Chapter 4

IMO and Codification of the International Law on Ballast Water Management

4.1. The IMO and its Treaty-making Procedures

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The International Maritime Organization (IMO) is the United Nations specialized agency competent to regulate matters relating to the safety of navigation – including maritime security – the prevention of marine pollution from ships and the legal matters relating thereto. These aims are well encapsulated in its motto ‘safe, secure and efficient shipping on clean oceans’. The role of the Organization is acknowledged in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which establishes the general obligation for States to comply with the standards adopted by IMO on matters concerning safety of navigation, which include construction, equipment and manning of ships and anti-pollution.2

1 At the end of 2004, I met the author of this book, Dr. Maria Helena Fonseca de Souza Rolim, at IMO. We discussed IMO in general and in particular the Organization’s treaty-making practice. At the end of the meeting, Dr. Fonseca de Souza Rolim asked me to write a contribution for her book. If you have ever met the author, you would know that it is impossible to refuse any request from her. Therefore, although some of the readers may be aware of these issues, I present here my modest contribution. The views expressed in this paper are those of the author and should not be considered as necessarily reflecting the positions or views of IMO. Gaetano Librando is Head of the Treaties and Rules Legal Section of IMO, London.

2 Although IMO is explicitly mentioned in only one article of UNCLOS (Article 2, Annex VIII), wherever the convention refers to the ‘competent international organization’ in connection with the adoption of 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, that expression applies exclusively to the IMO because of the global mandate of the Organization as a specialized agency within the UN system.
IMO was established by the *Convention on the International Maritime Organization* (IMO Convention), adopted by the United Nations Maritime Conference at Geneva on 6 March 1948, and began its operations in 1959.

Article 1 of the IMO Convention, which sets out the purposes of the Organization, establishes the global scope of IMO’s safety and antipollution activities. It also refers to other tasks such as the promotion of efficiency of navigation and the availability of shipping services based upon the freedom of shipping of all flags to take part in international trade without discrimination. Part XV of the IMO Convention deals with the relationship between the IMO, the United Nations and other international organizations. Thus Article 59 features IMO as the specialized agency within the UN system in the field of shipping and the effect of shipping on the marine environment. Articles 60 to 62 refer to cooperation between IMO and other specialized agencies, as well as governmental and non-governmental organizations, in matters of common concern and interests.

The IMO work is carried out in close cooperation and co-ordination with the activity of the United Nations and of the other UN specialized agencies which may share some of the IMO’s objectives. To this end, the IMO has entered into agreements of co-operation with these bodies.

Almost 50 treaties and hundreds of guidelines and codes have been adopted under the auspices of the IMO. These instruments are constantly refined and updated, and constitute the regulatory framework of international shipping.

The vast majority of IMO treaties are in force, and several of them have a large, almost universal acceptance. Additionally, they cover almost all the world fleet tonnage to which they apply. Ongoing consultations with the United Nations over the years have assured that, ever since the adoption of UNCLOS, all IMO instruments conform to it. Today it is virtually impossible for a ship to sail, unless its flag State is party to the principal IMO conventions.

The wide acceptance and uncontested legitimacy of the IMO’s universal mandate in accordance with international law is evidenced by the following:

1. At present, 164 sovereign States representing all regions of the world are Parties to the IMO Convention and accordingly Members of IMO.
2. All Members may participate at meetings of IMO bodies responsible for drafting and adopting recommendations containing safety and antipollution rules and standards. These rules and standards are normally adopted by consensus.
3. All States, irrespective of whether they are Members of IMO or of the United Nations, are invited to participate at IMO conferences in charge of adopting

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3 The original name, ‘Inter-Governmental Maritime Consultative Organization’ (IMCO), was changed into the present name by Assembly Resolutions A.358(IX) and A.371(X), adopted in 1975 and 1977, respectively.