

A STUDY OF ENGAGEMENT AND INFLUENCE AT THE INTERNATIONAL MARITIME ORGANISATION'S LEGAL COMMITTEE

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The International Maritime Organisation (IMO) is a specialised agency of the United Nations (UN) that sets standards and creates regulatory frameworks for the safety, security, and environmental performance of international shipping.¹ The structure of the IMO encompasses an Assembly, a Council, five Main Committees, and a number of Sub-Committees that support the work of the main committees. The broad structure of the organisation and its main constituent committees, is depicted in **Figure 1**.

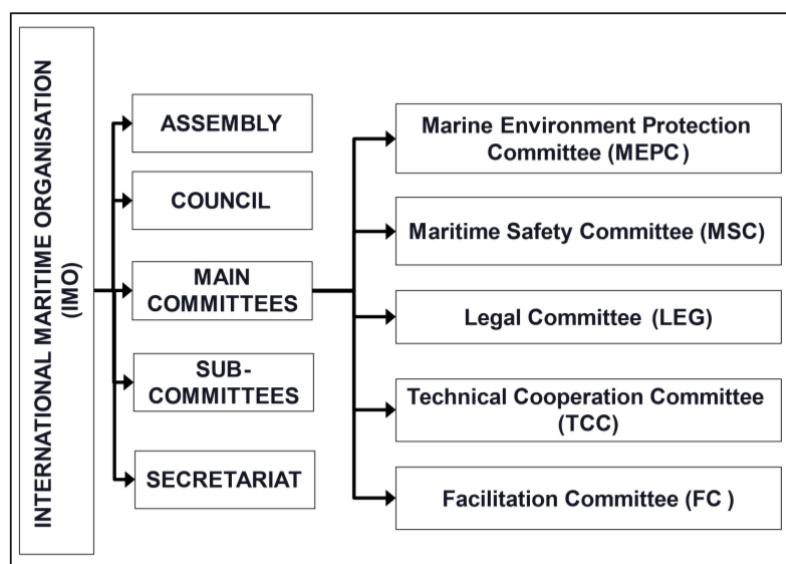


Fig 1: IMO and its constituent Main Committees
Source: IMO Website, <https://www.imo.org/en/about/pages/structure.aspx>

The Council is the executive organ of the IMO and is responsible for supervising the work of the IMO. It is elected by the Assembly for two-year terms, beginning after each regular session of the Assembly. Council members are grouped in three categories, namely, Category (a) comprising the 10 States with the largest interest in providing international shipping services,

¹ "Introduction to IMO," IMO, <https://www.imo.org/en/About/Pages/Default.aspx>

See also: "International Maritime Organisation," Britannica, <https://www.britannica.com/topic/International-Maritime-Organization>

Category (b) comprising 10 States of those not elected under Category (a) with the largest interest in international seaborne trade, and Category (c) comprising 20 States not elected under (a) or (b) above, which have special interests in maritime transport or navigation and whose election to the council will ensure the representation of all major geographic areas of the world.² The importance of the IMO Council is almost self-evident. Informed commentators have correctly noted that “[o]rganisations like the IMO will play a defining role in guiding various governments and industries to set standards and processes”³:

As a major maritime nation, it is important for New Delhi to ensure that it takes “...steps to ensure that it does not get left out”⁴ of the Council. India does, indeed, appear to be taking such steps. In December 2023, for instance, India was re-elected, for the biennium 2024-25, to the IMO Council (the executive organ of IMO under IMO’s highest governing body, the IMO Assembly). With 157 votes out of 167, India got the highest tally of votes in its re-election to the IMO Council.⁵ India is clearly aware of her interests (and the stakes) at the IMO and continues to engage proactively and constructively with IMO Member States and Participants. Indeed, as India seeks to position herself in international affairs as a rule-maker instead of mere rule-taker, she recognises that her engagement with and at IMO should increasingly focus on the standard-setting and rulemaking processes at IMO.⁶

Accordingly, this article argues that India must pay particular attention to the Legal Committee (the IMO-LEG) and accordingly seeks to provide baseline information on the functioning and interface mechanism(s) of this critical committee. It specifically draws the attention of Indian policymakers and policy-shapers to the potential of organisations outside the governments of IMO Member States. It also highlights issues relevant to transparency (or lack of it) within the IMO-LEG. The article will, it is believed, bring clarity, precision, and coordination to India’s engagements at- and with

² IMO website, “Structure of IMO”, <https://www.imo.org/en/about/pages/structure.aspx>

³ Krishna B Kotak and P Manoj, “Why India’s Re-election to the IMO Council is Significant”, 18 December 2023, *Economic Times Infra*, 18 December 2023, <https://infra.economictimes.indiatimes.com/news/ports-shipping/why-indias-re-election-to-the-imo-council-is-significant/106080993>

See also: “International Maritime Organisation recognition for IRNSS/NavIC,” *Indian Space Research Organisation (ISRO)*, <https://www.isro.gov.in/inter.html>

⁴ Kotak and Manoj, “Why India’s Re-election to the IMO Council is Significant”

⁵ ANI, “India elected again to International Maritime Organisation Council with highest votes,” 01 December 2023, *The Times of India*, <https://timesofindia.indiatimes.com/india/india-elected-again-to-international-maritime-organisation-council-with-highest-votes/articleshow/105663886.cms>

See also: PTI, “India re-elected to International Maritime Organisation Council with highest tally,” 02 December 2023, *The Hindu*, <https://www.thehindu.com/news/international/india-re-elected-to-international-maritime-organisation-council-with-highest-tally/article67597477.ece>

⁶ Ministry of Ports, Shipping and Waterways (Government of India), *Maritime India Vision 2030 (MIV 2030)*, 12 February 2021, 116, 138, 219, 250, 256, 282-283, 291, 295, <http://sagarmala.gov.in/sites/default/files/MIV%202030%20Report.pdf>

See also: Directorate General of Shipping (Ministry of Ports, Shipping and Waterways, Government of India), *Strategy Document: On the Implementation and Enforcement of Mandatory Instruments of the IMO Towards fulfilling India's Treaty Obligations*, 20 February 2024, 8-11, https://www.dgshipping.gov.in/writereaddata/News/202402221047535324756MSNotice08of2024onPromulgationofStrategyDocumentonImplementationofMandatoryInstrumentsunderIIIICodewithAnnexure_final_Copy.pdf

the IMO-LEG, and facilitate the larger promotion and advancement of Indian interests and views at IMO.⁷

Overview of IMO's Legal Committee (the IMO-LEG)

The IMO-LEG began in 1967 as an *ad hoc* Legal Committee established to address legal questions that arose in the aftermath of the MT *Torrey Canyon* oil spill (“*the first major oil spill in British and European waters*”).⁸ Subsequently, it was given *de jure* status and became a permanent subsidiary organ of the IMO Council.⁹

Within the wide ambit of the IMO's rulemaking/law-making role, the IMO-LEG is empowered to deal with any and all legal matters.¹⁰ These include, *inter alia*, issues of liability and compensation in the operation of ships (for example, damage, pollution, passenger claims, wreck removal, etc.), fair treatment of seafarers, and the suppression of unlawful activities at sea which affect navigational safety. It can also other duties as may be assigned to it by the IMO or by under any other international instrument that is accepted by the IMO.¹¹

Unfortunately, the organisation, functioning and interface mechanisms of an especially critical committee, namely the IMO-LEG, remain inadequately explored. This may be because the academic literature thereon is relatively sparse, and official documentation on rules, etc., is not easily available. Consequently, in the following sections, the functioning and interface mechanism(s) of the IMO-LEG is ‘unpacked’ by examining its foundational legal texts and other substantive and procedural provisions.

⁷ While this article focuses on India's engagement with the IMO and the IMO-LEG, the laws, procedures, and interfaces identified herein are equally relevant for any other State or stakeholder seeking to enhance engagement and/or influence at the IMO-LEG.

⁸ “Torrey Canyon oil spill: The Day the Sea Turned Black,” 17 March 2017, BBC, <https://www.bbc.com/news/uk-england-39223308>

See also: International Maritime Committee, *Torrey Canyon (Preliminary Report)*, <https://comitemaritime.org/wp-content/uploads/2018/06/TORREY-CANYON-1.pdf>

See also: Ved P Nanda, “The Torrey Canyon Disaster: Some Legal Aspects,” *Denver Law Review* 44, Issue 3 (January 1967), <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=3788&context=dlr>

⁹ Inter-Governmental Maritime Consultative Organisation (IMCO), *Resolution A.358(IX): Amendments to the IMCO Convention*, 14 November 1975, https://treaties.un.org/doc/source/docs/A_358_IX-E.pdf

See also: “Liability and Compensation,” IMO, <https://www.imo.org/en/ourwork/legal/pages/liabilityandcompensation.aspx>

¹⁰ Felicity Attard, “IMO's Contribution to International Law Regulating Maritime Security,” *Journal of Maritime Law & Commerce* 45, No 4 (October 2014): 485-493, 562, <https://files.pca-cpa.org/pcadocs/2019-28/Ukraine%20-%20Consolidated%20Legal%20authorities/UAL-95.pdf>

See also: Rosalie P Balkin, “The IMO and Global Ocean Governance: Past, Present, and Future,” in *The IMLI Treatise On Global Ocean Governance: Volume III: The IMO and Global Ocean Governance*, eds David Joseph Attard et al, Oxford University Press, July 2018, <https://opil.ouplaw.com/display/10.1093/law/9780198823957.001.0001/law-9780198823957-chapter-1>

See also: “International Legislation,” Directorate General of Shipping (India), https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap10

See also: Legal Committee (International Maritime Organisation), *List of Codes, Recommendations, Guidelines and other non-mandatory instruments related to the work of the Legal Committee*, LEG.2/2/Circ.2, 12 December 2011, https://drive.google.com/file/d/1fsd_xHm74PC51NHh8-kKOBN50MjFIuJ/view?usp=sharing

¹¹ “Legal Committee”, IMO, <https://www.imo.org/en/ourwork/legal/pages/legalcommittee.aspx>

See also: “Legal Committee (LEG),” IMO, <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/LEG-Default.aspx>

See also: “Structure of IMO,” IMO, <https://www.imo.org/en/about/pages/structure.aspx>

IMO-LEG: Foundational Texts

This article first examines The Convention on The International Maritime Organisation, 1948 ("IMO Convention") as a foundational text for the IMO-LEG. Article 2(b) of the IMO Convention specifies the legislative capacity of the IMO. The IMO-LEG itself is established under Article 11 and Part VIII (Articles 32-36).¹² Article 32 mandates that the IMO-LEG shall consist of all IMO Members. Article 34 lays out an obligation to submit drafts developed (of international conventions or amendments thereto) and reports to the IMO Council. Article 35 mandates, *inter alia*, that the IMO-LEG shall adopt its own rules of procedure, while Article 36 elaborates other rules and procedures that must be followed by the IMO-LEG in its functioning.

An important interface mechanism with the IMO-LEG is afforded by intergovernmental organisations and non-governmental international organisations, which play a significant role under the IMO Convention.¹³ Article 33 of the IMO Convention lays down certain duties of the IMO-LEG, and also mandates that "*upon request*" by the IMO Council or Assembly, the IMO-LEG will interface with "*other bodies*." (Of course, this interfacing will take the form of "*such close relationship...as may further the purposes of the [IMO]*.".) Article 33 is reproduced below:

"ARTICLE 33

- (a) *The Legal Committee shall consider any legal matters within the scope of the Organisation.*
- (b) *The Legal Committee shall take all necessary steps to perform any duties assigned to it by this Convention or by the Assembly or the Council, or any duty within the scope of this Article which may be assigned to it by or under any other international instrument and accepted by the Organisation.*
- (c) *Having regard to the provisions of Article 25, the Legal Committee, upon request by the Assembly or the Council or, if it deems such action useful in the interests of its own work, shall maintain such close relationship with other bodies as may further the purposes of the Organisation."*

Article 25, which is referred to in Article 33(c) above, further legitimises the relationship of the IMO-LEG with "*other bodies*." Separately and in broader terms, Article 62 mandates that the IMO "*may, on matters within its scope, make suitable arrangements for consultation and cooperation with non-governmental international organisations.*"

Thus, the potential of intergovernmental organisations and non-governmental international organisations as ways in which to engage and influence the IMO-LEG can be clearly seen in the

¹² "Convention on The International Maritime Organisation, 1948," *Sustainableoman*, <https://www.sustainableoman.com/wp-content/uploads/2016/06/1948-Convention-on-the-International-Maritime-Organization-pdf.pdf>

See also: "Convention on The International Maritime Organisation, done at Geneva on 6 March 1948," *United Nations Treaty Collection*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201276/volume-1276-I-4214-English.pdf>

¹³ "Relations with Intergovernmental Organizations," *IMO*, <https://www.imo.org/en/OurWork/ERO/Pages/IGOs.aspx>

See also: "NGOs," *IMO*, <https://www.imo.org/en/OurWork/ERO/Pages/NGOs.aspx>

IMO Convention. This potential is reflected in another foundational legal text of the IMO-LEG, namely, its “Rules of Procedure”.¹⁴

An observation by Professor Nicholas Gaskell (Emeritus Professor of Maritime and Commercial Law at the University of Queensland), who has attended many meetings of the IMO-LEG over the years, is especially relevant:

“In practice, it is very rare for anybody to make reference to the Rules of Procedure, i.e., to take technical procedural points. Many delegates are unfamiliar with the Rules of Procedure and it is often left to experienced delegates to assist [IMO-LEG] if an issue arises.”¹⁵

Nevertheless, Rule 35 categorically mandates that the Chair of the IMO-LEG shall “ensure observance” of the Rules of Procedure. Accordingly, and consequently, these rules remain important and ought to be factored into analyses undertaken by Indian delegates/attendees or any other participant(s) seeking to put forth their views at IMO-LEG. They are examined below.

Like the IMO Convention, the IMO-LEG’s Rules of Procedure also make allowance for the participation of intergovernmental and non-governmental international organisations in the work of the IMO-LEG. Rules 5(3)-(4), on ‘Observers’, are reproduced below:

“(3) The Secretary-General shall invite to be represented by observers at each session of the Committee at which matters of direct concern to them are on the agenda:

- 1. other intergovernmental organisations with which an agreement or special arrangement has been made; and*
- 2. non-governmental international organisations with which the Organisation has established relationships in accordance with the rules governing consultations with such organisations.*

(4) Upon invitation by the Chair and with the consent of the Committee concerned, such observers may participate without vote on matters of direct concern to them.”¹⁶

It can be seen how Rule 5 makes provision(s) for representation of and consultation with intergovernmental organisations and non-governmental international organisations. Rule 47 (entitled, ‘*Invitation of Experts*’) similarly enables the IMO-LEG to “*invite [to an IMO-LEG meeting] any person whose expertise it may consider useful for its work.*”¹⁷

¹⁴ Legal Committee (International Maritime Organisation), *Rules of Procedure of the Legal Committee*, <https://drive.google.com/file/d/1qMIIQKWEU1ztOFyuwbNrOnRmS9F-xbYO/view?usp=sharing>

See also: Legal Committee (International Maritime Organisation), *Report of the Legal Committee on the work of its 104th Session*, LEG 104/15, 10 May 2017, 18, http://www.imala.co/sites/default/files/leg_104-15_-_report_of_the_legal_committee_on_the_work_of_its_104th_session_secretariat.pdf

¹⁵ Nicholas Gaskell, “Decision Making and The Legal Committee of The International Maritime Organisation,” *International Journal of Marine and Coastal Law* 18, No 2 (June 2003): 155-214, 159.

¹⁶ Legal Committee (International Maritime Organisation), *Rules of Procedure*, 2.

¹⁷ *Ibid*, 8.

Thus, it can be seen that despite the absence of voting rights, such representation and consultation provide significant opportunities to engage and influence the IMO-LEG and its rulemaking functions.

Openness and Transparency

The next segment of this article examines issues relating to the openness and transparency of the IMO-LEG meetings or sessions. Here, Rule 10 (entitled “*Publicity*”), which is reproduced below, leaves much to be desired:

“Rule 10 - Publicity”

1. *The Committee may decide to hold meetings in private or public. In the absence of a decision to hold meetings in public, they shall be held in private.*
2. *Notwithstanding the aforesaid, and in accordance with the Guidelines for media access to meetings of Committees and their subsidiary bodies approved by the Council, the media may attend meetings of the Committee unless the Committee decides otherwise. Meetings of working and drafting groups established by the Committee shall be held in private.”¹⁸*

It is quite evident that Rule 10 does not lay down clear, objective criteria for when exactly a meeting *may* be held in private, or when it *must* be held in public. Instead, the language of Rule 10 appears to encourage “*private*” meetings, and thus hinders transparency and accountability. This is particularly true for meetings of working and drafting groups, and it is unclear why such meetings have been made unavailable for public viewing under the Rules of Procedure. A 2018 report on IMO governance thus found:

“While audio recordings of committee and subcommittee meetings are available to participants and observers, they are not made accessible to the public. This makes it hard in practice for the public to understand the arguments and policy positions taken by their national representatives, because written reports do not normally attribute statements or policy positions to delegates. The terms of reference for working groups and correspondence groups are not routinely published. There is also no available information on the procedures for nominating and electing chairs and vice-chairs or appointing secretaries to committees and groups.”¹⁹

This report also found that a similar spirit of exclusion prevails in IMO’s guidelines (including media accreditation procedures) governing media reporting of IMO proceeding(s).²⁰ It noted:

¹⁸ *Ibid*, 3.

¹⁹ Lucas Amin et al, *Governance at the International Maritime Organisation: The Case for Reform* (Berlin: Transparency International, 2018), 20, https://images.transparencycdn.org/images/2018_Report_GovernanceatIMO_English.pdf

²⁰ *Ibid*.

See also: Legal Committee (International Maritime Organisation), *Guidelines for Media Access to Meetings of Committees and their Subsidiary Bodies*, 12 July 2004, <https://drive.google.com/file/d/1ZvH0V-LXQYlnZOAYC4WFTmms8eHQVe0j/view?usp=sharing>

See also: Maritime Safety Committee (International Maritime Organisation), *Application of the Committee’s Guidelines: Media Accreditation System and Related Amendments to Rule 8 (Publicity) of the Rules of Procedure of the Committee*, MSC 79/19/1/Add.1, 22 September 2004, https://drive.google.com/file/d/1LP5QQ_r4ucAg35itEiJ-1fEPN0qkSU8/view?usp=sharing

“There are reporting restrictions in place across the IMO: the Assembly, the Council, the committees, and their subsidiary bodies. Journalists must be accredited to report on the proceedings of these IMO organs. However, press accreditation is provided by the IMO on a discretionary basis. The terms and conditions of media accreditation state that members of the media can be excluded from IMO meetings if “their presence would have a negative impact on the efficient and effective conduct of the Committee’s business.” Journalists who are accredited must also “report accurately the outcome of discussions” and refrain from naming individual speakers without obtaining their prior consent, according to the terms and conditions.

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. These rules are enforced in practice.”²¹

The issue of access to information and transparency was considered by the IMO Council at its 127th session in 2022. The official summary of this session declares:

“Reform – Live Streaming of IMO Meetings

The Working Group discussed measures to enhance access to information and transparency, including live streaming of IMO meetings. The Council agreed in principle, that, some meetings, or parts of meetings, could be live streamed to the public, and agreed that clear criteria and procedures should be developed for the selection of such meetings or parts of meetings to be live streamed.”²²

The IMO Assembly subsequently did consider this matter but appears to have taken a limited view thereon. The relevant extract from the proceedings’ summary is reproduced below (emphasis added):

“The Assembly agreed to live-stream to the public its public plenary meetings, commencing from the start of the current session, with the following exceptions: any time a vote is cast (not limited to voting by secret ballot); any matter related to the appointment of the Secretary-General; and any other discussion the Assembly may decide should be in a private meeting.”²³

It may be reasonably concluded that the issue of transparency in proceeding(s) of and decision-making at IMO-LEG remains unresolved and insufficiently addressed.

Agenda Setting

See also: Maritime Safety Committee (International Maritime Organisation), *Application of the Committee’s Guidelines: News Media Attendance at IMO Meetings and New Reporting Procedure — Outcome of C 92 and FAL 31*, MSC 79/19/1, 26 August 2004, <https://drive.google.com/file/d/14HFipTAHd7OEkYima1FkApjofyT-Cab/view?usp=sharing>

See also: “Terms and Conditions,” IMO,

<https://www.imo.org/en/mediacentre/imomediaaccreditation/pages/termsandconditions.aspx>

²¹ Lucas Amin et al, *Governance at the International Maritime Organisation*, 03, 20.

²² “Council 127th Session (C 127), 11 to 15 July 2022 (Remote Session),” IMO,

<https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/C127Summary.aspx>

²³ “IMO Assembly, 33rd Session, 27 November - 06 December 2023,” IMO,

<https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/IMO-Assembly-33rd-session,-27-November---6-December-2023.aspx>

The rules for agenda-setting (a crucial functional step in any international organisation) at the IMO-LEG²⁴ offer a clear potential that could well be leveraged as a way of setting the agenda for discussion(s) at the IMO-LEG. Rule 14, for instance, stipulates which item(s) will be included in the provisional agenda of each session of IMO-LEG. Since this rule fortunately has a wide scope, it can effectively ensure discussions on any issue(s) that may need to be addressed. Rule 16 further provides for the inclusion of a supplementary provisional agenda “*in circumstances of urgency.*”

UNCLOS 1982 as a Foundational Text

In considering the role of The United Nations Convention on The Law of The Sea, 1982 (“UNCLOS”) as a foundational text for IMO-LEG, the IMO-LEG appears to play a significant role(s) in at least two settings. The first is in terms of drawing up and maintaining a ‘list of experts’ under Article 2(2), Annex VIII of UNCLOS relating to matters of ‘Special Arbitration.’ The second, and more important one is in assisting the IMO in the latter’s functions as the ‘competent international organisation’ under UNCLOS. For instance, the IMO-LEG recently played a role in the preparation of guidelines (for further consideration by a Joint ILO-IMO Tripartite Working Group) on the fair treatment of seafarers detained on suspicion of having committed maritime crimes.²⁵

The IMO itself has reiterated on multiple occasions:

“Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of Annex VIII), several provisions in the Convention refer to the “competent international organization” to adopt international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping. In such cases the expression “competent international organization”, when used in the singular in UNCLOS, applies exclusively to IMO, bearing in mind the global mandate of the Organization as a specialised agency within the United Nations system established by the Convention on the International Maritime Organization (the “IMO Convention”).”²⁶

²⁴ Sojeong Kim, “Agenda-setting in International Organizations: A Case Study of Compact Cities” (Master’s thesis, KDI School of Public Policy and Management, 2016), 1, 14-19, <https://archives.kdischool.ac.kr/bitstream/11125/31903/1/Agenda-setting%20in%20international%20organizations.pdf>

See also: Sebastiaan Princen, *Agenda-Setting in the European Union* (UK: Palgrave Macmillan, 2009), 1-3, 19-30, <http://ndl.ethernet.edu.et/bitstream/123456789/59599/1/32.pdf.pdf>

See also: Laura Chaqués-Bonafont, “The Agenda-Setting Capacity of Global Networks,” https://repositori.upf.edu/bitstream/handle/10230/46601/Chiques_ohgpta_agen.pdf?sequence=1&isAllowed=y

See also: Hannah Murphy-Gregory, “Non-governmental Organisations, Agenda-setting and the World Trade Organisation” (PhD thesis, University of Tasmania, 2009), https://figshare.utas.edu.au/articles/thesis/Non-governmental_organisations_agenda-setting_and_the_World_Trade_Organisation/23230835

²⁵ United Nations General Assembly, *Oceans and The Law of The Sea: Report of The Secretary-General*, A/78/339, 01 September 2023, 5-6, <https://undocs.org/en/A/78/339>

²⁶ Secretary-General (International Maritime Organisation), *Contribution of the IMO to the Secretary-General’s Report on Oceans and The Law of the Sea, 2009*, 1, https://www.un.org/depts/los/general_assembly/contributions_2009/International%20Maritime%20Organization.pdf

In the succeeding section, this article continues the examination of the IMO-LEG's functioning and the interface mechanisms under its procedural texts.

See also: Secretary-General (International Maritime Organisation), *Contribution of the IMO to the Secretary-General's Report on Oceans and The Law of the Sea*, 2004, 1,
https://www.un.org/depts/los/general_assembly/contributions2004/IMO2004.pdf

The IMO-LEG: Procedural Texts

Broadly speaking, the functioning of the IMO-LEG (till 2029) is expected to be guided by the IMO's Strategic Plan for 2024 - 2029.²⁷ There are, however, indications that despite the presence of elaborate Rules of Procedure (including on matters of voting), the practical functioning of IMO-LEG is far from rigid. In this context, Professor Gaskell, a regular attendee at meetings of the IMO-LEG, notes:

*"The formal sessions of negotiating committees [such as IMO-LEG] produce debate and decisions, but the general IMO approach is to proceed by consensus. That is, the Chairman does not normally call for formal votes on a particular proposal. Delegations are asked to express a view upon it. At the end of a debate, the Chairman will sum what he considers to be the prevailing mood. If there is a clear or overwhelming majority in favour, he will normally conclude that the "sense" of the discussion was that the proposal be accepted."*²⁸

The professor's view notwithstanding, the IMO-LEG, in October 2023, promulgated a document entitled, "Organisation and Method of Work of The Legal Committee" and directed that it "should be observed strictly".²⁹ The following extracts therefrom throw light on the functioning of the IMO-LEG:

- "The document is applicable to the work of the Committee as well as to working groups, drafting groups and correspondence groups. The Chairs of the Committee and of working groups, drafting groups and correspondence groups should make all efforts to ensure strict compliance with the document."³⁰
- "The Committee shall function as a policymaking body and its working, drafting or other groups as purely technical bodies."³¹
- "The Committee shall regularly review the status of all conventions, protocols and other major instruments under its purview."³²
- "The Committee, in determining the acceptance of an output and its inclusion on its biennial or post-biennial agenda, shall at all times be guided by the Strategic Plan, and shall, in particular, take due account of:
 - the specific necessity for an output to be started during the current biennium;

²⁷ "IMO Assembly, 33rd session, 27 November - 6 December 2023," IMO, <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/IMO-Assembly,-33rd-session,-27-November---6-December-2023-.aspx>

See also: "IMO Assembly Adopts Budget, Strategic Plan," 08 December 2023, IMO, <https://www.imo.org/en/MediaCentre/PressBriefings/pages/IMO-Assembly-adopts-budget,-strategic-plan.aspx>

See also: The Assembly (International Maritime Organisation), *Application of the Strategic Plan of the Organisation*, Resolution A.1111(30), 08 December 2017, [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1111\(30\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1111(30).pdf)

²⁸ Nicholas Gaskell, "Decision Making and The Legal Committee," 186.

²⁹ Legal Committee (International Maritime Organisation), *Organisation and Method of Work of The Legal Committee*, LEG.1/Circ.14, 23 October 2023, para 8, 14, <https://drive.google.com/file/d/1CAEU6B5EAUmFuAdqwgKInZWJfJWlUhZj/view?usp=sharing>

³⁰ *Ibid*, para 1.3, 3.

³¹ *Ibid*, para 3.1, 4.

³² *Ibid*, para 3.4, 4.

- *the potential impact that the inclusion of an output on the biennial agenda may have on the timely delivery of outputs during the biennium;*
- *the potential impact that the inclusion of an output may have on the workload of the Committee;*
- *the personnel and budgetary resources available;*
- *the potential adverse impacts on the ability of the Organization to meet its objectives if a decision is made not to accept a proposal for inclusion of an output in the biennial or post-biennial agendas; and*
- *the potential impact that the inclusion of an output may have on small island developing States (SIDS) and least developed countries (LDCs).³³*
- *“Proposals for the inclusion of outputs submitted to the Committee by non-governmental organizations shall be co-sponsored by Governments.”³⁴ (Paragraph 4.7 details the information and documentation that must accompany proposals submitted to IMO-LEG, and paragraph 4.11 defines the criteria that must be satisfied before a proposal can be accepted by the IMO-LEG. Paragraphs 6.1-6.12 provide elaborate instructions on preparation and submission of documents to the IMO-LEG, including file format, font size and email address for correspondence.)*
- *“In respect of subjects requiring research, contributions from other organizations and appropriate entities should be encouraged and taken into account. Exchange of information on technological development should be encouraged.”³⁵*
- *“In the context of resolution A.911(22) on Uniform wording for referencing IMO instruments, the Committee should be guided in its work, as appropriate, by the guidelines annexed thereto.”³⁶ (These guidelines are a source of guidance and recommendations on words and expressions that should be used in submissions or proposals, although the resolution itself is not directed explicitly at submissions or proposals to IMO-LEG. The resolution seeks to “provide a standard text for inclusion in new IMO conventions and other mandatory instruments.... in order to ensure that, where reference is made to IMO and other instruments, a uniform wording is used in order to indicate clearly the legal status of the instrument in question after the IMO body concerned has decided on such a status.”)*

Another significant aspect of this document are its provisions concerning “*working arrangements*” for Working Groups (paragraphs 5.1-5.6), Drafting Groups (paragraph 5.7) and Correspondence Groups (paragraphs 5.8-5.17). Correspondence Groups in particular offer an interesting interface mechanism:

- *“Participation in correspondence groups is open to all delegations (Governments and organizations) which can provide the necessary expertise on a timely basis or which have a particular interest in the issue under consideration. Any Member Government or international organization can join in the work of the*

³³ *Ibid*, para 4.5, 5.

³⁴ *Ibid*, para 4.18, 5.

³⁵ *Ibid*, para 7.4, 14.

³⁶ *Ibid*, para 7.5, 14.

See also: The Assembly (International Maritime Organisation), *Uniform Wording for Referencing IMO Instruments*, A 22/Res.911, 22 January 2002,
[https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.911\(22\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.911(22).pdf)

correspondence group subsequent to the establishment of the group and any contribution should be accepted at any stage of the work of the group.”³⁷

- “When establishing a correspondence group, a “lead country”, “lead organisation” or the Secretariat should be designated to coordinate the work of the group.”³⁸

It is thus evident that the IMO-LEG’s foundational as well as procedural law provides wide-ranging opportunities to engage and influence the Legal Committee and its functioning. It is also seen that intergovernmental and non-governmental organisations offer particularly useful ways to undertake such engagement and influence. In the final section below, this analysis is concluded, and one recommendation is offered — for those seeking to engage.

Conclusion and Recommendations

Professor Gaskell has made the following relevant observation on the importance of the work (particularly the legal drafting work) that takes place in IMO-LEG:

“Although the Legal Committee may take a variety of decisions, the ones of most interest here are those concerning the drafting of international maritime law conventions. Whatever decisions are taken by the Legal Committee, however, they are mostly irrelevant unless later agreed at a diplomatic conference.... A general problem about international negotiations is the failure of some states to engage in the drafting and decision-making process at an early enough stage to have a significant influence. It is not enough to turn up at the diplomatic conference and hope that radical changes can then be made to any draft text. At this stage, drafting has advanced too far and other delegations which have put in years of work are reluctant to see the undoing of delicate compromises, whereby the change to an apparently small provision may have the effect of altering the balance of the text where many provisions are interrelated.”³⁹

It is thus clear that even before IMO’s diplomatic conferences (and also as part of preparation for such conferences), very close attention should be paid to the functioning and interface mechanism(s) of IMO-LEG, and fuller engagement should be sought therewith. The rules pertaining to IMO-LEG’s engagement with “other bodies”, “non-governmental international organizations” and “intergovernmental organisations” have already been examined earlier in this article. They demonstrate that these entities can, indeed, be additional vectors for Indian views and interests at IMO, and their potential should not be underestimated. Dr Md Saiful Karim, Professor of Law, and leader of the Ocean Governance Research Group at Queensland University of Technology, has commented on the role played by international non-governmental organisations at IMO, opining that:

“International non-governmental organisations (INGOs) play a significant a role in the IMO law-making process despite not having any voting rights in IMO organs.... INGOs represent a variety of interests....including different types of shipping interests (for example ship-owners and operators), cargo interests (for example cargo owners and charterers), seafarers and other labour organisations, environmental

³⁷ Legal Committee, *Organisation and Method of Work*, para 5.12, 9.

³⁸ *Ibid*, para 5.13, 9.

³⁹ Nicholas Gaskell, “Decision Making and The Legal Committee,” 156, 212.

organisations, research organisations, training organisations, classification societies, organisations representing marine-related industries, protection and indemnity insurance clubs and other marine insurers.....Non-governmental organisations do not just influence the law-making process merely by their submissions and participation in the meetings of MEPC and other IMO organs. Their main influence comes via IMO Member States who also share similar interests.”⁴⁰

Thus, India must identify such “*other bodies*” and “*non-governmental international organisations*” (referred to in articles 25, 33 and 62 of IMO Convention) that can put forward views and interests of Indian stakeholders at the IMO-LEG. Ministries that deal extensively with the IMO, such as the Ministry of Ports, Shipping and Waterways (MoPSW), and the Ministry of Environment, Forests, and Climate Change (MoEFCC), should take the lead in identifying such organisations and entities. A starting point for this identification is the lists provided online by IMO (of intergovernmental and non-governmental organisations that interface with the IMO in consultative and cooperative capacities).⁴¹

The Ministry of External Affairs (Government of India) needs to facilitate the attainment of ‘consultative status’ for specific, identified organisations, which can then put forward at IMO-LEG the views and interests of Indian stakeholders and market(s). Separately, the formulation of official Indian positions can also be guided by (and possibly even coordinated-with) the perspectives offered by such bodies and organisations at the IMO-LEG. In this context, the IMO’s ‘*Rules and Guidelines for Consultative Status of Non-governmental International Organisations with The International Maritime Organisation*’ may be seen to be more permissive than restrictive.⁴² For instance, Rule 6 of the aforesaid ‘Rules and Guidelines’ stipulates that even where a non-governmental organisation is not “*truly international*”, consultative status may still be granted on a provisional basis.

In conclusion, the importance of fuller engagement at IMO-LEG, including through organisations outside government, is reiterated. Such engagement will enable India to exercise constructive influence over rulemaking at IMO and, as stated earlier, help in the larger promotion and advancement of Indian views and interests.

About the Author

⁴⁰ Md Saiful Karim, *Prevention of Pollution of the Marine Environment from Vessels: The Potential and Limits of the International Maritime Organisation* (Switzerland, Springer, 2015), 20.

⁴¹ “Intergovernmental Organizations which have Concluded Agreements of Cooperation with IMO,” IMO, <https://www.imo.org/en/OurWork/ERO/Pages/IGOsWithObserverStatus.aspx>

See also: “Non-governmental International Organisations which have been granted Consultative Status with IMO,” IMO, <https://www.imo.org/en/OurWork/ERO/Pages/NGOsInConsultativeStatus.aspx>

⁴² The Assembly (International Maritime Organisation), *Rules and Guidelines for Consultative Status of Non-governmental International Organisations with The International Maritime Organisation*, A.31/Res.1144, 10 January 2020, [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1144\(31\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1144(31).pdf)

See also: The Assembly (Inter-Governmental Maritime Consultative Organisation), *Approval of the Rules for the Admission to Consultative Status of Non-governmental International Organisations*, Resolution A.31(II), 13 April 1961, [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.31\(II\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.31(II).pdf)

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