



Clear Sky and Transparent Sea

Transparency and Citizen Access Rights at
the International Civil Aviation Organization
and the International Maritime Organization

A study by

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Opportunity
Green

Written by Carly Hicks, Opportunity Green, with the support of ClimateWorks Foundation

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About Opportunity Green

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics and policy. Opportunity Green builds ambitious coalitions, supports climate vulnerable countries in accessing international negotiations and finds innovative legal ways to reduce emissions. At Opportunity Green we believe lawyers are obligated to analyse the existing legal systems and regulations to stop climate change. We use legal innovation to forge new pathways on climate action or where that is not possible, find pathways within the present legal structure to facilitate the legislation needed to slash carbon pollution.

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Executive Summary

The International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) have failed to adapt to manage the responsibility of reducing emissions from international aviation and shipping in the manner appropriate of United Nations (UN) organizations. The absence of effective access rights for citizens to the decision-making processes of the two organizations, and the resultant inability to hold ICAO and the IMO to account are both cause and symptom of this failure.

Access to information, public participation and access to justice in environmental decision making (referred to as “the access rights”) are not only aspirational hallmarks of good governance and democratic legitimacy, but guaranteeing them is a legal requirement for states who have ratified the Aarhus Convention or the Escazú Agreement (those states are referred to throughout this paper as “Parties”). Those Parties have not only an obligation to ensure the access rights are given effect in order to contribute to the overarching purpose of the Aarhus Convention and the Escazú Agreement – namely the protection of the individual right to live in a healthy environment – but also to promote their achievement in international organizations. ICAO and the IMO are such organizations.

The ICAO’s 41st Assembly in September 2022 came at a crunch point for the climate and was the first Assembly to be held in the aftermath of the Covid-19 pandemic. The pandemic saw flights grounded and passenger numbers plummet, but aviation passenger numbers are expected to return to 2019 levels by 2024, and the sector’s share of global emissions is expected to increase in the future: both because other sectors have started to decarbonise, and because demand for international aviation is expected to continue to grow.¹ In 2016, the US Environmental Protection Agency found that greenhouse gas emissions from the aviation sector ‘endanger the public health and welfare of current and future generations’.² While ICAO member states agreed a goal of net zero emissions in 2050 at the recent Assembly, this is only ‘aspirational’ and has not yet been accompanied by any legally binding regulations from member states. Moreover, ICAO’s public ‘vision’ remains the ‘sustainable growth’ of the aviation sector, a position that is incompatible with the need to decarbonise the sector in accordance with Paris Agreement goals.³ The public will not be able to hold ICAO or its member states responsible for their commitments due to the lack of transparency around key environmental decision-making committees. As the United States delegation to ICAO has recently highlighted, ICAO must greatly” increase the transparency of its decision-making processes to improve its accountability to the public it seeks to serve”, and in doing so meet the Aarhus Convention requirements for international UN organizations.⁴

¹ ‘International Aviation’, Climate Action Tracker <https://climateactiontracker.org/sectors/aviation/> (accessed 10 August 2022)

² Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 81 Fed. Reg. 54,422 (Aug. 15, 2016)

³ ‘About ICAO’, <https://www.icao.int/about-icao/Pages/default.aspx>, (accessed 14 July 2022)

⁴ ‘Views of the United States on Future Work in the CAEP’, <CAEP.12.WP .061.16.en-VIEWS-OF-THE-UNITED-STATES-ON-FUTURE-WORK-IN-THE-CAEP13-CYCLE.pdf> (usmission.gov) para. 3.1.

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The IMO has also long been criticised for its inability, or unwillingness, to produce ambitious, binding regulations governing emissions from the international maritime sector. While it does not of itself have the authority to enforce the regulations it issues (these are enforced only by its member states), it is the only global organization governing the maritime sector and regularly lays claim to its role as the 'appropriate international body to address GHG emissions in ships'.⁵ The IMO's competence in this area is also heavily relied upon by its member states, many of whom defer to the body to excuse inaction at the domestic level on international maritime emissions; despite having the ability to regulate outside the IMO framework.

Both ICAO and the IMO's decisions and their decision-making processes therefore have considerable global reach and impact. As such, this paper will show that the Aarhus Convention, and its sister, the Escazú Agreement, recently concluded between states in South America, (referred to in this paper either individually or as the Agreements) apply to both the member states of ICAO and the IMO and to ICAO and the IMO itself. Both bodies fall squarely within the remit of the Aarhus Convention as it applies to international organizations. Aarhus Convention Parties have developed a specific set of Guidelines, known as the Almaty Guidelines, to comprehensively set out the standard of transparency and accessibility required of international organizations such as the ICAO and IMO. The ICAO and IMO should apply the Almaty Guidelines to increase public access rights to their institutions. At a frightening time for the climate, reform to ICAO and the IMO's processes is urgently needed, not only to bring the organizations in line with legal requirements, but politically to demonstrate that they and their member states are taking the challenges of the climate crisis seriously, and are willing to be accountable to citizens for the same.

The paper will prioritise the analysis of the Agreements in respect of ICAO and the IMO as stand-alone bodies, by comparing the requirements set out in the Almaty Guidelines against ICAO and IMO working practice from the perspective of an interested member of the public (the intended beneficiary of the access rights guaranteed by the Agreements). It will set out a comprehensive series of recommendations that both bodies should adopt in order to bring their working processes in line with international legal frameworks.

However, it remains that it is member states of ICAO and the IMO, who are also Parties to the Aarhus Convention and the Escazú Agreement, who are internationally legally bound to deliver on the requirements in those two agreements and who have a legal responsibility to promote the principles they contain in international organizations such as ICAO and IMO. Where member states have not historically delivered on this, their legal obligation is to be positive advocates for change at a time when scrutiny

⁵ See this post on the IMO's LinkedIn page, showing the IMO delegation at the recent COP27 convening, [LinkedIn](#) (accessed 10 November 2022).

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and accountability of sovereign states and industry is paramount to the achievement of required decarbonisation efforts, and environmental issues are being mainstreamed into the public dialogue. If they do not do so, or are not seen to be doing so, they could risk legal action from members of the public seeking to hold national governments to account for failure to act. We therefore include recommendations for ICAO and IMO member states in our analysis.

This paper will outline the organizational structure of both ICAO and the IMO (Section 1), before analysing the purpose of the Aarhus Convention and Escazú Agreement and the application of the legal principles to both Parties and international organizations (Section 2). It will then analyse the current working practices of ICAO and the IMO as against the standards expected of international organizations pursuant to the Aarhus Convention and offer a series of recommendations for improvement (Section 3.1 and 3.2), before concluding in Section 4.

Background to the IMO and ICAO

International Maritime Organization

The International Maritime Organization (IMO) is the United Nations (UN) specialised agency 'with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships'.⁶ It is not, of itself, a regulator, but has an obligation to create a regulatory framework for the shipping industry. The IMO also supports the UN sustainable development goals: under the 1997 Kyoto Protocol, which introduced internationally binding targets to reduce greenhouse gas (GHG) emissions, the IMO became the forum through which states were obliged to tackle shipping related emissions. As such, the promotion of sustainable shipping and sustainable maritime development is 'one of the major priorities of IMO', as it works to "eliminate all adverse environmental impacts from ships by developing regulations that apply universally to all ships".⁷ The IMO's competence in this area is also heavily relied upon by its member states in a political sense, many of whom defer to the body to excuse inaction at the domestic level on international maritime emissions; even though there is no legal bar to member states taking independent action to reduce international emissions, and indeed member states have an obligation to act under the Paris Agreement.⁸ For this reason, the IMO must play an instrumental role in the decarbonisation of the shipping sector.

The main decision-making body in the IMO is the Assembly, which meets once every two years and is open to all 175 member states. In the interim period, the 40 members of the Council meet at regular intervals, often according to need. Beneath the Council sit five committees and seven subcommittees, while the IMO Secretariat acts as a permanent body within the organization. The Secretariat's staff numbers approximately 300 civil servants from across the IMO member states.

The IMO's environmental work is led primarily by the Marine Environment Protection Committee (MEPC), its senior technical body on marine pollution. The MEPC has a number of sub-committees of its own, and reports to the Council. All IMO member states can participate in committee and sub-committee work, according to their own interests and resource capacity. A number of working groups supplement the work of the MEPC and its subcommittees.

The primary means by which the IMO fulfils its function in the environment space is by the production of conventions. These come into force once they have been ratified by a specific number of states, which number varies according to the convention in

⁶ 'Introduction to IMO', [International Maritime Organization \(imo.org\)](https://www.imo.org) (accessed 21 November 2022)

⁷ 'IMO and the environment', <https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/IMO%20and%20the%20Environment%202011.pdf> (accessed 17 May 2022); 'Introduction to IMO', [International Maritime Organization \(imo.org\)](https://www.imo.org) (accessed 21 November 2022).

⁸ O'Leary, A., 'UK Legal Obligations on International Shipping: how the UK is in breach of its international obligations to reduce the climate impact of international shipping by waiting for the International Maritime Organization to act', Opportunity Green, September 2022, p. 1

question. States are then responsible for implementing the convention into domestic legislation. The IMO has produced numerous conventions on environmental issues, and in 2011 it adopted measures to address GHG emissions.⁹ The IMO website states that 'of the 51 treaty instruments for the regulation of international shipping IMO has adopted so far, 21 are directly environment-related'; evidencing high regulatory activity, and, necessarily, a high workload and production of documentation and other information, in the environmental field, which we would expect to be public.¹⁰

Alongside member state and the IMO Secretariat, there are also 66 intergovernmental organizations and 85 non-governmental organization which have observer, or consultative, status. The full list of these is publicly available.¹¹

ICAO

IMO Council members as against Aarhus/Escaru signatories

The ICAO governance and decision-making structure is large and complex, with different decision-making bodies operating at different levels of hierarchy. The overarching and main decision-making body is the ICAO Assembly, comprising 193 member states and meeting once every three years. This infrequency means a majority of the work is done by the ICAO Council, comprising 36 member states who are either elected by the Assembly or are permanently represented on the basis of the size of their aviation market.

The ICAO Council is supported by the Committee on Aviation Environmental Protection (CAEP), where the majority of work pertaining to the environment takes place. Various subcommittees complement the CAEP. The CAEP comprises 31 members and 21 observer states. There are a number of member states who are members of both the ICAO Council and the CAEP.

There are also state and non-state Observers of the CAEP. These are organizations who are invited to attend the sessions; they may participate but have no vote. The International Coalition for Sustainable Aviation (ICSA) is the only voice representing civil society; conversely there are eight industry Organizations. The Council has no official Observers at all.

⁹ 'List of Conventions', <https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx> (accessed 13 May 2022).

¹⁰ 'Environment', <https://www.imo.org/en/OurWork/Environment/Pages/Default.aspx> (accessed 17 May 2022).

¹¹ 'Intergovernmental Organizations which have concluded agreements of cooperation with IMO' Intergovernmental Organizations which have concluded agreements of cooperation with IMO (accessed 22 November 2022).

ICAO's most recent Assembly saw the adoption of a 'long term aspirational goal' for the reduction in international aviation emissions to net zero by 2050 against 2019 levels. The goal has been many years in the making, and is welcomed as an indication that the aviation sector has finally recognised the immediate imperative to decarbonise under pressure from scientists and consumers. However, the agreement on the goal itself is not enough; concrete action must be taken in the immediate term to ensure that the goal is met, and it is imperative that ICAO and its member states are able to be held accountable for its achievement.

Of the 39 signatories to the Aarhus Convention,

The following are members of the Council:

Greece; Finland; United Kingdom; Germany; Italy; Netherlands; France; Spain.

The following are members of the CAEP:

United Kingdom; Germany; Italy; Netherlands; France; Spain; Poland; Switzerland; Ukraine; Sweden.

The following are CAEP observers:

Greece; Portugal; Norway; Austria and the EU.

Of the signatories to the Escazú Agreement,

The following are members of the Council:

Brazil (signatory), Argentina (ratified), Colombia (signatory), Costa Rica (signatory), Paraguay (signatory), Peru (signatory), Dominican Republic (signatory),

The following are members of the CAEP:

Chile (ratified), Brazil (signatory); Peru (signatory, Observer)

Aarhus Convention and Escazú Agreement

The Aarhus Convention

The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the 'Aarhus Convention') was adopted on 25 June 1998. Its purpose, as outlined in Article 1, is to protect every person's right to live in an environment adequate to his or her health or wellbeing. It puts Principle 10 of the Rio Declaration on transparency in environmental decision-making into practice. It is the only globally legally binding instrument to do so.¹²

The Aarhus Convention primarily contains obligations for contracting Parties to the Convention; namely national governments and other regional organizations such as the European Union (EU). At the time of writing, all of the 39 signatories and 47 Parties to the Aarhus Convention (most European and Central Asian countries) are also members of the IMO and ICAO. The European Commission is an exception, as while it is a party to the Aarhus Convention, it is a consultative member, rather than a member, of the IMO. At ICAO, the European Commission is similarly an ad hoc observer.

The Convention grants the public rights and imposes certain obligations on signatory Parties relating to access to information and public participation and access to justice (generally referred to as the "access rights" throughout this paper). It also has an international angle, aiming to increase public participation in the negotiation and implementation of environmental international agreements. It is important to note that the access rights are not an end in themselves, but a means of 'contributing to the right of every person of present and future generations to live in an environment adequate to his or her health and well-being', a 'moral claim' that informs the three procedural access rights.¹³ As such, Parties should apply a purposive interpretation to the Convention requirements to guarantee the interests of private persons by increasing legal accountability in environmental decision-making.

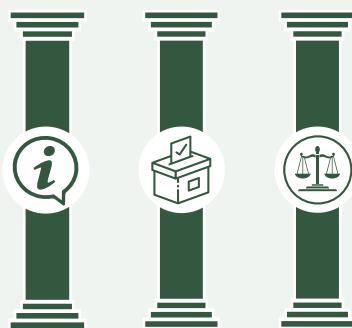
The Convention comprises three main pillars of access rights:

- Access to environmental information (Article 4);
- Participation in the environmental decision-making process (Article 6); and
- Access to justice in environmental matters (Article 9).

¹² 'Introduction' [Introduction | UNECE](#) accessed 13 July 2022

¹³ Barritt, E., *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship* (Hart Publishing, 2020), p. 154.

Three main pillars of access rights:



1. Access to environmental information
2. Participation in the environmental decision-making process
3. Access to justice in environmental matters

The third pillar (access to justice) requires Parties to ensure a public right to challenge environmental decisions made in breach of the first two pillars.

The Convention also contains a more general requirement on Parties, who:

Shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment (Article 3(7)).

The use of the word 'shall' means that Article 3(7) is a mandatory obligation. Moreover, the word 'promote' indicates a positive obligation; the dictionary definition of 'promote' is to 'support or actively encourage (a cause, venture, etc.); further the progress of'. Article 3(7) therefore requires Parties to be proactive in the promotion of the three Aarhus principles in international organizations, including within ICAO and the IMO.

In terms of enforcement, the Aarhus Convention established an active Working Group of the Parties, which includes a specific subgroup dedicated to the improvement of Public Participation in International Forums (PPIF). There is also a Compliance Committee (the Aarhus Convention Compliance Committee), which actively assesses complaints from members of the public and non-governmental organizations in relation to the Parties' application of the Aarhus Convention principles. It is worth noting here that the Aarhus Convention Compliance Committee has also "emphasised a purposive approach based on 'wide access to justice' and made clear that Parties to the Aarhus Convention may not maintain standing rules that 'cause an excessive burden' or 'significantly restrict access to justice' for NGOs (Article 9(2)), nor requirements that 'bar or effectively bar NGOs' from challenging a potential breach of national law relating to the environment (Article 9(3))."¹⁴

¹⁴ Ibid, p. 118.

It is worth highlighting at this point that the Dutch courts in the recent Urgenda decision, relied upon Article 9(3) of the Convention to support their conclusion that the Urgenda NGO had requisite standing to bring a case on behalf of Dutch citizens generally, rather than a specific group of affected individuals. This is a potentially important precedent, particularly in the aviation and maritime sectors, where harm against a specific group of persons can be difficult to establish due to the international and general nature of aviation and maritime emissions, and raises the potential of an NGO bringing a claim for general harm in a number of jurisdictions. Moreover, this purposive interpretation of the Convention suggests that it could potentially be relied upon by those seeking to protect not just current but also future generations; a group that otherwise enjoys limited legal protection. Parties should therefore apply a precautionary approach to the application of the Convention principles and purpose.

The Escazú Agreement

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) is the first international treaty in Latin America and the Caribbean concerning the environment and environmental justice. Inspired by the Aarhus Agreement, the Escazú Agreement recognises the substantive human right to a healthy environment and also establishes three pillars of environmental rights in order to guarantee this – access to information, public participation and access to justice in environmental matters. The Escazú Agreement has only recently come into force – it secured the required number of ratifications in early 2021. As such, states who have ratified the agreement (and those who have indicated their intention to ratify through signature) now have obligations in respect of environmental rights that they would not have had in previous years. We can only encourage them to be proactive in pursuit of these new objectives.

The Escazú Agreement applies to its contracting Parties. As it is a recent agreement, signed in 2018, there are a number of states who remain signatories (i.e., have agreed on the terms and expressed the intention to comply with the Agreement), and fewer states who have fully ratified the agreement (at which point the Agreement becomes binding on the state). However, signatory states hold a moral obligation to abide by the rules contained within the Agreement, particularly given how recently these signatures were committed.

In general, the Escazú Agreement benefits from additional detail in relation to the application of each of the access rights. As is the case with the Aarhus Convention, the Escazú Agreement contains a specific, but voluntary, obligation on Parties to promote knowledge of the provisions of the Agreement in international forums (Article 4(10)). Importantly, the Escazú Agreement also contains a mandatory obligation on Parties to promote public participation both within international forums themselves, and at the national level on matters of international environmental forums (where appropriate) ('Each Party shall promote...', Article 7(12)). This obligation means that signatory states

of the Escazú Agreement have a domestic obligation that flows down from their participation in international forums. In practical terms, this means that if there is a national dimension of a discussion at the international level relating to the environment (for example, a parliamentary debate about aviation emissions, or the development of domestic legislation to apply IMO standards), Escazú Agreement signatories are specifically obliged to promote public participation at the national level in relation to that (where appropriate). This could feasibly extend to the provision of information (a pre-requisite of effective public participation).

The Escazú Agreement also established an Implementation and Compliance Committee which is intended to ensure the 'significant participation' of the public. The Compliance Committee will be a means to ensure accountability and seems likely to follow a similar model to the Aarhus Compliance Committee.

The Aarhus Convention and Escazú Agreement as applied to ICAO and the IMO

In addition to the obligations that the Agreements place on contracting states, we also considered what obligations the IMO has on a standalone basis as an international Organization under the Agreements, separately and in addition to signatory states. The general ability for international Organizations to enjoy international legal personality separately from their respective member states is established in case law.¹⁵ Such organizations are able to bear rights and obligations under a treaty, though it is less clear that they can have substantive rights and obligations as a matter of customary international law.¹⁶ However, neither ICAO nor the IMO are signatory Parties to either the Aarhus Convention or the Escazú Agreement, so it is unlikely that they have direct obligations under those agreements against which they could be held directly accountable – either at a domestic or international level – in the same way as a signatory state.

Notwithstanding this, Article 3(7) of the Aarhus Convention is a recognition that while the immediate scope of the Aarhus Convention is limited to the Parties, the reach of environmental matters to which the Convention relates stretches beyond the boundaries of national sovereignty into the international arena. It represents a 'fundamental decision to see international processes relating to the environment as necessarily participatory and democratic in nature',¹⁷ and evidences that the decision-making processes of international organizations were certainly within the contemplation of the Parties during the development of the Aarhus Convention; so much so that the Parties bound themselves legally to promoting the Aarhus principles in such bodies. In order to further the achievement of the Article 3(7) principles, the Aarhus Convention Parties developed a series of guidelines to be used by international organizations to bring their working processes in line with the requirements of the Aarhus Convention. The next section expands on these guidelines.

¹⁵ 'Reparation for Injuries Suffered in the Service of the United Nations' (Advisory Opinion) ICJ Reports 1949, 174 at 185

¹⁶ Halsbury's Laws of England > International Law and Foreign Relations (Volume 61 (2018)) > 5. Subjects of International Law > (1) International Legal Personality > 39. International Organizations.

¹⁷ Dannenmaier, E., 'A European Commitment to Environmental Citizenship: Article 3.7 of the Aarhus Convention and Public Participation in International Forums', Yearbook of International Environmental Law, Vol. 18 (2007) p. 50.

Recognising the potential difficulty of applying the Article 3(7) requirement in practice, the Parties drew up the Almaty Guidelines. The Almaty Guidelines are a specific guidance document to inform Parties and international forums dealing with environmental information on how to apply the Aarhus principles in those organizations. The Guidelines are intended to apply to 'any multilateral international organization when dealing with matters relating to the environment',¹⁸ 'without limitation to those controlled by Parties to the Aarhus Convention'; the Guidelines apply to any relevant international organization independently of its membership.¹⁹

As outlined above, decision-making in the field of the environment is specifically within the scope of work of both ICAO and the IMO as the UN agencies with responsibility for the aviation and shipping sectors, and both organizations do actually make decisions that impact upon the environment in practice. As such, we consider that the Parties to the Aarhus Convention intended that the Guidelines should apply to both ICAO and the IMO and, consequently, that ICAO and the IMO should work in accordance with them towards improving transparency and accessibility of their decision-making processes. Our analysis of ICAO and IMO working practices is therefore based on these Guidelines, further information on which is outlined below.

The IMO and ICAO are therefore accountable to Aarhus Convention and Escazú Agreement member states, both on a bilateral basis with individual states and through the Working Group of the Parties and Aarhus Convention Compliance Committee. In particular, it is worth highlighting that ICAO has recently been the subject of consideration in the Aarhus Convention Working Group of the Parties, evidencing that the Parties agree with our analysis that international organizations fall squarely within the scope of Convention application, and that they will be held accountable to the extent that they are seen to be in non-compliance with the Convention. While the Escazú Agreement is much more recent, it is likely that ICAO and the IMO will also be accountable to the equivalent bodies of that Agreement once they are properly established, as these will likely replicate the Aarhus Convention institutions.

In addition to this indirect legal obligation, the UN bodies are also funded by contributions from IMO and ICAO member states. They can therefore be said to have a responsibility to act in ways that enable those member states to comply with their international legal obligations, particularly where such member states advocate for change. In addition, while it is outside the scope of this paper to consider the fiscal transparency obligations of the IMO, ICAO and their respective member states (and we note that the funding mechanism differs between the organizations), we make the assumption that member state contributions to the UN agencies likely derive from public financial resources. Accordingly, we highlight the potential for this to create a resulting obligation for those agencies to be transparent and accountable to the people of all member states (an obligation which would not be limited to the Aarhus Convention and Escazú Agreement Parties), and suggest that the IMO and ICAO should be cognisant in particular of the UN resolution relating to government fiscal transparency concluded in 2012.²⁰

¹⁸ Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, Chapter II paragraph 9.

¹⁹ Almaty Guidelines, *supra* note 6 at para 9.

²⁰ 'Promoting transparency, participation and accountability in fiscal policies: resolution/adopted by the General Assembly (Resolution 67/218, 2012) [Promoting transparency, participation and accountability in fiscal policies](#)

The international aspect of the Aarhus Convention and Escazú Agreement in practical terms

As outlined above, the Aarhus Parties, via the UN, has published specific guidance on the practical implementation of Article 3(7) of the Aarhus Convention, the Almaty Guidelines on promoting the principles of the Aarhus Convention in International Forums (the Almaty Guidelines). The principles contained in the Almaty Guidelines relate to both the negotiation of international agreements as well as decision-making processes within the framework of international organizations in environmental matters.

The Almaty Guidelines provide wide-ranging, granular guidance to signatory Parties acting within the framework of an international forum, as well as the Secretariats of those forums. They highlight that 'Access to information, public participation and access to justice in environmental matters are fundamental elements of good governance at all levels and essential for sustainability'. They anticipate that 'there may be a need to adapt and structure international processes and mechanisms' and that 'capacity-building may be important to facilitate international access for the public' which 'may involve the investment of resources'.²¹ Notably, the Almaty Guidelines create a presumption of access 'at all relevant stages of the decision-making process'.

It is worth highlighting that in accordance with the positive obligation contained within Article 3(7) (that we have discussed in some detail above), the Almaty Guidelines anticipate that compliance with the principles of the Aarhus Convention to decision making in international fora requires a positive change of approach, rather than continued application of the status quo. Applying the principles of the Almaty Guidelines, it is clear that transparency and pro-active provision of environmental information and access rights to the public is envisioned as the expectation, rather than the exception.

Given how recent the Escazú Agreement is, we are not aware of a similar set of interpretive guidelines for Parties or international organizations relating to the Article 7(12) obligation of that agreement. However, the principle of that obligation is very similar to that of Article 3(7) of the Aarhus Convention. In the following analysis, we have therefore focused on analysing ICAO and IMO practices relating to the Almaty Guidelines to develop a number of recommendations for change that should be adopted by ICAO and the IMO, as well as Aarhus Convention Parties, in order to comply with the principles of the Aarhus Convention and increase access rights relating to the regulation of international aviation and maritime emissions. These can (and should) be taken to be equally applicable for Escazú Agreement parties and signatory states.

²¹ Almaty Guidelines, Part III General Considerations.

The Almaty Guidelines and ICAO and IMO working practices



The next section constitutes an analysis of the current working practices of the IMO and ICAO against the requirements of the Almaty Guidelines. It is split into two sections – one for ICAO, and one for the IMO – and applies the same requirements to both organizations to assess their current processes in respect of the provision of Aarhus Convention access rights by international organizations. We have split the analysis into subsections relating to access to environmental information, public participation in environmental decision making, and access to justice. We have outlined an abridged version of each of the main elements of the guidance and then compared this to current ICAO and IMO working practices.

International Civil Aviation Organization

In this analysis we have included both our own investigations of the existing ICAO website and other publicly available information (such as ICAO TV and the E-library). We have also incorporated other analysis and evidence where relevant.

By way of overarching comment, it is worth noting at this point that, in general, the ICAO website is large and complex. It is not always easy to navigate to a webpage containing the information sought; each page has a number of subpages, and clicking through a link or opening one of these subpages will often take you through to further subpages and links, which are not always signposted at parent pages. As a point of principle relating to public access to information, this complexity is unhelpful. As a consequence, considerable time has been spent searching the website for information relating to the points below, but it cannot be excluded that a document or other information that may otherwise have been relevant is available but was not located during this analysis.

Where any registration was required to access certain information (for example ICAO TV), we used a personal email address not associated with a business or NGO, to best replicate how a member of the public would access this information.

Aarhus Convention

■ Parties
■ Signatories
★ ICAO Council/CAEP Members





Escazú Agreement



Access to Information

Access to information is the first fundamental principle of the Aarhus Convention. Access to meaningful information in a timely way is a critical prerequisite of public participation in decision-making processes and in improving accountability; without access to environmental information in a timely way, it is difficult for any person to participate in environmental decision-making or access effective environmental justice. Accordingly, the Aarhus Convention sets out a presumption in favour of access, a broad definition of environmental information, and an 'any person' right; namely, a right of access that extends to any person, without his or her having to prove an interest or reason for requesting the information.

Chapter IV of the Almaty Guidelines outlines a number of principles that Aarhus Convention states and ICAO should apply in order to help guarantee this access right in the context of international organizations:

1. Encourage international forums to make a clear and transparent set of policies and procedures on access to environmental information available to the public.

ICAO has no specific policy relating to public access to environmental information on its website. There are a number of other policies and rules of procedure available which have indirect relevance to this point, which we have analysed in paragraph 1 of the Public Participation section, below.

2. Environmental information contained in all official documents should be made available to the public via the Internet or other appropriate means, in a timely manner, subject to the rules of each forum.

ICAO Assembly

We were able to access the meeting agendas for the upcoming 41st ICAO Assembly on the website, which did highlight three environmental matters of interest. We could find no further information on these matters, so we wrote to the CAEP Secretariat Environment Deputy Director whose contact details were listed as the designated environmental information email address. However, we received an automatic response to say the mailbox was discontinued. We found the email address of the



ICAO Environment Deputy Director via an online search and we sent an email to request this information (see appended). We received no response.

Council

We were able to access summary pages of Council decisions and a calendar of Council meetings, which we understand is an improvement on previous practice and we recognise it as such. However, in the period in between Assembly meetings the Council is the main decision-making body in ICAO, and the lack of information beyond summary pages and a meetings calendar is not reflective of the importance of this body in respect of environmental decision-making. The absence of publicly accessible information is clearly contrary to the requirements of the Almaty Guidelines.

CAEP

We also looked for specific information relating to the CAEP, the ICAO body dedicated to environmental issues and for which we would accordingly expect the fullest information to be available. We were able to access the CAEP calendar, but no further information was provided. None of the documents submitted by Parties or developed by the ICAO Secretariat for CAEP meetings are publicly available. The CAEP Reports page (accessed via 'Environment Publications' appears to have been last updated in 2019. It offers access to a CAEP Report dated 2019, but at the prohibitive cost of 428 USD. We could not find any further environmental information in official documents.

Previous reports have highlighted that in order to access the CAEP portal (where CAEP documents can be accessed), CAEP members are asked to agree to a number of rules including accepting unlimited personal and professional liability in the event of disclosure, even if inadvertent or by accident (though we note that the full set of rules is unavailable, and by virtue of not being able to access the portal ourselves, we have not been able to confirm that this situation still endures).¹⁶ Given the importance of the CAEP in respect of environmental decision-making, the complete absence of meaningful information is unacceptable. We urge CAEP members, particularly those who are Aarhus Convention or Escazú Agreement Parties, to advocate for the immediate revision of these secretive working practices.

General

We spent some time searching the ICAO website and E-library more generally for other official documents containing environmental information. In the E-library, the search terms 'environment', 'climate', 'emissions', 'carbon', and 'CO2' were used. The majority of the documents returned were published e-books or technical guidelines. Some of these were payable. No Assembly, Council or other preparatory or meeting document was returned, either for previous or future meetings.

It is however worth noting that we were able to access considerable information regarding the study into the feasibility of a long-term aspirational goal (LTAG), including the full report, which was published earlier this year, and certain submissions. This information was free to access.

3. The availability of technical means for rendering information accessible to the public free of charge using electronic information tools should be promoted. Live webcasting should be considered.

The ICAO website hosts 'ICAO TV', a platform containing mostly promotional videos sponsored by a number of industry partners. A search of 'emissions' returned a number of more official videos, including information on the CORSIA scheme and an update from the Council President on the CAEP Feasibility Study on the LTAG. This included a recording of the recent High Level Meeting on the LTAG, which was also livestreamed. It is worth noting that the HLM took place outside the usual Council or CAEP procedures as an exceptional event and did not involve the taking of any decisions as such. The conclusions and recommendations of the HLM were conveyed to the Council prior to presentation at the 41st Assembly for a decision; the Council meetings are not livestreamed.

In the absence of any information on the 'Public Access' page in relation to the 41st Assembly, there does not appear to be any live webcasting available to the public of the Assembly or any other official meetings, whether Council or CAEP. This is something that could be easily remedied given that the Covid pandemic proved the use of livestreaming for large scale meetings.

4. Environmental information should be provided proactively, in a meaningful, accessible form. The designation of information officers or contact persons in international forums should be promoted.

We were able to access considerable environmental information on the 'Environment Reports' and 'Environment Publications' page of the ICAO website. There are a number of subpages attached to both of these webpages containing large amounts of information. Some of this is dated, and the majority is not referenced and/or it is not clear how it relates to ICAO decision making. The sheer volume detracts from the accessibility.

Some publications are available free of charge, for example a 2017 report on Renewable Energy for Aviation. However, these are often industry sponsored publications and do not contain information on ICAO decision-making.

The contact details for the CAEP Secretary Deputy Director on Environment are available online. However, as outlined above, when we tried to contact the given email address the mail server returned a delivery failure notification.

5. Any member of the public should have access to environmental information developed and held by an international forum upon request, without having to state an interest. Environmental information should be provided on request as soon as possible, recalling that the time limit under the Convention is one month. Requests for environmental information should be refused only on specific grounds, and refusals should be interpreted restrictively, taking into account the public interest in disclosure. Information should be provided free or at reasonable charge.

In the preparation of this report and as outlined above, we wrote to ICAO on 20 July requesting access to further information on the (then) upcoming 41st Assembly, as well as the development of its latest 'Feasibility study on a long-term goal for international aviation'. We did not receive a response.



Analysis

Meaningful public participation in decision making in international forums is contingent on good information being made available in a timely way, accompanied by transparent processes. The public does have some access to general environmental information on the ICAO website. However, almost none of this is relevant to specific decisions or decision-making processes, and it is not organised or signposted in a cohesive way. Instead, it is

spread across the website and requires investing significant time resource to find. It is perhaps helpful to know the Council and CAEP timetable, but without having access to the information that delegates will consider, member state submissions, or what decisions will be or have been taken (particularly with regards to CAEP), merely having access to a schedule is of little practical use. Access to information is one of the prerequisites for public participation, and effective public participation requires knowledge of upcoming meetings and events, as well as existing member state positions, to make any participation meaningful.

There is considerable industry sponsored information (particularly that which is available on ICAO TV) or information that is outdated to the extent that access to it would not give the public any realistic opportunity to influence decisions. The only CAEP document that was available for public access was at a considerable, prohibitive cost and was three years out of date.

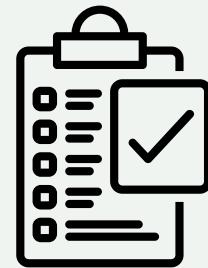
There is currently no means for the public to access further information on environmental matters as the contact details for environment matters are not active. We did not receive a response to an email we sent to two further email addresses found via an online search.

Overall, the access to meaningful information on environmental matters through ICAO is limited at best and must be improved in order to meet the Aarhus Convention and Escazú Agreement principles. While an analysis of the reasons behind the lack of full public availability of environmental information is beyond the scope of this report, we recognise that there could be some challenges in opening the decision making and participation process to the public – for example, protecting commercial confidentiality. However, ICAO's sister organization for the maritime sector already offers a significantly greater degree of information to the public than is the case for ICAO within the same or similar bounds. Moreover, Parties to the Aarhus Convention and Escazú Agreement have legal obligations to promote improved access to information within ICAO, and ICAO itself has the obligation to work towards the achievement of the Almaty Guidelines, even where this requires an evolution of existing working practices, and must therefore approach the current limitations with a view to challenge rather than accept the status quo.

Member states should in particular consider that to the extent that they may seek to rely on confidentiality agreements to prevent disclosure of environmental information to interested citizens at a domestic level, these decisions may be open to challenge in national courts. Member states who are Aarhus Convention and/or Escazú Agreement signatories should take positive steps within the Council and CAEP in particular to improve ICAO's information provision to the public and interested organizations, and to encourage the adoption of the recommendations below.



ICAO Working Procedures Recommendations



1. The ICAO website overall is large and complex. There is a wealth of information across hundreds of different pages, but this is in many instances unhelpful to the person trying to find something specific. The website generally requires streamlining. There are also three distinct repositories of information – the website, the E-library service and ICAO-TV. These should also be streamlined and integrated to provide a more accessible service.
2. In particular, the current Environmental Reports and Environment Publications webpages are large and complex, containing a lot of superfluous information. These should be streamlined to make access more manageable and meaningful. Information that relates to specific decisions or decision-making processes should be made distinct.
3. ICAO must develop and publish clearly on its website a specific policy relating to access to environmental information, including:
 1. Webpage location and access to information that is under current discussion in the Assembly, Council, CAEP and the CAEP working groups (including member state submissions);
 2. Information on how to obtain access to information that is not currently published, in a timely way (see recommendation 4 below);
 3. Signposting to information held elsewhere on the website and/or in other official documents; and
 4. Information on how to participate in decision making.
4. ICAO should develop a policy governing the provision of additional environmental information to the public, which should be made accessible on the website. The provision of any such information should not be contingent on the requestor evidencing any specific interest or expertise. This policy should include:
up-to-date contact details;

5. The streamlined Environment webpage should be updated in a timely way to facilitate meaningful access and participation in current decision-making processes. For example, sharing member state submissions in advance of meetings. All member state submissions to the CAEP, Council and Assembly should be made public by default.
6. ICAO must enable the live webcasting of the Assembly, Council and CAEP meetings (including working groups) to the general public. This includes ensuring that the public and interested organizations are able to find the information that they need to access any such webcasting in a timely way. We note the recent livestreaming of the HLM on LTAG meeting, which confirms that such webcasting is technically and practically possible.
7. Official documents should be made available as soon as possible both prior to and following the meeting to which they relate, preferably online. ICAO should remove any cost barriers to the provision of information in official documents. If costs are to be applied, these should be reasonable with the aim of increasing, not restricting, the distribution of information.
8. ICAO should remove as a matter of urgency, where they still exist, extremely prohibitive and onerous access requirements for Council and CAEP meetings, including non-disclosure or confidentiality agreements. CAEP working documents must be made publicly available by default in advance of meetings.
9. ICAO should amend its Rules of Procedure of the Assembly and the Council where required to deliver the above.

Obligations on Member States

Member States who are also Aarhus Convention and Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Work with the ICAO Secretariat to amend its Rules of Procedure of the Assembly, the Council and CAEP as a priority to open up the decision-making bodies to interested parties.
2. Enable public access to information relating to ICAO on a domestic level, including making submissions to the Council and CAEP public.
3. Work with the ICAO Secretariat to implement the Working Procedures Recommendations above.

Member States who are also Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Promote the distribution of information and contributions prepared for ICAO to the public in accordance with Article 7(12) of the Escazú Agreement, to the extent that they are different to the above.



Participation in the environmental decision-making process

Public participation in decision making is the second fundamental principle of the Aarhus Convention. Article 6 requires each Party to facilitate public participation in decision-making relating to activities that may have a significant effect on the environment, including participation in the preparation of plans, programmes and policies relating to the environment. The access to participation pillar sets out minimum requirements for public participation in various categories of environmental-decision making. The requirements include the timely and effective notification of the public concerned, reasonable timeframes for participation, a right to inspect information, and an obligation on the Parties to make "appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment" (Article 7). The 'public concerned' is defined broadly as the 'the public affected by, or likely to be affected by, or having an interest in, the environmental decision-making' and explicitly includes NGOs promoting environmental protection.²²

The Almaty Guidelines reiterate the importance of public participation as a way to improve the quality of decision-making in international organizations through the introduction of different opinions and expertise. Accordingly, **Chapter V of the Almaty Guidelines outlines** the following principles:

1. International forums should proactively seek the participation of relevant actors in a transparent, consultative way.

In general, ICAO does not proactively seek the participation of relevant actors in its environmental decision-making, and there is no dedicated page calling for evidence on upcoming decisions relating to the environment. However, there are some specific examples which rebut this general principle.

For example, there was evidence of a call for information relating to the LTAG discussions (dating to 2020), however it was not clear what the result of this call was or who was able to participate.

²² 'Public Participation' [Public participation | UNECE](#) (accessed 22 November 2022).

Previous studies have analysed the lack of transparent consultation relating to decision making around the CORSIA market-based mechanism, which included the refusal of a European Parliament delegation of Members to attend CAEP.²³ However, there is some greater transparency in respect of the administration and management of the technical aspects of the CORSIA programme itself. ICAO has responsibility for managing which offsets are eligible for use in CORSIA, and periodically invites programmes to apply to become eligible. These applications are scrutinised by a Technical Advisory Board (TAB) and assessed against eligibility criteria. Built into this process is a period for public comment, and all responses published. This public call is very welcome, however we are unclear whether the webpage as it is currently reflects the totality of the public responses received; it would be helpful if it could be updated to clarify this.²⁴

ICAO also only permits the accreditation of one NGO coalition as an Observer to the CAEP; the International Coalition for Sustainable Aviation (ICSA), who have the seemingly impossible responsibility of coordinating and representing the interests of NGOs across the globe in ICAO meetings. In theory, ICSA is able to participate in CAEP meetings and receives working papers, but it is not able to vote. Moreover, and most importantly, the ICSA is necessarily unable to represent the interests of the entire global population to ICAO and the CAEP and the restriction to only one NGO Observer therefore restricts the In order to apply the Almaty Guidelines ICAO should proactively seek to appoint additional Observer organizations that can more fully represent the diversity of the impact of aviation emissions on global populations; for example, local airport communities and representatives from climate vulnerable groups, as well as youth organizations (particularly reflecting the fact that the Aarhus Convention seeks to guarantee access rights for future generations, as well as present).

2. Public participation should apply at all levels and at all relevant stages of decision-making, unless there is a reasonable basis to exclude such participation according to transparent and clearly stated standards that are publicly available in advance, if possible.

There are three main environmental decision-making bodies at ICAO – the Assembly, the Council, and the CAEP. However, there are a number of other working groups and subcommittees forming a complex web of decision-making bodies. This complexity of itself does not facilitate effective public participation as significant institutional knowledge is required to understand the existing working processes and decision-making points.

²³ See, for example, O'Leary, A., 'Transparency and ICAO's Aviation Offsetting Scheme: Two Separate Concepts?', Sabin Centre for Climate Change Law (2017), page v.

²⁴ Technical Advisory Board, [Technical Advisory Body \(TAB\) \(icao.int\)](http://Technical Advisory Body (TAB) (icao.int)) (accessed 22 November 2022).

Assembly

This difficulty is compounded by the fact that while the Assembly, commissions and sub-commission meetings are held in public by default (Rule 24 of the ICAO Assembly standard Rules of Procedure), any of those bodies may decide that its meetings should be held in private. There is no requirement of reasonability or other criteria required to be met in respect of this decision. Moreover, while the Assembly guidelines in principle permit public participation, in practice the majority of decisions are made (or certainly 'recommended') at Council or working group level, which the Assembly then approves with little if any amendment. Rule 25 of the Assembly Rules of Procedure states that Observers may participate without vote in the deliberations of the Assembly, commissions and sub-commissions. However, Observers have official status and are only those who have been invited by ICAO – they are not members of the general public or other interested Organizations. There is only one official Observer representing civil society (ICSA).

Council and CAEP

We could not find the Rules of Procedure for Standing Committees of the Council on the ICAO website, but we were able to access them through a previous Carbon Market Watch report, where the Rules were made available.²⁵ Council and working group meetings (which includes the CAEP and any of its working groups) are not open to the public unless by exceptional decision to the contrary. Rule 17 of the Council Rules of Procedure state that committee meetings shall be open to the public, unless decided otherwise by a majority decision. However, even where Observers are permitted, it can be the case that key decisions are taken in 'members only' meetings absent of any Observers or invited participants, which the CAEP chair may call where consensus cannot be reached in plenary. This was the case in the meeting where the CORSIA rules were adopted.²⁶ This secrecy is clearly contrary to the expectations set out in the Almaty Guidelines, which make a presumption of transparency which should only be rebutted on a 'reasonable basis' according to transparent and clearly stated standards.

Overall, meaningful public participation is extremely lacking at all levels of the ICAO decision making process, and the policies governing participation are not transparent, clear or freely available.

3. Participation should be as broad as possible. Stakeholders may include:

- Affected or potentially affected members of the public;
- Representatives of public-interest organizations;
- Representatives of other interests that might cause, contribute to, be affected by or alleviate the problems under consideration (para. 30).

²⁵ Note we have only been able to access the Rules of Procedure via Carbon Market Watch at Microsoft Word – Doc.8146.6th Edition.alltext.en.docx (icssc.org.cn).

²⁶ Brief of Amicus Curiae International Council on Clean Transportation in support of environmental and state petitioners, USCA Case 21-1021, p. 8.

The CAEP grants Observer status to nine international non-governmental organizations. Of these, just one (ICSA), is a non-industry body. It's worth noting that the dominance of industry is recognised as having had significant effect on ICAO's decision-making process in the past. For example, as highlighted in the ICCT's Amicus Curiae brief in relation to the Center for Biological Diversity, Friends of the Earth and Sierra Club v US EPA case, emails between the European Commission and companies involved in the ICAO process for the development of CORSIA revealed that 'heavy influence from industry' led to a CO2 standard 'that will do nothing to cut aircraft emissions'; a situation that was 'only possible because of how ICAO operates: behind closed doors and with no public or democratic scrutiny'.²⁷

The clear skew towards industry associations is likely to owe at least partly to ICAO's initial role as a body concerned primarily with aviation safety and the issuing of global technical standards for aviation. Of course, the involvement of the aviation industry in developing and adopting such standards is paramount. However, the more recent addition of the environmental competence to ICAO's remit has not been met with the same expansion of civil society involvement, and it remains heavily industry-dominated (even though this additional remit has sat with ICAO since at least the conclusion of the Kyoto Protocol in 1997). The global detrimental effects of aviation emissions on the climate means that affected members of the public now number in their billions, but their voices continue to be significantly less prioritised than those of the industry interests contributing to that effect.

In order to improve the participation of as wide a group of private persons as possible, we strongly encourage ICAO to take positive measures to increase the representation of women and different ethnic groups, as well as those of climate vulnerable countries and young people, both within the CAEP and the organization more generally. This increased participation must be to the normal working processes of ICAO, and not limited to one-off events promoting specific causes (for example, gender diversity or similar).

4. Any restriction on public participation should be on a limited basis where necessary and unavoidable. Where applied, accreditation procedures should be based on clear, objective and transparent criteria aimed at securing meaningful and equitable participation without excessive formalization. Selection criteria may include field of expertise, geographic, sectoral, professional and other relevant context.

ICAO greatly restricts public participation; indeed, where public participation is facilitated (for example the recent web streaming of the LTAG discussions), this is the exception rather than the rule.

²⁷ Brief of Amicus Curiae International Council on Clean Transportation in support of environmental and state petitioners, USCA Case 21-1021, p. 7; 'We can live with this: How Airbus was allowed to write its own climate rules', Transport & Environment, 27 January 2018.

Observer accreditation

The accreditation process is not clear. We eventually found some information on how to obtain accreditation to the CAEP, but only via the Eastern and Southern African Office subpage, which had a further subpage on Environmental Protection and the CAEP. The information on how to obtain Observer status however appeared to be more targeted at member states who wanted to obtain Observer status than non-governmental organizations, and it is unclear how up to date it was.²⁸ However, the information that is available sets out a list of criteria which are, of themselves, exclusionary. For example, while the involvement of organizations representing climate vulnerable peoples should be considered paramount in respect of environmental matters, such groups would likely be excluded by the requirement that any prospective Observers 'represent the main geographical areas of the world'. Moreover, it is not clear how (for example) groups representing young voices would be able to demonstrate 'ready access to research facilities and supporting expertise' or a level of technical development and resources for implementation [...] representative of the world average' or indeed why this should be considered a reasonable criteria against which to measure and assess the potential participation of groups representing civil society; it is not a requirement that is permitted under the Aarhus Convention guidelines.²⁹

Generally, we understand Observer status on the CAEP to be granted by invite only on the assessment of the Council. This evidently greatly restricts public participation, even making it near impossible. The implication of this invite-only approach is that you must be known by ICAO bodies before you are able to receive an invitation – almost impossible when it is difficult to access the organization effectively in the first place. Invite-only participation also introduces participation bias whereby invites are more likely to be issued to those who either reflect the existing makeup of the organization, or who are supportive of it. It therefore has the effect of further limiting the diversity of representation.

There is moreover no transparency in relation to the granting of Observer status by the Council, which is in direct contrast to the spirit of the Aarhus Convention Guidelines and should be remedied. It remains that no civil society representative has ever been invited to observe Council meetings.³⁰

It was also not very clear how a member of the public might obtain public access, for example to meetings of the ICAO Assembly (online or otherwise), though we do recognise that this should be possible. In the development of CORSIA a delegation of

²⁸ 'Environmental Protection', ICAO, <https://www.icao.int/ESAF/env-protection/Pages/home.aspx> (accessed 22 August 2022).

²⁹ Ibid.

³⁰ 'Information note for the twenty-fourth Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters', <https://carbonmarketwatch.org/wp-content/uploads/2019/08/ICSA-note-on-ICAO-for-Aarhus-Parties.pdf>, (accessed 22 August 2022).

Members of the European Parliament, representing hundreds of thousands of European citizens, was denied Observer access; evidencing a blatant and quite surprising degree of restriction on public participation.

5. Public participation should apply from an early stage, including the negotiation of conventions, formulation and implementation of decisions, and preparation of events (para. 32). The form of public participation may vary but could include observer status, advisory committees, public forums and dialogue, and webcasting as well as general calls for comment (para. 33).

Generally, Observer status is granted by invite only. Observers have the right to share views and to contribute to calls for comment (see, for example, recent contributions from ICSA on their webpage).²⁵ Civil society groups may participate actively in subcommittee and subgroup meetings, but these are closed to the general public and the participating groups are unable to share information about them as they are bound by non-disclosure agreements, so there is no opportunity for external analysis and comment as the decision making process progresses.³¹

We sought further information on public access to the ICAO 41st Assembly, and on the availability of other environmental information, from the office of the Environmental Deputy Director, but did not receive a response.

It is worth noting that we were able to obtain access to recorded webcasts of ICAO's High Level Meeting on a Long Term Aspirational Goal (held 19-22 July 2022) via ICAO-TV, which was also livestreamed. This is a welcome move and supports wider understanding of the analysis and the exchange of views by the general public and interested civil society groups. We were also able to access recordings of the Council preparatory meetings for the 41st Assembly; again, a welcome move towards transparency. However, none of these platforms permit the public to contribute comment or make interventions and therefore any participation that may be permitted is passive only. There are no public forums, advisory committees or general calls for comment which could foster discussion and further participation. While these innovations might improve transparency, they therefore do not necessarily improve the level of public participation in decision making.

Social media

ICAO maintains a Twitter account. Social media is a key tool for public engagement



³¹ 'Visibility Unlimited: transparency of the new aviation carbon market', Carbon Market Watch, p. 6.

and promotes equitable participation, especially if used in an open and transparent way. However, we are aware that in the past ICAO has been criticised for 'dismissing factual critiques and blocking accounts that raise the climate change impact of flying', accusing them of being "fake news" and "spam".³² We would urge ICAO to reconsider its policies in respect of social media engagement to increase the value of this public engagement tool.

6. Participation should include the right to access all documents relevant to the decision-making process, to circulate statements and to speak at meetings, without prejudice to the business of such forums

The general public is not able to access documents relevant to any decision-making process at ICAO, and particularly at the most relevant level, namely CAEP. While, in principle, Observer status grants the right to access all documentation at the CAEP relevant to the decision-making process, there are still circumstances when certain meetings are taken behind closed doors. Council meeting documentation is not available to anyone, a fact that is clearly contrary to the Almaty Guideline requirements.

7. The public should be granted reasonable time frames for participation in order that they can effectively prepare and participate in an informed way, at a stage when options are still open. The public should be made aware of the opportunities and criteria for participating and of the availability of information. The public should be made aware how to contribute comments.

The general public are not able to contribute comments to any of ICAO's decision-making bodies. In general, only Observers may submit comments, if and to the extent they receive an invite to become an Observer.

8. Account should be taken of public participation in decisions. The impact of public participation on decisions should be made transparent through facilitating the public availability of documents submitted by the public.

There is no public participation in decisions made at ICAO, and therefore no account can be made of the impact of public participation at the organization.

9. Measures to increase diversity of participation should be encouraged.

The extremely limited number of Observers, as well as the high threshold to be met by organizations who may be interested in becoming Observers, necessarily limits the

³² AirportWatch | ICAO blocks any critics on Twitter and describes comments on aviation and climate as "fake news" (accessed 17 November 2022).

We could not find any evidence of specific support aimed at increasing the potential contribution of minority ethnic groups, the climate vulnerable, young people or women (for example). The complex website is not accessible to interested members of the public, particularly in respect of how they may access information relevant to decision-making processes.

10. It can be costly to subsidize in-person access to international forums. Efforts to maximise participation through innovative, cost-efficient and practical means should be made

ICAO-TV has the potential to be a useful tool that might be further expanded to support diversity of participation, particularly among the younger generations in a post-Covid world. The recent live streaming of the High Level Meeting on the LTAG is a good example of what is technically and practically possible. We would encourage much wider use of livestreaming to the general public given how effective it could be in delivering a 'quick win' for enabling wider access to information and public participation, particularly as it has already been technically proven.

Analysis

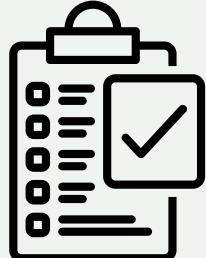
ICAO has made some encouraging innovations in recent years that have improved the availability of public information and transparency. The release of the recent LTAG report, and the webcasting of associated meetings, is a good example of this and we strongly encourage ICAO to expand the use of these tools to be accessible to the general public, irrespective of whether they have Observer status. It is particularly important that access is enabled at the correct level; while livestreaming of the ICAO Assembly is appreciated, it is the CAEP and Council where environmental decisions are developed and where efforts to increase participation should be concentrated. Additionally, we urge ICAO to develop a more transparent process for attaining (and retaining) Observer status and to prioritise the inclusion of a more diverse

range of voices at all levels of environmental decision-making.

The availability of provisional agendas for Assembly and Council meetings is also welcome. However, given the lack of information available relevant to these meetings, and the lack of opportunity for public participation, this is of limited practical use. Moreover, the fact that any decision-making body has discretion to take its meetings private at will is far from good governance, and this has arguably had significant impact in previous decision-making processes. Proactive efforts must be made to widen participation and increase the opportunities for intervention, and therefore increase the democratic legitimacy of ICAO decisions on matters related to the environment.



ICAO Working Procedures Recommendations



Accordingly, and on the basis of the Almaty Guidelines above, we recommend that ICAO should continue to broaden the real opportunities for participation in the following ways:

1. Create a dedicated section of the ICAO website which could be used to highlight environment-related workstreams and calls for evidence with associated timetables and submission obligations. Members of the public, or civil society groups representing their interests, should be entitled to make submissions. All submissions should be made public.
2. Ensure that Rules of Procedure for the Assembly, Council and CAEP are published and up to date. Restrictions on participation should be limited and clearly stated, and changes should not be able to be made at the relevant body's discretion.
3. The decision-making structure of ICAO bodies should be made clear and made publicly available. The current structural complexity does not facilitate effective public participation.
4. A publicly accessible decision tracker should be introduced charting the progress of environment-related decisions from the point of inception to the point of decision. It is currently unclear at what point decisions are made, and by whom. This makes intervention very difficult.
5. ICAO (and the CAEP in particular) should broaden participation to ensure that those most at risk from climate change are represented more effectively. This must include granting Observer status to additional non-industry organizations. Positive steps should be taken to promote representatives from climate vulnerable countries, different ethnic groups, women and young people (for example). A more equal balance of industry and non-industry organizations should be achieved, given the global impact of the aviation sector on the environment.

6. ICAO should ensure that accreditation processes for Observer status are clearly outlined on the website, including any restrictions on accreditation. The current invite-only approach should be abandoned in favour of completion of a transparent accreditation process. Post-Covid, hybrid online/in person meetings provide an opportunity to broaden the numbers of those who receive accreditation where physical space to accommodate a maximum number of delegates is less important.

7. ICAO should continue to publish Assembly and Council agendas and summary information and broaden this to the CAEP. It should continue expanding webcasting provision, particularly given that the technology is already developed. The website should clearly state what meetings are available to access via webcasting.

Obligations on Member States

Member States who are Aarhus Convention and/or Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Increase the gender, social and ethnic diversity of their delegations.
2. Publish their submissions to ICAO publicly, in particular on environmental matters.
3. Endeavour to give better consideration of public views on environmental decisions at ICAO, including by holding public consultations on key decisions at the national level (for example, translating the ICAO long term aspirational goal into national legislation). Any such consultation should specifically include consideration of those groups most at risk from the climate crisis or whose voices are not traditionally heard.
4. Advocate within ICAO at the appropriate levels to ensure that it continues to improve public participation in relation to environmental decisions made at ICAO, including by adopting the recommendations above.



Access to Justice

Access to Justice is the final pillar of the Aarhus Convention, and the principle also forms part of the Escazú Agreement requirements. The access to justice requirements aim to provide access to review procedures with respect to access to information and public participation requests, as well as challenges to breaches of environmental law in general. It therefore 'points the way to empowering citizens and NGOs to assist in the enforcement of the law'.³³ ICAO itself is not a regulatory body, however it remains that it does perform a semi-regulatory role at the international level and takes key decisions that ultimately impact upon the environment, which should be able to be held to account by the general public. For this reason, and the fact that it is a UN body performing a public function, ICAO and its decision-making processes must be able to be held accountable by the global community. **Chapter VI of the Almaty Guidelines outlines the following principles in relation to access to justice:**

1. International forums should consider measures to facilitate public access to review procedures relating to any application of the rules and standards of each forum regarding access to information and public participation (para 40).

The public is unable to review decisions made by ICAO (at least through ICAO processes). The public are effectively locked out of ICAO decision making processes in terms of both access to information and participation, and this means in turn that any access to justice in respect of those decisions is incredibly difficult, if not impossible.

Instructions are provided on obtaining media accreditation on the ICAO website. However, it remains that the media are not permitted at all ICAO meetings, including the Council and CAEP. Press access is also discretionary, and may be withdrawn 'at any time'.³⁴ The discretionary nature of media accreditation and the resulting potential impact upon press freedom is clear and concerning, and the accreditation process should be revised immediately such that journalists can report effectively on environmental decision-making processes at ICAO that affect citizens across the globe.

³³ 'Access to Justice' [Access to Justice](#) | UNECE (accessed 22 November 2022).

³⁴ [Media Accreditation \(icao.int\)](#) (accessed 17 November 2022).



🔍 Analysis

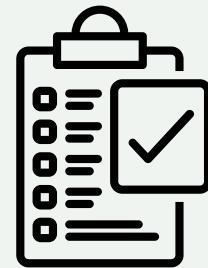
In October 2020, ICAO and its working practices were the subject of discussion at the Public Participation in International Forums working group under the Aarhus Convention. ICAOs approach to applying the expected standards on access to information, public participation and access to justice were considered at length, with the conclusion that while ‘in the field of civil aviation, transparency of decision-making processes, promoting access to information and participation [...] was needed’ at the international level, but that within ICAO ‘access to information and participation remained restricted’. The Chair encouraged the Parties to ‘reflect on how they could fulfil their obligations under the Aarhus Convention and promote the Convention’s principles within ICAO’.³⁵ Perhaps most notably, ICAO failed to send any representatives to contribute or respond to the discussion, evidencing an extraordinary lack of accountability.³⁶ Current processes, which fall far short of the expectations under the Almaty Guidelines, must be reformed if ICAO is to retain its legitimacy as a decision-making body.

³⁵ ‘Report of the Working Group of the Parties on its twenty fourth meeting’, Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters’, 5 February 2021, para. 63–64.

³⁶ *Ibid.*, para. 63.



ICAO Working Practices Recommendations



ICAO should do the following:

1. Open all of ICAO's decision-making forums to the press and ensure that the press accreditation process is clear and transparent.
2. Demonstrate its accountability by playing an active role in Aarhus Convention and Escazú Agreement Compliance Committee and working group meetings. ICAO should apply recommendations from such bodies.

Obligations on Member States

Member States who are also Aarhus Convention and/or Escazú Agreement signatories (and particularly those within the Council and CAEP) should do the following:

1. Advocate for ICAO to develop a transparent review procedure relating to its application of rules and standards, particularly where this relates to the accreditation of non-governmental organizations and the press.
2. Actively participate in Aarhus Convention and Escazú Agreement working groups relating to the improvement of ICAO processes and the application of the Aarhus Convention and Escazú Agreement principles at a national level relating to ICAO decisions on the environment.
3. Enact domestic legislation to give effect to the long term aspirational goal, which should be subject to all normal domestic judicial review arrangements.

International Maritime Organization

The next section constitutes an analysis of the working practices of the IMO against the Almaty Guidelines. Again, we have outlined an abridged version of each of the main limbs of the guidance (all of which are publicly available) and then compared this to current IMO working practices. In this analysis we have included both our own investigations of the existing IMO website and other publicly available information (e.g. IMODOCS, a portal offering access to more specific official information, requiring registration). We have also incorporated other analysis and evidence where relevant.

As with ICAO, where any registration was required to access certain information (for example IMODOCS), we used a personal email address not associated with a business or NGO, to best replicate how a member of the public would access this information. As mentioned previously, we have approached this analysis from the perspective of an interested member of the public, rather than a person with specific knowledge (such as one working within an NGO, who may have greater access to resources and institutional background). This is because the Agreements are intended to give effect to individual citizens' rights. We recognise that in some instances this may naturally limit the level of analysis. However, where possible, we have incorporated publicly available commentary from elsewhere.

Aarhus Convention

- Parties
- Signatories
- ★ IMO Council Members





Escazú Agreement



Access to Information

Access to information is the first fundamental principle of the Aarhus Convention. Access to meaningful information in a timely way is a critical prerequisite of public participation in decision making processes and in improving accountability. Chapter IV of the Almaty Guidelines outlines the following principles that Aarhus Convention states and the IMO should apply in order to help guarantee this:

1. Encourage international forums to make a clear and transparent set of policies and procedures on access to environmental information available to the public

The IMO website contains a section entitled 'How and Where to Find IMO Information'. This contains information on IMODOCS and other information sources, however there is no specific information signposted regarding access to environmental information on this page. We could not find evidence of any policy governing access to environmental information in the IMODOCS portal. Information we might have expected to see included in an access policy might include permitted access to MEPC and ISWG meeting documentation, the anticipated timeframe for reporting of discussions and decisions, emissions reporting and other types of data.

2. Environmental information contained in all official documents should be made available to the public via the Internet or other appropriate means, in a timely manner, subject to the rules of each forum.

As an overarching comment, we note at this point that IMODOCS overall is not very user friendly. From the perspective of a member of the public, there are acronyms used that are unfamiliar to a person without significant institutional knowledge. If using an unaffiliated log in, there are also several unpopulated subheadings and areas. Other information is clearly several years out of date. It is not possible to tell whether the information that is provided is the total of the information available, or whether it excludes certain information. As a point of principle in respect of a member of the public being able to successfully make use of the access rights intended by the Agreements, the unwieldiness of IMODOCS is not helpful.



MEPC and ISWG-GHG

We were able to access information about the MEPC 78th session earlier this year on the Marine Environment page on the IMO website. This included a summary of discussions held during that session regarding the IMO's strategy on GHGs. Through that page, we were also able to access a summary of the 12th meeting of the Intersessional Working Group on Reduction of GHG Emissions from Ships (ISWG-GHG 12) which also took place earlier this year. This summary information included the number of participants and key topics discussed, which included the recommendations made from the ISWG-GHG to the MEPC (though not the detail of these recommendations).³⁷ The same page also linked through to the IMODOCS page containing submissions from the participating members to the ISWG-GHG 12 regarding mid-term measures on GHGs. The information in these pages was easily accessible and relatively clear, and included a 'further work' section which serves as a helpful focus for future submissions. Meeting documents are also available in advance of the relevant meeting. Overall, we consider the availability of general information related to the MEPC and ISWG (in respect of GHGs) to be relatively good.

However, the overall good availability of general environmental information from the MEPC and ISWG could be significantly improved in respect of information relevant to specific meetings and decision-making processes. This includes by making the statements or contributions from member states and observers publicly available across the board. Currently, while general meeting information is available, it can be hard for a member of the public to easily find out what position their national government takes in relation to specific environmental matters, and therefore to hold them to account for this position. Some of this information is held on IMODOCS, where some member state contributions can be found. However, it is not mandatory for member states to make their submissions publicly available in this way; indeed, the default is for such submissions not to be made public, unless the submitting member state checks a box to permit publication.

We are aware that some IMO member states consider that opening up all submissions to the public could impact both the submission itself and slow down discussions.³⁸ We also recognise that there may be some concerns about the commercial confidentiality of industry data. However, we do not consider that either of these considerations are legitimate in respect of the actions of IMO members who are Parties to either of the Agreements, particularly given that the explicit presumption under the Almaty Guidelines is toward greater transparency, not less, and that the Agreements enshrine into law the public access rights to information about environmental decisions. In respect of the fear that providing information to the public

³⁷ 'Intersessional Working Group on Reduction of GHG Emissions from Ships, 16-20 May 2022, at Intersessional Working Group on Reduction of GHG Emissions from Ships (ISWG-GHG 12), 16 to 20 May 2022 (imo.org) (accessed 22 November 2022)

³⁸ 'Decision-making processes of ICAO and IMO in respect of environmental regulations', Study for the ENVI Committee, Decision-making processes of ICAO and IMO in respect of environmental regulations (europa.eu) (2016) p. 22.

could slow down discussion, this is moreover both untested and unfounded. Even were such a delay objectively evidenced, the impact could be managed and mitigated by adapting existing processes. This is expressly recognised by the Guidelines, which state that there may be a need to 'adapt and structure international processes and mechanisms', including working practices, to guarantee the Convention access rights.

Equally, there is no inevitable conflict caused by concerns about the submission of confidential industry data; not least because industry itself is not subject to the requirements of the Agreements in any event. Ultimately, it is Aarhus Convention and Escazú Agreement Parties that have a legal obligation to both promote the principles of those agreements within international organizations, and domestically to make such information accessible to their citizens. For those individual states, the default position legal position should be towards proactively providing their own submissions to the public, and of advocating for greater transparency in respect of all submissions rather than being accepting of arguments to the contrary.

Council

While the information provision in relation to the MEPC and the ISWG is relatively substantial (with the exception of the above), we found that the same could not be said of information relating to Council activities. While the Assembly is the main decision-making body in the IMO, the Council performs that function in the two years in between Assembly convenings, and particularly has the remit to determine the consultative status of non-governmental organizations. However, access to information on the Council and the Council's activities is severely lacking. Under the Council category of the IMODOCS platform, there are very few documents available – and those that are available are several years out of date. As an example, information we would expect to be available for a decision-making body at this level would be meeting preparatory documents (including member state submissions and agendas), meeting conclusions and recommendations, and voting records (including as these relate to the approval of prospective consultative members).

There have been a number of discussions within the Council in recent years regarding environmental issues. We would expect documentation regarding these to be available to the public through IMODOCS or elsewhere, in accordance with the Almaty principles. This unsatisfactory situation appears to have endured since at least 2018, when Transparency International, faced with the same lack of publicly available information regarding the Council's activities, concluded that 'there appears to be no meaningful information about the Council's work on the IMO website'.³⁹

³⁹ Transparency International, 'Governance at the International Maritime Organization: the case for reform', 2018, [2018_Report_GovernanceatIMO_English.pdf](https://transparencycdn.org/2018/08/2018_Report_GovernanceatIMO_English.pdf) (transparencycdn.org), p. 19.

This absence of accessible information is clearly contrary to the requirements of the Almaty Guidelines given that the Council is a key decision-making body within the IMO. We therefore urge the Council and Council members, particularly those who are Parties to either of the Agreements, to remedy this situation as a matter of urgency.

3. The availability of technical means for rendering information accessible to the public free of charge using electronic information tools should be promoted. Live webcasting should be considered [para. 21]

While general information and meeting summary information was generally available, we could not find any evidence that any IMO meetings were publicly livestreamed, although we did note that there is some livestreaming of unofficial events, such as the recent IMO Symposium on alternative low and zero carbon fuels for shipping. We also note the summary of the most recent Council meeting (C127, 11 to 15 July 2022), where it was agreed 'in principle' that some meetings could be live streamed to the public, and that clear criteria and procedures should be developed for the selection of meetings (or parts of) that would be live streamed. We support these efforts and urge the IMO to develop this policy as quickly as possible, particularly as the technical possibility of livestreaming has been proven many times over during the Covid pandemic.

There is a dedicated section of the website for IMO Publications, which include e-books, conventions, codes and other regulatory documents, including the International Convention for the Prevention of Pollution from Ships (MARPOL). Prices for these documents range from around £15 to over £100. This feels reasonable, as the majority of these documents are not related to the decision-making processes themselves, but to the subsequent output of international standards, with anticipated users mostly industry and governments. The cost of these documents is therefore unlikely to impact upon the access rights afforded to the general public.

We note that the IMO manages a number of social media channels, including YouTube, Facebook and Twitter. While these are updated on a reasonably regular basis, updates mostly consist of curated videos and messages from the Secretary General. These can be helpful as a general information tool, however do not offer specific enough environmental information such that an interested member of the public would be able to properly exercise their access rights as a result of using them. Social media can be an enormously powerful tool for public engagement, and has the potential in particular to increase the accessibility of the IMO for those with otherwise limited resources. The IMO could expand the use of existing communication channels, including by highlighting its efforts to increase public access rights in accordance with the recommendations in this report.

4. Environmental information should be provided proactively, in a meaningful, accessible form. The designation of information officers or contact persons in international forums should be promoted.

There was a reasonable amount of general environmental information available on the IMO website, as well as more detailed information relating to, for example, MEPC meetings. The MEPC pages usefully summarised the current main discussion points; for example, 'developing a basket of mid-term GHG reduction measures'. The Work Plan is also an insightful document. These summaries contained links to relevant working group activities and procedures, however at the time of writing there were no links to agendas of future meetings (although this may be added in time, closer to the event).

However, we were unable to find any information designating specific contact persons or information officers for the environment. There is a helpful 'how and where to find IMO information' subpage on the website, but this does not currently include a subsection dedicated to the environment. Similarly, the 'Contact Us' page does contain specific email links (for example, one relating to media enquiries, another for correspondence from member governments, NGOs, and IGOs). None of these are specifically related to environment queries, however. This failure could, it seems, be fairly easily remedied.

We would also like to highlight the importance of making numerical data (e.g., as regarding emissions reporting) available in meaningful and accessible machine-readable formats, such as .xls and .cvs files. Such data can be published in PDF form, which requires anyone seeking to analyse it to transcribe it first.

5. Any member of the public should have access to environmental information developed and held by an international forum upon request, without having to state an interest [para. 23]. Environmental information should be provided on request as soon as possible, recalling that the time limit under the Convention is one month [para 24]. Requests for environmental information should be refused only on specific grounds, and refusals should be interpreted restrictively, taking into account the public interest in disclosure [para 25]. Information should be provided free or at reasonable charge [para 27].

We could not obtain any further information about environmental issues, as there was no relevant contact information provided. Given that the IMO does not publish an inventory of all the environmental data and information that it collects or holds, it is essential that it designate a contact person from whom this information can be obtained within a reasonable time frame.

Q Analysis



Meaningful public participation in decision making in international forums is contingent on good information being made available in a timely way, accompanied by transparent processes. Overall, the IMO website does contain some good environmental information which is, on the whole, fairly accessible. Importantly, access to meeting documents for MEPC and ISWG meetings is available both through the Meeting Summaries page, and via links from other pages – for example the Marine Environment pages. From an accessibility perspective, it is useful to be able to access information through different starting points.

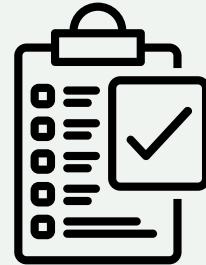
Access to information is one of the prerequisites for public participation, and effective public participation requires knowledge of upcoming meetings and events to concentrate efforts. The IMO could helpfully publish an upcoming meeting calendar for meetings related to the environment (at least). Much of this information is already available, but spread across the website.

IMODOCS is a useful portal, which is useable, though not always exceptionally responsive or intuitive. However, there are clearly some elements of the portal which are not populated so as to be accessible to a member of the public, and it is not clear whether what is provided is the extent of all submissions. While an analysis of the reasons behind the lack of full public availability of environmental information is beyond the scope of this report, we have considered the information available in previous commentaries and recognise that there could be some challenges in opening the decision making and participation process to the public. However, from the perspective of the legal obligations that Parties to either of the Agreements hold, as well as the Almaty Guidelines in respect of the operation of the IMO itself, we consider these reasons unconvincing.

Overall, we consider the IMO information provision to be relatively good, with the significant exception of Council meeting documentation and information, and the fact that not all member state submissions are publicly available. However, this could easily be improved by the Secretariat and member states taking account of the following recommendations to help bring IMO practices in line with Aarhus Convention and Escazú Agreement requirements:



IMO Working Procedures Recommendations



1. The IMO must develop and publish clearly on its website a specific policy relating to access to environmental information, including:
 1. Webpage location and access to information that is under current discussion in the Assembly, Council, MEPC and working groups;
 2. Reasons (if any) why information might be withheld, and how to access this information;
 3. A schedule of all official submissions whether or not they are available to the public, together with a short explanatory note where information is not made publicly available.
 4. Information on how to obtain access to information that is not currently published, in a timely way (see recommendation 4 below);
 5. Signposting to information held elsewhere on the website and/or in other official documents; and
 6. Information on how to participate in decision making.
2. The IMO should develop a policy governing the provision of additional environmental information to the public, which should be made accessible on the website. The provision of any such information should not be contingent on the requestor evidencing any specific interest or expertise. This policy should include:
 1. Up-to-date contact details;
 2. A target timeframe for the provision of the information or refusal (this could replicate the Aarhus Convention one month obligation for signatory states);
 3. A transparent list of reasons that might justify any refusal (which should be limited and provided in writing); and
 4. Any cost involved (following the principles above).

3. The IMO must enable the live webcasting of the Assembly, Council and MEPC meetings (including working groups) to the general public. This includes ensuring that the public and interested organizations are able to find the information that they need to access any such webcasting in a timely way, as well as information regarding any restrictions on participation (for example, who may make an intervention, and when).
4. Official documents should be made available as soon as possible both prior to and following the meeting to which they relate. This is particularly relevant for Council meetings, where official documents are not currently made available to the public.
5. All member state submissions should be made publicly available, unless there is a clear and compelling reason as to why they could not be made public, which should be by exception only.
6. The IMO should publish Rules of Procedure relating to both access to environmental information, and general access to IMO meetings and documents.

Obligations on Member States

Member States who are also Aarhus Convention and Escazú Agreement signatories (and particularly those within the Council) should do the following:

1. Work with the IMO Secretariat to amend its Rules of Procedure of the Assembly and the Council as a priority to open the decision-making bodies to interested Parties.
2. Advocate for the granting of public access to information relating to the IMO on a domestic level, including all submissions to the Council and MEPC and associate subcommittees.
3. Work with the IMO Secretariat to implement the Working Procedures Recommendations above.

Member States who are also Escazú signatories should do the following:

1. Promote the distribution of information and contributions prepared for the IMO to the public in accordance with Article 7(12).



Participation in the environmental decision-making process

Public participation in decision making is the second fundamental principle of the Aarhus Convention. Article 6 requires each Party to facilitate public participation in decision-making relating to activities that may have a significant effect on the environment, including participation in the preparation of plans, programmes and policies relating to the environment.

In respect of international organizations, the Almaty Guidelines reiterate the importance of public participation as a way to improve the quality of decision-making through the introduction of different opinions and expertise. Accordingly, **Chapter V of the Almaty Guidelines outlines the following principles:**

1. International forums should proactively seek the participation of relevant actors in a transparent, consultative way (para. 28).

Broadly, a number of actors are involved in the IMO decision making process. In principle, these range from non-governmental organizations (some of which may represent the public interest) to member state governments, through to industry organizations. Otherwise, we could not find any evidence of any current or previous open IMO public consultations on either the IMO website or IMODOCS, meaning that general members of the public do not have an opportunity to participate in IMO processes.

While a full review of the rights of consultative members within the IMO is beyond the scope of this study, consultative members, namely international governmental organizations and non-governmental organizations such as industry bodies and civil society groups do receive certain participatory rights. However, consultative members are offered that status at the discretion of the IMO's Council applying criteria found in the Rules and guidelines for consultative status of non-governmental international organizations with the International Maritime Organization.⁴⁰ In reality, these criteria taken together further limit the potential for certain organizations who may have a genuine interest in IMO activities to achieve consultative status. They also, and more

⁴⁰ 'Rules and guidelines for consultative status of non-governmental international organizations with the International Maritime Organization', December 2019, [NGOS RULES AND GUIDELINES \(post A.31\)](https://www.imo.org/en/maritimepolicyandlegislation/Pages/NGOS RULES AND GUIDELINES (post A.31).aspx) (imo.org) (accessed 22 November 2022).

concernedly, potentially limit the scope for organizations with existing consultative status to participate frankly and openly on environmental matters without fear of repercussion.

For example, in respect of the first restriction, under Rule 6 of the Rules and guidelines document, prospective non-governmental organizations will not be granted consultative status unless they can prove that they are 'truly international' in scope, with presence in 'a sufficient number' of countries. This restriction has the effect of limiting the potential participation of organizations representing climate vulnerable communities, who may be legitimately impacted by the activities regulated by the IMO, but whose membership may necessarily be limited to a particular region, or who may not have the resources to expand further (though it is to be noted that such organizations may be granted 'on a provisional basis'). In respect of the second limitation, non-governmental organizations with consultative status are subject to periodic review by the Council. NGOs who are unable to demonstrate a 'substantial contribution' to the work of the IMO, including the 'promotion of the work of IMO', may have their consultative status withdrawn, a decision which is at the Council and Assembly's discretion (and is neither made public nor is able to be appealed). The interpretation of 'substantial contribution' is clearly open to wide interpretation, while the requirement to promote the work of IMO suggests that organizations who are critical of the organization may find themselves disadvantaged, or even their consultative status withdrawn. Neither of these requirements is legitimised by either the Aarhus Convention, its Almaty Guidelines or the Escazu Agreement, and should be removed to ensure that participation by non-governmental organizations is as open as possible.

2. Public participation should apply at all levels and at all relevant stages of decision-making, unless there is a reasonable basis to exclude such participation according to transparent and clearly stated standards that are publicly available in advance, if possible.

The rules on the participation of non-governmental organizations are publicly available and provide a degree of clarity in respect of the standards required of international non-governmental organizations. However, as we have outlined above, the availability of these rules is no guarantee of transparency in how they are applied. Moreover, there is no requirement of reasonability applied to the discretion afforded to the Council and Assembly in extending or removing the consultative status of such organizations. In this respect, there is little transparency over the participation of non-governmental organizations, or the wider public.

For the general public, participation at any stage of the decision-making process is almost non-existent. There is no opportunity for public participation in any consultations or similar processes, at any stage of the IMO decision-making process

and within any of its decision-making bodies. The only other potential opportunity for individuals to participate would be at the domestic level. As far as we are aware, examples of member states facilitating this type of participation are few and far between.

3. Participation should be as broad as possible. Stakeholders may include:

- Affected or potentially affected members of the public;
- Representatives of public-interest organizations;
- Representatives of other interests that might cause, contribute to, be affected by or alleviate the problems under consideration (para. 30).

As outlined above, members of the public do not have access to official IMO meetings via livestreaming or otherwise. Public registration to the IMODOCS platform grants limited access to relevant documents which would potentially facilitate any meaningful participation, were this possible through access to meetings or otherwise. While in general, access to information is reasonably good, there are very few, if any, opportunities for the public to put this information to use. This includes members of the public who may be significantly affected by the IMO's work; for example, those living in port communities or in climate vulnerable countries.

Representatives of public interest organizations, such as non-governmental organizations, are afforded access to the IMO subject to the Rules governing their access. Under Rule 6, NGOs with consultative status are entitled to: receive a provisional agenda for IMO meetings; submit written statements on items in the agenda; be represented by an observer at Plenary and other IMO meetings, and receive texts of resolutions adopted by the Assembly and recommendations made by the Council, Committees and other IMO bodies. Consultative members do not have voting rights, but may (at the invitation of the chair) speak on an agenda item of interest. Informally, such groups may also work with more progressive member states to help inform and shape the debate. In principle, these rights appear sufficient to permit substantive contribution on behalf of the non-governmental organization. However, in exercising these rights NGOs must always be conscious of the periodic, non-transparent review process conducted by the Council and Assembly.

It is also important to note that that consultative membership status does not appear to extend to reporting on ongoing meetings (for example, through the use of social media). We are aware of instances where consultative members who have quoted speakers or otherwise tweeted during IMO meetings have been warned that they may be removed from the meeting.

In respect of other representatives who may cause, contribute to, be affected by or alleviate the problems under consideration, the IMO affords little official place for the

scientific community, climate vulnerable communities, global youth or other minority groups. Such groups are for the most part represented indirectly by non-governmental organizations, where they are represented at all. The onerous rules on gaining consultative status, and the difficulty accessing official information in the first instance, further limit the potential involvement of these groups.

Industry bodies, on the other hand, are extremely well-represented. Transparency International found that in the MEPC, there were 135 trade associations and 32 labour organizations present (against 52 civil society organizations and 27 international NGOs), and in the sub-committee on pollution prevention and response there were 109 trade associations, 15 labour organizations, 17 civil society organizations and 16 international NGOs.⁴¹ The clear skew towards trade association participation is likely to be at least partly symptomatic of the historic purpose of the IMO, which was initially established to improve the safety of the international shipping trade and establish standards of operation. We recognise the integral role for industry in such decision-making processes, and the relatively lesser role for civil society here. However, the numbers above suggest that the addition of the environmental competence to the IMO's remit – of vital importance to the world more generally – has not been met with the same expansion of civil society involvement, and the IMO, the MEPC and its subcommittees remain heavily industry-dominated. Despite the enormous impact of international shipping on the global populace, their voices have not been, and are not, prioritised.

4. Any restriction on public participation should be on a limited basis where necessary and unavoidable. Where applied, accreditation procedures should be based on clear, objective and transparent criteria aimed at securing meaningful and equitable participation without excessive formalization. Selection criteria may include field of expertise, geographic, sectoral, professional and other relevant context (para. 31).

As outlined above, the IMO Rules do provide a degree of clarity in terms of the participation of non-governmental organizations. In principle, non-governmental organizations, once they have gained consultative status, have the means to contribute to the decision-making processes of the IMO. However, the participation of the general public more generally is significantly restricted. Indeed, while it was possible to register for an IMODOCS account with a non-organizational email address, the documentation that is accessible within the portal is disappointingly absent in many cases. For example, under the 'Council' section of the portal, most of the subgroups contained no documents at all, and those that did contained out of date documents – some dating back to 2000. This is typical of the lack of information available in respect of the Council more generally. However, we could also not see or access any documents in the 'NGOs' subsection, including the section entitled 'Periodic Reviews', and as we have outlined above, the accreditation/review process

⁴¹ 'Governance at the International Maritime Organization: the case for reform', Transparency International (2018) [2018_Report_GovernanceatIMO_English.pdf](https://transparencycdn.org/2018/06/2018_Report_GovernanceatIMO_English.pdf) (transparencycdn.org), p. 23.

for NGOs has historically been confidential. This secrecy inhibits the full and open participation of NGOs and is not in the spirit of the Aarhus Convention; it should therefore be remedied.

The limitation on the use of social media by NGOs and other organizations also detracts from the spirit of equitable participation. Social media is a powerful tool for citizen involvement, and the fact that its use is actively restricted even on matters of the environment is concerning.

5. Public participation should apply from an early stage, including the negotiation of conventions, formulation and implementation of decisions, and preparation of events (para. 32). The form of public participation may vary but could include observer status, advisory committees, public forums and dialogue, and webcasting as well as general calls for comment (para. 33).

There is no meaningful public participation afforded to the general public, including via public forum, webcasting or calls for comment.

NGOs with consultative status (industry and environmental groups) are generally active at most stages of the decision-making process. A European Parliament report noted that this was particularly the case within the working groups of the MEPC, though as noted above, industry bodies still dominate this committee.⁴²

6. Participation should include the right to access all documents relevant to the decision-making process, to circulate statements and to speak at meetings, without prejudice to the business of such forums (para. 34).

The general public is not able to access all documents relevant to any decision-making process at the IMO. Civil society groups with consultative status generally have access to most documentation, with the exception of Council documentation.

It is worth highlighting that in contrast to the IMO's sister organization on aviation, ICAO, documents submitted by member states to the IMODOCS platform are not restricted from publication by any confidentiality agreement. It is therefore up to member states whether they wish to publish information to the public. Member states who are Aarhus Convention or Escazu Agreement signatories and who do not publish this data could therefore be considered to be acting in breach of their obligations under these agreements.

7. The public should be granted reasonable time frames for participation in order that they can effectively prepare and participate in an informed way, at a stage when options are still open (para. 35). The public should be made aware of the

⁴² 'Decision-making processes of ICAO and IMO in respect of environmental regulations', Study for the ENVI Committee, Decision-making processes of ICAO and IMO in respect of environmental regulations (europa.eu) (2016) p. 20.

opportunities and criteria for participating and of the availability of information. The public should be made aware how to contribute comments (para. 36). Account should be taken of public participation in decisions. The impact of public participation on decisions should be made transparent through facilitating the public availability of documents submitted by the public (para. 37).

The general public are unable to contribute comments to IMO processes, and there is therefore no account made of this contribution.

8. Measures to increase diversity of participation should be encouraged (para. 38)

The limited number of non-industry groups with consultative status, as well as the high threshold governing the potential participation of new organizations, considerably limits the diversity of representation. We could not find any evidence of specific support aimed at increasing the potential contribution of minority ethnic groups, the climate vulnerable, young people or women. We note the annual 'Women in Maritime' event that the IMO hosts, but we would encourage measures to increase the gender diversity of the IMO throughout its decision-making bodies on a day-to-day basis given the likely minimal practical impact of an annual one-day event.

9. It can be costly to subsidize in-person access to international forums. Efforts to maximise participation through innovative, cost-efficient and practical means should be made (para. 39)

Live streaming of IMO meetings was enabled during the Covid pandemic. Recently, the IMO Council considered more permanent reform to enable live streaming on an ongoing basis, and has asked interested delegations to submit proposals for criteria and procedures in relation to this. We welcome this development, however we note that no final decision will be taken until November/December 2023. Given how effective livestreaming could be in terms of enabling access to information and participation, and the fact that it has already been technically proven, we urge the IMO to move more quickly to implement this reform. We also note that the IMO's sister organization, ICAO, already utilises live streaming of meetings to great effect.



Q Analysis

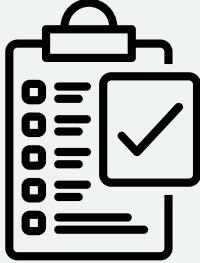
The IMO has made some encouraging innovations in recent years that have improved the availability of information to the public and increased transparency and diversity. However, to the extent that it remains difficult for a member of the public or interested civil society organization to participate in an active way in decision making, this increased access is of limited utility. It is particularly important that access is enabled at the correct level; the activities of the MEPC, where many of the environmental decisions are made or developed, remain mostly inaccessible to the public. Civil society organizations, many of which bring technical and policy expertise and insights on the needs and priorities of impacted communities and people, are able to contribute to MEPC and its subcommittees and can be particularly effective where they work with national delegations.

However, such groups are considerably outnumbered by industry bodies which could have the effect of stymying progress given the enormous detrimental effect of international shipping on the marine environment, could lead to poorly informed and ineffective decisions.

The Council is inaccessible to both the public and organizations with consultative status. The fact that any decision-making body has discretion to take its meetings private, seemingly at will, is far from good governance, and it is clear that this ability has had significant impact in previous decision-making processes. Total restrictions on the use of social media in meetings hinders a legitimate route of public involvement. Proactive efforts must be made to widen participation and increase the opportunities for intervention, and therefore increase the democratic legitimacy of IMO decisions.



IMO Working Procedures Recommendations



Accordingly, and on the basis of the Almaty Guidelines above, we recommend that the IMO should continue to broaden the real opportunities for participation in the following ways:

1. Create a dedicated section of the IMO website which could be used to highlight environment-related workstreams and calls for evidence with associated timetables and submission obligations. Members of the public, or civil society groups representing their interests, should be entitled to make submissions. All submissions should be made public.
2. Ensure that Rules of Procedure for the Assembly, Council and subcommittees are published and up to date. Restrictions on participation should be limited and clearly stated, and changes should not be able to be made at the relevant body's discretion.
3. The decision-making structure of IMO bodies should be made clear and made publicly available. The current structural complexity does not facilitate effective public participation.
4. A publicly accessible decision tracker should be introduced charting the progress of environment-related decisions from the point of inception to the point of decision. It is currently unclear at what point decisions are made, and by whom. This makes intervention very difficult.
5. The IMO (and the MEPC in particular) should broaden participation to ensure that those most at risk from climate change are represented more effectively. This could include granting consultative status to additional non-industry organizations. Positive steps should be taken to promote representatives from climate vulnerable countries, different ethnic groups, women and young people (for example), and information on these programmes should be made clearly available on the website. A more equal

balance of industry and non-industry organizations, particularly in the MEPC, should be actively sought.

6. The IMO should ensure that accreditation processes are clearly outlined on the website, including any restrictions on accreditation. The current approach, which introduces significant institutional discretion and bias, should be abandoned in favour of completion of a transparent accreditation process (recognising that there may need to be some restriction on the numbers of in-person participants). Post-Covid, hybrid online/in person meetings provide an opportunity to broaden the numbers of those who receive accreditation, where physical space to accommodate a maximum number of delegates is less important.

7. The IMO should continue to publish meeting agendas and summary information. It should continue expanding livestreaming provision as a matter of urgency, particularly given that the technology is already developed and proven. The website should clearly state what information is available to access via webcasting.

Obligations on Member States

Member States who are Aarhus Convention and/or Escazú Agreement signatories should do the following:

1. Increase the gender and social and ethnic diversity of their delegations.
2. Commit to publishing all their submissions to the IMO publicly, in particular on environmental matters and including MEPC and Council submissions.
3. Endeavour to give better consideration of public views on environmental decisions at the IMO, including by holding public consultations on key decisions at the national level. Any such consultation should specifically include consideration of young people and the climate vulnerable.
4. Advocate within IMO at the appropriate levels to ensure that it continues to improve access to information, meaningful public participation and access to justice in relation to environmental decisions made at the IMO, including by adopting the recommendations above.



Access to Justice

Access to Justice is the final pillar of the Aarhus Convention, and the principle also forms part of the Escazú Agreement requirements. Access to justice is a fundamental principle that seeks to ensure the accountability of decision-making bodies and, ultimately, seeks to guarantee the rule of law. The IMO itself is not a regulatory body, however it remains that it does perform a semi-regulatory role at the international level and takes key decisions that ultimately impact upon the environment. Moreover, IMO member states often defer to the IMO to excuse inaction at the domestic level on maritime emissions. For this reason, and the fact that it is a UN body performing a public function, the IMO and its decision-making processes must be able to be held to account by the global community. **Chapter VI of the Almaty Guidelines outlines the following principles in relation to access to justice:**

1. International forums should consider measures to facilitate public access to review procedures relating to any application of the rules and standards of each forum regarding access to information and public participation (para 40).

We could not find evidence of any ability for the public to review decisions relating to public access at the IMO.

The process for obtaining press access is outlined on the IMO website. In principle, this permits members of the media to obtain accreditation to access most of the IMO meetings, at all levels. However, as with consultative status, press accreditation is granted on a discretionary basis, and may be withdrawn if reporting is considered to 'have a negative impact on the efficient and effective conduct of the meeting's business'. The media are also restricted from quoting individuals unless they have given their consent. As Transparency International concluded, these rules effectively mean that journalists 'cannot report on the policymaking process – including the negotiations and favoured policies of Member States – but only the outcomes of meetings.'⁴³ We have also highlighted the blanket restrictions on the use of social media from IMO meetings. We note that organizations who have used social media have been threatened with expulsion from the meeting.

⁴³ 'Governance at the International Maritime Organization: the case for reform', Transparency International (2018) [2018_Report_GovernanceatIMO_English.pdf](https://www.transparency.org/reports/governance_at_the_international_maritime_organization) (transparencycdn.org), p. 20.

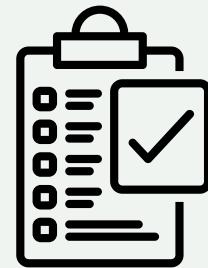


🔍 Analysis

We recognise that there is a balance to be struck between open discussion and commercial and member state confidentiality. However, the current policy in respect of media participation and reporting acts as a restriction on the transparent reporting that is legitimately expected of a UN agency and to which Parties to the Agreements have legally committed to ensuring.



IMO Working Procedures Recommendations



The IMO should:

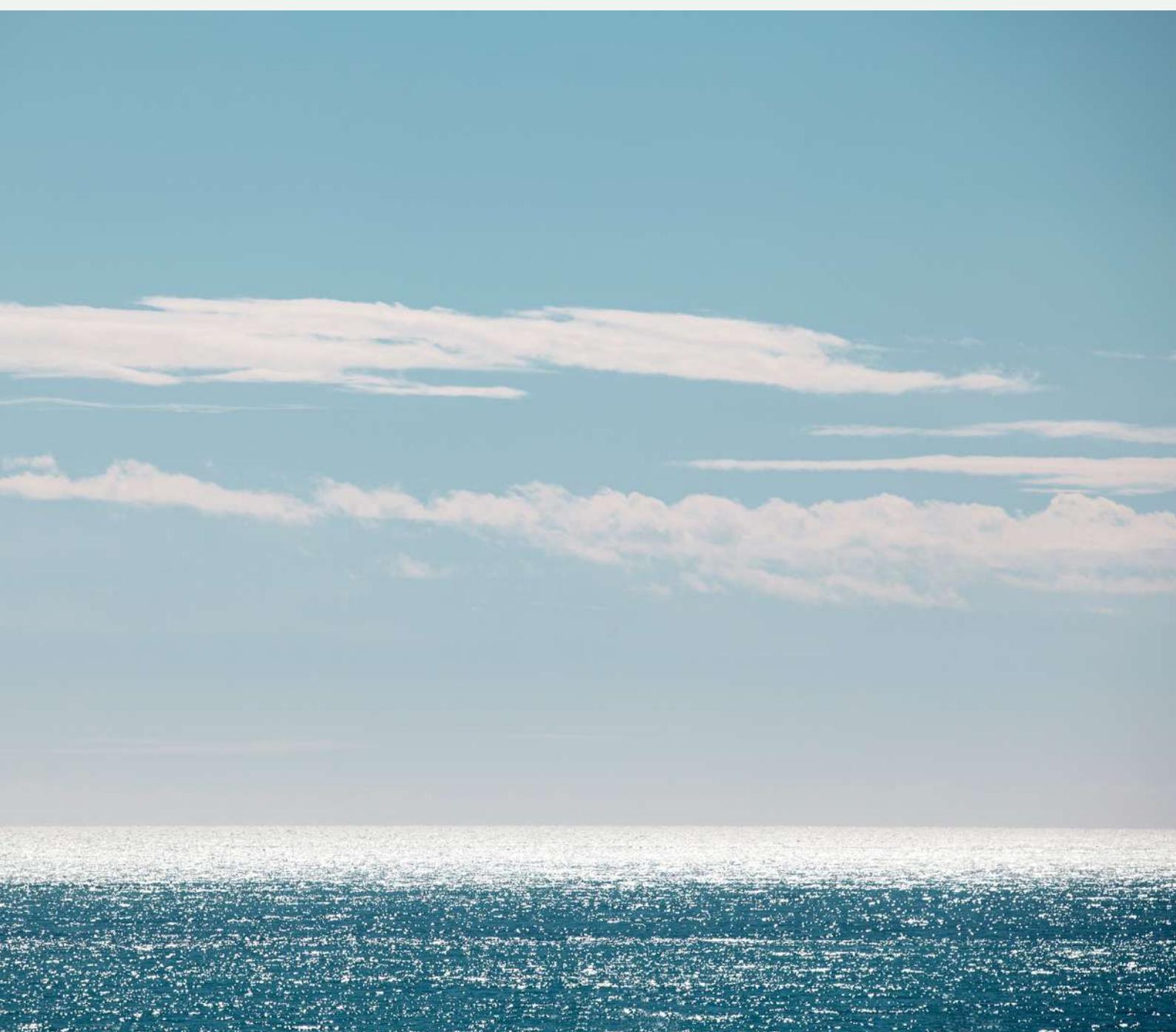
1. Open all of the IMO's decision-making forums to the press and ensure that the press accreditation process is clear and transparent. The discretionary element of the accreditation process should be reviewed with a view to reform.
2. Permit the unrestricted use of social media from within IMO meetings. We suggest that Chatham House rules could apply to the extent that confidentiality is required.
3. Review and amend the Rules and guidelines document, and specifically Rule 6, such that the Council's review of organizations with consultative status is made both public and that any decisions can be appealed in a transparent and meaningful way.
4. As a UN body subject to the Almaty Guidelines, IMO should demonstrate its accountability by playing an active role in Aarhus Convention and Escazú Agreement Compliance Committee and working group meetings.

Obligations on Member States

Member States who are also Aarhus Convention and/or Escazú Agreement signatories should do the following:

1. Advocate for the IMO to develop a transparent review procedure relating to its application of rules and standards, particularly where this relates to the accreditation of non-governmental organizations and the press.

2. Actively participate in Aarhus Convention and Escazú Agreement working groups relating to the improvement of IMO processes and the application of the Aarhus Convention and Escazú Agreement principles at a national level relating to IMO decisions on the environment.
3. Advocate for legally enforceable targets which should be transposed into domestic legislation and made subject to all normal domestic judicial review arrangements.



Conclusion

Access to information, public participation and access to justice in environment decision making are not only aspirational hallmarks of good governance and democratic legitimacy, but they are legal requirements for signatory states of the Aarhus Convention and the Escazú Agreement. As UN bodies, ICAO and the IMO must apply the Almaty Guidelines to their own processes to guarantee the same pillars of transparency at the international level. Parties to the Aarhus Convention and the Escazú Agreement who are also members of ICAO and IMO are also legally obliged to promote the principles of those agreements within the organizations; they can expect to be held accountable where this is not the case.

Historically, both organizations were founded to manage the commercial trade and growth of international transport. The institutions and their structures, including their funding structure (particularly in the case of the IMO, where flag states contribute relatively more to the budget), were developed to facilitate this. Over time, both organizations have had additional priorities added to their remits – and notably, that of mitigating the environmental impact of their activities. However, both institutions have failed to adapt to manage this additional responsibility in the manner appropriate of UN organizations charged with managing an issue which affects the lives of citizens across the world. As the scope of ICAO and IMO's work and responsibility has expanded, they still creak under the weight of outdated working practices and funding models. This has a significant effect on their ability to deliver in terms of access to information, public participation and access to justice. This lack of public oversight and the inability to hold either institution to account must not be allowed to continue if they are to retain their relevancy as the global decision-makers and facilitators of action on international emissions from shipping and aviation.

ICAO and IMO have the responsibility of managing the contribution of international shipping and aviation to the decarbonisation efforts required to reach the legal limits set out by national governments under the Paris Agreement. National governments bear this legal obligation, and it is through ICAO and IMO that they are expecting to meet it. In order to retain democratic legitimacy, and convince the world they are serious about tackling the climate crisis, ICAO and the IMO must respond to this mandate. Increasing transparency and legally required access rights is a vital first step.

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