



# **International Maritime Organization and the Regulation of Maritime Corruption: Is It Really Worthwhile?**

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# Outline

- Comprehensive anti-corruption frameworks in maritime law
- Heard and seen on the docks and community action
- IMO
- Conclusion

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# Comprehensive anti-corruption frameworks in maritime law



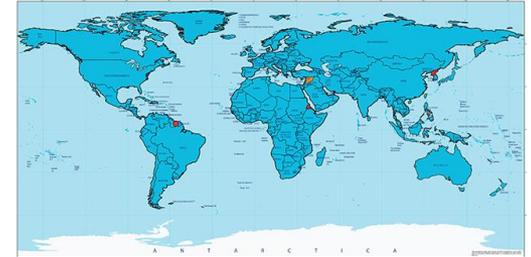
## United Nations Convention on the Law of the Sea, art 300

Part XVI, 'General provisions', art 300, 'Good faith and abuse of rights':

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

# United Nations Convention against Corruption

- The only legally binding universal anti-corruption instrument
- Covers 5 main areas
  - preventive measures
  - criminalization and law enforcement
  - international cooperation
  - asset recovery
  - technical assistance and information exchange
- Adopted by the UN General Assembly: 31 October 2003, by resolution 58/4
- Entry into force: 14 December 2005
- Signatories: 140
- Parties: 188 (as of 11 August 2021)
- Administered by the United Nations Office on Drugs and Crime (UNODC)



Source: [UNODC](#)



## **United Nations Convention against Corruption art 1 'Statement of purpose'**

Chapter I 'General provisions', art 1 'Statement of purpose':

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property..



## United Nations Convention against Corruption Ch II 'Preventive measures'

Article 5 'Preventive anti-corruption policies and practices'

Article 6 'Preventive anti-corruption body or bodies'

Article 7 'Public sector'

Article 8 'Codes of conduct for public officials'

Article 9 'Public procurement and management of public finances'

Article 10 'Public reporting'

Article 11 'Measures relating to the judiciary and prosecution services'

Article 12 'Private sector'

Article 13 'Participation of society'

Article 14 'Measures to prevent money-laundering'

# A tightening regulatory framework

## International

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997
- UN Convention against Corruption, 2003
- UN Global Compact

## Regional

- Civil and Criminal Law Conventions on Corruption, 1999 (with Additional Protocol)

## National

- Foreign Corrupt Practices Act of 1977 (US)
- Bribery Act 2010 (UK)

*Contracts: BIMCO Anti-Corruption Clause for Charterparties*



**Extraterritorial  
application!**

# UK Bribery Act 2010 offences

Case 1: P offers, promises or gives a financial reward or other advantage to another person. P must intend the advantage to act as an inducement for another person (not necessarily the recipient of the advantage) to perform improperly a relevant function or activity or to reward the improper performance of such a function or activity.

Case 2: P promises or gives a financial or other advantage to another person, knowing or believing that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

# UK Bribery Act 2010 offences (cont'd)

Case 3: R agrees to receive or accepts a financial or other advantage, intending that in consequence a relevant function or activity should be performed improperly (whether by R or another person).

Case 4: R requests, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

Case 5: R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

# UK Bribery Act 2010 offences (cont'd)

Case 6: in anticipation of, or in consequence of, R requesting or agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by R or by another person at R's request or with R's assent or acquiescence.

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# Heard and seen on the docks and community action



'MACN - The Cost of Corruption at Sea' (23 June 2021)  
<https://www.youtube.com/watch?v=pji8wBzV-ps>

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**IMO**



## Convention on the International Maritime Organization, 1948, as amended, art 1

Part I 'Purposes of the Organization', art I:

The purposes of the Organization are:

- (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; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes set out in this Article;
- (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;



## Convention on the International Maritime Organization, 1948, as amended, art 1 (cont'd)

Part I 'Purposes of the Organization', art I:

The purposes of the Organization are:

...

(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 and the effect of shipping on the marine environment 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.



## **Convention on the International Maritime Organization, 1948, as amended, art 48**

Part XI 'The Facilitation Committee', art 48:

The Facilitation Committee shall consider any matter within the scope of the Organization concerned with the facilitation of international maritime traffic and in particular shall:

- (a) Perform such functions as are or may be conferred upon the Organization by or under international conventions for the facilitation of international maritime traffic, particularly with respect to the adoption and amendment of measures or other provisions, as provided for in such conventions.
- (b) Having regard to the provisions of Article 25, the Facilitation Committee, upon request by the Assembly or the Council or if it deems such action useful in the interests of its own work, shall maintain such close relationship with other bodies as may further the purposes of the Organization.



# Convention on Facilitation of International Maritime Traffic, 1965, as amended, arts I and II

## Article I

The Contracting Governments undertake to adopt, in accordance with the provisions of the present Convention and its Annex, all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board.

## Article II

(1) The Contracting Governments undertake to co-operate, in accordance with the provisions of the present Convention, in the formulation and application of measures for the facilitation of the arrival, stay and departure of ships. Such measures shall be, to the fullest extent practicable, not less favourable than measures applied in respect of other means of international transport; however, these measures may differ according to particular requirements.



## Maritime Corruption at IMO: timeline

- Maritime fraud was already tabled in the early years of the IMO.
- IMO Doc FAL 42/16/3 (29 March 2018) 'Any Other Business: Maritime corruption; Impact on global trade, port governance and seafarers' Submitted by ICS, IAPH, ICHCA, IHMA, IMPA, INTERTANKO, INTERMANAGER, IPTA, IBIA, FONASBA, ITF and NI
- IMO Doc FAL 43/17 (4 January 2019) 'Work Programme: Proposal for a new output regarding maritime corruption and the impact on global trade, port governance and seafarers' Submitted by Liberia, Marshall Islands, Norway, United Kingdom, United States, Vanuatu, ICS, IAPH, BIMCO, ICHCA, IMPA, IFSMA, INTERTANKO, InterManager, IPTA, IHMA, IBIA, FONASBA, ITF and NI
- IMO Doc FAL 43/19 (23 January 2019) 'Any Other Business: Maritime corruption and the impact on global trade, port governance and seafarers' Note by the Secretariat



## Maritime Corruption at IMO: timeline (cont'd)

- IMO Doc FAL 44/4 (17 January 2020) 'Review and Update of the Annex of the FAL Convention: Report of the Correspondence Group' Submitted by France

Proposed the following new text under Section 1 – 'Definitions and general provisions' of the Annex of the FAL Convention:

1.9bis Recommended Practice. If, through its own assessment or a complaint received from a relevant stakeholder, there is a suggestion that corruption is being exercised in relation to ships' calls in the port, an authority in the port should endeavour to identify and take appropriate action to combat any such instances of corruption, in cooperation with the relevant stakeholders.

Comments by the Coordinator based on participants' input: next slide



# Convention on Facilitation of International Maritime Traffic, 1965, as amended, art VI

## Article VI

For the purposes of the present Convention and its Annex:

- (a) “Standards” are those measures the uniform application of which by Contracting Governments in accordance with the Convention is necessary and practicable in order to facilitate international maritime traffic;
- (b) “Recommended Practices” are those measures the application of which by Contracting Governments is desirable in order to facilitate international maritime traffic.



## Maritime Corruption at IMO: timeline (cont'd)

- IMO Doc FAL 44/4 (17 January 2020) 'Review and Update of the Annex of the FAL Convention: Report of the Correspondence Group' Submitted by France

Comments by the Coordinator based on participants' input:

This proposal was made in continuity with the submission about maritime corruption FAL 42/16/3 and FAL 43/17. It could give a basis in the FAL Convention to the "Guidance to address maritime corruption" whose development the FAL Committee decided to add to its current biennial agenda. The Group nevertheless had no time to conclude on this drafting. It was queried if corruption should not be defined and the 'appropriate action' explicated. UNODC asked whether the focus was not too narrow, being restricted to corruption in relation to the call of the ship, and to authorities 'in the port'. The inclusion of a provision about preventive measures was also advised.



## Maritime Corruption at IMO: timeline (cont'd)

- IMO Doc FAL 44/13 (7 February 2020) 'Guidance to Address Maritime Corruption: IMO Guidance to address bribery and corruption in the maritime sector' Submitted by Liberia, Marshall Islands, Norway, Panama, United States, Vanuatu, ICS, IUMI, IAPH, BIMCO, IMPA, IFSMA, INTERTANKO, P & I Clubs, InterManager, IPTA, IHMA, IBIA, FONASBA, ITF and NI
- Constitution of an IMO Correspondence Group for one year, extended for another year
- IMO Doc FAL (45/14 25 March 2021) 'Guidance to Address Maritime Corruption: Establishment of a new GISIS module on maritime corruption to support further technical cooperation assistance with the creation of a dedicated Facilitation Trust Fund' Submitted by Vanuatu
- IMO Doc FAL 46/1 (16 July 2021) 'Provisional Agenda for the forty-sixth session of the Facilitation Committee,1 to be held remotely from Monday, 9 May to Friday, 13 May 2022'  
Item 13 reads 'Guidance to address maritime corruption'
- IMO Doc TCC 71/15 (30 July 2021) 'Any Other Business: Capacity-building and training programme on combating maritime corruption' Submitted by Chile, France, Palau, Saudi Arabia, United Arab Emirates and Vanuatu



# Conclusion



## To recap

- Guidance
- Hard law
- Training
- Reporting
- Overarching governance frameworks
- Sensitivity
- UN Sustainable Development Goal 16, Target 16.5 'Substantially reduce corruption and bribery in all its forms'
- Corporate social responsibility