the proposal by the Marshall Islands


34 Port State Control involves the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations (i.e. IMO conventions) and that the ship is manned and operated in compliance with these rules. The primary responsibility for ships’ standards rests with the flag State - but Port State Control provides a "safety net" to catch substandard ships. See http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx

35 http://www.unocha.org/pacific/country-profiles/cook-islands


(supported by several other states), the Committee decided to focus instead on finalising the emissions data collection system.

Several interviewees reflected that the level of state engagement merely reflects their interest in seaborne matters, that on matters of common interest, countries coordinate as groups and talk “as a hunting pack”. Karim compares the situation of least-developed countries in the UNFCCC:

“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 UNFCCC. However, they do not work together in the IMO negotiations relating to climate change and international shipping. This may be due to their divergent interests regarding the maritime sector.”

The same view of divergent interests is expressed by Linné and Svensson more generally:

“Many states can have simultaneous and differing interests, e.g., coastal, flag and maritime interests. Thus, when dividing states within defined categories, it should be considered that “a state may consider one of these roles more important than the other due to its economic, geographical and environmental interests.”

2.5.4. Non-governmental participation

Rules on the participation of non-governmental organisations are on the IMO’s website:

“Non-governmental international organizations that have the capability to make a substantial contribution to the work of IMO may be granted consultative status by the Council with the approval of the Assembly.

Any organization seeking consultative status with IMO has to demonstrate considerable expertise as well as the capacity to contribute, within its field of competence, to the work of IMO. It must also show that it has no means of access to the work of IMO through other organizations already in consultative status and that it is "truly international" in its membership, namely that it has a range of members covering a broad geographical scope and, usually, more than one region.”

Non-governmental organisations holding consultative status at the IMO can submit documents for discussion, contribute to discussions, lobby delegations during breaks, and participate in committees, working groups and drafting groups.

i. Industry

“The IMO benefits from strong support from maritime industry actors. This can be explained by the extensive consultations with the industry and other relevant actors, the composition of main IMO bodies with representatives having a shipping background, which ensures concrete and practical approaches that have a fair chance of being implemented by national maritime administrations and the industry.”

Governments rely upon industry to develop their positions and be able to craft rules that can actually be applied by all ships, given their technical knowledge and their role in implementing conventions. As one industry representative explained:

38 Linné and Svensson, p106.
39 http://www.imo.org/en/About/Membership/Pages/Default.aspx
40 Merck, p111.
“I think what we contribute to debate is that we can explain implications of positions they are making. Our job is to represent commercial and political interest of our shipping operators. But we don’t expect governments to agree with us - we know they are supposed to maintain a wider constituency - we just ask for them to listen to us.”

Industry are sometimes part of member state delegations, but tend to prefer to be separate in order not to have to necessarily follow a member state policy line.

ii. Environmental NGOs

Some environmental organisations expressed a view that they are treated with suspicion by flag states and the shipping industry, although treated even-handedly by the Secretariat (who sometimes want to move faster than member states themselves). Former Secretariat staff echo this view of a negative outlook towards environmental organisations, with member states “switching off often when NGOs speak.”

Member state delegates admit that although states can dominate committee sessions, in working groups observers argue as forcefully as states, with their views being weighed the same. One industry representative questioned their level of technical expertise (“they are at the level of saying something must be done, we are at the level of saying how”41), with some member states also indicating their wish to see more statistical analysis from them. Environmental organisations point out that they do not possess the same level of resources as industry. Linné and Svensson42 point to a more basic impact of a lack of resources:

“Environmental NGOs are also active participants, and an increased importance of their roles in IMO has been observed, especially in the MEPC. However, their influence has been partially restricted due to the lack of financial resources to cover the plethora of issues on the agenda at meetings of the different bodies of IMO.”

Some industry and member state representatives feel that environmental organisations lose impact if they engage in too “extreme” a manner: “they don’t appreciate politics in terms of the global registry framework, and they can alienate non-EU states.” Mention was made regarding a recent MEPC session which had the task of discussing reduction targets, where an environmental group reported on discussions, including “naming and shaming” certain countries. Criticism was made that this information was incomplete and skewed to put pressure on member states, and that this approach hindered the impact of other environmental organisations.

Discussions take place between environmental organisations and government in the context of IMO meetings, formally and informally, and at national level as part of government (including EU) led consultations with stakeholders. Some member state delegates felt that environmental organisations could do more to interact with states and simultaneously that states themselves could be more proactive in reaching out to them.

Environmental organisations can build up their reputation over time, and a representative of one environmental body acknowledged that they were trying to change approach to win over member states. “People think we ask for too much too quickly. Probably because of the way NGOs are viewed by a lot of people, our normal approach is to win friends amongst member states - it’s much better if the message comes from them than us. The ideal situation is if we don’t have to take the floor. When you are at UN level, there are many progressive member states, so it makes sense for us to provide them with ideas and resources”. One shipping

41 With another commenting that the difference between UNFCCC and IMO was that “shipping is regulated by not nice words but very concrete regulations.”

42 Linné and Svensson, p110.
industry representative echoed this, feeling that their increasing influence was due to closer relationships with states. This is supported by Karim:

"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."43

Harrison makes the same point44:

“It must be recognised that the success of NGOs has been linked to the identification of a government which was also willing to ‘champion’ a particular cause... The significance of NGO participation in international institutions lies in their ability to influence debate through the provision of information and advice which can help to shape debates on the need for rules on the marine environment and their content.”

Previous research, carried out by the Delft University of Technology, NILOS and the SEA Division of AIDEnvironment45, although carried out some time ago, concludes as follows:

- Influence of NGOs on decisions at the MEPC is rated as more than ‘some influence’ but less than ‘substantial influence’.
- Industry-related NGOs hold a larger influence at the MEPC than environmental NGOs.
- There is a good correlation between effort and influence on the various issues.
- Examples on influence of NGOs translating into success abound. FOEI’s manual on Particularly Sensitive Sea Areas was adopted by the IMO Assembly as Guidelines. ACOPS and FOEI suggestions during discussions on MARPOL Annex III were adopted by the MEPC. Environmental groups actively pursued the designation of the North Sea as a Special Area under MARPOL Annex I.

iii. Secretariat

The Secretariat consists of around 300 technical and administrative staff46, and is traditionally viewed as a “broker” between member states47 to facilitate negotiations and discussions. It has no formal hard sanctioning mechanisms against member states.

The role of Secretary-General is widely perceived to be influential, although opinion varies to their influence on environmental issues. Some view member states and the MEPC to be driving environmental work forward to the extent that the Secretary-General role is negated, whereas others disagree. They point to the Secretary-General investing significant capital in achieving the EEDI, demonstrating leadership to members on the required steps forward.

There is also criticism that historically the IMO Secretariat has only reacted to environmental discourse, underplaying shipping’s projected future contributions to emissions. Speaking in

43 Karim, p20.
46 The IMO’s budget for 2015 was £33million.
advance of the UNFCCC Paris meeting, for example, former Secretary-General Koji Sekimizu pushed for the international community not to intervene in framing shipping legislation.\textsuperscript{48}

Some member states expressed an appreciation of the Secretariat’s expertise\textsuperscript{49}, although the lack of environmental experts is perceived as a disadvantage, with members of the marine environment and maritime safety division mainly possessing seafaring backgrounds\textsuperscript{50}.

Interviewees generally felt that the Secretariat has influence in the decision-making process. They cannot dictate what is discussed in technical committees, but they can give emphasis on certain areas and encourage reluctant parties to be more progressive, as a facilitator of the process. Some perceived them as proactive on emissions work, but that more recently they are now viewed as neutral.

"The Secretariat seems rather reluctant to push the public discourse into one direction, presumably out of fear that IMO member states could lose confidence in its work."\textsuperscript{51}

2.6. Transparency

Any papers submitted for IMO meetings are stored on a password protected site (IMODOCS), accessible to members only, as is recorded audio of plenary sessions. All Assembly, Council and technical meetings are accessible for accredited officials, and media can be accredited to attend technical meetings of Committees and Sub-Committees\textsuperscript{52}. Only the Assembly is a public meeting (diplomatic/international conferences are usually public unless otherwise decided). In practice, the only "public" observers are usually students.

The IMODOCS website makes the documents of committees and sub-committees (documents submitted, final reports; not Council documents) available to those whom have access. Those members submitting documents are entitled to disseminate them freely and there is nothing preventing the sharing of papers once access is provided. Some member state delegates commented that they are willing to provide temporary website access for stakeholders with a "valid" interest, and some are reported to not only publish their submissions but all IMO documents on their websites, prior to meetings. The dominant opinion, however, appears to be that there is a working practice not to do this, that formally opening up all documentation to the public submitted prior to meetings could impact on their submission, then slowing down discussions. Submissions can be commented on by other members prior to meetings, for example, but being able to keep these views within a restricted space and time permits frank and open expressions of views without worrying about their immediate impact and interpretation beyond IMO delegates.

At the recent MEPC session mentioned above, details were revealed by an environmental organisation of discussions prior to the end of the meeting. Whereas some member state

\textsuperscript{48} "In the process leading up to the Paris meeting, world leaders might be tempted to consider specific measures aimed at reducing shipping’s overall contribution of CO2 emissions, such as an overall cap. Such measures would artificially limit the ability of shipping to meet the demand created by the world economy, or would unbalance the level playing field that the shipping industry needs for efficient operation, and therefore must be avoided."

\textsuperscript{49} The Secretariat also relies on the expertise of classification societies (whom establish and maintain technical standards for the construction and operation of ships), in particular the International Association of Classification Societies), in order to judge the technical feasibility of new solutions. (Campe)

\textsuperscript{50} Campe, p158.

\textsuperscript{51} Campe, p148.

\textsuperscript{52} They must fill in an accreditation form to show they are bona fide news media representatives (can be online outlets) and have a letter of assignment. In attending they agree to abide by the terms and conditions such as not quoting individuals without prior consent.
delegates felt that the reporting on discussions (of setting up a working group) at the April MEPC session was a clear breach of confidentiality, that observer felt that without publishing details, there was no way to affect the decision-making process, given that a decision would have been taken by the end of the meeting. One member state delegate felt there was indeed a risk of countries changing their positions (thereby worsening environmental outcomes) if they were publicly criticised during meetings. Others felt such that positions would not be jeopardised, that member states in general were indifferent, but that those who were attributed comments might look unfavourably on those organisations reporting such attributions.

Transparency standards in general differ across IMO member states, and as an intergovernmental body IMO’s standards have to be acceptable to its members. One member state delegate suggested that live feeds accompanied by appropriate technology, with controlled accredited access, would be a good way to encourage developing country participation. In general, transparency is compared favourably by governmental and non-governmental organisations to the UNFCCC (and WTO) where access to key decision-making settings is restricted - live streams exist for UNFCCC plenary sessions, but not during text negotiations in contact groups, which are also prohibited to civil society. One environmental organisation expressed it accordingly "Their [UNFCCC] attitude is that because they embrace the NGO world, that that should make us respectful of the process, approach and outcomes. I think it’s good but they expect something in return.”

2.6.1. Scientific research

The Secretariat does not generally conduct scientific research or analysis (for which one can argue the MEPC exists), which is often provided by member states themselves (as part of proposals and submissions), and fed in from other sources, such as UNCTAD studies on maritime transport. Some criticism was made that decisions are not taken without having first commissioned impact assessments. Studies commissioned by the Secretariat (of their own accord or by member state demand, funded by member states) were positively welcomed, such as that on greenhouse gases\(^\text{53}\), and are accompanied by a steering group with geographic representation and careful attention given to terms and conditions.

2.6.2. Data

Whereas one environmental organisation representative took the view that "data in submissions is not sensitive, otherwise it wouldn't be submitted to IMO", others feel the opposite, that member states and industry would feel vulnerable, and fearful of giving rivals any competitive advantage, and be therefore less inclined to share information that is often needed for decision-making. The difficulty also lies in, where industry says information is sensitive, how much others are in a position to decide if it will affect industry competitively or not, and exactly what information is needed and why. Increased availability of information was perceived as a generally good thing, but the concerns are, at a minimum, administrative costs for industry and, at a maximum, commercial viability and competitiveness.

Currently IMO is engaged in a three-step process involving mandatory requirements for ships to record and report their fuel consumption, thereby allowing a decision to be made on whether any further measures are needed to enhance energy efficiency and address greenhouse gas emissions from international shipping. The idea is that "IMO would be required to produce an annual report to the MEPC, summarising the data collected. Data

would be anonymised so individual ship data would not be recognized\textsuperscript{54}. Interviewees expressed a range of views indicating that there is still no agreement on how to manage collected data. Some feel that there must be way to obtain information without revealing individual ship identities, and that this needs deeper discussion. Others feel that only member states should be able to see the results of data collection, with the Secretariat’s role to process and aggregate data. Fear was expressed at the fact that some companies are state-owned (or partial state-owned), and the impact of this on competitiveness if they obtain access to sensitive data.

\textsuperscript{54} http://www.imo.org/en/MediaCentre/PressBriefings/Pages/11-data-collection-.aspx
3. **ICAO**

3.1. **Objectives**

3.1.1. **ICAO Convention**

ICAO’s aims and objectives are set out in Article 44 of its founding convention (the 1944 Chicago Convention). The first objective, in Article 44(a), aims to “ensure the safe and orderly growth of international civil aviation throughout the world”. Environmental protection is not specifically mentioned in Article 44, although Article 44(d) refers to meeting “the needs of the peoples of the world for safe, regular, efficient and economical air transport”. Not until 2005 did “minimise the adverse effect of global civil aviation on the environment” become one of the organisation’s strategic objectives55.

3.1.2. **Universal standards**

ICAO aims to create international civil aviation Standards and Recommended Practices (SARPs) and policies “in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector”56. Other legal vehicles include international treaties and assembly resolutions.

3.1.3. **CBDR and Special Circumstances and Respective Capabilities (SCRC)**

Article 44(g) of the Chicago Convention contains the objective to “avoid discrimination between contracting states”. In the design of a market-based measures (MBM) scheme this would mean that aircraft operators flying on the same route should be subject to the same rules. Indeed, at the last Assembly, members adopted a resolution (A38-1857) which reiterated this principle, but also alongside the principle of common but differentiated responsibilities and respective capabilities (CBDR)58, which in theory would mean competitive distortions (different rules on the same routes), as well as the principle of “special circumstances and respective capabilities” (SCRC), which could potentially mitigate such distortion. Dealing with the requests of developing countries to take on less onerous commitments than developed countries, lest their own carriers’ development be hindered, is an issue at ICAO in the same way it is at IMO.

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56 [http://www.icao.int/about-icao/Pages/default.aspx](http://www.icao.int/about-icao/Pages/default.aspx)

57 [http://www.icao.int/environmental-protection/Documents/A38-17_A38-18.pdf](http://www.icao.int/environmental-protection/Documents/A38-17_A38-18.pdf)

58 CBDR implies that only developed countries bear mitigation obligations on emissions. SCRC attempts to recognise the different circumstances and levels of development between all states.
### 3.2. Structure

ICAO is principally made up of an Assembly, a Council (with subordinate bodies) and a Secretariat. The Assembly, composed of all member states, votes a triennial budget, considers proposals to amend the Chicago Convention, elects states to the Council, delegates authority to the Council to perform its duties, and receives Council reports. The Council works to fulfil Assembly mandates, manage ICAO’s finances, appoint the Secretary-General, adopt standards and recommended practices, and report infractions to the Convention. The Assembly is legally the supreme body of ICAO, but its role appears to have lost importance over time: “The composition, role and power of the Council have increased and it now appears to be the real focus of ICAO decision-making.”

The change in the 1950s to reduce the frequency of Assembly meetings from annual to once at least every three years, “progressively dissuaded active participation of member states other than those fortunate enough to have Council representation,” with the high workload making it impracticable for delegates to operate in an informed manner. The decision-making impact of this is that:

“The more disengaged and the less informed the majority of member states are on this issue, the stronger their inclination to reject collaborative action and block global proposals. Participation is a key element in the development of a global MBM scheme to address GHG emissions from international aviation.”

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61 Piera, 94.
Currently the Council has 36 states (with calls for this to be increased), and meets three times a year. The Chicago Convention provides some guidance criteria to as to how Council members should be chosen, in Article 50: 1) the states of chief importance in air transport; 2) the states not otherwise included which make the largest contribution to the provision of facilities for international air navigation; and 3) the states not otherwise included whose designation will ensure that all the major geographic areas of the world are represented. The notion of “chief importance” is not defined, and left to member states’ judgment.

ICAO’s funding is assessed on the basis of two general principles: 1) the capacity of contracting states to pay, as measured by national income, taking into consideration national income per head of population; 2) a contracting state’s interest and importance in civil aviation. In the computation of the scale, capacity to pay carries a weight of 75 per cent and interest and importance in civil aviation a weight of 25 per cent.

3.2.1. Committee on International Aviation Environment Protection (CAEP)

The CAEP is a body of experts that makes recommendations to the Council and undertakes specific studies. The Council reviews and adopts CAEP recommendations, and in turn reports to the Assembly where the main policies on environmental protection are ultimately defined. CAEP’s scope of activities encompass noise, air quality and the basket of measures today considered for reducing international aviation CO2 emissions, including aircraft technology, operations improvement, market-based measures and alternative fuels. CAEP informs the Council’s and Assembly’s decision making by providing aviation environmental trends assessment including future air traffic projections and impact assessment of proposed policies and developments.

Any state may request to join CAEP, but must be admitted through a Council process. If admitted, they must observe an apprenticeship period for several years as an observer. Some interviewees critiqued this process as being too slow in allowing in states who wish to contribute to the decision-making process, negatively impacting on engagement. A current Secretariat member pointed out not only a lack of small state representation in CAEP, but historically even from some of the major emerging economies.

CAEP is composed of 24 members and 15 observers, and meets annually. The main CAEP meetings take place every three years in February (evaluating and setting programmes for the following three years), and are important in terms of setting the CAEP agenda for the next cycle.

According to ICAO, more than 600 experts are involved in CAEP activities and working groups (meeting regularly), bearing in mind that although members and observers can nominate one “representative” to working groups, there may be many experts within this representation (and that non-members may also send observers).

62 States of chief importance in air transport: Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Russian Federation, United Kingdom and the United States. States which make the largest contribution to the provision of facilities for international civil air navigation: Argentina, Egypt, India, Mexico, Nigeria, Norway, Portugal, Saudi Arabia, Singapore, South Africa, Spain and Venezuela. States ensuring geographic representation: Bolivia, Burkina Faso, Cameroon, Chile, Dominican Republic, Kenya, Libya, Malaysia, Nicaragua, Poland, Republic of Korea, United Arab Emirates and United Republic of Tanzania.

63 Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany, India, Indonesia, Italy, Japan, Netherlands, Poland, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Ukraine, United Arab Emirates, United Kingdom, United States.

64 Greece, Norway, Peru, Saudi Arabia, Turkey, ACAC, ACI, CANSO, EU, IATA, IBAC, ICCAIA, ICSA, IFALPA, UNFCCC.
Working group members backgrounds are said to reflect their nomination by CAEP members (tending to be transport and civil aviation authority officials, like Council and Assembly delegates), but a nominated person from a transport facing department might be accompanied by environment colleagues, with those with MBM experience said to be increasingly prominent, particularly amongst countries with relatively less general participation in proceedings.

CAEP has attracted criticism in regard to its membership balance, in that while six industry trade associations provide experts to CAEP as observers, only one environmental NGO is allowed to participate. That meetings are held internationally is recognised as positive for engagement, but one consequence is that civil society bodies (who some point to as playing the most environmentally conscious role) are less resourced to be able to participate.

Environmental NGO expertise is recognised within working groups, but fights for attention alongside others’ expertise. Member states lacking resources suffer from a lack of nominated representation across working groups. As one observer commented: “well-resourced states come in with good people, lots of resources, lots of back office support, prepared to do extra investment on studies, data work. Therefore they have a bigger say than others in the process. But, that doesn’t mean that they are bullying others.”

Participants within CAEP note that interventions are freely made, with vocality of delegates varying across working groups depending on particular interest. For example, in some, ICSA (the International Coalition for Sustainable Aviation) is felt to be one of the most vocal. Vocality, however, does not translate into impact. Vocality can translate into influence on recommendations, but recommendations must still progress up the decision-making chain, where they become subject to amendment.

Under CAEP’s terms of reference, proposals must take into account a number of criteria, including environmental benefit, technical feasibility, economic reasonableness, and the interdependencies of measures. Under technical feasibility, CAEP seeks to ensure that a recommended environmental regulation is viable from a technical perspective. Some criticise this as merely allowing industry to maintain the technical status quo. Concerns have been expressed that economic reasonableness considerations do not account for the cost of aviation’s negative environmental externalities that aviation creates, instead just comparing options which give the lowest negative impact (such as the number of people exposed to noise). The work stays within the CAEP process, which makes external assessment difficult (as does the lack of cost-benefit analysis).

A steering group in CAEP formally approves the work of CAEP before it goes to the Council. Also, before recommendations reach the Council, there is an interim informal process of decision-making, designed to ensure that the raw product of technical analysis translates into political layman’s language. Apparently initiated during difficult discussions on CO2 standards, the more important players in CAEP are said to meet in a small informal group, including the Secretariat, under the status of a “chaperones group” designed to move policy forward and is now used to facilitate discussions on MBM issues. Representatives are said to include countries such as the US, Switzerland, Britain, France and Brazil - vocal countries with the resources to follow this process. There are two views of this informal mechanism. On the one hand, CAEP members appreciate its work in making issues understandable. Also, like the Environmental Advisory Group (see further below), it plays a role in minimising the need for

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65 Piera also calculates industry participation at 63% of the total number of delegates during CAEP/8. See Piera, p97.

66 Expert nominations’ expenditures include mission expenses, office hours.

voting, by getting an understanding in place before the relevant Council session. Voting at ICAO is extremely infrequent, but did take place in 2013 in the MBM context due to a lack of consensus. Instead, the norm is to push for consensus, which requires time (and therefore impacts the speed of ICAO’s work).

On the other hand, although the chaperones are said to be sensitive to regional group needs, and try to find a mutually accommodating way to move forward, they do so with their influence, sometimes changing the recommendations of the expert group, or prioritising recommendations. They face criticism (but not openly) that they operate opaquely, sometimes refusing to share developments with others, and that national industry interests tend to come to the fore.

One observer pointed out that, if a GMBM is agreed, airlines will want to be able to start trading in emissions units and be prepared for when they are held to a target of offsetting emissions. Although investment in emissions reducing activity would be welcome environmentally, presumably a decision-making process would need to be established deciding which kinds of offset units to be used. This would need to be performed sufficiently openly so as to give public confidence in the process.

3.2.2. Environment Advisory Group (EAG)

An EAG, a Council sub-group with 17 members, was created following Council discussions after the 2013 Assembly as to how to proceed in terms of developing a GMBM scheme, running for around 15 sessions and overseeing a draft Assembly Resolution text. The Council President, following discussions with regional groups, decided the composition, including industry representation, but not of environmental NGOs. In interview, the International Air Transport Association (IATA) confirmed that industry’s role was not to make proposals but to be able to discuss their potential impact. One environmental organisation representative (plus a former member state delegate) surmised that civil society’s presence was probably considered unhelpful: “We weren’t going to go in and say everyone has to halve coal emissions - we just wanted to talk about the details of carbon markets and how this impacts states.” One member state delegate elaborated on the perceived priority: “First we have to try and get consensus among the member states, focussing on the aviation angle of the problem. It’s not that other issues are not part of it from beginning, but we just need to focus from the aviation perspective.”

The perceived fear of disruption of this process by particularly combative environmental NGO representatives was iterated by another member state delegate, but who also felt that their role would have been useful in balancing some member state views: “if you have objective people who can give an opposite view in an objective way, this could fill a vacuum of information.” They pointed to one member criticising a GMBM scheme as beneficial only to the EU and detrimental to developing countries and aviation without reducing CO2 emissions but increasing carbon market profits. Because of what they point to as an ICAO culture in not refuting views publicly, this went unchallenged, despite this (non-EU) delegate’s view that a GMBM would benefit clean energy development in developing countries. In this delegate’s view, the Council and EAG were important, because “with 190 people at a table you’d never get a solid result. But, they should be representing the views of all countries,


69 For the list of official declarations of support and intent to joint the GMBM scheme, see http://www.icao.int/environmental-protection/Pages/market-based-measures.aspx

70 Although they did have some panel participation.
asking themselves what the impact is on small islands and developing states. I’d like to believe that those countries are represented by someone in the same boat.”

Although the EAG enabled an interface with technical experts, a knowledge gap still exists across EAG members, and Council members that are not EAG members are said to be even further removed from the process, with many not attending EAG even as observers (not to mention non-Council members71). By the time a (summary) report goes to Council, much of the detail and intricacy will be missing, impairing an in-depth understanding for those not more fully involved.

3.2.3. High-level and Friends of the President meetings
High-level meetings72 and Friends of the President meetings73 are also organised upon necessity, in order to speed up progress on draft text. The latest of these, to discuss a GMBM scheme, were organised in May and August respectively of 2016, both open to all member states (with the draft resolution text available online).

Although high-level meetings are considered as important as Assembly meetings, indicating that access is not restricted, one member state delegate pointed to one previous invitation suggesting the attendance of aviation or transport people sparking one delegation’s pointed reaction that they would decide for themselves on their representation74. Delegates in general noted that representation differed from state to state.

3.3. Actors
3.3.1. Government representation
Within governments, cross-departmental coordination on environmental issues varies. While they are accustomed to working closely with industry, there is a wide perception of historically weak coordination with environmental agencies, but with environmental colleagues (particularly on carbon markets issues) acknowledged to hold specific expertise and being increasingly part of CAEP delegations.

Developing countries are relatively less able to keep up to date with developments (and sometimes even unaware of ICAO negotiations), with one former delegate pointing to his own delegation being unable to see potential benefits of an MBM scheme, for example carbon credits for those countries with large forestry. This was echoed by an observer who commented that many countries were largely unaware of potential benefits, but that this was not unique to the environment debate. ICAO does, however, perform capacity building and regional workshops, with member states and regional groups operating similarly to help states understand processes and impacts.

State representation by ministry varies, although it is widely acknowledged that on issues of environment and aviation typically the lead government agency is a civil aviation commission or federal aviation authority, with ICAO permanent representatives and CAEP representatives

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71 "Qatar and Thailand rank in the top 20 countries in terms of international air traffic. However, because they are not members of the Council, they have very little interaction with the organisation on these issues." Piera, p305.
72 The last took place on May 11-13, 2016. See http://www.icao.int/Meetings/HLM-MBM/Pages/default.aspx
73 The last took place on August 22-23, 2016, intended for “high-level officials with authority to represent the views from their States on the subject of a global MBM scheme for international aviation”. See http://www.icao.int/Meetings/GMBMFP/Pages/default.aspx
74 ICAOs’ online meeting notice for the May 2016 meeting says that “All ICAO Contracting States, as well as a number of international organizations with direct involvement in aviation and/or environment, are being invited to participate in the High-level meeting.”
in particular with transport ministry backgrounds. This is unsurprising, given that CAEP grew out of ICAO, and that traditionally ICAO has been attended by transport ministry representatives.

Some observers compared the organisation of smaller states unfavourably with the UNFCCC process, taking what were described as often “surprising” positions, voting against pro-environmental positions. Others were not surprised by this, suggesting that those smaller countries with certain industry dependencies would vote according to their trade and economic priorities. Industry representatives tended to be neither doubtful that smaller states impacted by climate change were not vocal, nor that information was not available – their engagement depends on how much effort they want to invest.

Regional groups were mentioned as influential, including being responsible for proposing Council candidates. Regional “leaders” were mentioned as being influential for many countries that look to them for guidance, for those that have relatively less resources and are less cogniscent of policy implications. This bloc solidarity can be purely political, e.g. developing countries supporting each other, which has ramifications. If countries do not understand policy consequences they tend to adopt conservative positions, with a herd-like mentality. Some claim this was exactly what happened in 2013, that the EU had been pushing big aviation states to find acceptable wording in regard to a clause on MBM, without consulting smaller countries, the end result being that the EU (and others, such as the US and Japan\(^75\)) were outvoted.

Lyle claims that ICAO has not engaged those who will be most affected by climate change, namely least-developed countries, small island developing states and least developed land-locked states, whom play more significant roles in the UNFCCC process\(^6\) and international debate\(^77\). Many interviewees noted that ICAO has tried to improve its outreach and engagement (as well as certain member states, including the EU partnering with Caribbean states), trying to meet concerns early on, particularly with capacity building, regional workshops, and the organisation of the Global Aviation Dialogues (GLADs). These GLADs have mainly thought to have been well-received exercises\(^78\) with significant interaction (including panel representation by environmental NGOs), and a huge demand to be informed, particularly on understanding the impacts of MBMs, although their impact cannot be immediately known. There have been requests for more such outreach, such as from Argentina, during the 38th Assembly, who recommended that ICAO’s regional offices should be more involved in disseminating the committee’s work within their respective regions.

### 3.3.2. EU

The EU contains seven member states on the ICAO Council, with all 28 EU member states represented in the Assembly. While the European Commission did propose to the EU Council that the EU should aim for ICAO membership, there was no appetite by EU member states to give up their position in favour of EU representation. The European Commission has


observer status (and therefore no vote) in the Assembly, its committees, and technical panels.

To improve the coordination between the member state holding the EU Presidency and the European Commission, an office for the Commission’s representative was established in 2005 in Montreal. Among other functions, the Commission’s representative supports the EU Presidency in the development of common EU positions. The Commission believes it manages to coordinate well in finding common positions, notwithstanding members adopting different positions depending on relative interests.

There have been calls for better cooperation within Europe, specifically between the European Commission, European Aviation Safety Agency (EASA), the European Civil Aviation Conference79 (ECAC) and Eurocontrol80. Resources to effectively coordinate European policy discussions on environment issues, and accessibility of data are said to be two of the biggest hurdles, specifically data from Eurocontrol. As noted further above, there has been some cooperation on CAEP work programmes and the European Aviation Environmental Report81, but there is room for significant improvement.

Although the EU was not able to persuade ICAO members to accept its Emissions Trading Scheme (ETS) as a global mechanism, it did raise the related environmental problems of rising aviation and suggested the development of a GMBM as a solution, also underlying its economic benefits and highlighting its experience on guidance for states in incorporating emissions from international aviation into their emissions trading schemes. It can be argued that the conflict arising from the EU’s decision to include aviation emissions from non-European airlines in the ETS without their consent prompted ICAO to act in organising the high-level group on aviation and climate change to evaluate the feasibility of GMBM options.82 One EU official, however, noted a “gulf if not grand canyon between the perception of environmental issues in Montreal and Brussels”, that the level of expectations in quarters of Europe were too high versus the reality of working in the right spirit in an international body to find global solutions.

3.3.3. Non-governmental participation

Rules on the participation of non-governmental organisations are not contained on ICAO’s website, although a web-page83 lists international organisations “which may be invited to attend suitable ICAO meetings. Officially, ICAO does not classify these as ‘observers’.”

i. Environmental NGOs

ICAO contains only one environmental organisation, ICSA, accredited as an observer, itself comprising of several members. One of these pointed to a recent lack of willingness by the organisation (as opposed to member states) to meet with environmental bodies84, contrasting with a more open minded approach previously to hear their views. Rarely are

79 A European inter-governmental body working to harmonise civil aviation and practices.
80 A European inter-governmental traffic management body.
82 Lindenthal, A. Aviation and climate protection: EU leadership within the International Civil Aviation Organisation. Environmental Politics, Vol2. 3, No. 6, May 2014, p1064-1081.
83 http://www.icao.int/about-icao/Pages/Invited-Organizations.aspx
84 Speculation as to why included reasons around transparency and sensitivity of discussions on which countries should be included or excluded in an MBM scheme.
environmental bodies invited to make presentations in Council sessions\textsuperscript{85}, and Piera echoes this view:

"Arguably, industry enjoys greater access to the ICAO process than environmental NGOs. It is not unusual that industry is invited to participate in ICAO’s discussion, whereas NGOs are not. For instance, when the 38th Assembly agreed to develop a global MBM for international aviation, it tasked the Council to “finalise work on the technical aspects...of the possible options for a global MBM scheme...taking into account...the proposal of the aviation industry.” There is no reference to proposals from those sectors representing civil society.”

Observers and former Secretariat members saw the Secretariat, Council and working groups as often not welcoming for civil society organisations. In terms of the Council, it was suggested that many countries were not accustomed to civil society activity, especially in relation to civil aviation, pointing to different experience between Europe and other regions, and that there was a difference in the political culture of an international body like ICAO and Europe. One former Secretariat member pointed to an “institutional tendency” to not take environmental NGO input seriously (especially where industry possessed significantly bigger expertise), but that this varied between working groups. Where their expertise was greatest, their impact was felt strongest, such as around fuel consumption formulas, involving exemptions calculations and econometric modelling. Another former Secretariat member had the same view: “ICSA is viewed very positively in CAEP because they have been the prime source of information on carbon markets,” adding that ICAO’s carbon calculator was designed with them. On the CO2 process, an observer noted their important role in acting as a counterweight to industry input, especially difficult in an environment where half of the working group are well-coordinated industry members, alongside just one or two civil society representatives.

This appreciation of expertise was echoed by member state and observers. Some noted that their impact was also stronger when their messages and positions were delivered in “a manner adapted to UN discourse”, and that some personalities were too confrontational. Environmental NGOs point out that they have tried to counter the perception that they are one-dimensional, only interested in environmental protection without regard to other issues such as economic impact, and have actively reached out to delegates for advice on how they can be more helpful (including installing a permanent representative in Montreal). That governments have asked them for substantial analysis confirms the valuable nature of their work, but there are still actors ignoring it merely because it is civil society derived, a practice which occurs not only in ICAO.

\textit{ii. Industry}

Industry representatives expressed an appreciation for the role of environmental bodies in challenging industry and pushing governments to be more ambitious. One member state delegate suggested environmental NGOs had substantial influence on those who were open to listening to them, while another suggested that, while they received equal treatment, the industry point of view was the bottom line since they are mainly responsible for implementation, and any resistance from them signalled the need to think carefully about whatever the suggested approach was. Another agreed: “Any regulator would ask: 'what is your view on the best way to achieve this goal?’”

"Industry observers bring invaluable technical expertise and advice to ICAO. Their participation helps to ensure that rules are drafted in a manner that recognizes the practicalities of the market and the realities of a sector that is technical by definition."  

IATA (representing 83% of total air traffic), is headquartered next to ICAO. "ICAO has 17 technical panels," an IATA official commented, "and since these groups have sub-group meetings it’s advantageous to be close." Observers point to the key role of IATA on safety issues, particularly in the early years of ICAO’s creation: “to have operators on board in the decision-making process was crucial.” They are “traditionally the main stakeholders”, a former Secretariat official said, while environmental policy only became relatively important later in ICAO’s life. Historically, industry’s large representation is therefore, logical, given not just their large resources but also their objective to work with ICAO, ICAO’s reliance upon it, and thereby ensuring industry’s close access to ICAO.

In theory, all members of CAEP and working groups have the same opportunities to intervene and shape debate but, as one member state delegate said, “CAEP is based on expert knowledge, and knowledge definitely lies in industry.”

"Without industry input, ICAO will quickly lose touch with the practical needs and realities of the market on a number of regulatory issues including climate change."  

Member state delegates often noted that industry had advanced in its ambition on environmental policy, even more so than ICAO as a body, for example accepting the goal of carbon neutral growth from 2020. IATA official commented that “we are about 80% aligned on MBM with environmental groups”. IATA’s push for targets and a GMBM scheme has influenced key states and ICAO in its aspirational targets. The significant questions revolve around delivery and predictability. As one member state delegate said: “Industry will want to deliver in a way which causes the least disruption, which is why they support MBMs. Alternatives would be very costly, involving replacement of entire fleets,” while another said that “Industry in general is very positive in having an agreement, they just want it to be predictable and don’t want to be surprised.”

One member state delegate highlighted an issue of IATA’s lack of representation in that it does not contain smaller low-cost airlines which are increasing in growth and importance, particularly in Asia and Latin America (NB: in Europe low-cost carriers account for almost 40 percent of the intra-European traffic), and pointed to recent questioning by some members of the size of IATA’s voice on GMBM issues.

3.3.4. Secretariat
As of 2010 there were 574 posts in the Secretariat. The views of the Secretariat varied widely among interviewees, mainly depending on what the perceived role of the Secretariat should be. Some favour a pro-active role, that it should strengthen its expertise, consulting states and other actors, suggesting options and trade-offs. One member state delegate

86 Piera, p98.
87 Piera, p99.
88 http://www.iata.org/pressroom/pr/Pages/2009-06-08-03.aspx
89 Although IATA has faced criticism for not having being more pro-active immediately following the Kyoto Protocol’s mandate being given to ICAO.
90 Piera, p305.
91 According to Milde, p186, “Since 2009 any appointment above P-4 level must be approved in writing by the Council President. This approach allegedly politicises the recruitment of staff and, on occasions, favour the applicants from the representatives on the Council or their protégés.”
pointed to the two metrics being used in design of a GMBM, that the Secretariat would not give country-specific analysis when asked, out of political fear: “You can be neutral and be helpful, or be neutral and say go find out yourself. You need type of person that says I am apolitical but I can flag political implications to you in an objective way.” Another delegate, however, commented that at the last High-level meeting in May 2016, the Secretariat operated a booth where each member state could privately ask about GMBM impacts upon them.

Some, including former staff and delegates, point to recently improved but traditional reluctance for the Secretariat to deal with environmental issues. One former delegate said: “It’s not intuitive for them to address it, because in most people’s minds there aviation only represents 2% of emissions, so why bother? So they don’t illustrate how proposals might benefit countries.”

Others suggest the secretariat is under-equipped to deal with such complex issues and are still early on the learning curve. Former staff also point to internal issues around strict hierarchies and questions around reporting structures that prevent creative thinking filtering upward, with “a lack of brave ideas being put forward by the Secretariat compared to before”.

"ICAO’s organisational performance should turn positive with insight. For this to be achieved, fewer insights should get blocked, and creativity should be encouraged...ICAO could well do with this approach in general as well as in specific terms with regard to the development of an MBM scheme. Blocking insight through bureaucratic filtering leads to the greater damage of insights not being actioned.”

Some interviewees, however, pointed to the current Council President as being influential in taking the lead on environmental work (contrasting with the new Secretary-General). Despite this, others highlight the danger the Secretary-General faces of being seen to be too ambitious in public. Being seen as too much against certain member state interests risked their alienation. Leadership helps, one industry representative noted, but the work is “really in the hands of the share-holders”. This view was supported by a current Secretariat member: “All of these [Secretariat] leaders were highly motivated, but you had people around the table politically motivated for things not to happen, which is linked to a much bigger discussion on climate change.”

Sympathy was expressed for the Secretariat, that they must walk a fine line in order to achieve consensus among member states. A particular view among member states was that the Secretariat’s role was to facilitate discussion. Although they felt that the Secretariat has sufficient expertise, CAEP was the repository of knowledge, which was actually more effective for the organisation in ensuring better buy-in from governmental and non-governmental bodies, with a good level of contributions, commentary and peer review.

Some expressed appreciation for the Secretariat’s outreach work such as through symposiums, in order to increase transparency of the organisation’s work. However, environmental organisations pointed to an unnecessarily restrictive policy of only allowing nominated individuals (that represent organisations) to be represented in meetings, as opposed to allowing organisations to decide their representation on an on-going basis.

One observer believed the Secretariat acts as institutions tend to, looking after its own interests. From this perspective, if a GMBM is agreed, ICAO could play a central role in its administration which would reinforce ICAO’s importance. Its administration would require

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holding the requisite data within ICAO, and hence its desire to maintain high confidentiality and a restricted access policy.

An example which highlights the transparency debate regards the aeroplane CO2 standard, where the EU, in order to support subsequent rule-making in the EU legislative framework, requested that more information be made public compared to past ICAO practices (NB: CAEP reports can be available for several hundred dollars, but only contain discussion summarises and recommendations). The additional information related to the input into CAEP meetings to support subsequent decision-making, which had not been previously published. Following difficult discussions, an appendix to the CAEP/10 report was added summarising these key inputs.

3.4. **Transparency**

Although Assembly working papers (indicating member state positions) are made public, documentation in relation to the Council and CAEP is restricted to members only through a web portal (i.e. States and observers; although, generally Council meetings are open to the public to observe, and some reports of CAEP and Council[^93] are on the ICAO website). Observers point out positive and negative sides to this. The advantage is that once observer status is acquired, and nominations as experts to CAEP working groups can be made, there is document access (for the relevant fora) and the ability to be able to speak freely, with observers holding significant working responsibilities (in contrast to civil society engagement in technical work at UNFCCC). The disadvantage is, following a recently revised user agreement policy, liability clauses contained within those agreements technically prevent nominated experts from discussing issues on a wider basis with colleagues or to generate outside interest[^94] (although delegations have tended to push back on this requirement, with varying success). Also, although once nominated an expert can attend working group, meetings take place simultaneously, and so meeting coverage capacity is based on resources. There are also complaints of no official timings for meetings being given, with one complaint that “environmental NGOs invitations are often treated as an afterthought”. Media are said to be excluded from most fora except the Assemblies[^95].

In the UNFCCC process any NGO can acquire approval to attend without much difficulty (although space restrictions prevent total access at COPs, no such problem arises in smaller COP sessions or inter-sessional). All information, including draft resolutions, is publicly available through a website, and a mobile app providing daily updates. Exclusion of NGOs from the decision-making process is said to only take place towards the end of the session. In ICAO, exclusion from the decision-making process is said to start a lot earlier, which results in environmental NGOs having less opportunity to input into the process. They have access to High-level meetings[^96], where a draft version of MBM is discussed, all non-member states having the opportunity to take the floor once. Oral edits to the draft text are distributed solely to member states. Although draft Assembly Resolutions are not technical documents, they are generally not public. Access to Friends of the President meetings (organised sporadically) are said to be issued to environmental NGOs on an ad-hoc basis.

[^93]: [http://www.icao.int/about-icao/Pages/annual-reports.aspx](http://www.icao.int/about-icao/Pages/annual-reports.aspx)

[^94]: One interviewee compared this unfavourably with the UNFCCC process whereby the latest draft texts are available to see.

[^95]: One journalist commented that access to information was extremely difficult in general, with even meeting agendas unobtainable from ICAO’s media officials, in contrary to other UN organisations.

[^96]: The May 2016 meeting included 65 states and 17 international organisations.
As mentioned above, the Secretariat has asked every individual in working groups and on the GMBM Task Force\(^7\) to sign a statement including unlimited personal and professional liability in the event of disclosure, even if inadvertently or by accident. One member state delegate acknowledged that it was “reasonable to ask why member states haven’t asked to discuss this in depth or why the Secretariat hasn’t formally requested to discuss it.” One consequence was that for several months this year delegations that had not agreed to the new user agreements were unable to access the portal, thereby undermining working arrangements and technical discussions.

This revised user agreement policy is said to have evolved following leaks around CO2 standards (although possibly also after discussions on lithium batteries), after which a stakeholder was “trying to push debate by using the press, which often happens with NGOs”, as one observer described, and continued: “This is relatively new for ICAO, dealing with these situations. In Europe it’s not so new, with the use of social media, but ICAO is still adopting to modern means of communications where things get out quickly. The difficulty is that for work to be effective in some of these groups there has to be some confidentiality.”

CAEP is alleged to be treated differently to most other committees, in that normally the principle is of public access, with some meetings declared to be behind closed doors, but with CAEP being inverse to this. The CAEP Secretariat has apparently stated that all committees now operate under the same user agreement policy. CAEP directives, drafted by the CAEP Secretariat, specify that no one can attend CAEP without being an officially nominated member\(^8\). Whereas rapporteurs normally tend to exercise this control as appropriate, the Secretariat appear to have taken a pro-active role in this area.

The position of the Secretariat (and others) is that because CAEP is a consultative body that tries to prepare policy making decisions taken at later stage in process, public reporting of discussions between members of technical groups risks politicisation of the process and thereby impairs the functioning of the system. Experts are nominated, not formally working in the capacity of a state official. The working principal is that discussions are kept within the group to maintain independence and expert detachment, rather than risk a public shouting match. If media reported attributions, this would be seen as threatening the functioning of the group. The same concern regarding independence of experts was expressed in regard to the idea of streaming sessions live, and also that doing this for CAEP would merely drive decision-making backdoor (“where political agreements are made anyway”). For some, this idea of total public transparency would make member states more accountable by ensuring that public rhetoric was matched by private conduct. Concerns are expressed, however, of the danger of material not being seen in context: “If you just see one paper, you don’t see the reaction to it from other member states.”

Member state delegates acknowledge that there is not full satisfaction around transparency, but that there is “a balance to be struck – the business of running things effectively and having an open view to the outside world – there is always a permanent tension on getting this balance right.”

3.4.1. Data

Having a restricted access policy is also seen as important for the process of exchanging meaningful information, and ensuring data is forthcoming from industry, even if there is not the level of full data transparency that some would like. An ICAO official commented that:


\(^8\) Lamenting the Secretariat’s influence, one environmental NGO complained that the EU was not sufficiently supportive in this matter.
"In terms of data and cooperation, people are in a great position here. The ability to talk to
different parties is very important, and ICAO is successful in that regard. Industry doesn’t
share everything, they will protect their corporate interests, but they understand that ICAO
is the best level playing field, so we are lucky here. It’s true that there is a lot of information
that CAEP has generated that should be shared, but there’s also potentially sensitive
commercially information, so there’s a balance.”

An industry body confirmed some of this sentiment:

“Generally the information we share isn’t sensitive. But, statistics on fuel consumption and
fuel efficiency can be commercially confidential information. We would just be extremely
careful about what we did share. There is an expectation that people participating in CAEP
will sign a non-disclosure agreement to get access. Often this information is exchanged in
the context of a negotiation, like on CO2 standards. So, disclosure of state positions would
be upsetting.”

Some observers were, however, less convinced that the data flow from industry would stop
should all documentation be made public. According to this view, if industry restricted sharing
of data, others would compile it (albeit at a cost), which would then push industry to do the
same. One environmental organisation commented, “It’s hard to cure the asymmetry of
information – industry has nearly all the data – the problem is how to access this information
and to get a level playing field, and how to analyse proposals.” This is not just an industry
focussed issue though, as one observer pointed out:

"With respect to industry data, states that are part of the Airbus consortium are very much
mindful of industry arguments on protecting the confidentiality of information in CAEP. The
same will hold true of the FAA [US Federal Aviation Authority] vis a vis Boeing. Then you
have states for overall political reasons pushing against transparency, like China. Each plays
from their own perspective.”

There is some frustration that there is no agreed approach to decide what data actually
should be considered confidential. Generally, the dominant trend of opinion from different
sources was that the data security policy takes a blanket approach that doesn’t distinguish
between sensitive product specific data on aircraft equipment, for example, and basic
meeting reports. One former delegate pointed to discussions over CO2 standards, with
reluctance by industry to share data on the grounds of commercial sensitivity (and that
therefore the data could not be assessed).

One environmental organisation asserted that most industry data goes unchallenged, with
others pointing out the infeasibility of being able to replicate the gathering of data and the
prohibitive costs involved. On an occasion that funding was received for an environmental
NGO to produce its own data, states were keen to explore differences in different data sets
(which induced industry to share further data) and were interested in having capacity to look
at different scenarios than were being presented by industry.

One observer characterised the availability of databases and models to run policy scenarios
as one of the bases of power in CAEP, with the US highlighted as having the strongest
modelling capability, giving them power over process and able to present data based on their
models that are not challenged because of the lack of others’ resources to do so. The debate
over noise assessment highlights the importance of being able to do so. Following an
assessment that US data within CAEP was estimated to underestimate noise exposure by
40% in Europe, the European Aviation Safety Agency (EASA) worked with the European
Commission and Eurocontrol to collect local data in order to conduct their own noise
assessment. This input eventually fed into CAEP analysis work and was used in assessments
of stringency options for aircraft noise standards.
3.4.2. Scientific research

The preponderance of studies being performed by industry is attributable to resources, and a relative lack of those within ICAO. Member states have increased the Secretariat’s budget, but there appears to be low appetite for them to want the Secretariat to be more research-active. This could be because CAEP was viewed widely among interviewees as containing sufficient expertise.

The Impacts and Science Group, a body within CAEP, highlights when new scientific evidence becomes available, looking at areas where better understanding is required, tasking scientists to perform analysis and report back. It receives some criticism that the work tends to be merely reflective of the current state of science rather than being forward-looking. Currently there is an on-going discussion about the need for a new state of industry report on the impact on climate change, with question marks regarding who, for example the IPCC, should perform such work. Once an environmental objective is set, one environmental NGO commented, for example with CO2 standards, then ICAO works on how to implement it technically, so the relevance of scientific evidence (that comes out of bodies like the IPCC99, for example) tends to come beforehand.

CAEP’s work is generally perceived as high quality from most quarters, with high quality experts in attendance. “It would be relatively difficult for people or organisations not involved with this work to come up with much better analysis,” one observer said. With representation from across the world, CAEP has access to wide ranging information and data, and, through much debate, manages to come to consensus as a committee.

Periodically, states and observers nominate independent experts for panels (containing leading academic authorities on a given subject), lasting for a week, making recommendations as to whether standards are roughly in line with that technology can deliver, such as for noise standards. As one environmental group delegate commented, “there is a certain amount of self-serving as to who gets nominated by states, but we nominate too. We’re quite comfortable with that process. Although it was quite challenging, it showed potential for greater efficiency gains, and created space within CAEP process to argue for more stringency.”

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99 The IPCC special report (1999) was prepared following a request from ICAO and parties to the Montreal Protocol to assess the consequences of greenhouse gas emissions from aircraft engines.
4. CONCLUSIONS

There is a great deal of similarity between ICAO and IMO. Both have founding conventions and strategic objectives containing what interviewees often refer to as “equally valid” goals. Both involve technically complex standard-setting that will have significant economic impact on trade and people, requiring time to consider their implications and to create informed and effective implementable policy, particularly when trying to move forward without national discrimination. This is made more complicated by CBDR, a continuing influential factor.

Progress in UN bodies tends to be difficult and slow, because of large memberships working typically on a consensus basis. UN bodies tend to be highly politicised, often reflecting developed versus developing country concerns. Within IMO there are coastal, maritime and flag states interests, and conflicting objectives (like in ICAO), which reflect member states’ conflicting industrial versus environmental interests, which go beyond developed-developing world disputes. Both bodies need to reflect on whether their Council (and informal grouping) memberships contain enough of a balance between countries with specific aviation and maritime interests and wider representation.

That IMO and ICAO have been traditionally dominated by government maritime and aviation representatives and industry is not surprising given their history, mandates and need for stakeholder technical input, which impacts on policy priorities, although representation by environmental experts has risen. The level of internal cross-departmental coordination within governments varies hugely and remains challenging.

The EU’s role has been significant in pushing ICAO on environmental matters (particularly through the ETS scheme) and IMO (requirements of double hulls for oil tankers and the revision of Annex VI of the MARPOL Convention), while there is scope for improved internal coordination and institutional cooperation.

A plurality of challenging voices from civil society is necessary, and while civil society has improved its engagement and can be influential, particularly when working with member states, its relative lack of resources will continue to prove a hindrance. The same can be said for many developing countries, for whom awareness (and meaningful engagement) is also a particular problem. Recent institutional outreach and cooperation efforts may yet prove fruitful.

While access and transparency is important for accountability and credibility (and overcoming asymmetries of information to enable effective analysis), so is an environment which enables effective discussions and an appropriate protection of commercially sensitive data. ICAO’s working practice, compared to IMO, favours the retention of information and debate internally within the institution, which reduces scrutiny, and its Secretariat needs to improve its inclusivity and transparency. Contracting states of the Aarhus Convention are supposed to promote the principles of that Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment. However, not all ICAO and IMO members are parties to that Convention. States approach these concepts differently and thus finding a satisfactory medium will continue to leave some content and others frustrated. Members that are also Aarhus contracting states, however, would be expected to be pushing ICAO and IMO and their members to respect these principles.

Clearly there has been more movement on environmental issues recently compared to that over the last twenty years. From a situation where ICAO and its members questioned whether 2% of global emissions was relatively worthy of attention, members have accepted the...
estimates of emission growth trajectories and are at the point of designing a GMBM model. In IMO, the EEDI was made mandatory for new ships and the SEEMP for all ships with the adoption of amendments to MARPOL Annex VI, a legally binding climate change treaty\textsuperscript{101}.

There has not been the same sense of urgency amongst all of ICAO’s and IMO’s members, but governments have increasingly taken on a much broader policy perspective, stemming from the mainstreaming of environmental issues into public dialogue and states redefining their economic, geographical and environmental interests. Ultimately, ICAO and IMO are member state driven bodies, and what one former delegate said about ICAO is just as applicable to IMO:

"\textit{ICAO does not have a mind of its own: it reflects the will of its membership... ICAO will reflect always what its membership is able to produce on the basis of consensus...}"\textsuperscript{102}

\textsuperscript{101} New ships have to be 10% more efficient, 20% by 2020, with talks to make it more stringent with a 30% target for 2025.

\textsuperscript{102} Lionel Alain Dupuis, former Representative of Canada to the Council, quoted in Piera, p302.
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ANNEX

1992 Rio Declaration on Environment and Development

Principle 10 of the Rio Declaration states that

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

While Principle 17 states that:

"Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."

Aarhus Declaration

Following the Rio Declaration, the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25 June 1998 in the Danish city of Aarhus (Århus) at the Fourth Ministerial Conference as part of the "Environment for Europe" process. It entered into force on 30 October 2001. As of July 2016, there were 47 Parties to the Convention.

The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. The Convention provides for:

the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;

the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making");

the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

Article 3.7 also provides that:

"Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment."
The Decision on conclusion of the Aarhus Convention by the EC was adopted on 17 February 2005 [Decision 2005/370/EC]. The EC is a Party to the Convention since May 2005.

In 2003 two Directives concerning the first and second "pillars" of the Aarhus Convention were adopted; they were to be implemented in the national law of the EU Member States by 14 February and 25 June 2005 respectively:


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A
ECONOMIC AND SCIENTIFIC POLICY

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Policy Areas
- Economic and Monetary Affairs
- Employment and Social Affairs
- Environment, Public Health and Food Safety
- Industry, Research and Energy
- Internal Market and Consumer Protection

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