



POLICY BRIEF

DEEPENING KENYA'S ENGAGEMENT IN DECARBONIZING INTERNATIONAL MARITIME SHIPPING

Executive Summary

The International Maritime Organisation (IMO) is a dedicated United Nations (UN) specialized agency responsible for maritime safety, security and environmental performance of international shipping.¹ It has adopted multiple conventions to protect the marine environment. The International Convention for the Prevention of Pollution from Ships (MARPOL) is the principal international legal instrument for maritime environmental protection. Annex VI of MARPOL provides for regulatory measures for reducing environmental pollution and decarbonizing the maritime shipping industry.

The IMO is a technical organization and most of its work is carried out in a number of committees and sub-committees. Marine environmental policy issues are addressed by the Marine Environment Protection Committee (MEPC). While decision-making in the MEPC is intergovernmental, participation is open to all Member Governments and Non-Governmental Organisations (NGOs) with consultative status.²

Kenya is a member of the IMO Council – the executive organ responsible for supervising the work of the Organization. The country has taken the lead towards reducing GHG emissions from the shipping sector through several measures including hosting the Maritime Technology Cooperation Centre (MTCC) for Africa. MTCC-Africa is part of the Global Network of Centres promoting the uptake of low carbon technologies and energy efficient practices in the African maritime shipping industry. It is hosted by Jomo Kenyatta University of Agriculture and Technology in partnership with Kenya Maritime Authority and Kenya Ports Authority. In spite of its special position within the IMO, Kenya has historically tended to keep a relatively low profile in IMO work. The Kenyan IMO delegation is usually small

and sponsors a few submissions to MEPC meetings.³ This sets the country apart from other IMO member countries with maritime interests, most of which send large national delegations and make frequent submissions to the MEPC. The influence played by a handful of countries in IMO decision-making process has been a matter of great concern. It is against this backdrop that the Institute for Law and Environmental Governance (ILEG) organized a dialogue forum to explore Kenya's environmental maritime governance in relation to its engagement in IMO policy making with a view to strengthen the country's maritime governance capacity and international influence.

This policy brief summarises key points and recommendations gathered from the dialogue forum held at Castle Royal Hotel, Mombasa on 27th June 2024. The forum brought together policy-makers, NGOs and experts in blue economy and maritime affairs to delve into the depths of specific aspects, bring out the challenges, and co-design solutions. Among the pertinent issues that arose from the discussions include limited knowledge and public awareness of environmental maritime governance issues; low level engagement in the IMO meetings and negotiations; insufficient political, economic and diplomatic clout to ensure favourable outcomes in the IMO negotiations; lack of diversity in the composition of national delegation; and inconsistent approach in the composition of national delegation in IMO meetings and negotiations in London. To systematically strengthen Kenya's maritime governance capacity and international influence, the following measures are recommended: (i) promoting public awareness and learning on environmental maritime issues, (ii) building high-level engagement in IMO meetings and negotiations, (iii) establishing and strengthening regional collaboration with developing countries on environmental maritime issues, (iv) promoting greater stakeholder inclusivity in IMO policy-making processes, and (v) maintaining high-level delegation continuity in the IMO negotiations.

¹ <https://www.imo.org/en/About/Pages/Default.aspx> (Accessed on July 8, 2024)

² Psaraftis, H.N., Kontovas, C.A. Influence and transparency at the IMO: the name of the game. *Maritime Economics and Logistics* 22, 151–172 (2020). <https://doi.org/10.1057/s41278-020-00149-4>

³ Psaraftis, H. N. & Kontovas, C. A. (2021). Decarbonization of Maritime Transport: Is There Light at the End of the Tunnel? *Sustainability*. 13(1):237. <https://doi.org/10.3390/su13010237>

Background

International maritime shipping is a key sector for the global economy. It accounts for 80% of global trade by volume, and 70% in value terms.⁴ However, the sector is associated with many environmental challenges including emissions of GHGs (e.g., carbon dioxide and methane) and air pollutants (e.g., sulphur dioxide, nitrogen oxides, unburned hydrocarbons and particulate matter), spread of invasive species, underwater noise, and accidental oil spills.

The International maritime shipping relies on ageing world fleet that runs almost entirely on degraded residue heavy fuel oil – a thick sludge that remains at the end of the oil refining process – which causes poor air quality and global warming. Currently, the maritime transport sector accounts for 3% of the of global GHG emissions.⁵ In the absence of binding and ambitious regulatory measures to bring shipping on a low-emission trajectory, the maritime emissions shipping share of global emissions is expected to soar to 17% by 2050.⁶

The Paris Climate Agreement of the UNFCCC established a goal to pursue efforts to keep the increase in average global temperature below 2°C – with efforts to limit it below 1.5°C – compared to 1990. Achieving this will require net-zero emissions across all economic sectors. However, the international shipping is excluded from the UNFCCC regulatory framework due to its unique nature. It takes place mostly on high seas, making it difficult to allocate global emissions for mobile ships to national emission inventories. Moreover, ship owners register vessels in jurisdictions that promise the least expense and oversight, making it harder for countries to take meaningful action on their own. Consequently, climate change mitigation for international shipping is vested in the International Maritime Organisation (IMO) – a dedicated UN specialized agency responsible for maritime safety and security and environmental performance of international shipping.⁷

Currently, IMO has 176 Member States and 3 associate members.⁸ Several NGOs with consultative status represent shipowners' interests, shipping-related associations, environmental organizations, as well as academic and professional institutions.⁹ The IMO is a technical organization and most of its work is carried out in a number of committees and sub-committees. Marine environmental policy issues are addressed by the MEPC. Such issues include the control and prevention of ship-source pollution including oil, chemicals carried in bulk, sewage, garbage and emissions from ships. While decision-making in the MEPC is intergovernmental, participation is open to all Member States and NGOs with consultative status.¹⁰

Despite the diverse composition of MEPC, the level of engagement in IMO's regulatory development of African countries is limited and not as strong as that in the UNFCCC negotiations. A recent study shows that 20% of delegations represented 90% of the submissions to the MEPC from 1998 to 2019, and 74 out of 174 IMO Member States did not submit any proposals during the same period.¹¹

Kenya is a member of the IMO Council – the executive organ responsible for supervising the work of the Organization. The country has also taken the lead towards reducing shipping GHG emissions by hosting the Maritime Technology Cooperation Centre (MTCC) Africa. In spite of its special position within the IMO, and strong support for the introduction of a levy on GHGs, Kenya has historically tended to keep a relatively low profile in IMO work. The Kenyan IMO delegation is usually small and sponsors a few submissions to MEPC meetings.¹² This sets the country apart from other IMO member countries with maritime interests, most of which send large national delegations and make frequent submissions to MEPC. The influence played by a handful of countries in IMO decision-making has been a matter of great concern. Corporate lobbying occurs regularly at the IMO, and often takes place within national IMO delegations. Shipping-related associations and environmental NGOs often provide technical and diplomatic inputs to the country's IMO delegations prior to the IMO meetings.¹³

Decarbonizing Maritime Shipping

The IMO has adopted multiple conventions to address sectoral issues and complex maritime problems. The International Convention for the Prevention of Pollution from Ships (MARPOL) is the principal international legal instrument for maritime environmental protection. Annex VI of MARPOL provides for regulatory measures for reducing environmental pollution and decarbonizing the maritime shipping industry.

Following the landmark Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC), the IMO adopted an Initial GHG Strategy in 2018 with targets for decarbonizing the shipping industry. The strategy expressed the goal of halving emissions by 2050 relative to 2008 through the implementation of technical and operational measures. However, it was the 80th Session of MEPC (i.e. MEPC 80) in London in July 2023 that set the course, speed and clear signals required to decarbonize international maritime shipping. The MEPC 80 was a milestone in the ongoing global efforts to align the maritime transport sector to the larger climate change agenda under the Paris Agreement of the UNFCCC. It adopted a new

4 UNCTAD (United Nations Conference on Trade and Development). 2018. 50 Years of Review of Maritime Transport, 1968–2018: Reflecting on the past, exploring the future. https://unctad.org/system/files/official-document/dtl2018d1_en.pdf

5 <https://climate.ec.europa.eu/eu-action/transport-emissions/reducing-emissions-transport-en> (Accessed on August 2, 2023)

6 Fourth IMO GHG Study 2020

7 <https://www.imo.org/en/About/Pages/Default.aspx> (Accessed on July 8, 2024)

8 <https://www.imo.org/en/About/Membership/Pages/Default.aspx>

9 Psarrafis, H.N., Kontovas, C.A. Influence and transparency at the IMO: the name of the game. *Maritime Economics and Logistics* 22, 151–172 (2020). <https://doi.org/10.1057/s41278-020-00149-4>

10 Psarrafis, H.N., Kontovas, C.A. Influence and transparency at the IMO: the name of the game. *Maritime Economics and Logistics* 22, 151–172 (2020). <https://doi.org/10.1057/s41278-020-00149-4>

11 Baumler, R., Arce, M.C., & Pazaver, A. (2021). Quantification of influence and interest at IMO in maritime safety and human element matters, *Marine Policy*, 133, 104746

12 Psarrafis, H. N. & Kontovas, C. A. (2021). Decarbonization of Maritime Transport: Is There Light at the End of the Tunnel? *Sustainability*, 13(1):237. <https://doi.org/10.3390/su13010237>

13 Hendriksen, C. (2020). *Inside the Blue Box: Explaining Industry Influence in the International Maritime Organization*. Copenhagen: Copenhagen Business School

strategy on the reduction of GHG emissions, signalling a shift towards net-zero shipping. Specifically, the strategy sets a decarbonization target for 2050 and intermediate reduction targets for 2030 and 2040, along with the target for 2030 of a minimum of 5% uptake of zero or near-zero GHG technologies and fuels.¹⁴

The MEPC 80 agreed in principle on a basket of regulatory measures comprising of a technical element and an economic element, entering into force in 2027. The technical element includes a goal-based marine fuel standard regulating the phased reduction of marine's fuel GHG intensity towards the 2050 goal. The economic element, on the other hand, relates to maritime GHG emission pricing mechanism. To progress the work on regulations, the 81st Session of MEPC (MEPC 81) held in March 2024 agreed on a draft outline of an "IMO net-zero framework" with a list of regulations under MARPOL to be amended and adopted to allow for a new global fuel standard and a global pricing mechanism for maritime GHG emission abatement. In addition to progress on the legal framework, MEPC agreed on a comprehensive impact assessment on the impact of the proposed technical and economic measures on Member States to be finalized and submitted to the 82nd Session of MEPC (MEPC 82) which is due in October 2024.

The IMO net-zero framework and GHG emission pricing mechanism will have significant technical, operational and commercial implications for international shipping. Approximately, up to US\$1.9 trillion, will be required by 2050 to deploy zero carbon fuels and technologies and put in place new port infrastructure to accommodate newbuilt ships.¹⁵ This will disproportionately affect developing countries, including least developing countries and small island States that rely heavily on maritime transport. However, a carbon price on GHG emissions from shipping, currently under consideration at the IMO as part of mid-term measures, could generate funds to scale up decarbonization efforts and provide support towards an equitable and just transition to low-carbon shipping.

The IMO GHG reduction strategy and related regulatory measures are guided by several principles including (i) non-discriminatory regulation of all ships in international trade irrespective of flag or ownership, (ii) No More Favourable Treatment (NMFT), and (iii) Common but Differentiated Responsibilities and Respective Capabilities (CBDRRC). While operationalising non-discrimination and NMFT principles side-by-side with CBDRRC is challenging, they could be reconciled by preserving equal treatment on countries' obligations of a regulation while providing financial, technological and capacity-development assistance to developing countries.

Kenya's Participation in IMO's Meetings

The MEPC meetings of the IMO provide a key platform for multilateral negotiations and decisions on environmental maritime policy issues. In such negotiations, parties are formally equal. However, in practice, states are highly unequal in their capacity to participate in and influence multilateral negotiations. The size and composition of national delegations influence the country's negotiation capacity.¹⁶ While some countries participate in the negotiations with hundreds of delegates, others have small delegations. Countries with larger delegations have greater capacity to prepare and advocate for their positions.¹⁷ Such countries have more legal, scientific, or diplomatic expertise, can attend multiple and parallel meetings, participate in side events, and are generally better equipped to deal with the exhaustion of negotiations that can extend into late hours.¹⁸

Kenya's delegation to the IMO meetings are generally drawn from national government institutions, such as the Energy and Petroleum Regulatory Commission, Kenya High Commission to the UK, Kenya Maritime Authority, Kenya Ports Authority, Ministry of Transport and Infrastructure, MTCC-Africa, National Environment Management Authority, and the State Department for Maritime and Shipping Affairs. In contrast to many European and Asian countries which send large national delegations to MEPC meetings, Kenya's delegations is usually small, with no representation from NGOs and the private sector. Few attempts have been made to enlist the support of NGOs, the private sector, think tanks or other experts to tap into relevant scientific or technical expertise.

Moreover, Kenya significantly alters its delegation size and composition across different IMO meetings. Many delegates have participated only in one or a few MEPC meetings, suggesting lack of continuity in the country's delegation over time. Continuity allows the delegates to specialize in different thematic sessions and follow them in parallel.¹⁹ Experienced delegates are more familiar with the subject and process, and are therefore better able to actively engage and make their voice heard.

Coalitions are central to multilateral negotiations and decisions on environmental policy issues. Some coalitions emerge out of existing regional co-operation (e.g., African Group of Negotiators), and at specific time in the negotiations especially when critical policy issues on the agenda reflect developed versus developing country concerns, and conflicting industrial versus environmental interests.²⁰ Kenya

¹⁴ <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/MEPC-80.aspx> Accessed on 19 February 2024

¹⁵ Baresic, D., Rojon, I., Shaw, A., Rehmatulla, N. (2022). Closing the Gap: An Overview of the Policy Options to Close the Competitiveness Gap and Enable an Equitable Zero-Emission Fuel Transition in Shipping. Prepared by UMAS, January 2022, London. P.22

¹⁶ Klöck, C., & Castro, P. (2022). Compensating for small delegation size in environmental negotiations: The role of external experts, experience, and coherence at the UNFCCC. Paper Presented at the 2022 Toronto Conference on Earth System Governance

¹⁷ Ayse Kaya, Lynne Steuerle Schofield, Which Countries Send More Delegates to Climate Change Conferences? Analysis of UNFCCC COPs, 1995–2015, *Foreign Policy Analysis*, Volume 16, Issue 3, July 2020, Pages 478–491, <https://doi.org/10.1093/fpa/orz031>

¹⁸ Ibid

¹⁹ Danielle Falzon, The Ideal Delegation: How Institutional Privilege Silences "Developing" Nations in the UN Climate Negotiations, *Social Problems*, Volume 70, Issue 1, February 2023, Pages 185–202, <https://doi.org/10.1093/socpro/spab040>

²⁰ Carola Klöck, Paula Castro, Florian Weiler. Coalitions in the Climate Change Negotiations. LIEPP Policy Brief, 2021, 55, ff10.25647/liepp.pb.55ff. fhal-03409340f

is a member of the African Group of Negotiators which is active in climate change and other multilateral environmental negotiations and decision-making. However, such coalition does not exist for international shipping. The country engages in regional collaboration for international shipping through initiatives including planning and participation in conferences (e.g., IMO Conference on Low-Carbon Shipping in Africa), and hosting the regional MTCC-Africa.

The level of environmental awareness of environmental maritime issues including proposed regulatory framework for the abatement of shipping emissions is low. A large segment of Kenyan stakeholders in the environmental maritime sector demonstrates a low level of regulatory awareness concerning the reduction of GHG emissions from ships. The IMO meetings and related events such as the World Maritime Theme, the Day of the Seafarer and the Green Shipping Conference often get very little public attention. The awareness

on IMO policy making and implementation is often kept within the shipping sector.

The Kenya Maritime Authority facilitates maritime training through institutions such as Bandari Maritime Academy to enhance efficient maritime transport in line with international best practices. This is in keeping with the Kenya Maritime Authority Act (2006) which empowers it to establish structures for training in line with the IMO Convention on Standards of Training Certification and Watch Keeping.²¹ Kenya's National Climate Change Action Plan, on the other, amplifies the development of the Green Port Policy as the manifestation of the country's engagement with IMO. The policy is intended to establish shore-to-ship strategy at port to facilitate the reduction of shipping emissions including a provision of shoreside/ onshore power supply from renewable source. However, public engagement in the development of Green Port Policy is still limited to a few stakeholders.

Policy Recommendations

Below are the recommendations for the national government based on the outcome from the workshop on environmental maritime governance in Kenya:

i. Promote awareness and learning on environmental maritime issues

There is limited knowledge and awareness of environmental maritime issues. Relevant government and private institutions, as well as local and international media have not created and diffused scientific, economic and technical knowledge to provide the basis for policy action against environmental effects of shipping. Public awareness and knowledge of environmental maritime issues can be enhanced through post IMO-meeting seminars and briefings, newspaper articles, public participation in environmental maritime governance, and training of local journalists on environmental maritime issues.

ii. Build high-level engagement in IMO negotiations

Engagement in the IMO negotiations at the presidential and ministerial levels is required to raise the political profile of environmental maritime issues in Kenya. Currently, the country is largely represented in high-level IMO negotiations by the High Commissioner to the United Kingdom, and the Chairperson and Director General of KMA. This is in contrast to the UNFCCC negotiations which host heads of state and ministerial level discussions.

iii. Establish and strengthen regional collaboration on environmental maritime issues

Kenya does not possess sufficient political, economic and diplomatic clout to ensure favourable outcomes in the IMO

negotiations. Thus, there is need to foster a more coordinated and impactful regional or continental-level collaboration on environmental maritime policy issues. In this way, focus can be placed on policies and regulations that are specific to the context and unique regional circumstances, making implementation and enforcement feasible and effective at the country level.

iv. Promote stakeholder inclusivity in IMO policy-making processes

The composition of Kenyan delegation to the MEPC meetings of the IMO should reflect the diversity of environmental maritime stakeholders. Enlisting the participation of NGOs, think tanks or other experts in such meetings will boost the size of the national delegation and ensure access to relevant scientific, legal or diplomatic expertise. Moreover, participation of NGOs and the private sector will be required during pre-MEPC meetings to build a consensus on Kenya's environmental maritime policy position.

v. Maintain high-level of delegation continuity in IMO negotiations

The national delegation size and composition varies across different IMO meetings and negotiations. Many government delegates have participated only in one or a few MEPC meetings and negotiations. The country should ensure that the same team of negotiators and supporting staff would always be present in IMO meetings and negotiations over time. This would allow members of the delegation to specialize in different thematic sessions and follow them in parallel. Maintaining the delegation continuity is particularly relevant to smaller delegations, who often suffer from high turnover.

²¹ Section 5 of Kenya Maritime Act