



Clear Sky and Transparent Sea

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

A study by

 **ppportunity**
Green

December 2022

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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Further information

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Executive Summary:

International Maritime Organization

The International Maritime Organization has failed to adapt to manage the responsibility of reducing emissions from international shipping in the manner appropriate of a United Nations (UN) organization. The absence of effective access rights for citizens to the decision-making processes of the organization, and the resultant inability to hold 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. The IMO is one such organization.

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’.¹ 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.

¹ See this post on the IMO’s LinkedIn page, showing the IMO delegation at the recent COP27 convening, [LinkedIn](#) (accessed 10 November 2022).

The IMO's decisions and its decision-making processes therefore have considerable global reach and impact. As such, 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 the IMO and to the IMO itself. The IMO falls 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 IMO. The IMO should apply the Almaty Guidelines to increase public access rights to its institution. At a frightening time for the climate, reform to the IMO's processes is urgently needed, not only to bring the organization in line with legal requirements, but politically to demonstrate that it and its member states are taking the challenges of the climate crisis seriously, and are willing to be accountable to citizens for the same.

The paper prioritises the analysis of the Agreements in respect of the IMO as a stand-alone body, by comparing the requirements set out in the Almaty Guidelines against 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 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 the 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 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 IMO member states in our analysis.

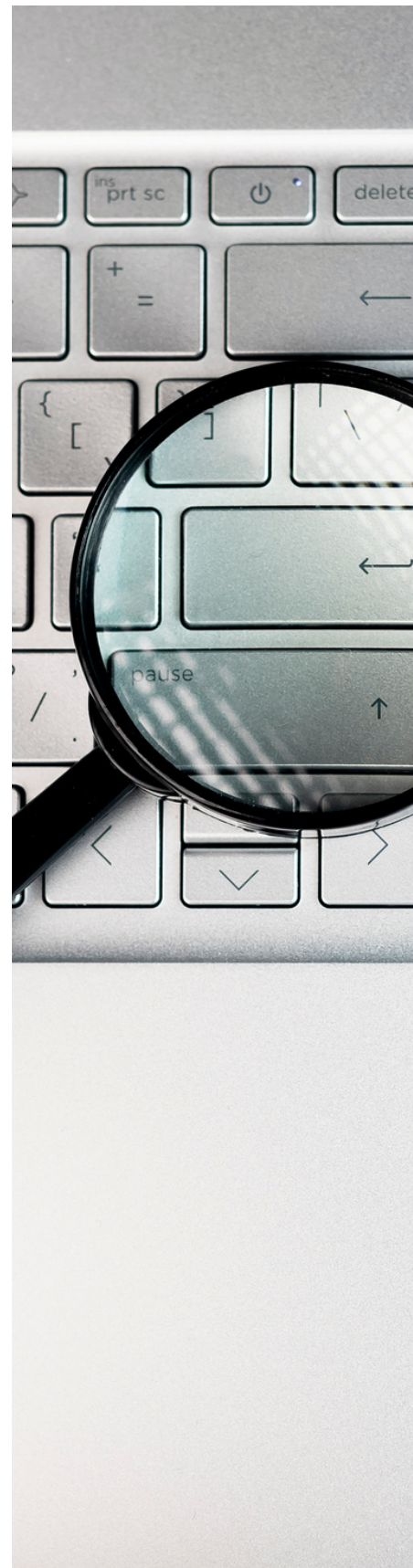
Access to Information

The next section constitutes an analysis of the working practices of the IMO against the Almaty Guidelines. In our 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).

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.

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.



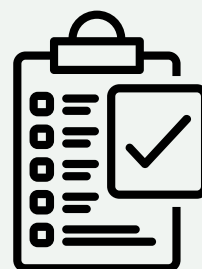
Access to information is one of the prerequisites for public participation, and effective public participation requires knowledge of upcoming meetings and events to concentrate efforts. The IMO could helpfully publish an upcoming meeting calendar for meetings related to the environment (at least). Much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

Public participation in environmental decision-making

Q Analysis



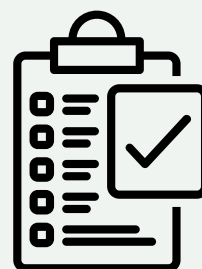
The IMO has made some encouraging innovations in recent years that have improved the availability of information to the public and increased transparency and diversity. However, to the extent that it remains difficult for a member of the public or interested civil society organization to participate 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.

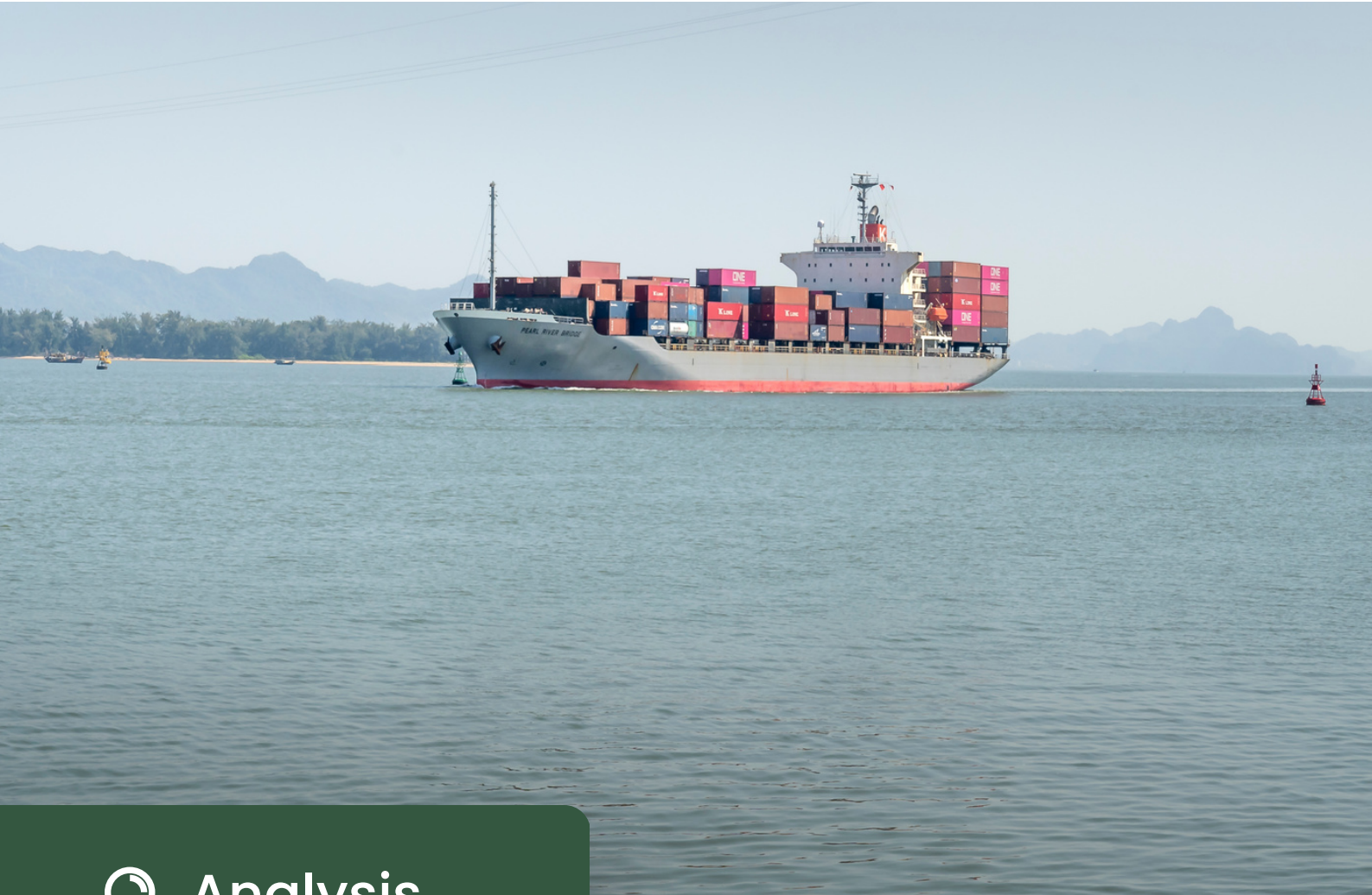
7. The IMO should continue to publish meeting agendas and summary information. It should continue expanding livestreaming provision as a matter of urgency, particularly given that the technology is already developed and proven. The website should clearly state what information is available to access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

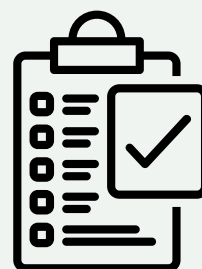


Analysis

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.



Opportunity Green builds ambitious coalitions, supports climate vulnerable countries in accessing international negotiations and finds innovative legal ways to reduce emissions.

Climate change is terrifying. But if we act now, the solutions that reduce emissions also bring enormous opportunities for economic development, improved health and increased democracy

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