

Submission to the Special Rapporteur on Climate Change
to the call for inputs on
“Access to information on climate change and human rights”

Opportunity Green, 30 May 2024

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics, and policy. We do this by amplifying diverse voices, forging ambitious collaborations and using legal innovation to motivate decision makers and achieve climate justice.

Opportunity Green welcomes the opportunity to respond to this call for inputs. We remain available for assistance and any further information; please contact David Kay, interim Legal Director at david@opportunitygreen.org or Dominika Leitane, Legal Officer at dominika@opportunitygreen.org.

1. Background

The shipping and aviation sectors are major polluters,¹ yet the two industries are poorly regulated in terms of greenhouse gas (**GHG**) emissions.

The International Maritime Organisation (**IMO**) is the United Nations (**UN**) agency responsible for setting global standards for the safety, security and environmental performance of international shipping. In 2023, the IMO revised its initial GHG Strategy, which sets out its vision for the reduction of GHG emissions from ships.² The revised strategy is a considerable improvement; however, it still fails to align with the 1.5 °C temperature goal,³ and measures to implement the strategy are yet to be adopted.

The International Civil Aviation Organization (**ICAO**) is the UN agency serving as the global forum of states for international civil aviation. ICAO has adopted two principal initiatives relevant to climate change: the Carbon Offsetting and Reduction Scheme for International Aviation (**CORSIA**), and a collective long-term global aspirational goal of international aviation of net-zero carbon emissions by 2050 (**LTAG**).⁴ The LTAG is also not in line with the 1.5 °C goal; possible temperature outcomes range from 1.6 °C to 2.3 °C.⁵ Further, it is not binding, and is intended to

¹ Global shipping accounts for 2.89% of GHG emissions: Jasper Faber and others, Fourth IMO GHG Study 2020 (IMO 2020) 112

<<https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Fourth%20IMO%20GHG%20Study%202020%20-%20Full%20report%20and%20annexes.pdf>> accessed 28 May 2024. Global aviation accounts for 2.5% of carbon dioxide (CO₂) emissions and approximately 3.5% of ‘effective radiative forcing’ which is a closer measure of its impact on warming: Hannah Ritchie, ‘What share of global CO₂ emissions come from aviation?’ (Our World in Data) <<https://ourworldindata.org/co2-emissions-from-aviation>> accessed 28 May 2024

² Resolution MEPC.377(80) (adopted 7 July 2023); Resolution MEPC.304(72) (adopted 13 April 2018).

³ Simon Bullock, James Mason and Alice Larkin, ‘Are the IMO’s new targets for international shipping compatible with the Paris Climate Agreement?’ (2023) Climate Policy 1.

⁴ ICAO Assembly Resolution A41-21 (adopted 7 October 2023).

⁵ Shraeya Mithal and Dan Rutherford, ‘ICAO’s 2050 net-zero CO₂ goal for international aviation’ (2023) International Clean Council for Transportation <<https://theicct.org/publication/global-aviation-icao-net-zero-goal-jan23/>> accessed 22 May 2024.

keep aviation on a pathway to ‘sustainable growth’,⁶ a position which is incompatible with the need to decarbonise the sector in accordance with Paris Agreement goals.

Ultimately, the IMO and ICAO have so far failed to adapt to manage the responsibility of reducing emissions from international aviation and shipping in the manner appropriate of UN organizations. The absence of effective access rights for citizens to the decision-making processes of the IMO and ICAO, and the resultant inability to hold the organisations to account, are both a cause and symptom of this failure.

This submission focuses on transparency and citizen access rights at the IMO and ICAO, and identifies some of the shortcomings in the working practices of the IMO and ICAO pertaining to access to information on climate change. It is based on the results of a study by Opportunity Green undertaken in December 2022 (and references to ‘as at the time of analysis’ should be construed accordingly).⁷

It is worth noting that, in responding to this call for inputs, we do not seek to suggest that the IMO and ICAO have made no provisions for public access to information. We merely focus on the specific shortcomings identified in our research.

2. Legal obligations of the IMO and ICAO pertaining to access to information on climate change and human rights

Article 3(7)⁸ of the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the **Convention**) is a recognition that while the immediate scope of the Convention is limited to the Parties to the Convention, the reach of environmental matters to which the Convention relates stretches beyond the boundaries of national sovereignty into the international arena.

Recognising the potential difficulty of applying the Article 3(7) requirement in practice, the Parties drew up the Almaty Guidelines on promoting the principles of the Aarhus Convention in International Forums (the **Guidelines**) - 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’.⁹

As outlined above, decision-making in the field of the environment is within the scope of work of both ICAO and the IMO as the UN agencies with responsibility for the aviation and shipping sectors. As such, we consider that the Parties to the 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-

⁶ ICAO Assembly Resolution A41-21 (adopted 7 October 2023) preamble and paras. 6–7.

⁷ Opportunity Green, “Clear Sky and Transparent Sea: Transparency and Citizen Access Rights at the International Civil Aviation Organization and the International Maritime Organization” (2022), <<https://www.opportunitygreen.org/publication-clear-sky-and-transparent-sea>> accessed 29 May 2024.

⁸ Article 3(7): “Each Party 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.”

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

making processes. Our analysis of ICAO and IMO working practices is therefore based on these Guidelines.

3. ICAO working practices

By way of overarching comment, 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 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.

Chapter IV of the Guidelines outlines guidance on promoting the right of access to information in the context of international organizations. We outline an abridged version of some of the key principles below, and compare these to ICAO working practices (as at the time of analysis).

1. 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.

We were able to access the meeting agendas for the 41st ICAO Assembly on the website, which did highlight three environmental matters of interest. We could find no further information on these matters. We were also able to access summary pages of Council decisions and a calendar of Council meetings. 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.

We also looked for specific information relating to the Committee on Aviation Environmental Protection (**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 were publicly available. The CAEP Reports page (accessed via 'Environment Publications') appeared to have been last updated in 2019. It offered 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 were not able to confirm that this situation still endures).

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 resources were for purchase. No Assembly, Council or other preparatory or meeting document was returned, either for previous or future meetings.

2. 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 industry partners. A search of 'emissions' returned a number of more official videos. This included a recording of a High Level Meeting (**HLM**) 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 did not appear to be any live webcasting available to the public of the Assembly or any other official meetings, whether Council or CAEP.

3. 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. However, these are often industry-sponsored and do not contain information on ICAO decision-making.

4. IMO working practices

As above, we outline below an abridged version of certain principles outlined in Chapter IV of the Guidelines, and compare these to IMO working practices (as at the time of analysis).

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. 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 Marine Environment Protection Committee (**MEPC**) and Intersessional Working Group (**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.

We note 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.

While the provision of information in relation to MEPC and ISWG is relatively substantial (with exceptions), there were very few documents available under the Council category of the IMODOCS platform. For a decision-making body at this level, we would expect documentation regarding the discussions on environmental issues to be available to the public through IMODOCS or elsewhere.

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.

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. We also noted the summary of Council meeting C127 of 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. Such steps could help to promote access to environmental information generally.

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. Whilst helpful, these 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.

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 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; however, none of these are specifically related to environment queries.

5. Conclusion

This submission has highlighted shortcomings in the working practices of the IMO and ICAO pertaining to access to information on climate change, for the reference of the Special Rapporteur. For further details on the research and analysis presented in this submission, and recommendations for improvement, please refer to Opportunity Green’s full report dated December 2022.¹⁰

¹⁰ Opportunity Green, “Clear Sky and Transparent Sea: Transparency and Citizen Access Rights at the International Civil Aviation Organization and the International Maritime Organization” (n 7).