

**IMO MANDATORY ENERGY EFFICIENCY MEASURES FOR INTERNATIONAL SHIPPING:
THE FIRST MANDATORY GLOBAL GREENHOUSE GAS REDUCTION INSTRUMENT FOR AN
INTERNATIONAL INDUSTRY**

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Bunker fuels used in the aviation and maritime sectors are responsible for nearly 10% of global greenhouse gas emissions.¹ According to a scientific survey: '[s]hipping is estimated to have emitted 1,046 million tonnes of CO₂ in 2007, which corresponds to 3.3% of the global emissions during 2007. International shipping is estimated to have emitted 870 million tonnes, or about 2.7% of the global emissions of CO₂ in 2007'.² The study also predicted that 'by 2050, in the absence of policies, ship emissions may grow by 150% to 250% (compared to the emissions in 2007) as a result of the growth in shipping.'³

The Kyoto Protocol of the United Nations Framework Convention on Climate Change ('*Kyoto Protocol*') particularly calls on certain developed countries to take action against greenhouse gas (GHG) emissions caused by marine bunker fuels through the International Maritime Organisation (IMO). Article 2(2) of the *Kyoto Protocol* provides as follows:

The Parties included in Annex 1 shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Organisation and the International Maritime Organisation, respectively.⁴

A negotiation has been going within the IMO for the adoption of a new international legal instrument for the reduction of emissions of GHGs in the shipping sector. In an article published early this year, we have assessed the feasibility of making an

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¹ European Federation for Transport and Environment (EFTE), *Bunker Fuels and the Kyoto Protocol: How ICAO and the IMO Failed the Climate Change Test* (2009) <www.transportenvironment.org/Pages/aviation/S>.

² International Maritime Organisation (IMO), *Second IMO GHG Study 2009 (Executive Summary)* (2009) <<http://www.seas-at-risk.org/Images/MEPC%2059-INF.10%20%28The%20Second%20IMO%20GHG%20Study%202009%29.pdf>>.

³ Ibid.

⁴ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 11 December 1997, 2303 U.N.T.S. 148 (entered into force 16 February 2005).

international regulation for reducing GHG emissions applicable only to ships from developed countries.⁵ We examined the clash between the complex nature of international shipping and the principle of Common but Differentiated Responsibility (CBDR). We have argued that given the unique characteristics of this industry, strict application of CBDR may not be viable.⁶ We proposed further that an alternative approach to the long standing North-South paradigm of solving environmental problems in the international arena needs to be found in order to successfully handle the challenges of global environmental problems like climate change.⁷

The Marine Environment Protection Committee (MEPC) of the IMO has recently adopted mandatory energy efficiency measures for international shipping which can be treated as the first ever mandatory global GHG reduction instrument for an international industry. The 62nd meeting of the MEPC held from 11-15 July 2011 in London approved an amendment of Annex VI of the 1973 *International Convention for the Prevention of Pollution from Ships* (MARPOL 73/78).⁸ This amendment added a new chapter 4 to Annex VI which introduced a mandatory Energy Efficiency Design Index (EEDI) for new ships and the Ship Energy Efficiency Management Plan (SEEMP) for all ships.⁹ The new amendment also introduced a survey and certification system including provision for an International Energy Efficiency Certificate.¹⁰ The newly inserted regulations are expected to come into force on 1 January 2013.¹¹ These regulations will be applicable only on ships of 400 gross tonnage and above. However, it introduced a leeway period for EEDI.¹² An administration can waive application of these provisions until four years after the entry into force of the newly introduced chapter 4.¹³ That means the result of this new amendment may be seen after 2017.

Like previous sessions of the MEPC, CBDR was the central issue of conflict between some leading developing and developed countries. Through a submission, China, Saudi Arabia and South Africa stated that the CBDR principle is the cornerstone of international climate change law.¹⁴ They are of the opinion that introducing the same responsibilities to ships flying the flag of developing countries is a clear deviation from the *UN Framework Convention on Climate Change*¹⁵ and its *Kyoto Protocol*; breaching the principle of CBDR by developed and developing countries.¹⁶

⁵ Md. Saiful Karim and Shawkat Alam, 'Climate Change and Reduction of Emissions of Greenhouse Gases from Ships: An Appraisal' (2011) 1 *Asian Journal of International Law* 131.

⁶ Ibid.

⁷ Ibid.

⁸ *International Convention for the Prevention of Pollution from Ships* opened for signature 17 February 1978, 1340 U.N.T.S. 61 (entered into force 2 October 1983) (MARPOL 73/78).

⁹ IMO, *Mandatory energy efficiency measures for international shipping adopted at IMO environment meeting* (2011) <<http://www.imo.org/MediaCentre/PressBriefings/Pages/42-mepc-ghg.aspx>>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ IMO, *Comments on the proposed mandatory energy efficiency regulations* (2011). <<http://www.amtcc.com/imosite/meetings/IMOMeeting2011/MEPC62/MEPC%2062-5-10.pdf>>.

¹⁵ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 164 (entered into force 21 March 1994).

¹⁶ IMO, above n 14.

The new instrument has been adopted in the wake of a threat of unilateral action by the European Union (EU) because a European Commission representative had earlier hinted that the EU would take unilateral action if no agreement on emissions reduction by the IMO can be reached by the end of the year.¹⁷ Consequently, this instrument has not been reached by consensus in the MEPC. This indicates a future challenge. Although the instrument is mandatory and global, some countries may not join to the instrument. So its global acceptance is problematic from the very beginning. Nevertheless, considering the global nature of the industry, this new instrument will hopefully encourage some technological development which may create less costly, environmentally sound alternatives to existing practice.

¹⁷ ICTSD, Ministers Voice Concern over European 2050 Emissions Goals (2011) <<http://ictsd.org/i/news/biores/109559/>>.