

## Is there any need for a separate legal instrument to adopt an economic measure at the IMO? \*

04 April 2025

*\*This briefing builds on previous work on the legal implications of the IMO's mid-term measures, including a [2018 publication](#) by Aoife O'Leary and Jennifer Brown,<sup>1</sup> and a [2024 publication](#) by Blánaid Sheeran.<sup>2</sup> Please reference for further information.*

### Summary

A separate legal instrument is not necessary to establish an economic measure at the International Maritime Organization (IMO). The International Oil Pollution Compensation Funds (the IOPC Funds) do not provide legal precedent for the adoption of an economic instrument, such as a universal levy or contribution on greenhouse gas (GHG) emissions, through the creation of a new legal instrument. The historical context, underlying objectives, and operational aspects of the IOPC Funds and the economic element of the IMO's mid-term measures are entirely distinct. Drawing an analogy between them in some circumstances may be conceptually and legally flawed. In addition, previous analysis shows the International Convention for the Prevention of Pollution from Ships (MARPOL) can be used as a vehicle for binding economic measures, including those that are distinct from technical or operational measures.

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<sup>1</sup> Aoife O'Leary and Jennifer Brown, 'The Legal Basis for IMO Climate Measures' (Environmental Defense Fund, Sabin Centre for Climate Change Law, Columbia Law School, June 2018) [https://scholarship.law.columbia.edu/sabin\\_climate\\_change/79](https://scholarship.law.columbia.edu/sabin_climate_change/79) accessed 01 May 2024. See also, Document MEPC 76/INF.22 and Document MEPC 76/7/11.

<sup>2</sup> Blánaid Sheeran, 'The Legality of Revenue Disbursement From an Economic Measure Agreed at the International Maritime Organization for Purposes Other than the Decarbonisation of International Shipping' [The Legality of Revenue Disbursement From an Economic Measure Agreed at the International Maritime Organization for Purposes Other than the Decarbonisation of International Shipping | Sabin Center for Climate Change Law](#) accessed 07 April 2024.

## Background

At MEPC 83 (April 7-11, 2025), Member States of the IMO will approve a basket of mid-term measures (MTMs) that will be used to reduce GHG emissions from international shipping. This basket will include both technical and economic elements and is intended to be incorporated in Annex VI of MARPOL.<sup>3</sup> Some have argued that the adoption of an economic measure, such as a universal price on all GHG emissions from international shipping, would require the creation of a new convention. These arguments frequently invoke the IOPC Funds as precedent to confirm that MARPOL can be amended to include technical and operational measures only.

## Analysis

### 1) The Legal and Historical Context of the IOPC Funds is Not Applicable Today

Arguments that the IOPC Funds offer a precedent for establishing a new convention to implement economic measures fail to recognise the historical context in which the Funds were created. At the time the IOPC regime's foundation, MARPOL did not yet exist as an enforceable legal instrument.

The IOPC regime originated in response to the Torrey Canyon disaster in 1967. This led to the adoption of the 1969 Convention on Civil Liability for Oil Pollution Damage (the 1969 CLC)<sup>4</sup> and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the 1971 Fund Convention),<sup>5</sup> laying the foundation for a dedicated financial compensation mechanism for oil pollution damage. These foundational conventions were adopted in the absence of an international marine pollution prevention framework. While MARPOL was adopted in 1973, and followed swiftly by the 1978 Protocol, the combined Convention did not enter into force until 1983.

**At the time the foundational IOPC Fund mechanisms were developed and negotiated, MARPOL was not a viable legal framework into which an economic compensation regime could have been incorporated.**

Historically, the IOPC Funds regime filled a legal vacuum. Today, we operate in a context where MARPOL Annex VI exists, is widely ratified, and has already been amended multiple times to increase its scope and functions, including in the case of GHG emissions reductions measures.

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<sup>3</sup> Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), as modified by the Protocol of 1978 relating thereto, and as modified by the Protocol of 1997.

<sup>4</sup> Convention on Civil Liability for Oil Pollution Damage 1969.

<sup>5</sup> International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

## 2) The IOPC Funds and the Economic Element of the MTMs are Fundamentally Different mechanisms.

The objectives and underlying operational considerations of the IOPC Funds and any economic element under the MTMs are entirely distinct. Drawing an analogy between them that is strong enough to support a legal argument is therefore conceptually flawed.

The IOPC Funds:

- Are part of a civil liability and compensation regime.
- Provide post-incident financial redress for the consequences of oil pollution exclusively, they are not designed to reduce pollution *ex ante*.
- Are funded by oil cargo receivers, not shipowners, through national reporting and collection systems.

A distinct economic element under the MTMs, such as a GHG Levy or contribution:

- Is a market-based measure aimed at internalising the cost of GHG emissions, incentivising decarbonisation.
- Applies *ex ante* as an emissions reductions tool.
- Is tied to the IMO's work under MARPOL Annex VI, which governs air pollution and GHG emissions reductions measures.

## 3) The adoption of a distinct economic element as an amendment to MARPOL Annex VI is legally permissible according to the requirements of Article 16 MARPOL

An amendment to MARPOL is permissible subject to the requirement that it relates to the substance of Annex VI<sup>6</sup> and is consistent with the other articles of MARPOL, as per the requirements of Article 16 MARPOL,<sup>7</sup> and interpreted in accordance with the principles of international treaty interpretation.<sup>8</sup>

An analysis detailing how an economic element of the MTMs, including one that is distinct from the technical element, such as a levy or contribution, meets these requirements is available [here](#).<sup>9</sup>

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<sup>6</sup>MARPOL Annex VI considers the prevention and control of air pollution and GHG emissions from ships.

<sup>7</sup> Article 16 MARPOL requires that amendments 'shall relate to the substance of that Protocol or Annex and shall be consistent with the articles of the present Convention [MARPOL].'

<sup>8</sup> The principles are found in: Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), art 31 and 32.

<sup>9</sup> Opportunity Green, 'Legal considerations for the inclusion of a distinct economic element within MARPOL Annex VI' (Opportunity Green, September 2024) available at: [https://static1.squarespace.com/static/64871f9937497e658cf744f5/t/67effbf06df36b3817058d1a/1743780848658/Brief\\_Legality+of+an+economic+measure+under+Annex+VI.pdf](https://static1.squarespace.com/static/64871f9937497e658cf744f5/t/67effbf06df36b3817058d1a/1743780848658/Brief_Legality+of+an+economic+measure+under+Annex+VI.pdf). Last accessed 04 April 2025.