IMO 1948-1998: a process of change

Since the Convention creating IMO was adopted fifty years ago, shipping has changed more than in any similar period in history. IMO has responded by adopting and amending international treaties, codes and recommendations dealing with maritime safety, marine pollution and other subjects. At the same time, the Organization has continually examined its own institutions and working practices. As a result, the Organization that exists today is very different from the one that was created in 1948. This paper looks at some of the changes that have occurred - and why they were so necessary.

Part 1: The IMO Convention

The importance of international co-operation in shipping has been recognized for centuries. The right of ships to take refuge in foreign ports in the event of bad weather has always been universally acknowledged, as has the obligation of ships to go to the aid of others in distress, irrespective of their nationality. But it was not until the nineteenth century that there was general recognition of the need to formalize ancient customs by enacting legal treaties.

In some cases the need for international co-operation was regarded as so essential that it resulted in the establishment of permanent organizations. The invention of telegraphy revolutionized communications and led to the establishment in 1865 of the International Telegraph Union (it is now the International Telecommunications Union). In 1873 the International (now World) Meteorological Organization was set up, followed a year later by the Universal Postal Union.

In view of this trend towards co-operation between nations it seemed logical that a similar body should be established to regulate shipping, which could claim to be the oldest international industry and by the late nineteenth century was more important to the world than ever before. In 1889 an international maritime conference was held in Washington, the capital of the United States. One of the proposals put before the conference was the setting up of a permanent international body to cater for the needs of shipping. The plan was duly considered - and promptly rejected. The Conference announced that "for the present the establishment of a permanent international maritime commission is not considered expedient".

The reason - although not stated explicitly - was that the shipping industry was suspicious of any attempt to control its activities and restrict its commercial freedom.

In 1945 the climate began to change. The Second World War was over and the United Nations was established to ensure that there should not be a Third. Although most attention was focused on New York and the General Assembly, the idealists who founded the United Nations saw it as comprising not just one but a
series of international organizations, each dealing with a different subject, some humanitarian, some technical.

In 1944 the International Civil Aviation Organization (ICAO) was founded - only 32 years after the first flight by the Wright brothers. The Food and Agriculture Organization (FAO) was created in 1945, the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the same year and the World Health Organization (WHO) in 1947. All were members of the United Nations system and it seemed that at last a serious attempt could be made to establish a similar body for shipping.

The Geneva conference
In February, 1948 a conference was opened in Geneva and two weeks later the Convention establishing IMO was finally adopted. The aims of the new Organization are summarized in Article I:

(a) To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation;

(b) To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade;

(c) To provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;

(d) To provide for the consideration by the Organization of any matters concerning shipping that may be referred to it by any organ or specialized agency of the United Nations;

(e) To provide for the exchange of information among Governments on matters under consideration by the Organization.

In view of the way in which the Organization subsequently developed it is worth examining these paragraphs more closely. One thing that is noticeable is the absence of any reference to marine pollution or the environment, now among IMO's greatest concerns. Even maritime safety is only referred to briefly, at the end of paragraph (a). The emphasis is on economic action to promote "freedom" and end "discrimination". Paragraphs (b) and (c) especially worried a number of Governments which regarded promises to create "a world without discrimination" and to take action against "unfair restrictive practices", as dangerous interference in the practice of free enterprise.

Part II of the Convention, which dealt with the Organization's functions, appeared to place limits on what was expected of IMO. Article 2 declared: "The functions of the Organization shall be consultative and advisory."

Article 3 (b) said that, in order to achieve the purposes set out in Article I, IMO should "provide for the drafting of conventions, agreements, or other suitable instruments, and to recommend these to Governments and to intergovernmental organizations, and to convene such conferences as may be necessary". IMO was thus not given the authority itself to adopt treaties. Article 3 (c) said that IMO should

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1 IMO was originally called the Inter-Governmental Maritime Consultative Organization (IMCO). The name was changed in 1982.
"provide machinery for consultation among Members and the exchange of information among Governments".

It was expected in 1948 that Article I (b) in particular would prove controversial, because Article 4 stated: "When, in the opinion of the Organization, any matter concerning unfair restrictive practices by shipping concerns is incapable of settlement through the normal processes of international shipping business, or has in fact so proved, and provided it shall first have been the subject of direct negotiations between the Members concerned, the Organization shall, at the request of those Members, consider the matter."

The Convention provided for three main organs: the Assembly, the Council and the Maritime Safety Committee (MSC).

The Assembly was to consist of all Member States and to meet once every two years, with provision being made for extraordinary sessions to be called if necessary. Its main tasks were to vote on the budget and decide financial arrangements, to determine the general policy of the Organization to achieve the purposes of Article I and to adopt resolutions submitted to it by the Council and the MSC.

The Council originally consisted of 16 Member States elected by the Assembly, of whom, according to Article 17:

(a) six shall be governments of the nations with the largest interest in providing international shipping services;

(b) six shall be governments of other nations with the largest interest in international seaborne trade;

(c) two shall be elected by the Assembly from among the Governments of nations having a substantial interest in providing international shipping services, and

(d) two shall be elected by the Assembly from among the governments of nations having substantial interest in international seaborne trade.

The main functions of the Council were to receive recommendations and reports of the MSC and transmit them to the Assembly; to appoint the Secretary-General, with the approval of Assembly; to submit budget estimates and, between sessions of the Assembly, to perform other functions of the Organization.

The MSC was also an elected body consisting of 14 Members elected by the Assembly. Eight were to be the largest shipowning nations and the remainder were to be elected "so as to ensure adequate representation of other Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas". Members were to be elected every four years and were to be eligible for re-election.

The duties of the MSC (Article 29) were to consider "aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue and any other matters directly affecting maritime safety".
The functions of the Committee were further defined in the next few articles and the Convention then went on to deal with the Secretariat, finances, voting (each Member was to have one vote), the headquarters (it was to be in London) and various other matters.

Article 59 stated that the Convention "would enter into force on the date when 21 States, of which seven shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties to the Convention..."

The question of funding was left to the IMO Assembly to decide. Article 41 of the Convention stated that the Assembly "should apportion the expenses among the Members in accordance with a scale to be fixed by it after consideration of the proposals of the Council thereon".

It was hoped that the Convention would enter into force relatively quickly. The Geneva conference established a preparatory committee to deal with such matters as rules of procedure, draft financial regulations and a provisional agenda. It also resolved that a conference to revise the International Convention for the Safety of Life at Sea (SOLAS), due to be held in London later in 1948 should draft provisions taking into account the duties and functions which had been accorded to IMO, the intention being to delegate future responsibilities for the Convention to IMO.¹

However, not everyone wanted to see IMO come into existence. To some countries much of Article I was unacceptable. Some were afraid that the treaty would lead to interference with their own national shipping industries and laws. Others felt that the IMO Convention was written by and for the benefit of the handful of countries who dominated shipping at that time.

By the mid-1950s the delay in ratifying the IMO convention was causing concern. The 1948 SOLAS Convention was already in need of revision. New maritime problems were also beginning to emerge, among them oil pollution, which was becoming more and more serious as the world recovered from the War and trade increased. In 1954 a conference in London adopted the International Convention for Prevention of Pollution by Oil and agreed that it would become the responsibility of IMO once the new organization was established.

Gradually the number of Parties to the Convention increased. But many of them registered declarations or reservations which had the effect of greatly restricting the Organization's area of activities. Several used identical wording stating that "it is in the field of technical and nautical matters that the Organization can make its contribution towards the development of shipping and seaborne trade throughout the world. If the Organization were to extend its activities to matters of a purely commercial or economic nature, a situation might arise where the Government (of the country concerned) would have to consider resorting to the provisions regarding withdrawal".²

¹ UN treaty series for 1958 No 4214.

² See UN treaty series for 1958 No 4214
On 17 March, 1958, Egypt became the 21st State to accept the IMO Convention and it finally entered into force. But by the time the new Organization met for the first time in January 1959, so many reservations had been submitted that it was clear that it would not be able to engage in any activities that might be regarded as economic or commercial. It would have to confine itself to mainly technical issues, especially those involving safety as defined in Article 29.

The First Assembly met in January 1959 and much of its work concerned administrative arrangements, one of the most important being the apportionment of expenses among Member States. Resolution A.20(I) agreed that each Member should pay a basic assessment to be determined by the percentage of its contribution to the United Nations. Countries paying less than 2% would have to pay $US 2,000, while those paying 10% or more would have to pay $US10,000.

Each Member would additionally have to pay an additional assessment determined by the gross registered tonnage of its merchant marine, as shown in the latest edition of Lloyd's Register of Shipping, on the basis of one share for every 1,000 tons. In practice, therefore, contributions to the IMO budget are based primarily on shipping tonnage rather than national wealth. This system is unique in the United Nations system.

The 1964 amendments
The long wait for the IMO Convention to enter into force meant that it was already in need of revision by the time the Organization met for the first time. One of the most important developments of the 1960s was the emergence of new nations, many of which had an interest in maritime affairs. As a result, membership of IMO began to grow and in September 1964, at the 2nd Extraordinary Session of the Assembly, IMO responded by adopting an amendment to the IMO Convention which increased the size of the Council to 18.

The main shipowning and trading nations continued to have six seats each, but a third group was added consisting of six Member 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". The amendments entered into force in 1967.

The 1965 amendments
The 2nd Extraordinary Session was followed a year later by the 4th regular session of the Assembly and this adopted an amendment to Article 28 increasing membership of the Maritime Safety Committee to 16. Of these, eight were to be elected from among the ten largest shipowning States and four to be elected in such a way as to ensure that Africa, the Americas, Asia and Oceania and Europe were all represented. The other four seats "shall be elected from among States not otherwise represented on the Committee". The amendment entered into force in 1968.

The 1964 and 1965 amendments were important because they acknowledged the fact that the membership of IMO was not only growing but was changing. The dominance of the traditional maritime countries was coming to an end as more and more developing nations joined the Organization.

The 1974 amendments
The next stage came at the 5th Extraordinary Session in October 1974, which increased Council membership to 24 Member States. This was done by enlarging Group (c) to 12 Member States. Even more important was the amendment made to Article 28. The existing text was replaced by one line stating: "The Maritime Safety Committee shall consist of all Members." The amendments entered into force in 1978.
Since the Maritime Safety Committee and its subsidiary bodies was responsible for most of IMO's technical work this decision, together with the enlargement of the Council, did much to counter the old criticism that IMO was still dominated by shipowning nations. The change in membership was underlined by the adoption of resolution A.316 (ES.V) which noted that "a high number of the members of the Organization is constituted by developing countries and that such fact has not so far been reflected in the composition of the governing bodies of the Organization."

The resolution declares that the amendments were adopted "as a recognition of the need of wider and more equitable representation in the Council and all sectors interested in the work of the Organization, having regard to the increased membership of the Organization and the need to improve the representation of developing countries in the Council."

The 1975 amendments
While the composition of IMO was changing, so too was its work programme. The main catalyst was the Torrey Canyon oil spill of 1967, which proved for the first time the immense environmental damage that could result from an accident involving a large oil tanker. The protection of the marine environment became a major issue as a result, but the Torrey Canyon spill also revealed a number of deficiencies in the international system for assessing liability and compensation for oil spill damage. IMO established a Legal Committee to deal with the latter and a new sub-committee of the MSC to handle environmental issues.

By the mid-1970s both subjects were recognized as being important enough to become a permanent part of the IMO work programme. The result was that in 1975, the 9th Assembly adopted resolution A.358(IX) which formed a new Marine Environment Protection Committee (MEPC) and raised it and the Legal Committee to the same status as the MSC. Article I of the Convention was changed by adding to the list of purposes "the prevention and control of marine pollution from ships; and to deal with legal matters related to the purposes set out in this Article."

At the same time the name of the Organization was itself changed to the International Maritime Organization. Apart from being long and cumbersome the original name was confusing, especially the inclusion of the word "Consultative", which gave the impression that IMO could only talk, rather than take decisions and act.

The amendments entered into force in 1982.

The 1977 amendments
The changing role of IMO was further recognized by the 10th Assembly. Changes were made to Article I parts (a) and (d) to accommodate the Organization's growing involvement in environmental, administrative and legal issues. Article 2 (which limited IMO's role to being consultative and advisory) was deleted.

Since 1966, IMO's technical co-operation activities had been growing and a Technical Co-operation Committee was established in 1969. The 1977 amendments raised it to the same status as the MSC, Legal Committee and MEPC and thereby showed how important this aspect had become. IMO was the first United Nations agency to take this step. The amendments entered into force in 1984.

The 1979 amendments
In 1979 the Assembly adopted further amendments which again increased the size of the Council, this time to 32, with 16 places being reserved for Group (c). The amendments entered into force in 1984.

The 1991 amendments
In 1991 further amendments were adopted to raise the Facilitation Committee to the same status as the other Committees. The Committee seeks to standardize the documentary procedures involved in international maritime trade and to remove the unnecessary "red tape" that is often involved. The amendments have not yet entered into force. By August 1998 they had been accepted by 38 countries, still well short of the 103 acceptances required to meet the two-thirds target.

**The 1993 amendments**

In 1993 the 18th Assembly adopted amendments which again increased the size of the Council. This followed concern over elections to the Council held during the 17th session of the Assembly, when several time-consuming votes had to be held to decide membership of Group (a) because so many Members were seeking election. The amendments will increase the size of the Council to 40, with Groups (a) and (b) being increased to ten and Group (c) to 20 Member States. The amendments are not yet in force. By August 1998 they had been accepted by 65 countries.

**Conclusion**

The IMO Convention has been revised so many times that it is completely different from the instrument that was adopted in Geneva in 1948. These changes represent not only the way in which shipping has changed, but also reflect the political developments that have taken place during the last 50 years.

The 1948 Convention was designed for a shipping industry that was dominated by the handful of countries that had run it for centuries. Safety was only one of the objectives listed in Article I. The prevention of marine pollution, technical co-operation and legal matters were not mentioned at all.

By the time the Convention entered into force, the shipping world had already changed. The fact that IMO never seriously pursued the purposes outlined in part (b) of Article I did not please some Members, but it did mean that the Organization was able to devote more time than originally intended to safety and environmental issues. By the 1970s these two subjects alone had become of major importance and IMO's work in the legal field had also grown to such an extent that new Committees had to be created to cope with the workload that resulted. The creation of the Technical Co-operation and Facilitation Committees were further stages in the Organization's evolution.

Other amendments were designed to open up the Organization to the participation of all IMO Member States. In the 1948 Convention only the Assembly was open to all Members. Today, only the Council is an elected body and, when the 1993 amendments to the IMO Convention enter into force, membership will increase to 40 Member States, with special attention being paid to the representation of developing countries.

The IMO that exists today is very different from the Organization envisaged in Geneva in 1948 - but so is the world of shipping itself. Without the amendments made to the Convention over the years, IMO would not have been able to respond to the changes that have taken place in the last fifty years. The success of this evolution can be measured by the fact that the Membership of IMO now stands at 156. Between them, these countries control more than 96% of world merchant marine tonnage.
Part 2: Tacit acceptance

The amendment procedures contained in the first Conventions to be developed under the auspices of IMO were so slow that some amendments adopted have never entered into force. This changed with the introduction of the "tacit acceptance" procedure.

Tacit acceptance is now incorporated into most of IMO's technical Conventions. It facilitates the quick and simple modification of Conventions to keep pace with the rapidly evolving technology in the shipping world. Without tacit acceptance, it would have proved impossible to keep Conventions up to date and the IMO's role as the international forum for technical issues involving shipping would have been placed in jeopardy.

-In the spring of 1968, IMO - then still called IMCO, the Inter-Governmental Consultative Organization - celebrated the 20th anniversary of the adoption of the IMO Convention. It should have been an occasion for some congratulations. But all was not well. Many of the Organization's Member States were not happy with the progress that had been made so far.

One problem was the IMO Convention itself. Article I outlined the objectives of the new Organization, one of which was to "encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping..." Another was to "provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns..."

But many of the major shipping countries were bitterly opposed to both policies. For years they refused to ratify the Convention and, when they did, it was with reservations - stating that they would leave IMO if these subjects were dealt with. As a result, this part of IMO's original mandate had never been considered. This did not please those countries which regarded these subjects as highly important.

Other countries were concerned about the Organization's structure and its ability to respond to the changes taking place in shipping. In March, 1967, the oil tanker Torrey Canyon had gone aground off the coast of England, resulting in what was then the world's biggest oil spill. IMO was called upon to take action to combat oil pollution and to deal with the legal issues that arose. But would it be able to do so?

The general disquiet was summed up by Canada in a paper submitted to the 20th session of the IMO Council in May 1968. It stated that "the anticipations of twenty years ago have not been fulfilled" and went on to complain of the effort required by Member States in attending meetings and dealing with the technical problems raised by IMO. To make matters worse, IMO's workload was rapidly increasing. The Canadian paper said: "The number of such meetings has grown to the physical limit which an organization of the size of IMO can handle in its present state. Yet there is no limit to the number of problems waiting their turn on the list of priorities for future study..."

The paper was discussed by the Council which agreed to establish a working group to prepare a draft statement of the objectives of IMO and an inventory of further objectives which the Organization could usefully fulfill in the field of international maritime transport.

In November 1968 the working group reported back to the Council. It outlined a list of activities,
far broader than the programmes undertaken by IMO so far. This was approved by the Council, which also agreed that IMO needed to improve its working methods.

The working group was asked to report to the Council again at its 22nd session in May 1969. This time it put forward a number of proposals for improving IMO's working methods, the most important of which concerned the procedures for amending the various Conventions that had been adopted under IMO's auspices.

The problem facing IMO was that most of its Conventions could only be updated by means of the "classical" amendment procedure. Amendments to the 1960 SOLAS Convention, for example, would enter into force "twelve months after the date on which the amendment is accepted by two-thirds of the Contracting Governments including two-thirds of the Governments represented on the Maritime Safety Committee." This did not seem to be a difficult target when the Convention was adopted, because to enter into force the Convention had to be accepted by only 15 countries, seven of which had fleets consisting of at least 1 million gross tons of merchant shipping.

But by the late 1960s the number of Parties to SOLAS had reached 80 and the total was rising all the time as new countries emerged and began to develop their shipping activities. As the number of Parties rose, so did the total required to amend the Convention. It was like trying to climb a mountain that was always growing higher and the problem was made worse by the fact that Governments took far longer to accept amendments than they did to ratify the parent Convention.

The Council approved the working group's proposal that "it would be a useful first step to undertake a comparative study of the conventions for which IMO is depositary and similar instruments for which other Members of the United Nations family are responsible." This proposal was endorsed by the 6th regular session of the IMO Assembly in October 1969 and the study itself was completed in time to be considered by the Assembly at its 7th session in 1971.

It examined the procedures of four other UN agencies: the International Civil Aviation Organization (ICAO), the International Telecommunications Union (ITU), the World Meteorological Organization (WMO) and the World Health Organization (WHO).

It showed that all of these organizations were able to amend technical and other regulations. These amendments became binding on Member States without a further act of ratification or acceptance being required.

On the other hand, IMO had no authority to adopt let alone amend conventions. Its mandate allowed it only to "provide for the drafting of conventions, agreements or other instruments and to recommend these to Governments and to intergovernmental organizations and to convene such conferences as may be necessary." Article 2 of the IMO Convention specifically stated that IMO's functions were to be "consultative and advisory".

The Organization could arrange a conference - but it was up to the conference to decide whether the Convention under discussion should or should not be adopted and to decide how it should be amended. The study concluded that "any attempt to bring the IMO procedure and practice into line with the other organizations would, therefore, entail a change either in the constitutional and institutional structure of the Organization itself or in the procedure and practice of the diplomatic conferences which adopt the conventions of IMO. The first might involve an amendment to the IMO Convention itself. The second might
require that diplomatic conferences convened by IMO should grant greater power to the organs of IMO in regard to the review and revision of the instruments."

The study was discussed at length by the Assembly. Canada pointed out that the amendments adopted to the 1960 SOLAS Convention in 1966, 1967, 1968 and 1969 had failed to enter into force and this "sufficed to show that IMO would henceforth have to tackle serious institutional problems." A note submitted to the conference by Canada stated that "unless the international maritime community is sufficiently responsive to these changed circumstances, States will once again revert to the practice of unilaterally deciding what standards to apply to their own shipping and to foreign flag shipping visiting their ports."

The result was the adoption of resolution A.249(VII) which referred to the need for an amendment procedure "which is more in keeping with the development of technological advances and social needs and which will expedite the adoption of amendments." It called for the Legal Committee and Maritime Safety Committee to prepare draft proposals for consideration by the 8th Assembly.

A growing urgency was added by the fact that IMO was preparing a number of new conventions for adoption during the next few years. Conferences to consider a new Convention on the International Regulations for Preventing Collisions at Sea and an International Convention for Safe Containers were both scheduled for 1972, a major Convention dealing with the Prevention of Marine Pollution from Ships for 1973 and a conference to revise SOLAS was scheduled for 1976. All of these treaties required a new, easier amendment procedure than the traditional method.

The MSC discussed the amendment question at its 25th session in March 1972. A working group was formed to discuss the matter in detail and concluded that at current rates of acceptance the requisite "two-thirds" target needed to amend SOLAS 1960 "will not be achieved...for many years, possibly never." Moreover, any future amendments would almost certainly suffer the same fate. This would include any amendments intended to improve the amendment procedure itself. The working group reported: "It follows that the only realistic way of bringing an improved amending procedure into effect within a reasonable period of time is to incorporate it into new or revised technical conventions.

A few weeks later, the Legal Committee held its 12th session. Among the documents prepared for the meeting was a report on discussions that had taken place at the MSC and a detailed paper prepared by the Secretariat. The paper analyzed the entry into force and amendment processes of various IMO Conventions and referred to two possible methods that had been considered by the Assembly, for speeding up the amendment procedure. Alternative I was to revise each Convention so that greater authority for adopting amendments might be delegated to the appropriate IMO organs. Alternative II was to amend the IMO Convention itself and give IMO the power to amend Conventions.

The study then considered Alternative I in greater detail. The main reason why amendments took so long to enter into force was the time taken to gain acceptance by two-thirds of Contracting Governments. One way of reducing this period would be by "specifying a date ...of entry into force after adoption by the Assembly, unless that date of amendment is explicitly rejected by a certain number or percentage of Contracting Governments." The paper said that this procedure "has the advantage that all Contracting Governments would be able to advance the preparatory work for implementing the amended regulations and the industry would be in a position to plan accordingly."

The Committee established a working group to consider the subject and prepared a preliminary study based on its report, which again referred to the disadvantages of the classical amendment system.
study continued\textsuperscript{10}. "The remedy for this, which has proved to be workable in practice, in relation to a number of conventions, is what is known as the 'tacit' or 'passive' acceptance procedure. This means that the body which adopts the amendment at the same time fixes a time period within which contracting parties will have the opportunity to notify either their acceptance or their rejection of the amendment, or to remain silent on the subject. In case of silence, the amendment is considered to have been accepted by the party...".

The tacit acceptance idea immediately proved popular. The Council, at its meeting in May, decided that the next meeting of the Legal Committee should consist of technical as well as legal experts so that priority could be given to the amendment issue. The Committee was asked to give particular attention to tacit acceptance.

The idea was given non-governmental support by the International Chamber of Shipping, which had consultative status with IMO and submitted a paper\textsuperscript{11} stating that the lack of an effective amendment procedure created uncertainties and was detrimental to effective planning by the industry. The classical procedure had also encouraged some governments to introduce unilateral legislation which, however well-intentioned, was "seriously disruptive to international shipping services." The paper said that if other Governments did the same "the disruption to international shipping and the world trade which it serves would become increasingly severe. Such unilateral action strikes at the purpose of IMO."

By the time the Legal Committee met for its 14th session in September 1972, there was general agreement that tacit acceptance offered the best way forward. Other ideas, such as amending the IMO Convention itself, had too many disadvantages and would take too long to introduce. There was some concern about what would happen if a large number of countries did reject an amendment and the Committee members agreed that tacit acceptance should apply only to the technical content of Conventions, which was often contained in annexes. The non-technical articles should continue to be subject to the classical (or "positive") acceptance procedure.

The Committee also generally agreed that alternative procedures for amending the technical provisions should be retained but it did not reach consensus on another issue: should amendments be prepared and adopted by an appropriate IMO body, such as the Maritime Safety Committee - or by Contracting Parties to the Convention concerned? This was an important point at the time, since many Contracting Parties to IMO Conventions were not yet Members of IMO itself and might object to treaties they had ratified being amended without them even being consulted.

This issue was still unsettled when the Conference on Revision of the International Regulations for Preventing Collisions at Sea opened in October 1972. The purpose of the conference was to update the Collision Regulations and to separate them from the SOLAS Convention (the existing regulations were annexed to SOLAS 1960).

The amendment procedure is contained in Article VI. Amendments to the Collision Regulations adopted by the MSC (by a two-thirds majority) have to be communicated to Contracting Parties and IMO Member States at least six months before being considered by the Assembly. If adopted by the Assembly (again by a two-thirds majority), the amendments enter into force on a date determined by the Assembly unless more than one third of Contracting Parties notify IMO of their objection. On entry into force, any amendment shall "for all Contracting Parties which have not objected to the amendment, replace and supersede any previous provision to which the amendment refers."

Less than two months later, on 2 December 1972 a conference held in Geneva adopted the International Convention for Safe Containers, article X of which contains procedures for amending any part
or parts of the Convention. The procedure is the traditional "positive" acceptance system, under which amendments enter into force twelve months after being adopted by two-thirds of Contracting Parties.

However, Article XI contains a special procedure for amending the technical annexes which also incorporates tacit acceptance. The procedure is slightly different from that used in the Collision Regulations, one difference being that the amendments can be adopted by the MSC "to which all Contracting Parties shall have been invited to participate and vote." This answered the question of how to take into account the interests of Parties to Conventions that were not Member States of IMO.

The next Convention to be considered was the International Convention for the Prevention of Pollution from Ships (MARPOL), which was successfully adopted in May 1973. It, too, incorporated tacit acceptance procedures for amending the technical annexes.

In the meantime, IMO was preparing for a new SOLAS convention. This was considered necessary because none of the amendments adopted to the 1960 version had entered into force and did not appear likely to do so in the near future. The 1966 Load Lines Convention also contained a classical amendment procedure and the intention was to combine the two instruments in a new Convention, which was scheduled to be considered in 1976.

The MSC discussed this proposal at its 26th session in October-November, but it was clear that this would be a daunting and time-consuming task. The combined instrument might be a good idea for the future - but the real priority was to get the amendments to SOLAS 1960 into force as quickly as possible and to make sure that future amendments would not be delayed. A working group was set up to consider the various alternatives, but opinion began to move in favour of a proposal by the United Kingdom that IMO should concentrate on an interim Convention designed to bring into force the amendments adopted since 1960. The new Convention, it was suggested, would consist of the 1960 text with the addition of a tacit acceptance amendment procedure and the addition of amendments which had already been adopted.

Another advantage, the United Kingdom pointed out, was that the conference called to adopt the revised Convention "might be held considerably earlier than 1976 since comparatively little preparation would be needed." The subject was discussed again at the MSC's 27th session in the spring of 1973 and, although some delegations wanted a more comprehensive revision, others felt that the workload would be so great that the conference would be seriously delayed. By a vote of 12 in favour and four abstentions, the Committee decided to call a conference with limited scope, as proposed by the United Kingdom.

On 21 October, 1974, the International Conference on Safety of Life at Sea opened in London and on 1 November a new SOLAS Convention was adopted, which incorporated the tacit acceptance procedure.

**Conclusion**

The tacit acceptance amendment procedure has now been incorporated into the majority of IMO's technical Conventions and has been extended to some other instruments as well. Its effectiveness can be seen most clearly in the case of SOLAS 1974, which has been amended on 16 occasions since then. In the process, the Convention's technical content has been almost completely re-written. Some chapters have been updated more than ten times and four completely new chapters have been added.

These amendments have usually entered into force around two years after being adopted, although the April 1988 amendments, which were adopted as a result of the Herald of Free Enterprise ferry disaster, entered into force in October 1989, only 18 months later.
The 1988 Protocol to the Convention has not fared so well. The Protocol affects the Convention's articles rather than its technical content and as a result is subject to the positive acceptance amendment procedure. It is intended to harmonize the survey requirements of SOLAS with those of two other Conventions, but, although the Protocol was adopted unanimously, it has not yet met entry into force requirements.  

**Update** - *The Protocol entered into force on 1 February 2000*

Without tacit acceptance, it is likely that the amendments adopted to SOLAS and other IMO Conventions would have suffered the same fate. Had that occurred it is virtually certain that the unity of IMO would have been severely tested. Some nations - especially those whose Governments found themselves confronted by a disaster or similar emergency - would have been tempted to switch from international to national action. Once one had done so others would have been tempted to follow suit. Without tacit acceptance, IMO's ability to set safety and environmental standards for world shipping would have been seriously weakened. Without tacit acceptance, in fact, IMO might no longer exist.
## ANNEX 1: TACIT ACCEPTANCE IN IMO CONVENTIONS

<table>
<thead>
<tr>
<th>CONVENTION</th>
<th>YEAR OF ADOPTION</th>
<th>TACIT ACCEPTANCE (for technical regulations)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maritime Safety</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Convention on Load Lines (LL)</td>
<td>1966</td>
<td>No</td>
</tr>
<tr>
<td>Special Trade Passenger Ships Agreement (STP)</td>
<td>1971</td>
<td>No</td>
</tr>
<tr>
<td>International Convention for Safe Containers (CSC)</td>
<td>1972</td>
<td>Yes</td>
</tr>
<tr>
<td>Convention on the International Regulations for Preventing Collisions at Sea (COLREG)</td>
<td>1972</td>
<td>Yes</td>
</tr>
<tr>
<td>International Convention for the Safety of Life at Sea (SOLAS)</td>
<td>1974</td>
<td>Yes</td>
</tr>
<tr>
<td>Convention on the International Maritime Satellite Organization</td>
<td>1976</td>
<td>No</td>
</tr>
<tr>
<td>International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)</td>
<td>1978</td>
<td>Yes</td>
</tr>
<tr>
<td>International Convention on Maritime Search and Rescue (SAR)</td>
<td>1979</td>
<td>No</td>
</tr>
<tr>
<td>International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)</td>
<td>1995</td>
<td>No</td>
</tr>
<tr>
<td><strong>PREVENTION OF MARINE POLLUTION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 69)</td>
<td>1969</td>
<td>Yes</td>
</tr>
<tr>
<td>Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC)</td>
<td>1972</td>
<td>Yes</td>
</tr>
<tr>
<td>International Convention for the Prevention of Pollution from Ships, 1973 (Conv)</td>
<td>1973</td>
<td>Yes</td>
</tr>
<tr>
<td>CONVENTION</td>
<td>YEAR OF ADOPTION</td>
<td>TACIT ACCEPTANCE (for technical regulations)</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>as modified by the Protocol of 1978 (MARPOL 73/78)</td>
<td>1978 (Prot)</td>
<td></td>
</tr>
<tr>
<td>International Convention on Oil Pollution Preparedness, Response and Co-operation</td>
<td>1990</td>
<td>No</td>
</tr>
<tr>
<td><strong>LIABILITY AND COMPENSATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Convention on Civil liability for Oil Pollution Damage (CLC)</td>
<td>1969</td>
<td>No</td>
</tr>
<tr>
<td>Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR)</td>
<td>1971</td>
<td>No</td>
</tr>
<tr>
<td>International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND)</td>
<td>1971</td>
<td>No</td>
</tr>
<tr>
<td>Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL)</td>
<td>1974</td>
<td>No(^{17})</td>
</tr>
<tr>
<td>Convention on Limitation of Liability for Maritime Claims (LLMC)</td>
<td>1976</td>
<td>No(^{18})</td>
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<tr>
<td>International Convention on Liability for Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS)</td>
<td>1996</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>OTHER MATTERS</strong></td>
<td></td>
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</tr>
<tr>
<td>Convention on Facilitation of International Maritime Traffic (FAL)</td>
<td>1965</td>
<td>Yes(^{19})</td>
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<tr>
<td>International Convention on Tonnage Measurement of Ships (TONNAGE)</td>
<td>1969</td>
<td>No</td>
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<tr>
<td>Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA)</td>
<td>1988</td>
<td>No</td>
</tr>
<tr>
<td>International Convention on Salvage (SALVAGE)</td>
<td>1989</td>
<td>No</td>
</tr>
</tbody>
</table>

Instruments which are in force or applicable but which are no longer fully operational because they have been superseded by later instruments.
<table>
<thead>
<tr>
<th>CONVENTION</th>
<th>YEAR OF ADOPTION</th>
<th>TACIT ACCEPTANCE (for technical regulations)</th>
</tr>
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<tbody>
<tr>
<td>International Convention for the Safety of life at Sea (SOLAS)</td>
<td>1960</td>
<td>No</td>
</tr>
<tr>
<td>International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL)</td>
<td>1954</td>
<td>No</td>
</tr>
</tbody>
</table>

**Instruments which are not yet in force and not intended to enter into force**

<table>
<thead>
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<tbody>
<tr>
<td>International Convention for the Prevention of Pollution from Ships, 1973</td>
<td>1973</td>
<td>No</td>
</tr>
<tr>
<td>Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV)</td>
<td>1977</td>
<td>No</td>
</tr>
<tr>
<td>Protocol of 1984 to amend the International Convention on Civil liability for Oil Pollution Damage, 1969 (CLC PROT 84)</td>
<td>1984</td>
<td>No</td>
</tr>
</tbody>
</table>