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STRATEGY, PLANNING AND REFORM

Council reform

Submitted by Antigua and Barbuda, Australia, Bahamas, Canada, Georgia, Guatemala, Islamic Republic of Iran, Jamaica, Liberia, Spain, Ukraine, and United Arab Emirates

SUMMARY

Executive summary: The thirtieth session of the Assembly adopted an ambitious Strategic Plan for the Organization for the six-year period 2018-2023. As the executive organ of IMO, the Council has a responsibility to ensure that IMO achieves the objectives embodied in the Strategic Plan. It is timely to consider whether reforms to the Council would better position it to achieve these objectives.

Strategic direction, if applicable: 7

Output: 7.8 and 7.9

Action to be taken: Paragraph 32

Related documents: Resolutions A.1111(30) and A.909(22)

1 The thirtieth session of the Assembly adopted the Strategic Plan for the Organization for the six-year period 2018-2023. As the executive organ of IMO, the Council has a responsibility to ensure that IMO achieves the objectives embodied in the Strategic Plan. It is timely to consider whether reforms to the Council would better position it to achieve these objectives.

2 At the same session of the Assembly, there was significant discussion on the biennial Council elections and the role of the Council. Guatemala submitted a document (A 30/21/3) which noted that the practice of appointing members of the Council by acclamation is not consistent with the IMO Convention and impacts upon the governance of the Organization, the legitimacy of the Council and the transparency of procedures. The Assembly agreed that all categories of the Council would be voted upon in future elections even if the categories were not oversubscribed.

3 It is now timely to assess whether further reform would position the Council to achieve the goals outlined in the Strategic Plan, and in particular whether:

- .1 the Council should be more active in setting, directing and monitoring policy;
- .2 Council membership still accurately reflects the balance of interests of all IMO Member States;

- .3 Council terms should be increased from two years to four;
- .4 Council and Assembly decisions and discussions should be made more accessible to Member States and the public; and
- .5 the Council should examine the role of industry bodies attending IMO meetings and whether these bodies accurately reflect the breadth of maritime interests.

The proposals in this document are intended to only present possible reform options for further discussion rather than concrete solutions to address these issues.

The Council's role in policymaking

4 The Council is the executive organ of IMO and is responsible, under the Assembly, for supervising the work of the Organization. Between sessions of the Assembly, the Council performs all the functions of the Assembly, except the function of making recommendations to governments on maritime safety and pollution prevention which is reserved for the Assembly in accordance with Article 15(j) of the IMO Convention.

5 As noted by the Bahamas in 2001 (C 86/28), the Council should be able to consider and discuss the full scope of the work of IMO in a transparent and open manner and respond quickly to emerging issues. The Council has a much broader mandate than the committees and is therefore best placed to develop overarching policies on key maritime issues. At the time, the Bahamas observed that the large majority of documents submitted to the Council originated from the Secretariat and were related to administrative issues such as the budget and reports of committees, and this observation could equally be made today.

6 In response to the proposals in document C 86/28, the Assembly adopted resolution A.909(22) on *Policy Making in IMO – Setting the Organization's policies and objectives*. While this resolution is insightful, it does not appear to have brought about lasting change and there has been little progress in assisting IMO to genuinely address the broad variety of maritime challenges faced by Member States. These challenges extend far beyond IMO's traditionally narrow focus and cross over into security, environmental, humanitarian and economic areas.

7 The Council has a responsibility to ensure IMO achieves the objectives embodied in the Strategic Plan and becomes a more modern and relevant standard-setting body. Rapid technological advancements also create a unique opportunity to improve safety and environmental outcomes and increase efficiency in the maritime sector, supporting international efforts to achieve sustainable development. These advancements create a series of challenges for policymakers and regulators who must ensure that the highest practical standards are maintained without stifling innovation. To achieve this balance, IMO needs to develop international standards that are responsive and adaptable.

8 At IMO, much of this effort will fall to the technical committees, particularly the Maritime Safety Committee and the Marine Environment Protection Committee. However, overarching policy guidance and oversight is needed. The Council and the Assembly should take the opportunity to provide policy guidance to the committees and sub-committees before referring new and emerging issues and should take a more active role in monitoring and assessing the ongoing work of the committees.

9 IMO's transition into a more modern and innovative Organization needs to be supported by greater willingness from Member States to increase the IMO budget so the IMO Secretariat is appropriately resourced to meet the demands placed on it. Indeed, IMO's budget until 2018-2019 had been essentially frozen for a number of years and proposed budget increases had been met by resistance from Member States, and particularly by the Council. The number of committee meeting days had been cut back and the number of staff in the IMO Secretariat had also been significantly reduced. Some sub-committees have overwhelming workloads and this impacts on the quality of the outputs. The co-sponsors encourage Member States to consider whether an increase to the IMO budget (or identification of alternative savings or additional resources) would be beneficial to allow for an increased number of meeting days, the production of meeting summary reports and more timely delivery of new and amended standards.

Council membership

10 The Council is divided into three categories under Article 17 of the IMO Convention. Category (a) consists of 10 States with the largest interest in providing international shipping services; category (b) consists of 10 States with the largest interest in international seaborne trade; and category (c) consists of 20 States 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.

11 These categories were introduced by the 1964 amendments* to the Convention on the Inter-Governmental Maritime Consultative Organization, the predecessor to IMO. In 1993, additional amendments were introduced to expand the membership of the Council from 32 to 40 Member States after concerns were raised about the results of the elections for the 1991-1992 biennium. These amendments entered into force on 7 November 2002.

12 Since categories (a) and (b) increased from 8 States to 10 States after the elections in 2003, category (a) has only been contested once and category (b) has only been contested twice. By contrast, category (c) has been consistently contested every biennium, allowing new Member States to enter the Council. It is not immediately clear why Member States have traditionally not contested categories (a) and (b). However, it is important for the institutional health of the Council, and IMO more broadly, that all seats on the Council are readily contestable.

13 Resolution A.1000(25) provides some guidance on implementing the intended criteria for category (c). However, there is very little practical guidance on the criteria for category (a) or category (b). If these categories are intended to deliver a balanced representation of key interests across IMO, then clearer guidance should be provided. For example, each biennium the IMO Secretariat publishes the tonnage of each Member State to inform voting for category (a). The IMO Convention text however does not appear to restrict category (a) to flag States and would also appear to capture major shipowning nations. This issue was first raised by Norway at the twenty-first session of the Assembly in 1999 (see A 21/SR.8) and was referred to the Council for consideration in the following biennium. The summary record from the twenty-second session of the Assembly (see A 22/SR.7) indicates that this issue was not considered by the Council due to a lack of support. It is not clear how this decision was made, as the report of the twenty-first session of the Assembly indicates that the issue was referred to the Council by the Assembly, the highest decision-making body of IMO.

* Resolution A.69 (ES II).

14 Category (b) is for States with the largest interests in international seaborne trade. Until the eighteenth session of the Assembly, statistics on international seaborne trade were provided to Member States before each election. However, the United Nations statistical series being drawn upon was discontinued (see A 21/SR.8). Since that time, IMO has not issued any further guidance for this category.

15 Category (c) is for States which have a special interest in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world. There is little guidance on what a special interest in maritime transport or navigation entails and concerns about geographical representation have been raised on numerous occasions, including during the twenty-seventh session of the Assembly (see A 27/SR.10) and the twenty-fourth session of the Assembly (see C 96/18(a)). This issue is not resolved and there is currently no mechanism to facilitate geographical representation across the Council. Similarly, there is little guidance on what a "special interest in maritime transport or navigation" entails. This category is currently composed of States with a broad range of maritime interests, including major flag States, large trading nations, States with strong environmental interests, and States that have significant domestic reliance on international shipping.

16 The current interpretation of the criteria for each category allows States providing shipping services and major trading nations to become over-represented on the Council. This is because a State meeting the criteria for category (a) or category (b) would always arguably meet the criteria for category (c), but nations meeting the criteria for category (c) would often fail to meet the criteria for category (a) or category (b). This then leads to under-representation of States which have important and legitimate maritime interests, such as small island developing States, but which are not major exporters or shipping nations.

17 This imbalance of representation is reflected in the composition of the Council. Flag States and shipowning nations are represented across all three categories and 22 of the 25 largest flag States (by tonnage) are currently represented on the Council, with 7 of the 15 largest flag States represented in category(c).

18 There are a number of possible options to promote more inclusive representation on the Council, including by increasing the number of Council members. The 1993 amendments brought Council representation to about 30% of the total membership at the time the amendments were agreed. Since that time, the membership has expanded significantly and now only 23% of Member States are represented on the Council. To address this issue, the IMO Convention should be amended to increase the number of Council seats to 60, which should ensure that a minimum of 30% of the total membership is represented on the Council.

19 There are many options to ensure Council membership reflects the diversity of Member States. The simplest is to remove the category system entirely and allow Member States' discretion to elect their preferred representatives in an expanded Council. Another option is to better define all three categories, particularly category (c) to differentiate this category from category (a) and category (b). However, we note that the Council elections have become increasingly politicized and merit has played a diminishing role.

Council terms

20 The Council is currently elected for two-year terms to perform executive functions in between biennial meetings of the Assembly. As the Assembly involves all IMO Member States, each meeting provides an important opportunity for Member States to comment on the work and decisions of the Council and to communicate their expectations of the Organization.

21 As the Council election campaigns have become more intensive, the Assembly agenda has been increasingly dominated by the elections and the full programme of functions held by candidate nations. This has left less time for members to consider the core work of IMO. It is also a substantial commitment of time and resources for Council candidates to run candidacies so frequently.

22 A possible solution would be to lengthen the term of Council membership to four years. This would reduce the burden on candidates and IMO, and would also allow the Assembly to meet outside of the election cycle to provide better considered policy guidance to the Council.

23 Additionally, changes could be made to the operation of the Council and the Assembly meetings – as well as committee meetings – to ensure there is sufficient time to adequately discuss substantive issues. One such change could be that documents (or entire agenda items) which do not require a decision (and are otherwise uncontentious) should be acknowledged by the Chair but not opened for comment. Similarly, interventions which do not relate to substantive work items could be strictly limited in both time and number.

Access to discussions and decisions

24 The Rules of Procedure of the Assembly provide that the plenary meetings of the Assembly shall be held in public unless otherwise decided, but that meetings of subsidiary bodies of the Assembly shall be held in private unless otherwise decided by the Assembly. The Rules of Procedure of the Council provide that meetings of the Council shall be held in private unless the Council decides otherwise.

25 Member States should consider whether the presumption in the Rules of Procedure should be changed so that Council meetings and meetings of Committee 1 and Committee 2 at Assembly are held in public, reflecting Member States' commitment to increase transparency at IMO.

26 IMO delegates represent the official policy of Member States. These policy positions, and the interventions made by representatives, should be open to the public and stakeholders that may not currently be formally engaged with IMO, including through the media. Most meetings of committees and subsidiary bodies are open to the media, but there are restrictions on broadcasting the content of plenary discussions without permission from relevant Member States. While this may be necessary and appropriate in very specific circumstances or during sensitive negotiations (from which the media would likely be excluded), generally an intervention delivered on behalf of a Member State (or IMO) should be able to be accurately quoted without permission.

27 Finally, the Council currently produces a record of decisions for each meeting and a report to each session of the Assembly, but has not produced summary reports (or equivalent) since the 106th session of the Council in 2011. The Assembly produces a list of resolutions, but has not produced summary reports since its twenty-seventh session in 2011. This change was introduced as a cost-saving measure but has resulted in decreasing accessibility of discussions and decisions within the Council and the Assembly for both Member States and the public. The availability of audio files is not a satisfactory equivalent because it is not possible to do a word-search, easily reproduce or distribute these audio files. Member States should consider requesting the Secretariat to produce both summary reports and records of decision for the Council and the Assembly.

28 Allowing greater engagement by the public and a broader range of stakeholders may increase public confidence in IMO decisions and to help address community perceptions of industry capture in IMO decision-making. The co-sponsors support the electronic dissemination of IMO reports and IMO publications free of charge, as imposition of fees for information and advice is entirely counterproductive to the aims of the Organization's efforts in encouraging implementation and compliance.

Role of industry bodies at IMO

29 Industry bodies play a vital role in providing technical advice and support to IMO and it is important to ensure that IMO's engagement with industry representatives, as well as environmental, community and other interest groups, is broad enough to reflect the full range of interests impacted by the policy and regulatory decisions of IMO.

30 In October 2017, InfluenceMap published *Corporate capture of the International Maritime Organization*. Soon after, Transparency International, a not-for-profit organization focused on identifying and addressing corruption, announced a project to assess the governance, transparency and accountability performance of IMO. Transparency International has provided an interim report with recommendations to improve the performance of IMO.

31 In light of the concerns raised by InfluenceMap, Transparency International and other commentators, the Council should, as a high priority, examine the role of industry bodies and other organizations in consultative status with IMO. Possible areas of focus include whether the current group of organizations in consultative status represents the full spectrum of interests in both the maritime industry and the broader international community, a review of the Guidelines for granting consultative status and options for IMO to more fully engage with a broader range of community interests. Amendments to the Guidelines could also be considered to clarify that reasonable criticism of IMO will not prevent an organization from gaining or maintaining consultative status.

Action requested of the Council

32 The Council is invited to consider the proposals contained in this document and, taking into account the discussion at C 120, to:

- .1 request the Secretariat to develop reform options for consideration at C 121, addressing, as directed by the Council:
 - .1 the Council's role in policy development;
 - .2 representation on the Council;
 - .3 Council terms;
 - .4 transparency of discussions and decision-making; and
 - .5 the role of industry bodies and how to ensure a balance of interests is represented; and
- .2 establish a working group no later than the 121st session of the Council to consider the Secretariat's proposals and proposals received from Member States.