International Regulatory Co-operation and International Organisations

THE CASES OF THE OECD AND THE IMO



OECD

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Foreword

This report is part of a mini collection of books on the topic of international regulatory co-operation (IRC). It builds on the 2013 publication on *International Regulatory Co-operation: Addressing Global Challenges*, which offers evidence of the intensifying regulatory co-operation across countries and the growing role that international organisations play as standard setting bodies. This volume launches work on the rule-making activities of international organisations by the OECD together with other IOs. It reflects initial discussions held among 16 international organisations, OECD countries and stakeholders in a meeting organised in Paris on 16 April 2014. It provides insights into the growing role of international organisations as standard-setters based on the contribution of a prominent academic and case studies of the OECD and of the International Maritime Organization (IMO).

This publication was co-ordinated by Céline Kauffmann, Deputy Head, under the supervision of Nick Malyshev, Head of the OECD Division on Regulatory Policy. Chapter 1 was drafted by Kenneth W. Abbott, Professor of Global Studies at the Arizona State University. Chapter 2 was drafted by Céline Kauffmann and Valériane Koenig, Legal Advisor in the OECD Legal Directorate; and benefitted from extensive comments from Nick Malyshev, Nicola Bonucci, Director of the OECD Legal Directorate, and Gita Kothari, Senior Legal Advisor, OECD Legal Directorate. Chapter 3 was drafted by Olaf Merk, Administrator Port and Shipping at the International Transport Forum at the OECD; and benefitted from inputs from Jesper Loldrup, Head, Executive Office of the Secretary-General and of Policy and Planning, Office of the Secretary-General of the International Maritime Organisation, and Alexandra Szczepanski, Associate Professional Officer, Policy and Planning, Office of the Secretary-General of the International Maritime Organization. The report was prepared for publication by Jennifer Stein.

The work on IRC is being conducted under the supervision of the OECD Regulatory Policy Committee whose mandate is to assist both members and non-members in building and strengthening capacity for regulatory quality and regulatory reform. A steering group comprising Canada, Mexico, New Zealand, the UK and the US guides the work on the topic.

The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance and Territorial Development Directorate. The OECD Public Governance and Territorial Development Directorate's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practice in different societal and market conditions. The goal is to help countries build better government systems and implement policies at both national and regional level that lead to sustainable economic and social development. The directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

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Preface

The world has never been more interconnected. We can see this in international trade and investment flows, the movements of people, the economic activity of multinationals, and the internationalisation of research and development. However, while globalisation has seen unprecedented growth since the early 1990s, the world has not become "flat". The growing fragmentation of production across borders identified in the OECD work on global value chains is matched by a fragmentation of norms and rules. Sometimes, it is for good reasons: specific rules and norms cater for specific needs and preferences or have historical roots and would bring little benefits to change. But most often divergences threaten co-ordinated policy action, hamper interoperability and raise unnecessary costs for citizens and businesses. The global financial and economic crisis has provided ample illustration of the dramatic impact of poor articulation and inadequate enforcement of rules across borders and reminded us of the pressing need for effective co-operation to address global systemic challenges.

According to *International Regulatory Co-operation: Addressing Global Challenges*, the seminal stocktaking report that the OECD published in 2013, international regulatory co-operation has a strong role to play to 'harness' and create the common rules of globalisation. It has the potential to maintain the high level of protection that citizens expect, to improve the functioning of markets, to reduce costs, to help manage global risks and to create substantial benefits for business and the public at large. The report identified 11 mechanisms in support of international regulatory co-operation, from the most binding one – complete harmonisation of rules via joint institutions like the ones of the EU – to the lightest form of co-operation through exchange of information via the numerous networks and fora that allow sector-specific regulators to meet. In this spectrum of 11 mechanisms, our work showed that international organisations play a critical role in supporting the development and ensuring the effectiveness of the rules of globalisation. According to the survey carried out, most countries routinely belong to 50 or more international organisations.

It is not clear, however, that we are taking full advantage of the potential of international organisations to address the global challenges of our times and help us all reap the benefits of globalisation and minimise its potential costs. This volume, *International Regulatory Co-operation and International Organisations,* provides an initial analysis of the rule-making activities of international organisations. It reflects discussions held among 16 international organisations, OECD countries and stakeholders in a meeting that was held in Paris on 16 April 2014. It provides insights into the growing role of international organisations as standard-setters based on case studies of the OECD and of the International Maritime Organisation (IMO), as well as on the contributions of two prominent academics.

The report shows that international organisations generally have a commitment to good processes and disciplines to ensure the quality of their rule-making. However, this is an area where evidence on impacts remains scarce and needs strengthening through our collective action. Greater implementation of regulatory disciplines such as key principles of transparency, participation, review and revision and accountability could also contribute to structuring and rationalising rule-making of international organisations in line with the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance.

This publication calls for more work to help fully exploit the role of international organisations in support of a "new multilateralism". The OECD is committed to work with countries and other institutions to collect the necessary information, undertake the analytical work and foster the necessary consensus on the practices and instruments of good rule-making of international organisations. It is in the interest of all to ensure that we are well prepared and able to harness the benefits of globalisation.



Angel Gurría
OECD Secretary-General

Acronyms and abbreviations

AIS	Automatic Identification Systems
BDN	Bunker Fuel Delivery Note
BEPS	base erosion and profit shifting
CMP	country maritime profiles
ECAs	emission control areas
EDRC	Economic and Development Review Committee
EEDI	Energy Efficiency Design Index
EHS	Environment, Health and Safety
EPRs	Environmental Performance Reviews
HPV	High Production Volume
HRS	High Risk Ship
IACS	International Association of Classification Societies
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
ICMRA	International Coalition of Medicines Regulatory Authorities
IFC	International Finance Corporation
IFIs	international financial institutions
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IOSCO	International Organization of Securities Commissions
ISO	International Organization for Standardization

LRS	Low Risk Ship
MAD	Mutual Acceptance of Data
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPC	Marine Environment Protection Committee
MOUs	Memorandums of Understanding
MSC	Maritime Safety Commission
MSC	Maritime Safety Committee
NATO	North Atlantic Treaty Organisation
NCPs	National Contact Points
NIR	New Inspection Regime
OCIMF	Oil Companies International Marine Forum
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
P&I	protection and indemnity
PSC	Port State Control
RIA	Regulatory Impact Assessment
ROs	recognised organizations
SAICM	Strategic Approach to International Chemicals Management
SEEMP	Ship Energy Efficiency Management Plan
SG-RAR	Steering Group for Reducing Administrative Requirements
SIRE	Ship Inspection Report Programme
SOLAS	International Convention for the Safety of Life at Sea
SRS	Standard Risk Ship
SRS	Standard Risk Ship
STCW	Standards of Training, Certification and Watchkeeping for Seafarers

UNCLOS	United Convention of the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
WHO	World Health Organization

Executive summary

The world is witnessing the progressive emergence of an open, dynamic, globalised economy, and the intensification of global challenges such as systemic risks, environmental protection, human health or safety. Against this background, governments are increasingly seeking to ensure greater co-ordination on regulatory objectives, processes and enforcement and to eliminate unnecessary regulatory divergences and redundancies. International regulatory co-operation (IRC) represents a critical opportunity to foster sustainable and inclusive growth through lower barriers to international flows and better rules of the game for all.

International organisations (IOs) are playing a growing role as standard setting bodies and in supporting regulatory co-operation in multiple areas. They do so by offering platforms for continuous dialogue on regulatory issues and the development of common standards, best practices and guidance. Beyond standard setting, these discussions and tools foster regulatory co-operation by facilitating the comparability of approaches and practices, consistent application and capacity building in countries with a less developed regulatory culture. As permanent fora for discussion, they also provide member countries with flexible mechanisms to identify and adapt to new and emerging regulatory areas or issues and contribute to the development of common language.

IOs contribute to the creation of common rules of globalisation that help harness the movement of goods, services, capital and individuals across borders, as well as to reach beyond national boundaries to nurture global goods and mitigate the spread of global "bads". However, structured evidence on the impact of IOs' rule-making activities remains scant, both concerning economic and social gains and increased administrative efficiency and capacity. Current trends in IO rule making also suggest that there may be important risks, including potential fragmentation or regionalisation of regulatory co-operation, competition among IOs and with new actors, and mission creep with underfinancing and limited impacts.

Evidence shows that IOs have, over the years, developed processes and practices to support their rule-making – such as consultation mechanisms and impact evaluation. However, although institutional arrangements, operational modalities and regulatory tools have proved to be critical determinants at the domestic level of the quality of regulatory governance, evidence on the active use of these regulatory management disciplines in international rule-making is limited. More systematic exchange of information and experience would enable IOs to capitalise on lessons learnt and maximise the potential of existing governance arrangements and instruments, and would ultimately help them garner greater legitimacy and accountability in their standard setting role.

On 16 April 2014, the Organisation for Economic Co-operation and Development (OECD) convened a meeting that, for the first time, brought together officials from 16 international organisations, from 15 member and non-member countries, as well as from stakeholders to share their experience on the ways, means and impacts of the rule-making activities of international organisations in a range of policy areas and sectors. The meeting aimed to launch a discussion on collaborative work among IOs. The discussions were structured in several roundtables introduced by leading academics and built on two case studies describing how the OECD and the International Maritime Organization (IMO) support IRC.

This volume contains Professor Abbott's contribution (Chapter 1), the case study on the role of the OECD (Chapter 2) and the case study on the role of the IMO (Chapter 3) as well as the summary of the April 2014 meeting (Annex A).

The OECD and IMO experiences offer a number of lessons. Success factors in the case of the OECD include the OECD's capacity to reach consensus quickly owing to the like-mindedness of its members, its multidisciplinary expertise, its focused approach and its capacity to adapt to new developments. OECD has been particularly effective in its rule-making activity when the organisation has been able to adopt a pragmatic approach, establish strong monitoring mechanisms, benefit from stakeholders' engagement, and has pioneered new fields of activity or set the grounds for international standards. The IMO, as a regulatory system and standard-setting authority for the global shipping industry, has large credibility and legitimacy in the maritime sector. This is also due to its application of various regulatory instruments, including consultation, peer reviews, *ex ante* impact studies and administrative burden reduction initiatives.

Looking ahead, the OECD is committed to working in close partnership with other IOs, in order to strengthen the knowledge base about the impacts of IOs as standard setters, as well as about their internal rule-making processes. The OECD hopes that other IOs will undertake similar case studies on their experience in supporting IRC, contributing to greater understanding of how to maximise the impact of IOs' standards. The OECD also plans to undertake a broad survey exercise to take stock of the variety of IO governance arrangements and operational modalities. Establishing a knowledge base on the impact and the internal rule-making processes of IOs will facilitate reflection on how to underpin the legitimacy and accountability of standard-setting by IOs. It will also support greater co-operation among IOs, an important step in addressing the risk of fragmented IRC. The contribution of countries will be critical for this endeavor, as they constitute the overlapping constituencies of IOs.

Going forward, closer co-operation among IOs on rule-making activities would support more coherent policy advice and co-ordination. To achieve greater impact and relevance and reinforce further international policy co-ordination, IOs' contributions could aim to better inform global debates, facilitate agreements on the direction of policies, and help co-ordinate particular individual and collective country measures.

Chapter 1

International organisations and international regulatory co-operation: Exploring the links

by

Kenneth W. Abbott*

This chapter outlines recent trends in international regulatory co-operation (IRC), the roles that international organisations (IOs) play in IRC, and how the effects of IO involvement might be assessed. The trends are clear and striking. However, we know far too little about the roles of IOs and their effects, both crucial issues. The OECD project on international regulatory co-operation, with the collaboration of participating IOs, can thus make a valuable contribution, producing better information and analytical insights, allowing IOs to improve their procedures, and helping states to reap the benefits of regulatory co-operation. This chapter accordingly concludes with preliminary thoughts on questions and approaches the project might explore.

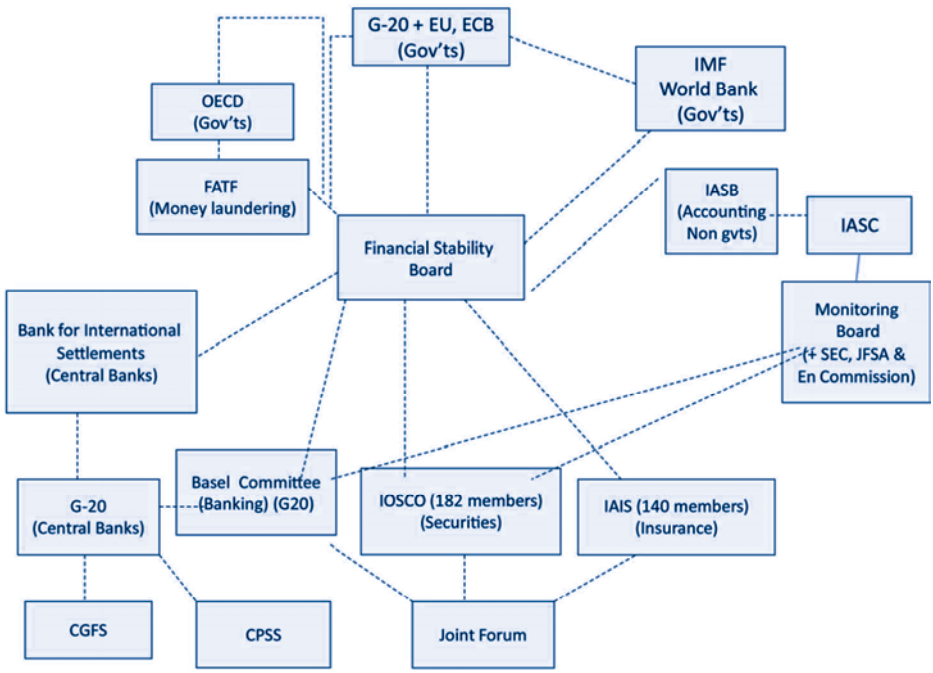
* Kenneth W. Abbott is Professor of Law and Global Studies at the Arizona State University.

Trends

The explosion of IRC

The most notable trend over the past 25 years has been a "Cambrian explosion" (Keohane and Victor, 2011) of international regulatory co-operation. IRC has traditionally been a relatively decentralised process, in which governments or regulatory agencies negotiate bilaterally or plurilaterally with their foreign counterparts to co-ordinate regulations and related procedures – e.g., through mutual recognition or harmonisation.[1] Today, however, IRC also includes diverse forms of international and transnational rule-making, many of which involve IOs.

Figure 1.1. **The structure of global financial regulation**



Source: OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

The OECD's report, *International Regulatory Co-operation: Addressing Global Challenges* (OECD, 2013a) includes numerous examples and case studies that reflect this variety of co-operative approaches. For example, Figure 1.1 – taken from OECD (2013a) – shows the governance institutions engaged in global financial regulation. While the Financial Stability Board (FSB) occupies a focal position in this complex of institutions, a remarkable number of organisations make rules, set standards and co-ordinate regulation within this crucial field.

Figure 1.2 shows a second example, from Keohane and Victor (2011): the "regime complex for climate change". Not all the organisations in Figure 1.2 are primarily "regulatory." For example, the "multilateral development assistance" category includes international financial institutions (IFIs), such as the World Bank and regional development banks;[2] "expert assessments" includes institutions that generate scientific information and analyses, such as the Intergovernmental Panel on Climate Change.

Figure 1.2. **The regime complex for climate change**



Source: Keohane R. O. and D. G. Victor (2011), "The Regime Complex for Climate Change," *Perspectives on Politics*, Vol. 9, pp. 7-23.

Other organisations in the regime complex, however, are primarily regulatory. This is true of the "UN legal regimes" under the UN Framework Convention on Climate Change – an elaborate set of institutions as well as a treaty – and the Montreal Protocol ozone regime. In addition, the

organisations wholly or partly outside the oval in Figure 1.2 are regulatory organisations that may in the future be required to act on climate change. For example, a range of IOs and treaty bodies may be called on to adopt new rules or apply existing ones to control geoengineering; adjust financial market rules to support global carbon trading; modify international trade rules to accommodate border tax adjustments for carbon emissions; and adapt intellectual property rules to facilitate technology transfers.

Figure 1.2 is particularly striking because it depicts a "regime complex," that is, a complex of "regimes" (Raustiala and Victor, 2004). The units shown in Figure 1.2 are not individual IOs – as in Figure 1.1 – but groups of related institutions. Thus the number of IOs involved is larger than first appears. For example, the "adaptation initiatives" category includes numerous UN agencies and IFIs that operate programmes to support climate adaptation.

Table 1.1 shows a third example, from the field of health governance. Since 2013, the heads of advanced national (and in the case of the EU, supranational) medicines regulatory agencies have been discussing possible forms of international regulatory co-operation. Those agencies face two related problems: many countries now produce medicines and active ingredients, and those products are traded through rapidly globalising and increasingly complex supply chains. Both developments pose serious problems of effectiveness and cost for national regulators, forcing them to consider new forms of IRC. As Table 1.1 makes clear, however, regulators have already created a substantial number of international bodies to address these issues in co-ordinated fashion.[3]

Table 1.1. **Regulatory institutions addressing medicines safety**

IOs	
European Directorate for the Quality of Medicines & HealthCare	EDQM
European Medicines Agency	EMA
Pan American Health Organization	PAHO
World Health Organization	WHO
World Organization for Animal Health	OIE
Inter-state	
Asia Pacific Economic Cooperation	APEC
Pharmaceutical Inspection Convention	PIC

Table 1.1. **Regulatory institutions addressing medicines safety** (*cont.*)

Transgovernmental	
European Network for Health Technology Assessment	EUnetHTA
European Heads of Medicines Agencies	HMA
International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use	ICH
International Coalition of Medical Regulatory Authorities (in formation)	ICMRA
International Generic Drug Regulators Pilot	IGDRP
International Medical Device Regulators Forum	IMDRF
International Pharmaceutical Regulators Forum	IPRF
Pan American Network for Drug Regulatory Harmonization	PANDHR
Pharmaceutical Inspection Co-operation Scheme	PIC/S
International Working Group on the Standardization of Genomic Amplification Techniques (SoGAT) for the Virological Safety Testing of Blood and Blood Products	SoGAT
International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products	VICH
European Working Group of Enforcement Officers	WGEO
Hybrid	
APEC Regulatory Harmonization Steering Committee	RHSC
Asian Harmonization Working Party	AHWP
International Organization for Standardization	ISO
U.S. Pharmacopeial Convention	USP
International Medical Products Anti-Counterfeiting Taskforce	IMPACT
Council for International Organizations of Medical Sciences	CIOMS
Private	
ASTM International	ASTM
Biotechnology Industry Organization	BIO
Health Level Seven International (medical records industry)	HL7

Rationales for IRC

Most of the current IRC activity reflects a clear set of rationales on the part of participating governments and regulators, although different drivers predominate in specific cases. The rationales include:

1. Responding to an increasingly globalised economy. This is the principal problem faced both by medicines regulators and by financial regulators in their respective fields.

2. Supplying global public goods, and controlling collective "bads," in situations requiring international co-operation (Kaul et al., 2003; Barrett, 2007). These are the major problems in climate change governance. Multiple, diverse institutions have been created because the public goods problems in this field are so complex.

3. Reducing the economic burdens created by duplicative or inconsistent national regulation. This is the traditional aim of IRC, driven primarily by business interests. This goal can be achieved only through explicit or implicit international co-operation.

4. Assisting regulators to carry out their expanding missions even as their resources become ever more constrained. This is a virtually universal problem, common to developed and developing countries alike. Even the relatively well-resourced US Food and Drug Administration, which has been authorised to inspect medicines production facilities in some other countries, cannot monitor the estimated 300 000 factories that now produce medical ingredients.

These rationales also drive the "better regulation" movement, reflected in the 2012 OECD Recommendation on Regulatory Policy and Governance (OECD, 2012), and in subsequent work by the OECD Regulatory Policy Committee (OECD, 2013a). IRC is a major focus of this movement, as shown especially by Point 12 of the 2012 OECD Recommendation.

Institutions of IRC

As these examples show, a significant amount of international regulatory co-operation is carried out through formal IOs: for example, the International Monetary Fund (IMF), OECD and Bank for International Settlements (in the finance example); UN specialised agencies, IFIs and (potentially) the WTO (in the climate example); and the World Health Organization (WHO) (in the medicines example). However, many new or reconstituted organisations have also been created to address emerging regulatory problems.

In global finance, for example, the Financial Stability Board was created as recently as 2009,[4] to strengthen co-ordination of financial regulatory and supervisory policies. G20 leaders' summits were initiated only in 2008,[5] partly to co-ordinate the policies of IFIs. In health, the International Pharmaceutical Regulators Forum was established in 2013,[6] and the International Medical Device Regulators Forum in 2011, both to promote regulatory harmonisation (www.imdrf.org). And the heads of leading medicines agencies are working to establish a new co-ordinating body tentatively called the International Coalition of Medicines Regulatory Authorities (ICMRA).

Equally important, the institutions now involved in IRC take very different forms. To be sure, many are traditional inter-state or inter-governmental organisations, such as the IMF and WHO. But others are informal bodies, such as the G20, which has no permanent office or secretariat (Vabulas and Snidal, 2013). And a substantial number are so-called "transgovernmental" institutions (Raustiala, 2002; Slaughter, 2005): organisations or networks that consist of national regulatory agencies or other governmental units operating autonomously, rather than states or national governments as such.

The trend toward transgovernmental IRC appears clearly in the examples discussed above. In global finance, as shown in Figure 1.1, many of the most influential standard-setting institutions are transgovernmental bodies, not formal IOs. The FSB, for example, was not established by states – as formal IOs are – but by central bank governors and finance ministries.[7] Likewise, its members are not states, as they are in formal IOs, but rather central banks, finance ministries and bank supervisory authorities. Similar structures characterise the Basel Committee on Banking Supervision (BCBS) (central banks and other banking supervisory authorities), the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). The trend is equally clear in medicines regulation: the largest group of institutions in Table 1 is transgovernmental. ICMRA and the Pharmaceutical and Medical Device Regulators Forums mentioned above all take this form.

Transgovernmental institutions are seen as having several advantages. They can adopt rules without ratification by states. They may reach co-operative agreements more easily because all participants share common experiences and understandings. And they may be more flexible than formal IOs in responding to changing conditions. On the other hand, transgovernmental rules are not binding under international law, although participating agencies typically face strong pressures to adopt and comply with those rules.

While the distinction between inter-state and transgovernmental arrangements is significant, it is not always sharp. For example, the G20 Heads of State and Government have endorsed the FSB Charter, enhancing its status. And many IOs encompass both transgovernmental and inter-state interactions. For example, national delegates may participate in IO governing bodies on behalf of their states, while technical experts from ministries and regulatory agencies participate in working groups on behalf of their agencies. In the WHO, even state delegates to the World Health Assembly, the supreme governing body, are to be drawn from "the national health administration" (WHO, 1946, Art. 11); as a result, most interactions within the WHO are to some degree transgovernmental. In addition, IOs

often collaborate with transgovernmental institutions even though they are in a sense rivals for authority and influence; for example, the IMF, World Bank and OECD are members of the FSB along with national agencies.

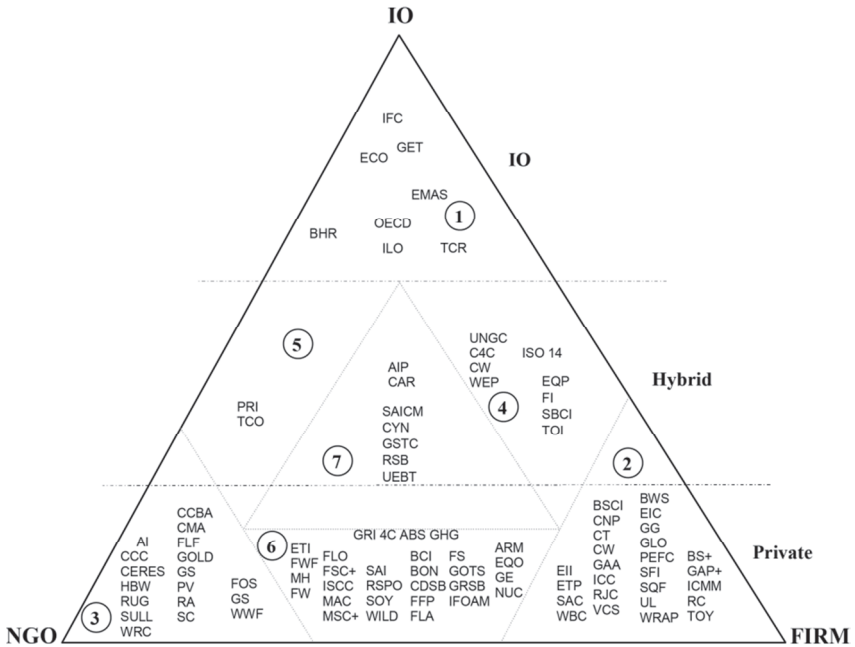
The proliferation of standard-setting and co-ordinating organisations has produced its own regulatory co-operation problem: bodies designed to co-ordinate regulation have become so numerous that they themselves require co-ordination. Without co-ordination, institutional fragmentation threatens serious negative consequences for governance (Zelli, 2011; van Asselt and Zelli, 2014; Zelli and van Asselt, 2013). More practically, virtually all IOs now need to develop strategies for accomplishing their missions in complex institutional environments like those shown here.

States have responded to fragmentation by forming higher-level organisations to co-ordinate other institutions. For example, the 2012 UN Conference on Sustainable Development (Rio+20) and the General Assembly recently created the High-Level Political Forum for sustainable development. One of its principal tasks is to "improve co-operation and co-ordination within the United Nations system on sustainable development… promote the sharing of best practices and experiences… and promote [UN] system-wide coherence and co-ordination of sustainable development policies" (UNGA, 2013). The UN system already includes multiple co-ordinating bodies, including the Chief Executives Board for Coordination (http://unsceb.org/content/about) and the Environmental Management (www.unemg.org/index.php/about) and Development (www.undg.org/content/about_the_undg) Groups. ICMRA is being formed at the level of heads of agencies to provide high-level co-ordination for the working-level bodies shown in Table 1.1.

A final significant trend is the explosion of "transnational" regulation: regulation initiated by non-state actors as well as or instead of states, which applies across borders (Abbott, 2012, 2013; OECD, 2013b [Cafaggi et al.]). Figure 1.3 shows the Governance Triangle; an earlier version appears in OECD (2013a) (Abbott and Snidal, 2009a, b; 2010). This figure depicts a variety of transnational institutions that regulate business in two broad issue areas, environment and worker rights. Because we limit the Triangle to these two areas, Figure 1.3 omits many important transnational regulators, such as the International Accounting Standards Board (IASB) shown in Figure 1.1. Transnational institutions regulate through "voluntary" standards, unlike mandatory state enactments, and so must rely on incentives such as consumer demand, reputational benefits and avoidance of mandatory regulation to induce participation and compliance.

The Triangle maps transnational regulatory organisations based on the actors that establish and govern them: business firms and associations, civil society organisations, and IOs or other state-based organisations – the three vertices of the Triangle. Thus, organisations in Zone 2 are established and managed by business firms or industry associations alone, for self-regulation; civil society groups establish those in Zone 3. Schemes in Zone 6 are collaborations between business and civil society actors, more often seen as adversaries. Schemes located in different zones are likely to have different goals and regulatory capacities, reflecting those of their members.

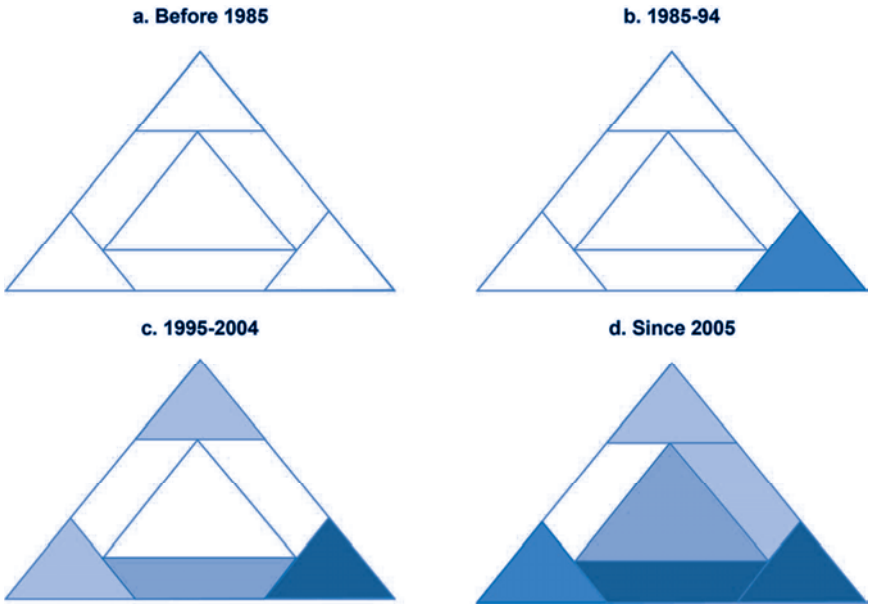
Figure 1.3. **The governance triangle**



Source: Abbott, K. W. and D. Snidal (2009a), "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State," in *The Politics of Global Regulation*, Eds W. Mattli, N. Woods, Princeton University Press, Princeton NJ, pp. 44-88; Abbott, K. W. and D. Snidal (2009b), "Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit," *Vanderbilt Journal of Transnational L*aw, Vol. 42, No. 2, pp. 501-578; Abbott, K. W. and D. Snidal (2010), "International Regulation without International Government: Improving IO Performance through Orchestration", *Review of International Organizations*, Vol. 5, No. 3, pp. 315-344.

Not all organisations on the Governance Triangle are purely private. The schemes in Zone 1 are voluntary standards adopted by IOs that apply directly to business targets; the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy are prominent examples. In addition, the "hybrid" tier of the Triangle – Zones 4, 5 and 7 – includes public-private collaborations, most of which involve IOs. This tier includes important regulatory schemes such as the UN Global Compact – "the largest voluntary corporate responsibility initiative in the world" (www.unglobalcompact.org/AboutTheGC/index.html) – and its offshoots; the Equator Principles, social and environmental standards for private investments; and the Strategic Approach to International Chemicals Management (SAICM).

Figure 1.4. **The governance triangle over time**



Source: Abbott, K. W. and D. Snidal (2009a), "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State," in The Politics of Global Regulation, Eds W. Mattli, N. Woods, Princeton University Press, Princeton NJ, pp. 44-88; Abbott, K. W. and D. Snidal (2009b), "Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit," *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 2, pp. 501-578; Abbott, K. W. and D. Snidal (2010), "International Regulation without International Government: Improving IO Performance through Orchestration", Review of International Organizations, Vol. 5, No. 3, pp. 315-344.

The explosion of transnational regulation is a very recent phenomenon. Figure 1.4a above shows the situation before 1985, when there were very few transnational schemes of any kind.[8] Figure 1.4b shows the decade 1985-94; the rapid proliferation of Zone 2 business schemes in Figure 1.4b reflects the beginnings of the corporate social responsibility movement, which has made it *de rigueur* for companies operating internationally to adopt codes of conduct and report their social and environmental impacts. In Figure 1.4c, 1995-2004, self-regulation continues to spread, involving entire industries as well as individual firms. And civil society and private collaborative organisations begin to proliferate. Finally, Figure 1.4d shows the period since 2005. One might expect the formation of transnational regulatory organisations to have slowed by this point in time; remarkably, however, it has accelerated: nearly half of all Zone 6 schemes, and virtually all tripartite Zone 7 schemes, were created since 2005.

Transnational regulatory organisations may seem beyond the scope of a project on IOs and international regulatory co-operation, but they are relevant in several important ways.

1. Transnational organisations – notably private and hybrid schemes – are already "regulating" large parts of the global economy – albeit with voluntary standards. Their reach extends from organic produce to building safety and from labor practices to socially responsible investment.

2. Private transnational regulators often complement public regulation. For example, a variety of private standards shape the voluntary carbon market, which complements the Clean Development Mechanism, European Trading System and other public programmes. In other cases, private organisations substitute for public regulation. The Forest Stewardship Council was created after states failed to agree on binding forest conservation rules at the 1992 Rio conference.

3. IRC often relies on private and hybrid standards: the WTO Agreement on Technical Barriers to Trade recognises standards adopted by the International Organization on Standardization (ISO), a private organisation in which both public and private standards bodies participate; numerous international and national bodies follow GS1 voluntary supply chain standards (www.gs1.org/about/overview); and over 100 nations mandate use of the International Financial Reporting Standards developed by the private IASB (www.ifrs.org/About-us/Pages/What-are-IFRS.aspx). In effect, transnational organisations serve as laboratories to develop, test and demonstrate approaches to governance.

4. Even more directly, as noted above, many organisations on the Triangle are public-private collaborations. Almost all the hybrid schemes in the central tier of Figure 1.3 involve at least one IO.

5. IOs often "orchestrate" private and hybrid organisations – helping to create them, supporting them, guiding their activities and co-ordinating them (Abbott & Snidal, 2009a; Abbott et al., 2014). By doing so, IOs strengthen the overall global regulatory system, while enhancing their own ability to achieve their regulatory goals. The UN Environment Program (UNEP) has been a particularly active orchestrator, helping to create and support the Global Reporting Initiative (the most widely used standard for corporate sustainability reporting), the Principles for Responsible Investment and other transnational schemes. The International Finance Corporation (IFC), part of the World Bank Group, helped launch the Equator Principles; the two organisations meet regularly to keep their standards aligned.

In sum, private and hybrid transnational organisations are increasingly important parts of regulatory regime complexes. They should be part of any comprehensive international regulatory co-operation programme.

The roles of IOs in international regulatory co-operation

IOs play a wide range of roles in international regulatory co-operation. OECD (2013a) identifies eleven "mechanisms" of IRC, ranging from the formal and comprehensive (e.g., harmonisation through supranational institutions) to the informal and partial (e.g., soft law, exchanges of information). Table 1.2 summarises these eleven mechanisms.

"Inter-governmental organisations" are identified in the report as one of the eleven.[9] In fact, however, IOs are significant in many other mechanisms. This can be better appreciated if we reorganise the eleven mechanisms into three categories, reflecting the sequential process of regulatory co-operation:

- IOs are one of several *institutions* within which IRC can take place;
- IOs manage a variety of co-operative *procedures;* and
- IOs embed agreed co-operation in a variety of *instruments*.

Table 1.2. **Forms of IRC mechanisms**

Mechanism	Examples
Harmonisation through rule-making by supra-national or joint institutions	EU directives
Treaties among states	Montreal Protocol, OECD Model Tax Convention
Regulatory "umbrella" partnerships	Canada-US Regulatory Cooperation Council
Inter-governmental Organisations	ILO, OECD, WTO
Regional agreements on regulation	APEC
Mutual recognition agreements	EU "New Approach" to technical standards
Transgovernmental networks	Basel Committee
National requirements to consider international standards	COAG Best Practice rules
Incorporation of international standards in national law	Adoption of ISO standards
Soft law instruments	OECD Guidelines and Principles
Dialogue/information exchange among regulators and stakeholders	Transatlantic dialogues, Global Risk Dialogue

Source: OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

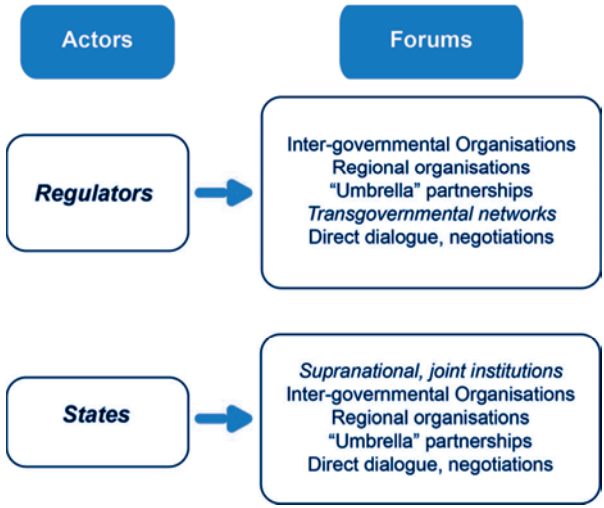
Institutions

Most fundamentally, IOs serve as institutionalised forums within which actors can engage in IRC. IOs are alternatives both to other potential forums – such as transgovernmental networks, regional institutions and "umbrella" regulatory partnerships – and to direct negotiations outside any institutional forum, as depicted in Figure 1.5. IOs are, moreover, forums in which states and/or regulatory agencies can interact; that is, they are forums for both inter-governmental and transgovernmental interactions (the same is true of most other forums, except those italicised in Figure 1.5). IOs also provide forums for transnational co-operation, hosting private or hybrid schemes.

The role of IOs as forums is widely undervalued, but it is highly significant (Abbott and Snidal, 1998). Even as relatively passive hosts for interactions among national actors, IOs make valuable contributions that are unavailable when states or regulators interact outside an institutionalised forum.

- The permanency of IOs and their regular meeting schedules create "iterative" opportunities for interaction: representatives of governments and agencies interact repeatedly over time. This allows them to reach common understandings of problems and solutions, and to develop personal and institutional trust. It also allows them to develop reputations as constructive collaborators (or otherwise), and to react to the actions of others. Over time, these interactions should promote stronger co-operation.

Figure 1.5. **Forums for international regulatory co-operation**



- IOs frequently possess large stores of information and experience on which governments and agencies can draw.
- The established procedures, norms and organisational cultures of IOs reduce the transactions costs of interaction and shape IRC. Discussions can proceed without first having to negotiate the political and procedural ground rules. In addition, those ground rules have been set without reference to the actors or issues involved in any specific interaction, and so are likely to promote fair negotiations.
- IO secretariats provide a range of supportive services that facilitate interactions. In many cases, moreover, secretariats go beyond mere facilitation, actively promoting constructive interactions and making substantive contributions through agenda setting, research, drafting and other activities (Biermann and Siebenhüner, 2009).
- Many IOs have formal (e.g., OECD, ILO) and informal procedures to facilitate input by civil society, business and other stakeholders.

Procedures

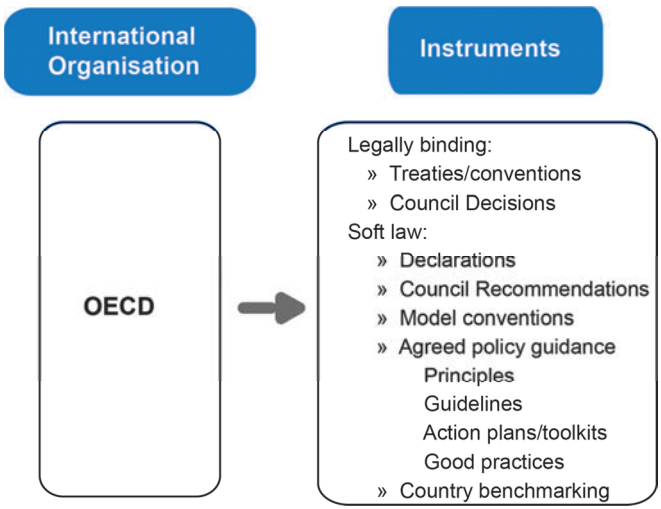
As forums, IOs host procedures that remain essentially decentralised; examples include "dialogues and informal exchanges of information" and some negotiations among national delegates or regulators. But states and agencies frequently turn to IOs because of their institutionalised rule-making procedures.

IOs often provide multiple procedures linked to different organs. For example, committees and working groups, composed of technical experts, emphasise research, analysis, information sharing and dialogue, and operate by consensus. Intermediate-level organs prepare policy decisions and legal acts for consideration at higher levels. Political organs offer quasi-legislative rule-making procedures, which may include stakeholder consultation. While many IOs operate primarily by consensus, voting is often available. Especially in issue-specific IOs (e.g., UN specialised agencies), states "pool" authority on certain issues through absolute or qualified majority voting (Hooghe and Marks, 2014).

Instruments

When national delegates or regulators reach agreements on IRC, or when they adopt rules through institutionalised procedures, the results can be embodied in any instrument available in that forum. Many of the eleven "mechanisms" identified in OECD 2013 are instruments of this kind.

Figure 1.6. **Instruments of IRC: The example of the OECD**



Source: Based on Chapter 2 on the Role of the Organisation for Economic Co-operation and Development.

Figure 1.6 shows the spectrum of instruments available in the OECD, where actors can select from a particularly wide range, as shown in Chapter 2. Again, these range from the formal, comprehensive and binding to the informal, partial and non-binding. They include treaties; legally binding Council Decisions; model conventions, which shape inter-state

negotiations; diverse and nuanced forms of "soft law," including declarations, Council Recommendations, principles and guidelines; and statements of good practices and other forms of agreed policy guidance. When agency or ministry experts engage in IRC, they normally embody their understandings in relatively soft instruments; when ambassadors or other national government delegates are involved, instruments may take harder forms.

Importantly, however, there appears to be wide variation among IOs in the procedures and instruments they employ. In contrast to the OECD, for example, the WTO acts almost exclusively through multilateral treaties; as a result, WTO negotiations over IRC are highly formalised and almost always inter-state. The case study of the International Maritime Organization (IMO) in this volume suggests that it too relies primarily on treaties.

The ILO embodies international labor standards in treaties, but these are frequently supplemented with recommendations on implementation. The ILO has also adopted some prominent soft law declarations, notably the Declaration of Philadelphia and Declaration on Fundamental Principles and Rights at Work – as well as the Tripartite Declaration on Multinational Enterprises. The WHO, in contrast, has adopted only a single treaty, the Framework Convention on Tobacco Control; it is, however, empowered to adopt "regulations" in specified areas, most quite technical. The WHO has recently invoked the broadest of its regulations, the International Health Regulations 2005, in response to the Ebola outbreak in West Africa.[10]

The effects of IO involvement

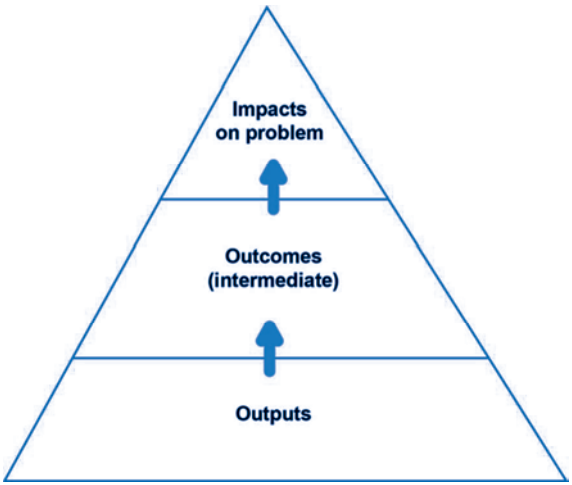
To assess (and thus to improve) the role of IOs in international regulatory co-operation, we must consider the *effects* of their involvement (Young, 1999; Underdal & Young, 2004). Member states generally expect IOs to pursue their mandates effectively and efficiently (DFID, 2011). Effects are also important for IO legitimacy. IOs are sometimes seen as elitist and distant from ordinary citizens, lacking transparency and accountability; these features weaken "input" legitimacy, which depends on democratic structures and procedures (Buchanan & Keohane, 2006; Dahl, 1999; Zweifel, 2006). As a result, IOs must rely heavily on "output" legitimacy, based on effectiveness in performing their assigned functions (Buchanan & Keohane 2006; Bernstein & Cashore, 2007; de Burca, 2007; Bernstein, 2011): "performance is the path to legitimacy" (Gutner & Thompson, 2010, p. 228).

Unfortunately, assessing effects is analytically challenging. One common analytical framework distinguishes among three types of effects:[11]

- *outputs* (meetings and other interactions, instruments approved and the like – the immediate results of interactions and IO actions on IRC);
- *outcomes* (changes in national regulations or the behavior of national regulators – intermediate results that stem from outputs); and
- *impacts* on the problems addressed – the ultimate results of regulatory co-operation. IRC may be intended to address problems in the *regulatory process*, such as regulatory quality, capacity or cost. In addition, it is normally intended to address *substantive problems*, such as carbon emissions, the soundness of financial institutions, the safety of medicines and a host of other real-world issues.

All three types of effects are significant, and success at lower levels (outputs and outcomes) should contribute to greater impacts, as Figure 1.7 suggests (Gutner & Thompson, 2010, p. 236). But positive substantive impacts – whether IRC "solves the problem that motivated its establishment" (Underdal, 2002, p. 11) – are clearly the ultimate goal.

Figure 1.7. **Results of IRC**



Source: Gutner, T. and A. Thompson (2010), "The Politics of IO Performance: A Framework," *Review of International Organizations*, Vol. 5, pp. 227-248.

Unfortunately, while it is relatively easy to *identify and measure* outputs, and often possible to identify and measure outcomes (if appropriate information-gathering procedures are in place), it is much more difficult to identify and measure impacts.[12] There are several reasons for this:

- The necessary information may not be available. This may be because of technological deficiencies: it is difficult to determine the impact of carbon emission regulations on deep-sea life. It may be because information is costly: it is expensive to determine the impact of medicines regulations on health in large populations. It may be because information processes are insufficient: regulations may be adopted without provision for monitoring their outcomes or impacts. And it may be because governments use non-commensurable indicators to shape the gathering of information (Radaelli & Fritsch, 2012).
- Many other causal factors are operating at the same time as international regulatory co-operation: even if impacts are observed, it is difficult to attribute them to IRC. Diverse physical or social changes may unfold simultaneously. Multiple institutions within a regime complex may address the same problem in different ways. Changing political forces within states or changing relationships between states may work in favour of or against strong results from IRC. New information may spur implementation of agreed standards; weak national capacity or corruption may undercut it. Particular societies may have preferences that reinforce agreed standards, others preferences that undercut them; here the preferences themselves do the work, as much as or more than IRC.
- We can never know the "counterfactual:" (compare Coglianese, 2012): in this case, what would have happened if an IO had not been involved in IRC. Perhaps states or agencies would have reached agreement on their own, or in some other forum, implemented it effectively and achieved good results; on the other hand, perhaps negotiations would never have gotten off the ground.
- Some impacts are intrinsically difficult to quantify. For example, while it is possible to measure reductions in carbon emissions (although difficult to attribute them to the actions of an IO), when impacts are subjective or not directly observable – such as "regulatory quality" – it is challenging to determine what has been achieved.

It is even more difficult to *assess the value* of impacts.[13] Many impacts of IRC, both regulatory and substantive, involve political or even ideological considerations; interested parties may have very different visions of what constitutes "success" – including even what others see as failure. In addition, one must consider not only the impact of IRC on a particular problem, but also the costs of making that impact, the fairness of the distribution of costs across different social groups, the possibility of unanticipated adverse effects, and similar issues, all of which are equally political.

Issues and approaches for IRC research

IRC processes

We still know surprisingly little about how international regulatory co-operation works in practice within IOs, and how the process varies between them. This chapter has highlighted a number of significant issues in this area. They include:

- What actors engage in IRC within a given IO – technical experts from regulatory agencies, high-level officials from agencies, ministers, ambassadors? That is, is IRC transgovernmental, inter-governmental, or both? Does the identity of the actors vary depending on the issue under consideration, the organ involved, the intended instrument or other factors?
- What rationales motivate actors to engage in IRC on particular issues? What rationales motivate them to pursue IRC within a given IO, rather than in an alternative forum or through direct negotiations?
- What procedures do actors follow within the IO once they have initiated IRC? How do the organisation's culture and norms shape interactions?
- What services does the IO offer to facilitate IRC? Do actors benefit from information the IO holds, from secretariat support of particular kinds, from procedures for stakeholder input?
- To what extent does the secretariat actively promote IRC, as by helping to convene interactions, shape the agenda, provide information and analysis, or draft final instruments?

- What range of procedures and instruments is available within the IO, and which do actors select to pursue and embody their IRC? Does the choice of procedures and instruments vary depending on the issues or actors involved? On the importance or gravity of an agreement?
- How do the actors engaged in IRC, and the IO itself, take account of the activities and norms of other organisations in their institutional environments? Do IOs pursue explicit strategies to avoid rule duplication and inconsistency, conserve organisational resources and increase overall regulatory impact?
- How does the IO interact with private or hybrid transnational regulatory organisations? Has it adopted transnational standards? Engaged in orchestration, helping to create, support or co-ordinate transnational organisations? Participated in any hybrid organisations?

The first step in addressing these information gaps is to survey a range of IOs. Ideally, perhaps in a later phase, information could also be gathered from transgovernmental networks and other forums, so as to compare the roles played by different types of institutions. Careful comparative analysis of this information should go far to clarify the roles played by IOs and the variations among them. Beyond this, it should also be possible to address a series of important analytical and normative questions:

- Analytically, why do IOs such as the WTO, WHO and OECD engage different actors in IRC, employ different IRC procedures, and embody IRC in different instruments? Do these variations relate to the organisations' legal mandates, the issues they address, organisational cultures, path dependence, or other factors?
- Normatively, which modes of action (i.e., which combinations of actors, institutions, procedures and instruments) produce the most successful IRC? Does the relative success of different modes vary across issue areas (e.g., trade versus health), across specific types of issues (e.g., harmonising regulations versus co-ordinating nomenclature), or across other circumstances?
- Which modes of action are best able to address emerging issues in timely fashion, and most flexible in responding to change?
- Which modes are most useful and acceptable to states with low regulatory capacity? Which are best at building national capacity?

- Which approaches are best suited to incorporate stakeholder input?
- Do modes of IRC vary in terms of procedural legitimacy? Do IOs follow the same types of procedures to ensure regulatory quality that the OECD recommends for governments – and should they? To what extent do IOs follow emerging norms of global administrative law?
- Finally, how can we promote learning, good regulatory practices and a degree of harmonisation among IOs engaged in rule-making, as IOs do among states and agencies?

Effects

The procedures and outputs of IRC are of little value without significant outcomes and impacts. Thus, it is also important to gather information and engage in comparative analysis on the effects of IO involvement in IRC. Information gathering is complex at this level, as *comparable* information from *multiple* countries is required.

The most basic need is to identify and compare the procedures that IOs have established to track outcomes and impacts. Tracking may often be left wholly to participating states and agencies, where the ultimate responsibility for implementation lies. If those actors do not track adequately, or track different things, appropriate information on the effects of IRC will be difficult to assemble. (The OECD Framework for Regulatory Policy Evaluation [OECD, 2014], can be helpful in encouraging and assisting governments to track outcomes and impacts, and to do so in comparable ways.) Where reporting or other follow-up procedures exist, however, they can provide valuable information on effects. In those cases, the most fruitful approach would be to develop case studies that track IO actions on IRC, to the extent possible, through to their outcomes and impacts – so-called "process tracing" (Gutner & Thompson, 2010, p. 240).

We could begin by identifying how participating actors *expect* particular forums, procedures and instruments to affect regulator behavior: social scientists call these relationships "causal pathways." For example, good practices, toolkits and other forms of policy guidance are generally expected to influence behavior through the causal pathway of learning, on the assumption that regulators are sincerely committed to their missions. Soft law supplemented by peer review is expected to operate by socialising regulators to act as their peers expect of them.

Process tracing can then document whether and how the expected causal pathways operate in particular cases. It may also reveal that additional processes are at play, further illuminating how IRC works in practice. In

addition, process tracing addresses many of the analytical problems involved in studying effects. Tracing the effects of IO involvement helps to sort out multiple causal factors. It also addresses the "counterfactual" problem: while we can never know for certain what would have happened without IO involvement, if we can trace that involvement through to concrete outcomes and impacts, we have a strong basis to conclude that it made a difference.

Instruments

Another valuable starting point would be to examine the instruments of IRC – from good practices to treaties – in varied IOs and issue areas. To have significant substantive impacts, IRC must *i)* include meaningful commitments; *ii)* have strong influence on regulators, through binding legal force, peer pressure or other mechanisms; and *iii)* include all significant actors (Abbott & Snidal, 2004). In most areas of international co-operation, however, actors must make tradeoffs between stringent, binding commitments, on one hand, and participation and compliance, on the other. To attain broad participation and strong compliance, actors must make commitments less stringent or binding. Conversely, to create stringent, binding commitments, they must restrict participation to those willing and able to comply (Downs et al., 1996).

Studying the instruments that embody IRC, as part of process tracing, can help reveal whether, and under what conditions, similar tradeoffs occur in this field. If they do, we will be forced to scale back our assessment of impacts, at least for certain forms of IRC. But it may well be that such tradeoffs are less common in IRC than in other areas, because of the benefits IRC provides to regulators. That would be a significant finding, bolstering both our understanding and our evaluation of the role of IOs in IRC.

A related issue is that IRC is often incremental, as seen, for example, in the development of prior informed consent rules for trade in chemicals (Mekouar, 2000): even when strong agreements cannot initially be achieved, regulatory co-operation may develop greater stringency, more binding character and/or broader participation over time (Abbott & Snidal, 2004). Case studies of incremental processes can help us understand and assess IRC on a "life cycle" basis, rather than at a single point in time.

Case studies are also valuable in clarifying the causal pathways that lead to incremental development – does progress depend, for example, on continually enhancing information, learning, trust, peer pressure or other factors? This analysis can help us determine which institutions, procedures and instruments can best generate incremental progress in the face of barriers to co-operation. One might hypothesise, for example, that the most successful forums for incremental co-operation are IOs that *i)* offer a range

of instruments, enabling actors to move over time from soft understandings through increasingly stringent and binding instruments, and that *ii)* periodically review commitments and effects. As the case study in this volume shows, the OECD embodies both of these features.

Conclusion

International regulatory co-operation, in all its forms, has become a central feature of global governance. While direct negotiations between regulators continue, IOs and other international and transnational institutions now play central roles, both as forums for interaction and as collective rule-makers. Yet our understanding of these institutionalised processes – and thus our ability to improve them – remains limited. The research being carried forward by the OECD and participating IOs, as reflected in this volume, promises to make significant contributions to our understanding. It should lay the groundwork for concrete discussions and actions to improve IRC, and thus regulation itself, in a steadily globalising world.

Notes

1. For discussions of decentralised IRC, see, e.g., Administrative Conference of the United States, Recommendation 91-1, "Federal Agency Cooperation with Foreign Government Regulators," June 13, 1991; Michael T. McCarthy, "International Regulatory Cooperation, 20 Years Later: Updating ACUS Recommendation 91-1," Oct. 19, 2011, available at www.acus.gov/research-projects/international-regulatory-cooperation. The US and the EU entered into a major bilateral MRA in 1998. www.ustr.gov/archive/World_Regions/Europe_Middle_East/Europe/1998_US-EU_Mutual_Recognition_Agreement/Section_Index.html.

2. While IFIs are not primarily regulatory, their operational policies do impose numerous requirements on prospective and actual borrowers; these include a range of social and environmental "safeguard policies." See, e.g., http://go.worldbank.org/wta1ode7t0.

3. The information for Table 1.1 was provided by the United States and Singapore medicines agencies.

4. A predecessor, the Financial Stability Forum, was created in 1999. It was intended to enhance "cooperation among the various national and international supervisory bodies and international financial institutions so as to promote stability in the international financial system." www.financialstabilityboard.org/about/history.htm.

5. The organisation began to operate at ministerial level in 1999, www.g20.utoronto.ca/g20whatisit.html.

6. A predecessor body was created in 2008, www.i-p-r-f.org/en/iprf-network/links-other-initiatives/.

7. The participating agencies were initially from the G10 countries, more recently from those in the G20.

8. The shading of zones reflects the number of transnational regulatory schemes of particular types during the relevant time periods: the darker the shading, the greater the number. Zones shown in white are not necessarily empty; they may include a small number of schemes. In Figure 1.4a, for example, a few schemes – including the OECD Guidelines and ILO Declaration (Zone 1) and the Sullivan Principles (Zone 3) – were adopted during the 1970s.

9. The report acknowledges that certain mechanisms may overlap in practice.

10. www.who.int/mediacentre/news/statements/2014/ebola-20140808/en/.

11. Analysts sometimes use different terms to represent similar concepts, potentially creating confusion. For example, Coglianese, 2012, p. 8 refers to impacts on underlying substantive problems as "outcomes." Note also that the content of the three stages of effects may differ depending on whether one is evaluating national regulation or IRC. For example, in evaluating national regulations, the intermediate stage (behaviour change) refers to the behaviour of the targets of regulation; for IRC, it refers to the behaviour of national regulators.

12. For a discussion of possible experimental and statistical techniques for doing so, see Coglianese, 2012.

13. It can even be difficult to evaluate certain outcomes. For example, while regulatory harmonisation is often a desired outcome, complete harmonisation is not necessarily optimal: nations with different social, environmental, cultural and political conditions have different optimum levels and forms of regulation.

Bibliography

Abbott, K. W. (2012), "The Transnational Regime Complex for Climate Change," *Government and Policy: Environment and Planning C*, Vol. 30, No. 4, www.envplan.com/epc/fulltext/c30/c11127.pdf, pp. 571-590.

Abbott, K. W. (2014), "Strengthening the Transnational Regime Complex for Climate Change," *Transnational Environmental Law*, Vol. 3, No. 1, doi: 10.1017/S2047102513000502, pp. 57-88.

Abbott, K. W., P. Genschel, D. Snidal and B. Zangl (2014), *International Organizations as Orchestrators*, Cambridge University Press.

Abbott, K. W. and D. Snidal (1998), "Why States Act Through Formal International Organizations," *The Journal of Conflict Resolution*, Vol. 42, No.1, pp. 3–32.

Abbott, K. W. and D. Snidal (2004), "Pathways to International Cooperation," in E. Benvenisti & M. Hirsch (eds.), *The Impact of International Law on International Cooperation: Theoretical Perspectives,* Cambridge University Press, Cambridge.

Abbott, K. W. and D. Snidal (2009a), "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State," in W. Mattli, and N. Woods (eds), *The Politics of Global Regulation*, Princeton University Press, Princeton NJ, pp. 44-88.

Abbott, K. W. and D. Snidal (2009b), "Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit," *Vanderbilt Journal of Transnational L*aw, Vol. 42, No. 2, pp. 501-578.

Abbott, K. W. and D. Snidal (2010), "International Regulation without International Government: Improving IO Performance through Orchestration", *Review of International Organizations*, Vol. 5, No. 2, pp. 315-344.

Barrett, S. (2007), *Why Cooperate? The Incentive to Supply Global Public Goods*, Oxford University Press.

Bernstein, S. (2011), "Legitimacy in intergovernmental and non-state global governance," *Review of International Political Economy*, Vol. 18, No. 1, pp. 17–51.

Bernstein, S. and B. Cashore (2007), "Can non-state global governance be legitimate? An analytical framework," *Regulation and Governance*, Vol. 1, No. 1, pp. 1–25.

Biermann, F. and B. Siebenhüner, eds. (2009), *Managers of Global Change: The Influence of International Environmental Bureaucracies*, MIT Press.

Buchanan, Allen and Robert O. Keohane (2006), "The Legitimacy of Global Governance Institutions," *Ethics & International Affairs*, Vol. 20, No. 4, pp. 405-437.

Cafaggi, F., A. Renda and R. Schmidt (2013), "Transnational Private Regulation," in *International Regulatory Co-operation: Case Studies*, Vol. 3, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200524-en.

Coglianese, C. (2012), "Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy," www.oecd.org/gov/regulatory-policy/framework-for-regulatory-policy-evaluation.htm.

Dahl, R. A. (1999), "Can international organizations be democratic? A skeptic's view," in I. Shapiro & C. Hacker-Cordón (eds.), *Democracy's Edges*, Cambridge University Press, New York.

De Burca, G. (2007), "Developing Democracy beyond the State," *Columbia Journal of Transnational Law*, Vol. 46, No. 2, p. 221.

Department for International Development, UK (2011), *Multilateral Aid Review: Ensuring Maximum Value for Money for UK Aid Through Multilateral Organizations*, www.gov.uk/government/publications/multilateral-aid-review.

Downs, G., D. Rocke and P. N. Barsoom (1996), "Is the Good News About Compliance Good News About Cooperation?" Vol. 50, No. 3, *International Organization,* pp. 379-406.

Gutner, T. and A. Thompson (2010), "The Politics of IO Performance: A Framework," *Review of International Organizations*, Vol. 5, pp. 227-248.

Hooghe, L. and G. Marks (forthcoming), "Delegation and Pooling in International Governmental Organizations," *Review of International Organizations*, forthcoming.

Kaul, I., P. Conceicao, K. Le Goulven and R. U. Mendoza (eds.) (2003), *Providing Global Public Goods: Managing Globalization*.

Keohane R. O. and D. G. Victor (2011), "The Regime Complex for Climate Change," *Perspectives on Politics*, Vol. 9, No. 1, pp. 7-23.

Mekouar, M. Ali (2000), "Pesticides and Chemicals: The Requirement of Prior Informed Consent," in D. Shelton (ed.) (2000), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System,* Oxford University Press, pp. 146–163.

OECD (2014), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214453-en.

OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges***,** OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

OECD (2013b), *International Regulatory Co-operation: Case Studies***,** Vol. 3, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200524-en.

OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", 22 March, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

Radaelli, C. and O. Fritsch (2012), "Evaluating Regulatory Management Tools and Programs," www.oecd.org/gov/regulatory-policy/framework-for-regulatory-policy-evaluation.htm.

Raustiala, K. (2002), "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law," *Virginia Journal of International Law*, Vol. 43, No. 1, pp. 1-29.

Raustiala K. and D. G. Victor (2004), "The Regime Complex for Plant Genetic Resources," *International Organization*, Vol. 58, No. 1, pp. 277-309.

Slaughter, A.-M. (2005), *A New World Order***,** Princeton University Press.

UN General Assembly (2013), "Format and organizational aspects of the high-level panel on sustainable development," A/67/L.72, 27 June.

Underdal, A. (2002), "One question, two answers," in E. L. Miles, A. Underdal, S. Andresen, J. Wettestad, J. B. Skjaerseth, & E. M. Carlin (eds.), *Environmental regime effectiveness: Confronting theory with evidence*, Cambridge: MIT Press.

Underdal, A. and O.R. Young (2004), *Regime consequences: Methodological challenges and research strategies*, Kluwer Academic, New York.

Vabulas, F. and D. Snidal (2013), "Organization Without Delegation: Informal Intergovernmental Organizations and the Spectrum of Intergovernmental Arrangements," *Review of International Organizations*, Vol. 8, No. 2, pp. 193-220.

van Asselt, H. and F. Zelli (2014), "Connect the Dots: Managing the Fragmentation of Global Climate Governance," *Environmental Economics and Policy Studies*, Volume 16, No. 2., pp 137-155.

World Health Organization (1946), *Constitution of the World Health Organization*, www.who.int/governance/eb/constitution/en/.

Young, O. R. (1999), *The effectiveness of international environmental regimes: Causal connections and behavioral mechanisms*, MIT Press, Cambridge.

Zelli, F. (2011), "The Fragmentation of the Global Climate Governance Architecture," *WIRES Climate Change,* Vol. 2, No. 2, pp. 255-70.

Zelli, F. and H. van Asselt (2013), "Introduction: The Institutional Fragmentation of Global Environmental Governance: Causes, Consequences and Responses," *Global Environmental Politics*, Vol. 13, No. 3, pp. 1-13.

Zweifel, T. D. (2006), *International organizations and democracy: Accountability, politics, and power*, Lynne Rienner, Boulder.

Chapter 2

The role of the Organisation for Economic Co-operation and Development

by

Céline Kauffmann and Valériane Koenig*

The Organisation for Economic Co-operation and Development (OECD) is an intergovernmental organisation which serves as a forum for information exchange, policy dialogue, and co-ordinated action between countries on a wide range of policy issues. The OECD fosters regulatory co-operation in a wide range of policy areas by providing a platform for policy makers to exchange experience and, if appropriate, set standards through the adoption of legal instruments or other policy guidance. This case study describes how the OECD supports international regulatory co-operation – the context where regulatory co-operation is taking place, its main characteristics, its impacts, successes and challenges.

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Introduction

This case study describes how the Organisation for Economic Co-operation and Development (OECD) supports IRC – the context where regulatory co-operation is taking place, its main characteristics, its impacts, successes and challenges. The OECD is an intergovernmental organisation which serves as a forum for information exchange, policy dialogue, and co-ordinated action between countries on economic issues. The chapter highlights the fact that the OECD fosters regulatory co-operation in a wide range of policy areas by providing a platform for policy makers to exchange experience and, if appropriate, set standards through the adoption of legal instruments or other policy guidance. The OECD has a renowned track record in evidence based analysis, data and information gathering and publication and peer-review processes upon which it builds to develop and promote the implementation of normative frameworks and standards. It relies on a strong and competent Secretariat to develop the underlying analysis; a Council composed of representatives from member countries to provide oversight and strategic direction; and substantive committees to work with the Secretariat and ensure implementation at country level.

The context of regulatory co-operation

The OECD is an intergovernmental organisation which serves as a forum for information exchange, policy dialogue, and co-ordinated action between countries on economic issues. The OECD replaced the Organisation for European Economic Co-operation (OEEC), which was established in 1948. The objective of the OEEC was for European countries to define for themselves a programme for economic recovery and to allocate financial aid in accordance with that programme. The OEEC also contributed to a significant increase in trade between its members through mechanisms such as the European Payments Union and the Code of Liberalisation of Trade.[1]

The future of the OEEC was intensively discussed in the 1950s, following the end of the Marshall Plan, significant economic recovery in Western Europe, the development of the North Atlantic Treaty Organisation (NATO), and the establishment of the European Economic Community. On 14 December 1960, the OECD Convention[2] was signed and the OECD was established through the entry into force of the Convention on 30 September 1961.

Area of work and intended objectives of the regulatory co-operation

The mission of the OECD is broadly defined. Article 1 of the OECD Convention provides that the aims of the Organisation are: to achieve the highest sustainable economic growth and employment; raise standards of living; maintain financial stability; contribute to sound economic expansion in both member and non-member countries; and contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations. In essence, the OECD's goal is to help governments to benefit from increasing interdependence and globalisation while tackling the accompanying economic, social, and governance challenges.

These aims allow extensive room for manoeuvre for the organisation's activities, which have evolved over the last 50 years (Carroll and Kellow, 2011). In fact, despite its broad mandate, the OECD at first concentrated on the consolidation of its members' economies (Bonucci and Thouvenin, 2013). Over the decades, the OECD has shifted towards improving national policies (Wolfe, 2008), thereby attracting countries far beyond its membership, and strengthening its role as a standard setting organisation.

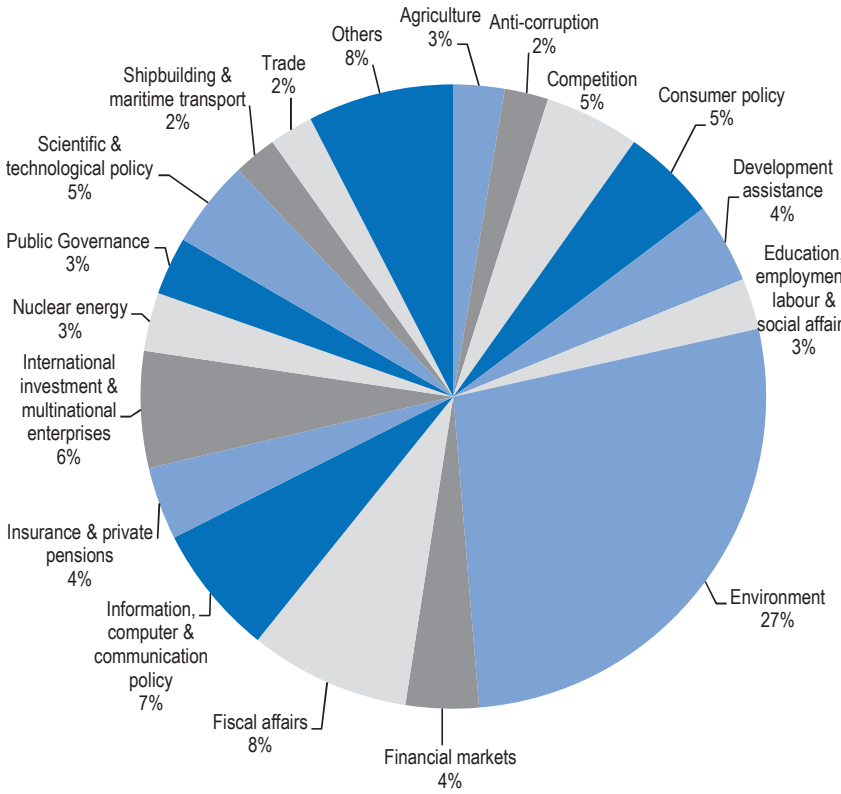
In line with its broad mandate, the OECD's work today covers almost all areas of government with only a few exceptions such as defence, culture, and sport. Some of the sectors in which the OECD's work is best-known include macro-economic policy; labour markets; anti-corruption; taxation; education; development; investment; and environment. This wide coverage enables the OECD to also tackle horizontal, multi-disciplinary issues such as innovation or environmentally sustainable development.

In all the above-mentioned areas, the OECD provides a platform for discussion with the objective of reaching consensus on principles and best practices that member countries agree to adopt. The OECD often contributes to the establishment of common standards through the adoption of legal instruments, which then guide the development of domestic regulations. To these ends, the OECD collects, produces and analyses data as well as policies through in-depth reviews in each of the above-mentioned areas. Regulatory co-operation therefore takes place in many different areas and the intended objectives depend on the matter in question.

For example, in the area of chemicals, the development and implementation of the Mutual Acceptance of Data system, under which chemical safety data developed using OECD Test Guidelines and OECD Principles of Good Laboratory Practice in one member country must be accepted in all member countries, follows the objectives of avoiding unnecessary duplication of testing (saving thereby resources for industry and society), minimising non-tariff barriers to trade, reducing the use and

suffering of laboratory animals and ensuring a level playing field for the industry with regards to quality requirements.

Figure 2.1. **OECD legal instruments by sectors (as of end 2013)**



Source: OECD, www.oecd.org/legal/legal-instruments.htm, accessed February 2014.

Furthermore, legal instruments, standards and policy recommendations have been developed in all fields of work of the OECD. Figure 2.1 illustrates the vast array of sectors covered by these instruments and the importance of the environment as an area of policy co-operation across member countries. Seventy two of the 252 OECD legal instruments have been developed in relation to environment, 20 with regards to financial markets, insurance and pensions and 18 in the area of information, computer and communication.

Landscape of international and domestic regulatory actors in this area and IO position in that landscape

Given the broad, multidisciplinary mandate of the OECD, the landscape of international and domestic regulatory actors and the OECD's position in this landscape will vary depending on the field of work. As illustrated in the section on Assessment of the impact of regulatory co-operation, the OECD can be regarded as the leading forum and standard setting institution in areas such as anti-corruption, tax or corporate governance. In all areas, whether the OECD is at the forefront or feeding the work of other institutions, it has developed a range of co-operation with other international actors to expand its policy impact and its standards beyond its own membership. The multiplicity of stakeholders involved in regulatory co-operation is a general feature already identified in OECD (1994 and 2013a).

In certain fields, the organisation operates in crowded regulatory environments, where transnational regulatory networks, powerful national or regional regulators, or other international institutions are also important standard setters. The regulatory standard setting in the field of international finance, for example, is dominated by specialised transnational regulatory networks, such as the Financial Stability Board, the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, and the International Association of Insurer Supervisors. However, it is an area where the OECD contributes, along with many other actors to the landscape of global financial regulation (see Chapter 1 and the case study on banking supervision in OECD (2013c).

Main characteristics of regulatory co-operation

Governance arrangements and operational modalities

Membership and participation

The OECD is a global organisation, which is reflected in its membership: it does not have universal membership but its membership is not limited to any particular region. At the same time, it clearly provides a relatively small forum with its 34 member countries. Its membership is thus broader than the European Union or NAFTA, yet much narrower than the United Nations or the WTO.

Evolution of membership

The 20 original members of the OECD were (in alphabetical order): Austria; Belgium; Canada; Denmark; France; Germany; Greece; Iceland; Ireland; Italy; Luxembourg; the Netherlands; Norway; Portugal; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States.

The European Union has a specific status within the OECD: it is not a Member and therefore does not take part in decision-making or pay mandatory financial contributions, but it participates in the OECD's work both within the substantive committees and the governing bodies.[3]

Since its creation in 1961, the membership of the OECD has progressively been expanded. The geographical reach of the Organisation was expanded with Japan, Finland, Australia and New Zealand joining in the 1960s and 1970s. Mexico, Korea, the Czech Republic, Hungary, Poland, and the Slovak Republic then joined between 1995 and 2000. In 2010, Chile, Estonia, Israel, and Slovenia acceded to the OECD. Accession discussions with the Russian Federation were opened in 2007. On 29 May 2013, a new round of accession discussions was launched with Colombia and Latvia and the OECD Council decided to review the situation with a view to opening discussions with Costa Rica and Lithuania in 2015.

Participation of non-members

The notion of the global reach of the OECD has been present since the establishment of the Organisation. Art. 1 OECD Convention provides that one of the aims of the Organisation is to contribute to sound economic expansion in member as well as non-member countries. Currently, around 80 non-member economies participate in the activities of OECD bodies. The basis for the participation of non-members in OECD work can be found in Art. 12 OECD Convention, which provides that the Organisation may "invite non-member Governments or organisations to participate in activities of the Organisation".

One form of participation is for a non-member to take part in the work of a particular OECD committee or sub-body, either as an Associate (requiring adherence to the key OECD legal instruments), Participant (regular invitation on the understanding that the non-member will actively participate and co-operate in the work of the body) or Invitee (invitation to an individual meeting which can be limited to specific agenda items). Another way in which non-members can take part in OECD work is through global initiatives such as the Global Fora.

The OECD in particular maintains close co-operation with five Key Partners (Brasil, China, India, Indonesia and South Africa). The special relationship with the Key Partners was launched in May 2007 and is based on mutual interest. All committees are expected to engage with these countries and can invite them as Participant or Invitee without prior Council approval.

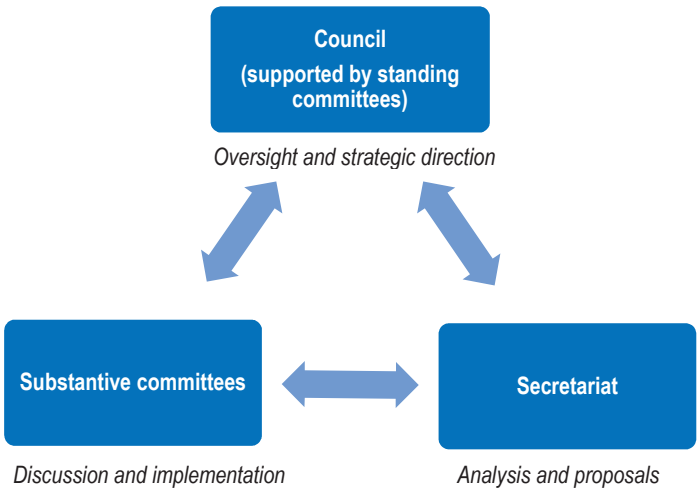
The OECD has also developed co-operation with specific non-members or regions. It can include participation in OECD committees, regular

economic surveys, peer reviews in specific policy areas, adherence to OECD legal instruments, and integration into OECD statistical reporting and information systems. The OECD has also developed a number of regional programmes with different substantive focus areas (with South-east Asia, Middle East and North Africa, Eurasia and South East Europe).

Structure of the organisation

The structure of the OECD is three-fold: governing bodies; substantive committees and special bodies; and secretariat, as illustrated in Figure 2.2. The important role given to the substantive committees makes the OECD a "decentralized" organisation. Member countries take the lead within the committees and subsidiary bodies, on the basis of Secretariat analysis. There is no hierarchy between the substantive committees which operate independently. As increasing co-operation between the different committees is required, this can at times represent a challenge. Yet, the OECD's organisational structure is hierarchical with regards to its decision-making structure: all OECD legal instruments, which are prepared by the substantive committees and their sub-structures, are adopted by the OECD Council, the governing body of the organisation.

Figure 2.2. **Who drives the OECD's work?**



Council

Pursuant to Art. 7 OECD Convention, the decision-making body of the Organisation is the OECD Council. The Council is composed of one

representative of each member as well as a representative of the EU. The Council, chaired by the Secretary-General, meets regularly – usually once a month – at the level of permanent representatives to the OECD to provide oversight and strategic direction of the activities of the Organisation. A Ministerial Council Meeting, chaired by one or more members, is held annually in order to discuss key issues and set priorities for the Organisation's work. The Council is assisted in its work by three standing committees: the Executive Committee, the Budget Committee, and the External Relations Committee. These committees prepare the ground for discussions and decisions by the Council and monitor the implementation of such decisions.

Substantive committees

The substantive committees are at the core of the OECD's substantive work. They shape the agenda of the Organisation's work in each field, discuss policy issues on the basis of data and analysis by the Secretariat, develop concrete outputs including OECD legal instruments, and monitor the implementation of such standards. Each year, approximately 40 000 delegates from governments attend the meetings of more than 250 specialised OECD committees, working parties, and expert groups, which generate the substantive work of the Organisation in each of its fields of activity. Each committee includes one representative of each member, as well as a representative of the EU. Members are generally represented by experts from national administrations who travel from their capitals to attend the committee meetings. Non-members, international organisations, and NGOs also participate in committee meetings. The frequency of committee meetings is usually between two to four times per year. Committees may also meet at ministerial level from time to time. In addition to the committee structure, the OECD system also includes bodies with special membership criteria such as the International Energy Agency, the Nuclear Energy Agency and the Development Centre, organisations with institutional links with the OECD such as the International Transport Forum, as well as organisations which are housed by the OECD such as the Financial Action Task Force.

Secretariat

The Secretariat supports the activities of the committees and special bodies in line with the priorities set by the Council. It provides information, analysis and proposals for policy discussions as well as corporate support for the functioning of the Organisation.

Decision-making process[4]

Within the OECD, the general rule is that decisions are made by consensus. Art. 6 (1) OECD Convention provides that, unless unanimously agreed otherwise, decisions shall be taken by "mutual agreement of all the Members". The term "mutual agreement of all the Members" has been interpreted to mean consensus, i.e. adoption without a vote in the absence of objection by any member. If a standing committee or substantive committee or sub-group is unable to reach agreement by consensus, the issue can be put to a higher level for review and decision. For instance, the Executive Committee can refer a matter to the Council, or a working party can refer a matter to its parent committee.

There are certain exceptions to the rule of decision-making by consensus. First, Art. 16 OECD Convention provides that a decision to invite a country to become a member of the Organisation must be taken by unanimity unless there is a unanimous decision to permit abstention (this has never happened in practice). Second, in accordance with Art. 6 (1) OECD Convention, members have unanimously agreed to allow decisions by qualified majority voting in certain defined cases including the Organisation's programme of work and budget, and the creation, continuation, and abolition of substantive committees and programmes. Decisions are only taken by qualified majority voting if necessary: every effort must be made to reach mutual agreement. The formula for qualified majority voting within the OECD is that decisions are adopted if supported by 60% of the members, unless opposed by three or more members who represent at least 25% of the scale of financial contributions (assessed contributions).

Pursuant to Rule 6 of the OECD Rules of Procedure, decisions can be taken in session or by written procedure. No distinction is made with regards to the legal value of decisions taken in session and by written procedure, but the majority of decisions are taken at meetings.

Aside from the Convention itself, the rules applicable to the proceedings of all bodies of the Organisation – governing bodies and substantive committees – are set out in the Rules of Procedure of the Organisation.[5]

Budget and dedicated staff

The OECD is funded by its members through assessed contributions which take into account the size of each member's economy. The largest contributor is the US followed by Japan. There are also optional activities within the OECD which are funded by the participating countries only. The OECD's budget for 2013 was EUR 354 million. The size of the budget and the programme of work are determined by the Council on a two-yearly basis. Another major source of

funding of specific activities are voluntary contributions made by members, and grants by non-members, international organisations and other entities. The rules for the financial management of the Organisation are contained in a set of Financial Regulations and related Financial Instructions. Independent external auditing of the Organisation's accounts and financial management is carried out by the Supreme Audit Institution of one of its members, appointed by the Council.

The OECD Secretariat comprises some 2 500 staff (both officials and temporary staff), principally policy analysts. The officials of the Organisation, who must be nationals of OECD member countries, are international civil servants who are independent from member governments, and there is no system of nationality quotas. The rules applicable to OECD staff are contained in a set of Staff Regulations, Rules, and Instructions. The Secretariat is headed by the Secretary-General who is appointed by the Council for a renewable term of five years and is assisted by four Deputy Secretaries-General.

Forms of IRC

The committees and their subsidiary bodies provide the main platforms for regulatory co-operation. Within these bodies, members can work together to share experiences, discuss policy issues and seek solutions to common problems as well as develop concrete outputs (analytical reports, legal instruments,…) and monitor their implementation.

Art. 3 OECD Convention provides that members will: *i)* share information with each other and with the Organisation; *ii)* consult together on a continuing basis and carry out joint studies and projects; and *iii)* co-operate closely, taking co-ordinated action where appropriate. These three elements form the basis for the working methods employed within the OECD (Figure 2.3). The key characteristic of the OECD method is that it is an evidence-based bottom-up approach, which begins with collection and analysis of data rather than a political decision about the desired outcome of a given project (Bonucci and Kothari, 2011).

These activities cover the entire cycle of regulatory governance (as provided in OECD 2011 and shown in Figure 2.4) from the design phase to monitoring. The OECD is strongly involved in the activities that precede standard setting, including the collection and exchange of information and the setting of agendas, goals and strategies (Table 2.1). The development of norms and standards is not systematic but frequent. The OECD also contributes to the monitoring of its instruments. However, whereas few instruments provide some kind of dispute settlement mechanisms (e.g. the Codes of Liberalisation and the Guidelines for Multinational Enterprises), the OECD does not provide for any formal sanctions.

Figure 2.3. **OECD ways of working**

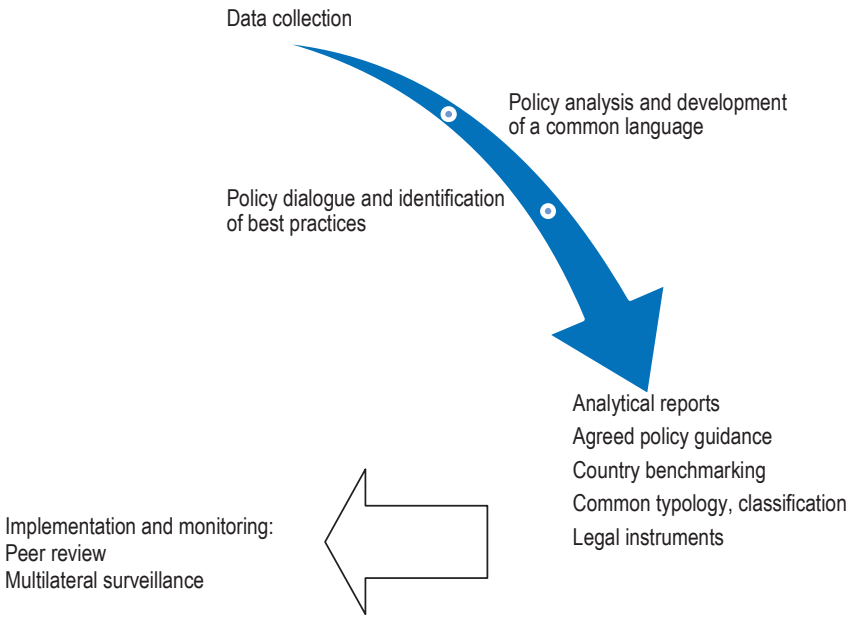
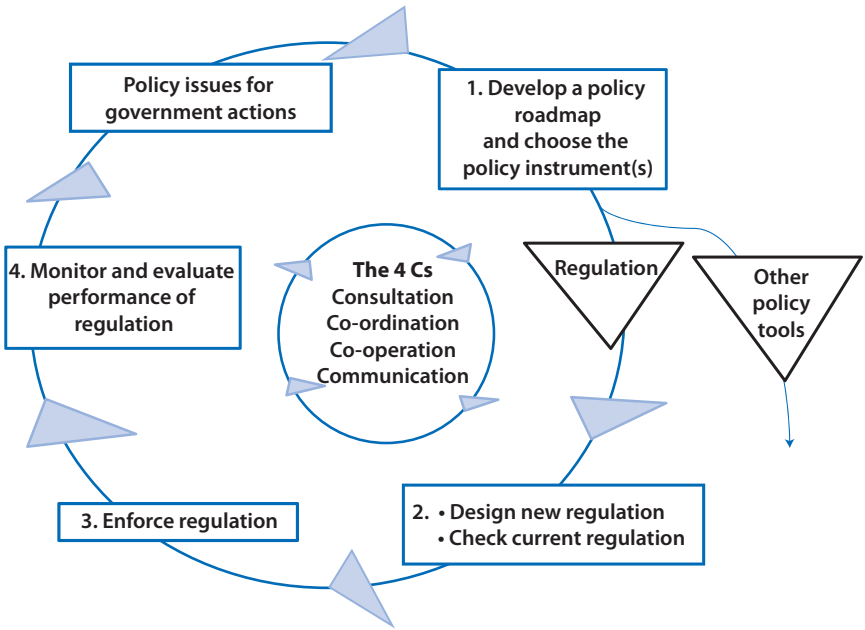


Table 2.1. **OECD role in the regulatory governance cycle**

	Yes (systematically)	Yes (frequently)	Yes (occasionally)	No
Ex ante exchange of information	+			
Agenda setting / setting goals/strategies	+			
Formulation of rules / norms / standards		+		
Data collection		+		
Monitoring of instruments		+		
Enforcement – imposition of sanctions				+
Dispute resolution			+	
Crisis management				+

Figure 2.4. **The regulatory governance cycle**



OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en.

Data collection and exchange of information

The OECD collects vast amounts of statistical data and other information from its members as well as from a number of non-members, and develops internationally comparable statistical indicators. The OECD is one of the world's largest sources of comparative statistical, economic, and social data and produces comprehensive data in all of its fields of activity. This data is made available through publications (including an OECD Factbook) and via on-line databases. The OECD offers a platform for co-operation that allows both the sharing of information and data-collection in the phase prior to the development of standards and when monitoring its implementation.

Policy analysis, dialogue and development of a common language

On the basis of data and information collected, the Secretariat produces policy analysis through in-depth reviews and forecasts, which survey the OECD and other countries. These reports serve as input for discussions in OECD committees. The report prepared by the Secretariat may go through

several rounds of modifications in order to become a report by the committee on the particular issue. Policy dialogue takes place within the substantive committees and their sub-groups on the basis of these analytical reports. Members and stakeholders forge a common language on specific policy issues, share their experience on the issues in question and identify common challenges, as well as good practices implemented by certain members in responding to these challenges. This stage can also be the end-point of the work chain, facilitating better policy-making by identifying good practices which can be used, as appropriate, by each member.

Analytical reports

Analytical reports can be end products in themselves, published by the Secretariat after discussions in the relevant committee For instance, the Committee on Fiscal Affairs agreed on a report on the attribution of profits to permanent establishments which became the reference point on transfer pricing, providing detailed guidance as to how the profits attributable to a permanent establishment should be determined. The OECD reports contribute to forge a common understanding of the policy area under consideration.

Agreed policy guidance

Standard setting in its broad definition is not limited to legal instruments. Agreeing on policy guidance can also be a way to set standards. Even when Guidelines, Principles or Action Plans do not form part of legal instruments, they can have strong impact. The Principles for Donor Action on Anti-Corruption (2006) and the Best Practice Guidelines on Biological Resource Centres (2007) are two illustrations of standard setting through agreed policy guidance.

Common typologies and classifications

In some cases, OECD work involves stabilising language in a specific domain through the development of classifications and typologies (OECD, 2013a). In chemical safety, for instance, this has taken the form of the development and implementation of the Global System of Harmonisation of Classification and Labelling – a joint effort by OECD, ILO and UNITAR. With regards to consumer product safety, the development of a global product taxonomy was seen as essential to support better sharing of information across jurisdictions and tracking of unsafe products across borders.

Country benchmarking

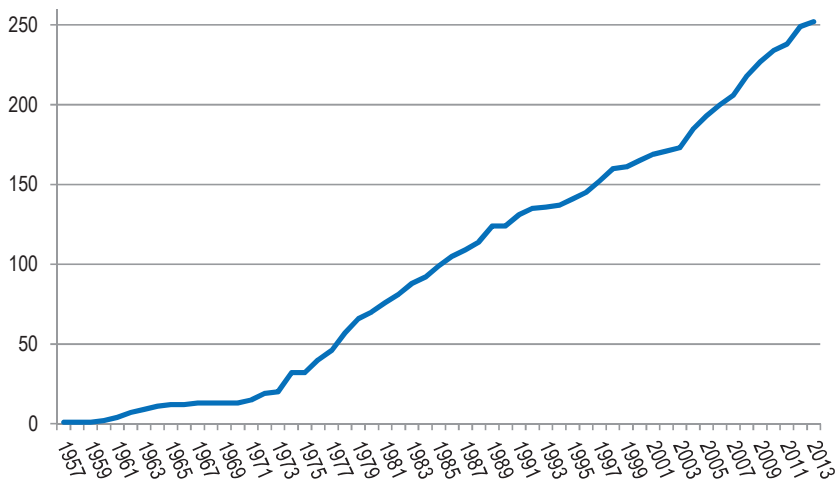
An important OECD activity consists in using the information collected from countries to build performance indicators and benchmark the progress of countries. Experience shows that this is a very effective mechanism to incentivise country action. The most well-known cases include the Programme for International Student Assessment (PISA) or the OECD Economic Outlook.

Legal instruments

If it considers it appropriate, the committee may decide to develop its work into an OECD standard in order to achieve closer co-ordination of the policies of OECD members on a given issue. There were 252 legal instruments of the OECD at the end of 2013, setting out binding and non-binding standards in almost all fields of the Organisation's work. Figure 2.5 shows the growing number of OECD legal instruments.

Figure 2.5. **OECD legal instruments (by date of adoption)**

(cumulative numbers, as of end 2013)



Source: OECD, www.oecd.org/legal/legal-instruments.htm, accessed February 2014.

Binding/non-binding instruments

There are two types of legally binding instruments: Council Decisions and international agreements. All other OECD instruments, namely the most widely developed OECD Recommendations, are non-binding or "soft law".

In accordance with Art. 5 OECD Convention, *decisions* are legally binding on members that do not abstain at the time of adoption. They set out specific rights and obligations and can contain obligatory monitoring mechanisms. There are currently 30 OECD decisions in areas including international investment, mutual acceptance of test data on chemical products, and transboundary movements of hazardous waste. The obligations on members resulting from an OECD decision are similar to those under a treaty – members are bound under international law but the decisions are not directly applicable or self-executing. In practice, it is accepted that, after the adoption of a decision, members will usually need a reasonable length of time in which to take the steps necessary to implement the provisions of a decision.

The most common OECD legal instruments are *recommendations*: some 180 OECD Recommendations have been developed until end of 2013. Recommendations are non-binding and form part of the extensive body of soft law produced by the Organisation. However, within the OECD, recommendations entail a strong political commitment by members which are expected to – and do – take measures for the implementation of the recommendation.

A further sub-category of OECD Acts are *decision-recommendations*; a legal instrument consisting of one part which is a legally-binding decision and another part which is a recommendation.

It is possible for a member to abstain from the adoption of a decision or recommendation – with the effect that the instrument is adopted but is not applicable to that country – or to make a reservation with regard to a particular provision thereof. It is noteworthy that these possibilities are rarely used. This can be seen as a result of the bottom-up and consensus-based process for the development of OECD instruments which means that a consensus will almost always have been reached before the instrument is presented to the Council for adoption.

Aside from the two categories of legal instrument which constitute the OECD Acts, two further categories of instrument have been developed through the practice of the Organization: declarations (there are currently 25) which are adopted by the adhering countries and noted by Council such as the Declaration on International Investment and Multinational Enterprises and international agreements (there are currently five in force concluded within the OECD framework such as the OECD Anti-Bribery Convention and the Convention on Mutual Administrative Assistance in Tax Matters.

Policy principles/technical standards

OECD legal instruments, in some cases, set out general policy principles and, in other cases, highly specific technical standards. One example of the first category is the OECD Principles for Transparency and Integrity in Lobbying. As negotiated and carefully drafted statements with a view to have normative significance despite being non-binding, they have been transformed into a OECD Recommendation and constitute today the only policy instrument providing guidance to decision-makers on how to promote good governance principles in lobbying. Examples of the second category include the Agricultural Codes and Schemes which facilitate international trade through the simplification and harmonisation of documentary, inspection and testing procedures.

Narrow vs. broad subject coverage

With its decentralised approach, the OECD demonstrates an enormous flexibility which has been described as one of its most important strengths (Salzman, 2011). The bodies of the Organisation decide how the different topics should be addressed, taking into account the specificities of the relevant policy areas. Whereas some OECD legal instruments and standards have broad coverage, a great amount is very specific.

Ensuring regulatory quality

At the domestic level, countries have developed high level principles and tools to ensure the quality of their regulatory system, as reflected in the Recommendation of the Council on Regulatory Governance and Policy.[6] These principles and tools for good regulatory policy and governance relate to transparency and participation in the regulatory process; regulatory impact assessment; systematic review of the stock of significant regulation; review processes and consideration of other relevant international standards.

Although institutional arrangements, operational modalities and regulatory tools have proved to be critical determinants at the domestic level of the quality of regulatory governance, regulatory management disciplines are not systematically used by international standard setters. In the case of the OECD, evidence shows an uptake in the systematic use of consultation and review mechanisms in the development and implementation of instruments. However, there is no overarching corporate policy that specifies concrete modalities for conducting consultation processes or designing and implementing review mechanisms. This is currently left to the appraisal of each of the committees which have their own working methods. Ways of ensuring more systematic approaches to standard setting across OECD bodies are under consideration.

Cost/benefit analysis or ex-ante regulatory impact analysis

Whereas neither the OECD committees nor the Secretariat is undergoing cost/benefit analysis or ex-ante regulatory impact analysis systematically, some reflection on the costs and benefits and the possible impacts form implicitly part of the decision-making process regarding whether and how a project should be carried out. The decision whether or not to move towards the development of a standard is taken by the relevant committee usually on the proposal of the Secretariat building on evidence-based analysis.

Consultation

The OECD increasingly undertakes broad consultation to ensure the relevance and facilitate the subsequent implementation of its instruments. The OECD works closely with other actors such as other international governmental and non-governmental organisations as well as business and civil society. There are two standing non-governmental stakeholders with consultative status within the OECD: the Business and Industry Advisory Committee and the Trade Union Advisory Committee, which provide an interface for business and labour organisations.

Broad consultation – beyond the institutionalised platforms – is becoming the norm. The participation of businesses and civil society in the development of the Guidelines for Multinational Enterprises, for example, has facilitated their acceptance and their readiness to implement and use these Guidelines. Likewise, the current reviews of the OECD Principles of Corporate Governance and the OECD Guidelines of Corporate Governance of State-Owned Enterprises include stakeholder consultations, which take place at the beginning as well as in later steps of the review process.

However, modalities for conducting consultations differ across Committees (timing of such consultation process, length of the consultation process, means for disseminating the documents, ways of treating feedback), which may reflect the specificity of the policy area under consideration and the number of stakeholders and interested countries or groups.

Monitoring implementation

One of the unique characteristics of OECD working methods is the system for monitoring policies and practices as well as the implementation of OECD standards through peer review. The OECD also resorts to other mechanisms to ensure appropriate implementation and monitoring depending on the policy areas. Table 2.2 summarises these mechanisms, which are developed and illustrated by examples in the section below.

Table 2.2. **Implementation and monitoring mechanisms**

Mechanisms	Description
Peer review mechanism	Systematic and reciprocal assessment of the performance of a member by other members, with the goal of helping the reviewed member to improve its policy-making and comply with OECD standards (OECD, 2003).
Committee or Secretariat review/assistance upon request	*Ad hoc* detailed reviews of the policy performance of a country upon its request.
In-built reporting mechanism	Clauses included in OECD instruments specifying the modalities of review and monitoring.
National Contact Points	Mechanism that has been developed for the Guidelines for Multinational Enterprises. The main role of the NCP is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that arise from the alleged non-observance of the guidelines in specific instances.
Notification	System that allows the reporting of measures which affect implementation of standards.

Peer review

Peer reviews are conducted on a non-adversarial basis and rely on the confidence of members in the effectiveness and fairness of the process. In this regard, a key element in peer reviews is the existence of established criteria and methodology for assessing performance. These are typically established based on the normative framework provided by the standard and compendium of good practices developed by the OECD. The review results in a series of recommendations addressed to the OECD member, and the implementation of these recommendations is examined during the next review. Peer pressure can be used, if necessary, to bring a member into compliance with an OECD standard and can take various forms including dialogue within the OECD body and rankings between members. The publication of OECD peer review reports constitutes an effective form of pressure on the country concerned through scrutiny by the media and the public.

- Country-specific or vertical peer review

Typical examples of peer reviews within the OECD are the regular Economic Surveys carried out on OECD members and selected non-members. The Economic and Development Review Committee (EDRC) is at the core of the OECD's peer review mechanism. Its role is to examine

economic trends and policies in OECD and Key Partner countries, assess the broad performance of each economy and make policy recommendations. The surveys generally include a detailed analysis of a specific structural topic. Recent topics have included education, innovation, fiscal federalism, housing, migration and competition, and these have been based inter alia on cross-country analysis carried out in the Economics Department and in the specialised Directorates at the OECD. This demonstrates one of the key elements of the peer review process: examining a country's performance in the light of the experience and lessons learnt in other countries. Other examples include Environmental Performance Reviews (EPRs) and Public Governance Reviews which identify good practices and make recommendations to improve the reviewed country's policies and programmes in the relevant area.

Among the existing peer review mechanisms, some clearly focus on specific instruments of the organisation. Article 12 of the OECD Anti-Bribery Convention requires a programme of systematic follow-up to monitor and promote full implementation of the Convention. Countries' implementation and enforcement of the Convention and related OECD Recommendations is monitored by the OECD Working Group on Bribery in International Business Transactions through a rigorous peer-review monitoring system, which Transparency International calls the "gold standard" of monitoring. Monitoring takes place in three phases: Phase 1 evaluates the adequacy of a country's legislation to implement the Convention, Phase 2 assesses whether a country is applying this legislation effectively and Phase 3 focuses on the enforcement of the Convention, compliance with the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and outstanding recommendations from Phase 2. Each evaluation of a Party in the Phases 1 to 3 is discussed within the Working Group, the Party under evaluation having the possibility to intervene in the discussions, but having no right of veto ("consensus minus one"). Where the Phase 3 report reveals a lack of implementation, the Working Group may opt for a Phase 3bis evaluation. Questionnaires and on-site visits form part of these evaluation processes. The country monitoring reports, which contain recommendations drawn from the rigorous peer-review examinations of each country, are published on the OECD website.

- Thematic or horizontal peer review

The Corporate Governance Committee's thematic review process is designed to facilitate the effective implementation of the OECD Principles of Corporate Governance and to assist market participants and policy makers to respond to emerging corporate governance risks. Covering more

than 25 jurisdictions, these reviews generally take a horizontal approach, although the practices of individual countries (usually three to five countries) are looked at more specifically. By the end of 2013, the Committee completed peer-reviews in areas such as board practices, board nomination and election, the role of institutional investors in promoting good corporate governance as well as supervision and enforcement in corporate governance.[7]

- Voluntary peer review

National Contact Points for the OECD Guidelines for Multinational Enterprises have reinforced their joint peer learning activities with the 2011 update of the Guidelines. The voluntary peer reviews highlight the achievements of individual NCPs as well as areas of improvement and recommendations to ensure the efficient structure and functioning of an NCP.

Committee or Secretariat review/assistance upon request of a country

In addition to the peer review system, individual members or non-members can request Committees or Secretariat to carry out ad hoc detailed reviews of their policy performance in a particular field in order to help the country evaluate its policy-making and identify areas for improvement. To date, many OECD Directorates have, upon request, carried out such reviews on a great variety of topics, including in the areas of environmental performance, regulatory policy, investment policy, innovation policy.

In-built reporting mechanism

For several years, new OECD Recommendations have systematically included monitoring and review clauses. Box 2.1 illustrates the trend by providing examples based on the adoption of latest OECD instruments. Monitoring of the implementation of the relevant instrument is generally based on questionnaires and benchmarking. The assessed level of implementation is then presented in a report to Council.

Box 2.1. **Examples of monitoring clauses in recent OECD Council Recommendations**

The Recommendation of the Council on Principles for Independent Fiscal Institutions (adopted in 2014):

INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter.

Box 2.1. **Examples of monitoring clauses in recent OECD Council Recommendations** (*cont.*)

The Recommendation of the Council on the Safety Testing and Assessment of Manufactured Nanomaterials (adopted in 2013):

INSTRUCTS the Chemicals Committee to monitor closely the technical aspects of implementation of this Recommendation and to report to Council within three years of its adoption and thereafter as appropriate.

Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship (adopted in 2013):

INSTRUCTS the Employment, Labour and Social Affairs Committee and other competent committees to establish a mechanism to monitor the implementation of the Recommendation through gender activities as specified in their programme of work and budget; in consultation with other competent OECD committees, assess progress through benchmark indicators whilst making use of existing reports on progress with gender equality; and, report to Council no later than four years following its adoption and regularly thereafter.

Source: OECD, www.oecd.org/legal/legal-instruments.htm, accessed February 2014.

National Contact Points

Another example of innovative mechanisms can be found with regards to the implementation of the Guidelines for Multinational Enterprises. Their implementation is monitored through a system of National Contact Points (NCPs).[8] The NCPs facilitate compliance both in assisting enterprises and stakeholders to take appropriate measures to further the observance of the Guidelines and in providing a platform for dispute resolution. In fact, the Guidelines are the only government-backed international instrument on responsible business conduct with a built-in grievance mechanism. These specific instances concern alleged non-observance of the Guidelines and are treated by NCPs, who make their statements publicly available. NCPs can also work jointly to solve cross-border disputes. Beyond, the activity of NCPs is monitored and co-ordinated by the Investment Committee.

Notifications of measures affecting implementation of standards

Some instruments contain a provision regarding the notification of non-compliance vis-à-vis the rules they set out. For example, under Articles 11 and 12 of the OECD Codes of Liberalisation, Members shall notify the OECD of any measures having a bearing on their obligations under the Codes. According to Article 1 of the Third Revised Decision of the Council

concerning National Treatment, Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures, listed at the time of adherence, constituting exceptions to National Treatment and of any other measures which have a bearing on National Treatment.

Ex post evaluation

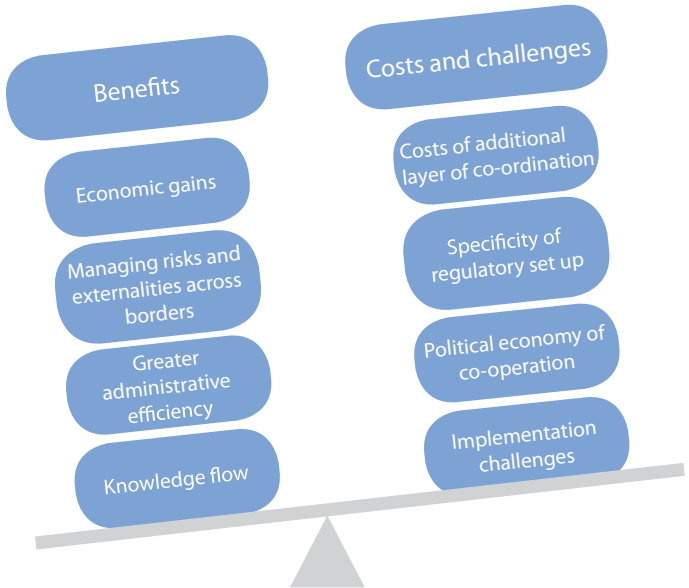
Beyond the review mechanisms foreseen in specific OECD instruments (see Box 2.1 above for examples), a system of in-depth evaluation of the performance of committees was put in place in 2005. The overarching goal of in-depth evaluation at the OECD is to provide a mechanism through which Council can assess whether Committees are conducting processes, delivering outputs and achieving impacts that are in line with Members policy expectations and priorities and with the comparative advantage of the OECD; and that represent value-for-money to capitals. Hence, among other issues, in-depth evaluations assess the effectiveness and quality of outputs and the continuous improvement of Committees by learning from best practices, and they ensure that continued policy relevance and a focus on achieving expected outcomes are reinforced in appropriate Committee mandates and Committee structures. The reports to the OECD Council provide detailed recommendations with regards to the relevance, efficiency, effectiveness and sustainability of OECD Committees.

Assessment of the impact of regulatory co-operation through the OECD

Benefits, costs and challenges of regulatory co-operation

Evaluation of the benefits and costs of co-operating through the OECD (as through international organisations more generally) remains an underdeveloped field. Evidence is scattered and anecdotal and further work is needed. This would require more systematic exchange of information with countries on the economic and other impacts of co-operating through the OECD and implementing OECD instruments domestically. As a preamble to such work, OECD (2013a) identifies a number of benefits, costs and challenges associated with IRC (synthesised in Figure 2.6). The perceived benefits may include the economic gains from reduced costs on economic activity and increased trade and investment flows, the progress in managing risks and externalities across borders, administrative efficiency from greater transparency and work-sharing across governments and public authorities, as well as knowledge flow and peer learning. The perceived challenges include the co-ordination costs, sovereignty issues and the lack of regulatory flexibility, the difficult political economy of regulatory co-operation, and implementation bottlenecks.

Figure 2.6. **Schematic approach to perceived benefits, costs and challenges of IRC**



Source: OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

OECD (2013a) provides examples of these benefits and challenges across a number of policy areas where the OECD supports co-operation (tables 2.4 and 2.5).

Quantified evidence of these benefits, costs and challenges is scarce and non-systematic. However, chemical safety provides an example where efforts have been undertaken to systematically quantify the benefits and costs of co-operation through the OECD. In 2010, the OECD conducted an analysis to determine the savings that governments and industry accrue from their participation in the OECD Environment, Health and Safety (EHS) Programme for chemical safety, focusing on the benefits of harmonisation through the Mutual Acceptance of Data (MAD) system and burden sharing from working together through the High Production Volume (HPV) programme (Table 2.5). In parallel, an evaluation of the costs of supporting the EHS Programme was carried out (Table 2.6).

Table 2.3. **Benefits of regulatory co-operation through the OECD in three areas**

	Chemical safety	Consumer product safety	Model Tax Convention
Economic efficiency	By establishing the same quality requirements for tests throughout OECD, a level playing field for the industry is ensured		
Reduced costs on economic activity	By accepting the same test results OECD-wide, unnecessary duplication of testing is avoided, thereby saving resources for industry and society. Reduction in delays for marketing new products		
Increased trade and investment flows	Minimise non-tariff barriers to trade, which might be created by differing test methods required among countries	Reduced obstacles on trade in products.	Abolition of double taxation, an important obstacle to cross-border trade and investment.
Progress in managing risks and global goods across borders	Better health and environment protection through greater evaluation of chemicals and action taken	More efficient & effective detection and reaction on consumer product safety issues within & across jurisdictions lead to reduced number of injuries.	
Greater transparency	Increased availability of safety data on high production volume chemicals	Greater exchange of information on product safety within and between economies;	Improve transparency and exchange of information in tax matters. This has led to the elimination of bank secrecy as an obstacle to the effective exchange of information upon request.
Work-sharing across governments	Development of technical instruments that improve the quality of chemical evaluations and regulations	Reduced administrative costs and more coherent responses to consumer product safety issues	Achieving regulatory efficiency gains through the adoption of common standards
More efficient administrative relations (e.g. clearer and less contentious)	Exchange of information and practices between countries with different policy experience. Development of common language through harmonised classification and labelling systems for chemical products	Improved quality and effectiveness of regulation through exchange of information, access to good regulatory practices and more co-ordinated action.	Flexible co-ordination which facilitates the relations between tax administrations whilst preserving the tax sovereignty of countries involved.
Other	Reduce the use and suffering of laboratory animals needed for toxicological tests.	Support research on product safety issues	Uniform interpretation of tax treaties allows a reduction in conflicts between taxpayers and tax authorities.

Source: OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

Table 2.4. **Challenges of regulatory co-operation through the OECD in three areas**

	Chemical safety	Consumer product safety	Model Tax Convention
Legal obstacles		Legal constraints to sharing information	The incorporation of tax treaties into domestic law may raise constitutional & legal issues. The independence of the judicial branch and the fact that judges are not represented in international fora dealing with tax treaties make it difficult to achieve co-ordination in the way domestic courts interpret tax treaties provisions.
Administrative costs of IRC	Budgetary constraints	Sufficient resources will be required to continuously maintain the portal on product recalls and inventory of initiatives.	
Other	Need for continual adjustment in a context where "easy" issues have been dealt with.	Avoiding duplication of work taking place in other global fora	Countries are free to adopt parts of the standards and ignore others. IRC is not comprehensive in terms of areas covered and country participation.

Source: OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

Table 2.5. **Annual savings resulting from the OECD's EHS Programme**

Savings due to:	Savings (EUR)
New chemicals	
• no need to repeat testing	27 576 000
New pesticides	
• no need to repeat testing	134 640 000
• use of OECD dossier format	1 546 800
• use of OECD monograph format	2 408 700
High production volume chemicals	
• no need to repeat testing; ability to use quantitative structure activity relationships (Q)SARs following OECD principles	1 547 400
• use of co-operative assessments	508 680
Total savings *(not counting costs)*	168 230 000

Source: OECD (2010), *Cutting Costs in Chemicals Management: How OECD Helps Governments and Industry*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085930-en.

Table 2.6. **Estimated total annual costs of supporting the EHS Programme**

Country costs		Secretariat costs	
Number of meetings[a]	99	Part I budget[b]	
Average length of meetings[c] (days)	2.52	Expenditure on permanent staff and consultancy funds	EUR 342 050
Total number of participants[d]	3 589		
Travel costs[e]	EUR 5 578 700	Part II budget[f]	
Country staff costs[g]	EUR 6 069 100	Special Programme on the Control of Chemicals	EUR 1 821 700
		Grants[h]	EUR 1 416 100
Total country costs	EUR 11 648 000	Total Secretariat costs	EUR 3 579 800

a Yearly average over the period 2006 to 2007 (from EMS data).

b The Part I Budget is the regular OECD Budget to which all member countries contribute.

c The average length of meetings is a weighted average based on the number of participants and the length of each meeting.

d Yearly average over the period 2006 to 2007 (from EMS data).

e Travel costs (rounded) = travel [weighted average cost of round-trip flight (EUR 1 000) x number of participants (3 589)] + expenses [length of meetings (2.52 days) x daily expenses (EUR 220) x number of participants (3 589)].

f The Part II budget constitutes assessed extra-budgetary contributions made by 27 out the 30 member countries to support the Special Programme on the Control of Chemicals.

g Country staff costs (rounded) = participation [length of meetings in hours (2.52 x 8 = 20.16) x number of participants (3 589) x staff costs per hour (EUR 36)] + preparation [(133% x 20.16 = 26.8128) x number of participants (3 589) x staff costs per hour (EUR 36)].

h Extra-budgetary contributions from countries to support specific activities in the EHS Programme.

OECD (2010), *Cutting Costs in Chemicals Management: How OECD Helps Governments and Industry*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085930-en.

In addition, OECD (2013b) highlights that qualitative benefits from participating in the OECD chemical safety programme are just as real, likely and important as the quantified benefits. Such benefits include the health and the environmental gains from governments being able to evaluate and manage more chemicals than they would if working independently. They also include the avoidance of delays in marketing new products; according to industry sources, these could represent similar amounts of money as those saved by avoiding duplicative testing (for example, delays in registrations of a pesticide might lead to missed sales for a full growing season). Further, by providing a forum for experienced experts from member countries to discuss

scientific issues, the EHS programme is helping countries develop new and more effective methods for assessing chemicals (e.g., approaches for assessing chemicals with endocrine disrupting potential, the effects of chemicals on children, and the effects of exposure to multiple chemicals). Individually, no country could match this level of expertise in each field.

Assessment of success

Two aspects need to be looked into to assess the impact of the regulatory co-operation within the OECD: the comprehensiveness of the regulatory co-operation and the level of compliance.

Comprehensiveness: how is the OECD going global?

Achieving comprehensiveness is a critical dimension of international regulatory co-operation. It is defined by Levy (2011) by the extent to which legal instruments cover countries that significantly affect the outcome that is being regulated. Given its limited membership, achieving comprehensiveness is a key challenge for the OECD. While initially, its membership reflected 80% of the World GDP, this share stands today at 68% (Table 2.7).

Table 2.7. **Evolution in OECD membership and its share of the world GDP**

Year	OECD membership	Share of world GDP
1961	Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, UK, US	80%
1980	Previous + Japan, Australia, New Zealand, Finland	74%
2000	Previous + Czech republic, Hungary, Korea, Mexico, Poland	81%
2010	Previous + Chile, Estonia, Israel, Slovenia	68%

Source: OECD, based on the World Development Indicators of the World Bank, http://data.worldbank.org/data-catalog/world-development-indicators, accessed March 2014

This challenge is reflected in the case study on chemical safety (OECD, 2013b), which highlights that "the shift in chemical production from OECD countries to non-members can make the OECD less representative and less influential in the global setting when not enough attention is paid to outreach". Involving new players has therefore become a critical step to preserve the balance of interests in the co-operation, but may involve

important challenges. With increased number of players involved, the process of obtaining consensus may become slower for instance. In the area of tax, "the OECD limited membership means that not all countries, especially major emerging economies, are directly involved in the development of the internationally-agreed standards. As a general rule, countries are also, in effect, free to adopt parts of the internationally-agreed standards and ignore others (OECD, 2013b). However, these challenges are now being addressed in different ways.

Inviting non-members to adhere to OECD instruments

In the past, only OECD Members adhered to the Organisation's legal instruments with a few exceptions. OECD legal instruments now routinely include a paragraph inviting non-members to adhere to OECD instruments. For example, the recently adopted OECD Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship "INVITES non-members to take due account of and adhere to this Recommendation and to collaborate with the OECD to exchange policy principles, guidelines, good practices and data on gender equality in education, employment and entrepreneurship".

Non-members can adhere to an OECD legal instrument at the time of its adoption or at any time thereafter. Non-members actively make use of these possibilities (see Figure 2.7 for selected examples). Non-members have also publicly accepted an OECD standard without formally adhering to the relevant legal instrument. The best examples are the OECD standard on exchange of information set out in Article 26 of the OECD Model Tax Convention, and the OECD Principles on Corporate Governance (see further below).

As Figure 2.7 shows, seven non-members are parties to the Anti-Bribery Convention, including Brazil, Russia and South Africa. While there are still some major economies missing including China, India and Indonesia, the 40 countries that have joined the Convention generate nearly two-thirds of total world trade and 90% of outward foreign direct investment.

Figure 2.7. **Non-member adherence to OECD standards as of 31 March 2014 (examples)**



* The Convention will enter into force for Latvia on 30 May 2014.

° The Convention will enter into force for Croatia and Lithuania on 1 June 2014 and for Colombia on 1 July 2014.

Inviting non-members to participate in the development or revision of legal instruments

Non-members are also involved in the development or revision of legal instruments and this is particularly important in order to ensure shared ownership of the resulting standard. Participation can be as Associate i.e. on an equal footing with OECD Members with an expectation that the non-member will adhere to the resulting standard or as Invitee. This has been the case of the 2011 revision of the Guidelines for Multinational Enterprises in which six non-Members were invited to participate including China, India and Russia. On-going examples are the development of legal instruments on base erosion and profit shifting (BEPS) in which ten non-members, including all G20 members, are participating as Associates and the revisions

of the OECD Principles on Corporate Governance, the OECD Guidelines on Governance of State-Owned Enterprises in which twelve economies, including all G20 and FSB members have been invited to participate as Associates.

Incorporation of OECD standards in other frameworks

OECD standards have been incorporated into other legal frameworks with broader adherence. For instance, a series of OECD legal instruments creating a system governing the transboundary movements of wastes were used as the basis of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which now counts 180 Parties. Another example is the principle agreed by OECD members in a 1984 Recommendation that the export of a hazardous chemical from an OECD country would require the importing country to be informed, which was the basis for UNEP and FAO to develop the Rotterdam Convention on Prior Informed Consent Procedures in 1998.

Co-operating with other IGOs and G20

Partnerships and specific joint initiatives with other international organisations are other important examples of the OECD's co-operation beyond its membership. The OECD currently has 11 Partnership Agreements with international organisations including the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the International Labour Organization (ILO) and is a partner of innumerable joint initiatives. On a regular basis, the OECD is a co-author of joint publications with other international organisations. On top of this, some 70 international organisations participate in the meetings of OECD committees as observers or on an *ad hoc* basis in specific meetings.

The OECD has worked closely with the Group of Eight (G8), providing analysis and contributing to the implementation of the priorities set by the G8 as well as supporting the dialogue of the G8 with major emerging economies and developing countries. The OECD has been supportive on a broad range of issues on the G8 agenda on tax, transparency and trade. As an example, at the Lough Erne Summit in June 2013, G8 Leaders agreed on concrete steps to put in place a global, secure and cost-effective model of automatic exchange of tax information on the basis of the OECD's work in this field.

The OECD increasingly co-operates with the Group of Twenty (G20), which is establishing itself as the "premier forum for international economic co-operation".[9] The OECD has participated in the G20 summits and their preparatory work in order to help achieve substantive outcomes. For

example, the OECD is leading the G20's work on fighting tax evasion and taxation of multinational enterprises (Base Erosion and Profit Shifting) by updating and upgrading national and international tax rules in order to build efficient and fair tax systems. Overall, the OECD has consolidated its role within the G20 on the issues within its competence, contributing also to the structural policy dimension of the G20 Framework for Strong, Sustainable and Balanced Growth and participating in its own right in the G20 Anticorruption Working Group.

Level of implementation

As noted above, the OECD does not have strong tools to enforce its standards. However, for an organisation with mostly non-binding instruments, the level of compliance is generally high. The reasons for this can be found in the consensus- and evidence-based approach, the dialogue leading to the identification of best practices and the monitoring mechanisms put in place to facilitate implementation even of non-binding norms. The importance attached to non-binding instruments is demonstrated by the fact that members abstain from the adoption of a decision or recommendation or make a reservation with regard to a particular provision thereof even though the resulting instrument is not legally binding.

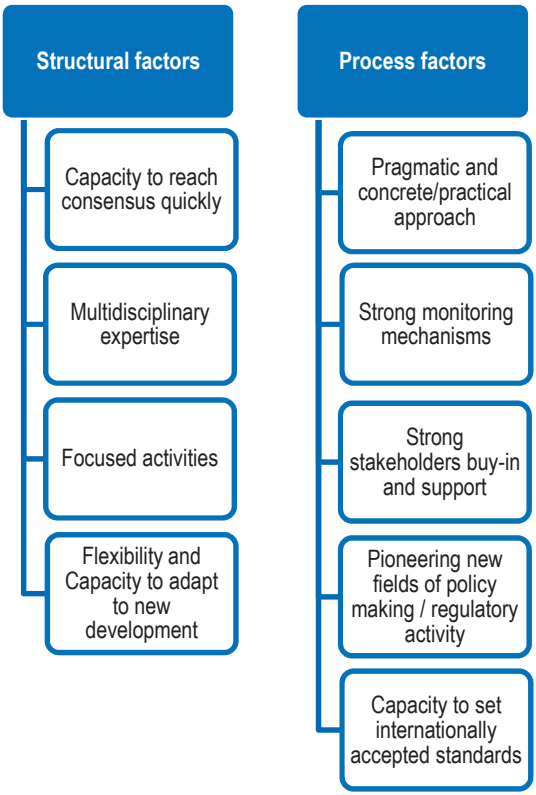
Besides regular reporting, no standardised methodology has been put in place to measure theplementation and compliance. Likewise, there is not much concrete quantifiable evidence of the level of implementation, as this is difficult to measure. However, there are exceptions. For example, a quantified approach has been used by the Committee for Scientific and Technological Policy to benchmark implementation by Members as compared to accession candidate countries. The level of implementation by the candidate country was measured against the median of the level of implementation of OECD Members.

As an external evaluation of the effectiveness of implementing the Anti-Bribery Convention, Levy (2011) notes that even in this case where enforcement is left to national level, the monitoring performed at international level has the potential to buttress credibility. "As the difficult interactions between the OECD's anti-corruption compliance monitoring program and the British authorities showed, robust monitoring does not translate directly into enforcement. But that same example also demonstrates that peer pressure, anchored in prior endorsement of globalised rules and robust, transparent globalised monitoring can have an impact, even on the actions of sovereign, national governments."

The Export Credits Arrangement, which aims at providing a framework for the orderly use of officially supported export credits, benefits from a very high level of compliance. The key factors for this level of compliance are: First, the Arrangement adopts a pragmatic approach towards compliance. Indeed, a prior notification of the intention to derogate to specific rules is required. As a consequence, the set of rules including the derogations are agreed upon and are followed by the Parties. Second, the rules have been incorporated in the EU and WTO law and are referenced to in WTO dispute settlements. In this regard it is important to note that the European Union is one of the nine Participants of the Export Credits Arrangement, thus all EU Member States are included and the Arrangement rules have been incorporated into legally binding EU legislation.

Factors of success

Figure 2.8. **Success factors**



Several factors of success can be identified (see Figure 2.8 above), which are often inter-related. The first category arises from the key characteristics of the OECD and is of a structural nature; the second category relates to specific practices in the standard setting process and to the nature of the policy area under consideration. Key OECD characteristics that have been factors of success involve its capacity to reach consensus quickly owing to the like-mindedness of its members, its multidisciplinary expertise, its focused approach and its capacity to adapt to new developments. In the second category, when the OECD has been able to adopt a pragmatic approach, establish strong monitoring mechanisms and stakeholders' engagement, and has pioneered new fields of activity or set the grounds for international standards, its standard-setting activity has been particularly effective.

Capacity to reach consensus quickly

The relatively small membership and its like-mindedness enable the OECD bodies not only to reach consensus quickly, but to reach also a stable consensus. Moreover, the success of the peer review system within the OECD can be attributed to this like-mindedness and the high degree of mutual trust between them. The constructive and collaborative attitude of members to the review mechanisms is essential to its effectiveness. As shown in OECD (2013b), success in the area of chemical safety has been a function of trust building among stakeholders. This has relied strongly on a phased approach involving the development of a common language; the alignment of testing methods and GLP; and the establishment of binding Council Acts on Mutual Acceptance of Data. Building on this capacity, the OECD has shown that it could lay the initial groundwork for broader international consensus and function as a laboratory of co-operation experiments (OECD, 2013a).

Multidisciplinary expertise

Being multidisciplinary, the organisation can tackle broad questions, identify possible synergies between different areas and work horizontally on issues (Kothari, 2013). For example, regarding the water challenge, the OECD identifies the priority areas where governments need to focus their reform efforts. It contributes analysis to improve the information base, identifies good practice, and provides a forum for exchanging country experiences with a multidisciplinary approach involving various OECD Directorates. Within the OECD, members have addressed issues such as financing, governance, policy coherence and private sector participation. Ongoing work also covers water security, green growth, climate change adaptation, water allocation and urban-water management.

Focused activities

The OECD's approach to develop very specific instruments has generally proven to be successful. For example, an important part of the OECD Anti-Bribery Convention's success is due to the fact that it is not just the first, but still the only international legal instrument focused on the 'supply side' of the bribery transaction, i.e. the supply of bribes by nationals of States Parties to public officials in any foreign country including countries which are not parties to the Convention. This narrow focus facilitates the rigorous monitoring of the performance of each Party which would be more difficult with a broader set of issues.

Flexibility and capacity to adapt to new developments

OECD instruments and standards have shown their capacity to adjust with time. OECD (2013a and 2013b) recalls the evolution in the focus of the co-operation on tax matters as a good illustration of this constant adaptation. From the 1920s to the early 1980s, co-ordination efforts in the tax field were primarily directed at developing the network of bilateral tax treaties through the drafting of standard provisions to help the negotiation and conclusion of bilateral tax treaties. In the early 1980s, the co-ordination efforts of the OECD and its member countries started to focus a lot more on the interpretation and application of existing treaties. The co-ordination efforts have gradually moved from improving market access (through the removal of double taxation) towards conflict avoidance and resolution and facilitating the inter-operability of tax systems. Over the last 10 years, there has been another shift in the main objective of the co-ordination towards improved transparency and exchange of information in tax matters.

The OECD is also able to adapt to new challenges quickly. This can be illustrated with the recently started OECD project on base erosion and profit shifting (BEPS). Where multinational enterprises exploit the gaps of national tax laws by avoiding taxation in their home countries with their activities falling under low or no tax jurisdictions, the integrity of tax systems is at stake. The OECD has quickly adapted to this new challenge in reorganising the work and bodies of its Committee on Fiscal Affairs and involving non-members from the outset. At the request of G20 Finance Ministers, the OECD launched an Action Plan on BEPS in July 2013, identifying 15 specific actions needed in order to equip governments with the domestic and international instruments to address this challenge.

Pragmatic and concrete/practical approach

Legal instruments as well as policy guidance and analytical reports etc. show great successes when a concrete and practical approach is being taken. Concrete guidance, toolkits and specific guidelines of implementation have

proven to be extremely helpful to governments and other actors. With these, member countries have the practical tools to develop, foster or implement agreed policies. They are developed in all areas of work of the OECD. One example is the unprecedented investment sector-specific risk-assessment tool and due diligence guidance embodied in the Recommendation on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.[10]

Strong monitoring mechanisms

Monitoring mechanisms, namely the peer reviews, are considered motors of the regulatory co-operation (Bocquet, 2012). Where monitoring has been effective, the co-operation has proved a success. The rigorous monitoring in the area of anti-bribery with its strong peer pressure, for example, represents one of the success factors of the Anti-Bribery Convention and its related instruments.

Strong stakeholders buy-in and support

Public consultations with stakeholder as well as their involvement from the outset when developing legal instruments ensure the stakeholders' buy-in and support. This is important to forge a consensus that will support implementation and to ensure accountability of the IRC mechanism. As already noted, consultations have played an important role in the development and update of the Guidelines for Multinational Enterprises and form part of the current review processes of the OECD Principles of Corporate Governance and the OECD Guidelines of Corporate Governance of State-Owned Enterprises. Moreover, the OECD has put in place different formats, where multi-stakeholder discussions are held. Global Fora, which are regularly organised on specific topics including finance, development, education, tax, investment, and environment, are opened up for broader participation.

Pioneering new fields of policy making/regulatory activity

The OECD has been especially successful where it was the first organisation to create legal instruments on a given subject, as has been the case for the instruments on capital movements and for most environmental OECD instruments in the 1970s. The OECD was the first intergovernmental organisation to create a separate environmental division. Its Environment Directorate was set up in 1971 – before the convening of the first UN summit on environmental protection in Stockholm in 1972, which is commonly perceived as the beginning of modern international environmental law. As the success story of the polluter-pays principle

demonstrates,[11] being the only international standard setter can equally be regarded as an important factor for success. It was first mentioned at the international level by the OECD in a Recommendation of 1972.[12]

Similarly, this has been illustrated by the Agricultural Codes & Schemes, which were created in the late 1950s/early 1960s, by the OEEC (the predecessor organisation) and then the OECD. The OECD has also been a pioneer with its Decision of the Council concerning the Mutual Acceptance of Data in the Assessment of Chemicals and related instruments, which establishes a system under which data on chemical safety, developed in one adhering country using a specific set of test methods and following certain principles for good laboratory practice, are recognised by another adhering country. This pioneering system eliminated the need for each country to test and assess the same chemical or chemical preparation, which is a resource-intensive process.

Capacity to set internationally accepted standards

Several OECD standards have subsequently been accepted by the international community to constitute the international standard on a particular issue. The OECD standard is thus considered to be a reference point and is applied beyond the OECD membership. For example, the Model Tax Convention is now the most widely used model for bilateral tax treaties worldwide and its Article 26 is recognised by 121 jurisdictions to be the international standard on exchange of information. The OECD Principles on Corporate Governance have been included as one of the 13 key standards of the Financial Stability Board and are applied in country reviews by the International Monetary Fund and the World Bank.

Conclusion

This case study identifies success factors arising from some of the OECD's key structural characteristics. These include the ability to reach a quick and stable consensus due to the relatively small membership and its like-mindedness. The structure and expertise of the committees allow the OECD to work on very specific topics. The breadth of topics covered and the ability of the Secretariat to link across them allows it to tackle broad questions, identify possible synergies between different areas and work horizontally on issues requiring multidisciplinary expertise. The OECD's reputational capital has supported the broad acceptance of standards developed by the Organisation, including adherence to standards by many countries outside its membership. The OECD has also shown its capacity to adjust its standard-setting activity over time to new challenges. Peer reviews and peer pressure are the *sine qua non* of the Organisation and have proven to be a strong monitoring mechanism for the various instruments.

In addition, a number of practices in the development of standards contribute substantially to the success of standard setting. Adopting a concrete and practical approach – through the development of guidance, toolkits and specific guidelines of implementation – has proven an important ingredient of success. Public consultations with stakeholder as well as their involvement from the outset when developing legal instruments help forge the consensus and trust necessary to support implementation and to ensure accountability. The OECD has been especially successful where it has pioneered new fields of policy making and has been the first organisation to create legal instruments on a given subject.

At the same time, the case study identifies a number of challenges the OECD faces in supporting IRC. Some are specific to the OECD, for instance in relation to its limited membership. Others apply across IOs. For instance, although there is sporadic evidence showing the economic and social gains, and the increased administrative efficiency and capacity generated by OECD's activities, structured and systematic information with regard to the final impacts of OECD work and instruments downstream (i.e. the implementation stage at country level) remains scant. This is an area where an increased collaboration with members and non-members is needed. This should include identifying a framework to guide the collection of information as well as the commitment from countries to gather and provide the relevant information.

In addition, the OECD being a decentralised organisation, evidence on the existing range of operational modalities to develop and implement the OECD instruments and other normative tools is dispersed. There is no agreed methodology specifying how to carry out the evaluation of the case for the instruments, the modalities of the consultation processes and the review mechanisms. More work could be done to identify and promote good practices internally and to learn from the experience of other IOs.

Notes

1. OEEC Council Decision concerning the Code of Liberalisation of Trade of 18 August 1950 [C(50)258].
2. See the full text of the OECD Convention here: www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm.
3. See Article 13 of the Convention on the OECD and Supplementary Protocol No. 1 thereto.
4. The Organisation is currently reviewing its governance arrangements.
5. See the full text of the OECD Rules of Procedure here: www.oecd.org/legal/Rules%20of%20Procedure%20OECD%20Oct%202013.pdf.
6. See the full text of the Recommendation of the Council on Regulatory Policy and Governance of 22 March 2012, www.oecd.org/gov/regulatory-policy/49990817.pdf.
7. See: www.oecd.org/daf/ca/keydocumentsoncorporategovernance.htm.
8. The list of their name and contact is available at: www.oecd.org/daf/inv/mne/NCPContactDetails.pdf.
9. Leaders' Statement: The Pittsburgh Summit, 24-25 September 2009.
10. Recommendation of the Council on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [C/MIN(2011)12/FINAL].
11. Pursuant to this principle, the polluter should bear the expenses of carrying out the pollution prevention and control measures decided by public authorities to ensure that the environment is in an acceptable state.
12. OECD Recommendation of the Council of 26 May 1972 on Guiding Principles concerning International Economic Aspects of Environmental Policies [C(72)128].

Bibliography

Bocquet, D. (2012), "Pour une mondialisation raisonnée: Les révolutions discrètes de l'OCDE", *La documentation Française*, Paris.

Boisson de Chazournes, L. (2013), "L'OCDE et la protection de l'environnement: entre innovation et maturation ", *Le pouvoir normatif de l'OCDE*, SFDI/OCDE, pp. 55-69.

Bonucci, N. and G. Kothari (2011), "Organization for Economic Co-operation and Development", *Max Plank Encyclopedia of Public International Law*, Online Edition.

Bonucci, N. and J-M. Thouvenin (2013), "L'OCDE, site de gouvernance globale?", *Le pouvoir normatif de l'OCDE*, SFDI/OCDE, pp. 25-41.

Carroll, P. and A. Kellow (2011), *The OECD: A Study of Organisational Adaptation*, Edward Elgar Publishing, Cheltenham.

Cohn, T. (2002), *Governing Global Trade: International Institutions in Conflict and Convergence*, Ashgate, Aldershot.

Kothari, G. (2013), "L'élaboration des principes et standards à l'intention des entreprises: l'approche innovante de l'OCDE", *Le pouvoir normatif de l'OCDE*, SFDI/OCDE, pp. 99-112.

Levy, B. (2011), "Innovations in Globalized Regulation: Opportunities and Challenges", *Policy Research Working Paper*, World Bank.

Marcussen, M. (2004), "OECD Governance through Soft Law", Mörth, U., *Soft Law in Governance and Regulation: An Interdisciplinary Analysis*, Edward Elgar Publishing, Cheltenham, pp. 103-126.

OECD (2013a), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

OECD (2013b), *International Regulatory Co-operation: Case Studies, Vol. 1: Chemicals, Consumer Products, Tax and Competition*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200487-en.

OECD (2013c), *International Regulatory Co-operation: Case Studies, Vol. 2: Canada-US Co-operation, EU Energy Regulation, Risk Assessment and Banking Supervision*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200500-en.

OECD (2012a), *Recommendation of the Council on Regulatory Policy and Governance*, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest***,** OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en.

OECD (2010), *Cutting Costs in Chemicals Management: How OECD Helps Governments and Industry*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085930-en.

OECD (1994), *Regulatory Co-operation for an Independent World*, OECD Publishing, Paris.

OECD (2003), *Peer Review: An OECD Tool for Co-operation and Change*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264099210-en-fr.

Salzman J. (2011), "The Organization for Economic Co-operation and Development's Role in International Law", *George Washington International Law Review*, Vol. 43, pp. 255-276.

Wolfe, R. (2011), "The OECD Contribution to the Evolution of Twenty-First Century Trade Law", *George Washington International Law Review*, Vol. 43, pp. 277-293.

Wolfe, R. (2008), "From Restructuring Europe to Constructing Globalization", Mahon, R. and McBride, S., *The OECD and Transnational Governance*, UBC Press, Vancouver.

Wouters, J. and S. Van Kerckhoven (2011), "The OECD and the G 20: An Ever Closer Relationship?", *George Washington International Law Review*, Vol. 43, pp. 345-374.

Chapter 3

The role of the International Maritime Organization

by

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The regulation of shipping is based on an ingenious institutional architecture, with the interplay of public and private actors providing incentives for the sector to abide by the standards adopted by the International Maritime Organization (IMO), the main standard setting body for shipping. A wide variety of instruments is applied to ensure enforcement of international conventions with regards to shipping, including inspections, self-regulation, benchmarking, consultation, ex ante *impact assessments, peer reviews and assessments of administrative burdens. This case study describes how the IMO supports IRC – its institutional context, its main characteristics, its impacts, some successes and challenges.*

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Introduction

This case study assesses the case of the International Maritime Organization (IMO): its institutional context, its main characteristics, its impacts, some successes and challenges. International shipping provides a unique case of international regulatory co-operation, considering the global nature of the sector, the world-wide impacts and the risk of free rider-behaviour. The regulation of shipping is based on an ingenious institutional architecture, with the interplay of public and private actors providing incentives for the sector to abide by the standards adopted by the International Maritime Organization, the primary standard setting body for shipping. A wide variety of instruments is applied to ensure enforcement of international conventions with regards to shipping, including inspections, self-regulation, benchmarking, consultation, *ex ante* impact assessments, peer reviews and assessments of administrative burdens.

The impact of international regulatory co-operation in shipping through the IMO is generally positive. Accident rates have gone down, shipping-related pollution has decreased and maritime safety has improved, which can be related to the implementation of major international maritime conventions. Notwithstanding the positive impacts, several regulatory challenges in shipping remain. The IMO meets these challenges in a variety of ways, including by strengthening technical co-operation activities through the introduction of country maritime profiles.

The context of regulatory co-operation

Area of work and intended objectives

Maritime transportation is one of the truly global human activities. Shipping companies operate globally, with a very international workforce that is constantly moving, along with ships that are most of the time outside territorial waters, so outside national jurisdictions. The shipping industry is increasingly structured as a "global value chain", composed of multiple linked enterprises scattered around the globe. This globalised sector has world-wide impacts: vessels pose a potential threat to the international community at large;[1] the threat of accidents with associated environmental and economic costs has been one of the drivers for global regulation of the sector. The global nature of the shipping sector has increased tendencies of

regulatory avoidance, via re-location (re-flagging) to places with lower regulatory standards. Maritime States are in many cases not directly confronted with the externalities, which makes shipping different from many other activities.[2] Ships are most of the time on open seas, need not even call ports of the States in which they are registered,[3] and the nationals of the State the vessel is registered in are not any more likely to be employed on these ships, so will not be particularly impacted by low labour standards (DeSombre, 2006). These characteristics result in ample possibilities for freeriding, of individual actors and States having an incentive to avoid regulation, since the effects of non-abidance are diffused. The story of international regulation of shipping in recent decades is how to regulate the sector considering inherent risks of regulatory avoidance.

The case of the international regulation of shipping has a wider relevance. There are generic lessons that can be drawn from the mechanisms used to regulate shipping, which could be applied to other sectors increasingly subject to globalisation. Shipping can be seen as a critical case in relation to effective global regulation considering the long-standing and sustained efforts to establish effective forms of global governance since the first decades of the 20th century (Sampson and Bloor, 2007). If regulatory compliance in the shipping sector cannot be adequately secured it is unlikely to be secured elsewhere according to some authors (Sampson and Bloor, 2007).

Institutional landscape

The institutional landscape of international regulatory co-operation with regards to shipping has evolved over time. The original conception of the UN permanent body for shipping (the current IMO) just after the Second World War was based on implementation of international standards by flag States. The subsequent regulatory avoidance via the emergence of open registries, in which the relation between flag and nationality is very loose, has led to stronger role of port States, in addition to smart incentives for self-regulation, partly building on institutions that had existed for a long time, such as classification societies and P&I clubs.

International Maritime Organization

The main international organisation regulating shipping is the International Maritime Organization (IMO), a specialised UN agency that has adopted approximately 60 conventions on maritime safety, security, pollution prevention and liability for pollution damage, and training of seafarers. International regulation of commercial shipping generally touches on three issues: the way in which ships are built, vessel maintenance and the

way in which vessels are operated. In a complementary role, the International Labour Organization (ILO) has assumed responsibility for issues relating to the working and living conditions of seafarers, e.g. issues related to accommodation, food and employment rights. In 2006 the ILO amalgamated all of its conventions related to shipping into one overall convention, the Maritime Labour Convention, in order to improve transparency and easy understanding.

National maritime administrations

The rules adopted by IMO and ILO are implemented by national administrations. Member States must ratify or accede to the individual conventions and then take action to incorporate them into national law. In addition, States also enforce their own distinctive national regulations. In the European Union, port States are also subject to EU shipping regulation, e.g. on sulphur content of marine fuel burnt in the port. All vessels must be registered with a national ship registry ("flag") and they are subject to that State's shipping regulations where-ever the vessel is located.

Until the first half of the 20th century national shipping companies generally registered their vessels under their national flags and were thereby subject to national legislation. The second half of the 20th century saw a disintegration of shipping and nation States: new flag States emerged and many shipping companies "flagged out" their ships to these open registries. Shipping companies and ship-owners had an incentive to do this for tax reasons and to avoid national regulatory control and thus to save costs. Countries had an incentive to develop these open registries as they provide sources of income and possibilities to develop other offshore activities.[4]

Currently, 75% of the world's merchant fleet tonnage is registered in open registries (UNCTAD, 2013). The three largest ship registries – Panama, Liberia and Marshall Islands – account for approximately 40% of total tonnage. In most of these registries ship registrations come almost entirely from outside their borders. Although the worst commercial flags (within open registries) are no worse than the worst national flags, the best commercial flags are lagging behind the best national flags (Corres and Pallis, 2008).[5] Open registries tend to have a higher ship detention rate than the national registries (DeSombre, 2008).

The emergence of open registries has also given rise to "international" and "second" registries in the traditional maritime States. For example, Denmark, Germany, Norway, Portugal and Spain have all created international registries. These registries are held to the same international agreements that these States have adopted, but they generally relax crewing constraints and offer lower taxes and registration fees. In a similar vein, the

United Kingdom, France and the Netherlands have opened "second registries" in their overseas territories, which have relaxed crewing requirements.

In response to the "flagging out" of many shipping companies, various States have intensified the verification of international standards in their capacity as port States. Regardless of the vessel's flag, nation States verify international maritime conventions on the ships that berth in their own ports based on IMO's "No More Favourable Treatment Principle, and via tailored port State controlled inspections, also referred to as Port State Control (PSC). Port State control is considered a major supplementary way of verifying international shipping regulations. Verification by flag States and port States aims at implementation of the IMO standards by vessel crews.

Classification societies and P&I clubs

Enforcement of international standards is supported by the activities of classification societies. These are hired by ship-owners to survey, inspect, certify and advise ship-owners to ensure that their ships meet standards mandated by flag States. Classification societies may also act on behalf of a maritime administration and may be authorised to perform functions of the administration (so called recognised organisations). The role of classification societies in many cases begins before a ship is constructed. The twelve most reputable classification societies (of a total or more than seventy in the world) have formed the International Association of Classification Societies (IACS), which collectively classes up to 92% of the ocean-going vessels as measured by tonnage. Another organisation of classification societies, the International Federation of Classification Societies (IFCS) is composed of an additional set of societies, though they are much less well known and less favourably regarded. Different societies have different standards they require in a ship; this allows for the possibility to find a society that will class a ship that might otherwise not be accepted. However, this is made more difficult due to the fact that information concerning the classification of ships is shared within the organisations of classification societies.

Classification societies are essential to ensure that ships are constructed in accordance with construction and equipment requirements. One of the main advantages of construction and equipment regulations is that they can be relatively easily implemented, unlike operational regulations that forbid pollution. This can be illustrated by the case of oil spills and pollution. Surveillance of oil pollution by ships has generally been very problematic with respect to detection, proof and prosecution. The IMO has thus increasingly focused on regulating ship design features (such as segregated ballast tanks and double hulls) that avoid or minimise the possibility of oil

spills. A good functioning system of classification societies helps to enforce these construction and equipment regulations. The value of reputation has become increasingly important as PSC processes have begun to issue detention statistics by classification society. Consequently, flag states that want to improve their records become more selective in their choice of classification societies. In this competitive process, classification societies take on stricter requirements and refuse to classify questionable ships or ships from disreputable flag States, in order to gain better PSC records.

The protection and indemnity (P&I) insurance of ships provides an additional market disincentive for substandard ships. These P&I Clubs consist of groups of ship-owners who insure themselves by putting money into a collective fund from which each draws in case of an accident. Ship-owners within a P&I club have an incentive to admit only those to the club who do not pose a particularly high risk of accident or other liability, since the expenses of the club depend on keeping liability low (DeSombre, 2008). So, most club managers interview representatives of the ship-owner, find out the credit rating of the owner, and gather information from current club members. Many of the P&I clubs work together in an organisation called the International Group of P&I Clubs, which functions as a clearinghouse for information. If a ship-owner from one P&I club in the International Group applies to join a different club, the club it previously belonged to is obliged to tell the new club what the rates and performance of the ship were. Since nearly 90% of the new members in a club come from another club within the International Group, this policy can make it difficult to hide bad performance records by moving to a new club. Fees to P&I clubs are differentiated according to the risk profile of the ship, but clubs are also reluctant to terminate the membership of those who are found to have high liability, because it could also happen to them (DeSombre, 2006). It has been estimated that around 5% of ships engaged in international shipping have no P&I insurance.

Evolution of the regulation of shipping

There is a relatively long history of international regulatory co-operation in shipping. Since the upsurge in international trade related to the industrial revolution in the 18th century, there have been international treaties related to shipping. The subjects covered included tonnage measurement, the prevention of collisions, signalling and others. By the end of the nineteenth century suggestions had even been made for the creation of a permanent international maritime body to deal with these and future measures. The plan was not put into effect, but international co-operation continued in the twentieth century, with the adoption of still more internationally-developed treaties. Nevertheless, it was not until after the Second World War and the

establishment of the United Nations that the idea of setting up a permanent body for shipping materialised. The convention establishing this organisation was adopted on 6 March 1948 by the United Nations Maritime Conference. This convention entered into force on 17 March 1958 and the new organisation, then called Intergovernmental Maritime Consultative Organization, was inaugurated on 6 January 1959. In 1982, the name changed into International Maritime Organization (IMO).

The scope of work of the IMO has grown gradually over the last decades, driven by developments in the industry and society. The sector has undergone drastic changes in ship types (such as containerisation), ship size, ship design speed, intensity of trade and the emergence of new trade routes and new maritime nations. Not surprisingly, institutional priorities have shifted over time, and some have been in response to major disasters. In the early years the IMO concentrated on developing international safety standards: the majority of conventions were adopted in this period, between 1969 and 1979. In the 1980s the attention shifted from standard setting to improving implementation of the conventions in particular by providing technical assistance to developing countries. From the 1990s the IMO developed a more pro-active and preventive approach, in contrast to earlier periods which were characterised as more reactive to disasters. The last decades have seen the emergence of various new issues including environmental matters, including climate change, maritime security, piracy, armed robbery and ocean governance.

Main characteristics of regulatory co-operation

Governance arrangements and operational modalities

The main role of the IMO is "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", according to the Convention that established it.[6] These areas of interest have remained relatively stable over time, but new areas of work have been added to the coverage of the IMO, including maritime security, related to the emergence of risks of terrorism.

Membership and participation

The IMO is a specialised UN agency, controlled by its Member States. The IMO currently has 170 Member States and three associated members (Faroes, Hong Kong, China and Macao China). Together these Member States represented 96.51% of the world tonnage in 2014, according to the World Fleet Statistics of IHS Fairplay.

Structure of the IMO

The Organization consists of an Assembly, a Council and five Committees. The Assembly is the highest Governing Body of the Organization. It consists of all Member States and it meets once every two years in regular sessions, but may also meet in an extraordinary session if necessary. The Assembly is responsible for approving the work programme, voting the budget and determining the financial arrangements of the Organization. The Assembly also elects the Council. The Council is elected by the Assembly for two-year terms beginning after each regular session of the Assembly. The Council, consisting of 40 Member States, 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. Other functions of the Council include appointing the Secretary-General, subject to the approval of the Assembly.

The Assembly and the Council are assisted in their work by five main Committees:

- Maritime Safety Committee (MSC). The functions of the Maritime Safety Committee are to "consider any matter within the scope of the Organization concerned with 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 investigations, salvage and rescue and any other matters directly affecting maritime safety".
- Marine Environment Protection Committee (MEPC). The MEPC focuses on the prevention and control of pollution from ships. In particular it is concerned with the adoption and amendment of conventions and other regulations and measures to ensure their enforcement. The MSC and MEPC are currently assisted in their work by seven specialised sub-committees.
- The Legal Committee is empowered to deal with any legal matters within the scope of the Organization. It was established in 1967 as a subsidiary body to deal with legal questions which arose in the aftermath of the Torrey Canyon disaster.

- The Technical Co-operation Committee is required to consider any matter within the scope of the Organization concerned with the implementation of technical co-operation projects for which the Organization acts as the executing or co-operating agency and any other matters related to the Organization's activities in the technical co-operation field.
- The Facilitation Committee focuses on eliminating unnecessary formalities and "red tape" in international shipping by implementing all aspects of the Convention on Facilitation of International Maritime Traffic 1965.

The IMO has a secretariat, headquartered in London, consisting of approximately 270 staff members, headed by a Secretary-General. The work of the IMO is driven by its Member States and the functions of the secretariat are to provide advisory and technical work. The secretariat perceives itself as a neutral knowledge broker and discussion facilitator rather than a political actor (Campe, 2009).

Decision-making process

The rule making process at the IMO is an intergovernmental affair, yet interest groups that are granted observer status with the IMO participate in on-going discussions at the IMO. The main decision-making concentrates on the adoption of international conventions, the main regulatory instruments of the IMO. Each convention has its own voting rules, but the practice in negotiating these maritime conventions is to build consensus, in order to ensure sufficient compliance by Member States.

Budget and dedicated staff

The budget of the IMO amounted to GBP 29 million in 2013. The approved budgets for 2014 and 2015 are GBP 32 and GBP 33 million respectively; the IMO has a budgetary system in which the budget is discussed and approved for a period of two years (biennium). The IMO is financed via contributions from Member States according to the size of its registered merchant fleet (in total gross tonnage), so it differs in this respect substantially from other UN organisations. This financing model implies that the largest contributors to the IMO budget are the world's largest flag States, with Panama – which has the largest ship register - alone generating around one sixth of total IMO budget revenues in 2013.[7]

Forms of international regulatory co-operation

The main instruments of the IMO are its conventions. There are currently approximately 60 IMO conventions adopted, of which 49 conventions are in force; conventions enter into force after a pre-determined number (agreed on adoption) of Member States has ratified them. Main conventions include the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). These main conventions have been adopted by almost all Member States, so have a very broad global coverage.

Main conventions from the earlier years of the IMO attempted to solve issues such as safety at sea and the facilitation of international maritime traffic. The 1967 Torrey Canyon disaster off the south coast of England - followed by other major tanker disasters – resulted in stronger IMO involvement in the regulation of the environmental impact of shipping. IMO was given the task of establishing a system for providing compensation to those who had suffered financially as a result of pollution. Two treaties were adopted, in 1969 and 1971, and resulted in the establishment of the International Oil Pollution Compensation Funds (IOPC Funds) that provides financial compensation to victims of oil pollution damage. Although, the conventions are established under the auspices of the IMO, the IOPC Funds operate as a separate intergovernmental organisation. The IOPC Funds are financed by contributions paid by entities in Member States based on the amount of oil received.

The Torrey Canyon disaster led also to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and its Annexes. Regulations concerning the prevention of pollution by oil from ships can be found in Annex I. Other regulations concern, for example, discharge of sewage within proximity to land, air pollution from ships, noxious liquid substances, garbage and packaged goods. A key mechanism embedded within the MARPOL legislation is the creation of emission control areas (ECAs), maritime zones where stricter requirements are applied to the contents of bunker fuels in use. Thus, while sulphur is limited by the 2008 amendments to 3.5% of fuel globally from 2012, and to 0.5% from 2020, in ECAs, the limits are 1.0% and 0.1% respectively. ECAs are located in areas that contain high concentrations of both shipping activity and coastal populations, such as the Baltic Sea, the North Sea, North America and the Caribbean Sea. Progress has been made on operational and technical measures to reduce GHG emissions such as CO_2, via measures such as the Energy Efficiency Design Index (EEDI) for all new ship constructions, and the Ship Energy Efficiency Management Plan (SEEMP) for existing ships.[8]

The recent years have seen the emergence of various new issues including maritime security, piracy and armed robbery and the migration. Global responses to these challenges have been met by the IMO in various ways, including the amendment of conventions, the development of codes and guidelines and the fostering of co-operation between States through meetings.

Security

An integral part of the IMO mandate is the duty to make travel and transport by sea as safe as possible. A variety of acts of terrorism have threatened the safety of ships and the security of their passengers and crews (Bateman 2012). The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (SUA Convention and Protocol) deal with unlawful acts that fall outside the crime of piracy and mainly focus on the maritime aspects of effective border control. The main purpose of the original SUA Convention and Protocol is to ensure that appropriate action is taken against persons committing unlawful acts against ships and fixed platforms located on the Continental Shelf. The 2005 SUA Protocols amend the original treaties by broadening the list of offences.

However, the terrorist attacks of 11 September 2001 on the United States of America prompted the IMO Assembly to request the review of the existing legal and technical measures and considered new ones to prevent and suppress terrorism against ships and to improve security aboard and ashore. The diplomatic conference held at the London headquarters of IMO in December 2002 (the 2002 SOLAS Conference) adopted a number of amendments to SOLAS, the most far-reaching amendment is centred on the International Ship and Port Facility Security Code (ISPS Code) that entered into force on 1 July 2014. The Code provides a comprehensive regulatory security regime for international shipping designed to prevent ships and their cargoes becoming the targets of terrorist activities and offers a framework for the co-operation between contracting governments, government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade. Along with the ISPS Code, the amendments to SOLAS comprised the development of a new SOLAS Chapter XI-2 on "Special measures to enhance maritime security".

Piracy

Some areas of the oceans are still affected by a disturbing number of acts of piracy, giving rise to grave danger to life, severe navigational and environmental risks as well as negative impacts on international trade. Facilitating discussions between industry, Member States, security forces, and other UN agencies with an interest in piracy and other maritime-security issues is a key element of the work of the Organization, as is the development of both mandatory instruments and guidance. IMO works with Member Governments and the maritime industry, to suppress piracy and armed robbery against ships and has demonstrated considerable achievements, particularly in the Asia Pacific Region demonstrated by the success of the regional anti-piracy operation in the Straits of Malacca and Singapore.

The IMO Assembly adopted resolutions on piracy and armed robbery against ships in waters off the coast of Somalia which, inter alia, strongly urged Governments to increase their efforts to prevent and suppress acts of piracy and armed robbery against ships, including bringing the matter to the attention of the Secretary General of the United Nations (UN) and through him the UN Security Council. Following the notice by the General Assembly of the adoption of this resolution by the IMO Assembly and of the initiatives taken by the IMO, the UN Security Council adopted resolution 1816(2008) on June 2008. The Security Council decided that, following the consent of the Transitional Federal Government of Somalia (TFG), States co-operating with the TFG in the fight against piracy and armed robbery at sea would be allowed, for a period of six months, to enter the Somalia's territorial waters and use "all necessary means" to repress acts of piracy and armed robbery at sea. The UN Security Council extended these authorizations for further periods of twelve months in following resolutions.

An IMO-led, high-level, sub-regional meeting for States from the Western Indian Ocean, the Gulf of Aden and Red Sea areas, held in Djibouti 2009, developed a Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and Gulf of Aden area (the Djibouti Code of Conduct) that was signed by 20 States. At present, the IMO is extending its efforts on the implementation of sustainable maritime security measures to West and Central Africa. A Code of Conduct was adopted and signed by representatives of 22 States. The Code incorporates a number of elements of the Djibouti Code of Conduct, but is much wider in scope as it addresses a range of illicit activities at sea including illegal fishing, drug smuggling and piracy.

Additionally, the IMO self-protection measures, developed over a number of years to address piracy worldwide, were further developed by the shipping industry as the Best Management Practices, currently in its fourth iteration (BMP 4). Although measures taken by naval forces to protect shipping in the Gulf of Aden became increasingly successful the levels of naval forces available were not able to completely suppress piracy. Ships therefore had to become increasingly self-reliant and proactive in their own self-protection. Due to this fact, the IMO over time, responding to the situation at sea, effectively co-ordinated efforts of Governments, navies and the shipping industry in countering the act of piracy.

Migration

As a result of wars, famine, poverty, political or religious persecution, natural disasters, armed conflicts and many other causes, thousands of people travel in unseaworthy boats to find better conditions of living. The boats in which these migrants travel are not properly manned, equipped or licensed for carrying passengers on international voyages. Pursuant to the "Tampa" incident of Australia in 2001, the Assembly adopted resolution A.920(22) on review of safety measures and procedures for the treatment of persons rescued at sea. That resolution requested various IMO bodies to review selected conventions adopted under the aegis of IMO for the treatment of rescued persons, ensuring that the life of persons on board ships is safeguarded. The objective of the exercise was to ensure that the integrity of the maritime search and rescue system, as IMO has put it in place worldwide, was preserved. In response to this, the MSC adopted amendments to the SOLAS and SAR Conventions concerning to complement the obligation of the master to render assistance by a corresponding obligation of Contracting Governments to co-ordinate and co-operate to deliver persons retrieved at sea to a place of safety within a reasonable time, these obligations apply regardless of the status of the persons in distress at sea, including potentially illegal migrants.

The issue of illegal migration by sea between North Africa and Europe has been an active concern for decades. In recent years, it has reached staggering proportions that existing rescue measures are rendered ineffective, including those adopted by IMO, while there is clearly also a limit to the capacity of coastguard and rescue vessels and of assistance merchant vessels can realistically provide. The solution for maritime migration, therefore, must be a collaborative effort of all potential stakeholders. There has, for example, been a series of meetings under the auspices of IMO in recent years with the intention of drawing up a regional Memorandum of Understanding (MoU) to improve the co-ordination of SAR operations and to facilitate the disembarkation of persons rescued at

sea in the Mediterranean region. This MoU could serve as a "pilot scheme", which would form the basis for similar MoUs to cover other parts of the world experiencing the same, or similar, situations. However, to solve this challenge, the overall objective must be some form of managed and sustainable migration mechanism, but that is something that lies outside the scope of IMO. Therefore, the Secretary-General has mapped out the role of IMO and allocated resources in the Secretariat, in co-operation with other United Nations agencies such as the UN High Commission for Refugees (UNHCR) and the UN Office on Drugs and Crime (UNDOC), to focus on preventing illegal migrants travelling by sea from North Africa to countries in Europe and to mobilise the international community to take appropriate action to address all phases of this issue. Such action could include promoting peace keeping efforts in source countries, improving their living conditions and economies, promoting basic human rights, protecting migrating people, the suppression of organised crime including the trafficking of migrants and developing and implementing appropriate measures to strengthen the processes whereby such migration can take place in a managed and sustainable manner.

Ensuring regulatory quality

Ex ante *impact analysis*

The instrument of *ex ante* impact analyses of proposed IMO regulations is sometimes used. This is particularly the case for controversial and complex issues on which divergent views exist. There are various feasibility studies and impact assessments related to market-based mechanisms to reduce greenhouse gas emissions from shipping. Considering that IMO regulations have a huge impact on potential investment decisions in a highly capital-intensive sector, such studies are also used to show the probable effects of these regulations in order to increase legitimacy of proposals. E.g. an IMO-commissioned study has claimed that, the EEDI and SEEMP - under high uptake scenarios - should reduce global emissions below the status quo scenario by an average of 330 million tonnes (40%) annually by 2030, which would increase savings in the shipping industry by USD 310 billion annually (Lloyd's Register, 2011).

Consultation

There is a wide range of organisations that have been granted consultative status at the IMO. The consultative status gives the right to receive the agendas of meetings of IMO bodies and to submit documents on items of these agendas. It also gives the right to be represented by an observer at plenary meetings of the Assembly and at meetings of other

bodies of the IMO. Finally, it gives the right to receive texts of resolutions adopted by the Assembly and of recommendations made by other bodies of the IMO. To date there are 77 international non-governmental organizations in consultative status with IMO, including associations representing the different maritime industries, environmental interests and other organisations. Any organisation seeking consultative status with IMO has to demonstrate considerable expertise as well as the capacity to contribute, within its field of competence, to the work of IMO. It must also show that it has no means of access to the work of IMO through other organisations already in consultative status and that it is international in its membership, namely that it has a range of members covering a broad geographical scope and, usually, more than one region. IMO may enter into agreements of co-operation with other intergovernmental organisations on matters of common interest with a view to ensuring maximum co-ordination in respect of such matters. To date there are 63 intergovernmental organisations which have signed agreements of co-operation with IMO, including the different port State control MoUs, and supra-national organisations such as the European Commission.

Monitoring implementation

The main responsibility of monitoring implementation lies with the flag States. A flag State must maintain a register of ships flying its flag and must assume jurisdiction under its international law in respect of administrative, technical and social matters, over each ship flying its flag and over its masters, officers and crew, irrespective of the maritime zone where the ships may be. The flag State shall inspect a vessel prior to allowing it to fly its flag. Thereafter, the flag State is obliged to carry out such surveys, by duly qualified and approved surveyors, at regular intervals. Flag States may authorise Recognized Organizations (ROs) to act on their behalf in conducting the surveys, inspections, issue certificates and documents, the marking of ships and other statutory work required under the IMO conventions. The flag State must ensure that an ROs have certain qualifications, including those related to technical, managerial and research capabilities to accomplish the tasks being assigned to them, in accordance with the "Minimum Standards for Recognized Organizations Acting on Behalf of the Administration" set out in the IMO resolution A.739(18).

Although, the delegation of flag State responsibilities to ROs is allowed, the flag State must retain the capacity and resources to monitor and verify the work of the ROs, to carry out its own flag State inspections of vessels flying its flag, and maintain an effective Administration for the many other administrative, technical and social matters required of a properly functioning flag State administration. Only the inspection, surveying and

certification functions of a flag State may be delegated, enforcement and granting of exemptions cannot be delegated. Fundamentally, the flag States bear the responsibility for the completion and efficiency of the ROs tasks and it is therefore the flag State that is primarily responsible for the ships flying its flag.

Sovereign and other self-governing States have the right to control any activities within their own borders, including those of the visiting ships. The variations in the implementation of international conventions by flag States have led to the enhancement of port State control (PSC) where port State authorities verify compliance with the requirements of the international maritime conventions over foreign flagged ships. Many of these port States came together via a series of regional agreements, Memorandums of Understanding (MoUs), determined to implement a common cross-national methodology on vessel inspection. These MoUs make no new laws pertaining to ships and refer to existing international instruments on safety and environmental protection. Their purpose is to create a systematised process of verifying adherence to the existing international rules, which thus brings into being new obligations specifically for the port States participating. In the MoUs, the port State authorities agree to inspect a certain percentage of ships that call on their ports during the course of the year, in general between 25% and 50% (the oldest MoU is the Paris MoU (Paris Memorandum of Understanding on Port State Control), which became operational in 1982, established by a group of European States and Canada, is currently carrying out 24 000 ship inspections per year, representing 25% of the ships berthing in their ports). The IMO has actively promoted the effectiveness of port State control, and the Assembly in November 1991 adopted a resolution calling for the establishment of regional port State control mechanisms, similar to the Paris MoU. Subsequently, MoUs were adopted around the world, including for Asia and the Pacific (Tokyo MoU) and Latin America (Vina del Mar MoU).

Port State control inspections are normally conducted in two phases. The first is based on a review of the certificates that give evidence of the characteristics of all elements of the ship and its crew and equipment. In most cases the date of issue and duration of validity are checked. The second phase is to verify the status of items and equipment, to ensure that it complies with the information contained in the certificates. This phase gives rise to reports, made on the basis of evidence of the performance and results of the inspection, to justify any corrections considered necessary (Rodriguez and Piniella, 2012). The results of such inspections are publicly accessible via internet. Additionally, the maritime industry itself does a large amount of inspections. Surveys and inspections by classification societies cover the physical characteristics of a ship, coming from two main sources:

international agreements generally overseen by the IMO (such as SOLAS, MARPOL, and the International Load Lines Convention) and rules created by the classification societies.[9] Most P&I Clubs hire inspectors to inspect ships that are more than ten years old and refuse to insure ships that are not certified as complying with the IMO's International Safety Management (ISM) code. Also industry associations regularly do inspections. The Oil Companies International Marine Forum (OCIMF) for example, with membership of 90 companies, which has set up its own inspectorate, the Ship Inspection Report Programme (SIRE), which provides detailed vetting of vessels in the tanker trade. Such industry inspections are much more extensive than port State control inspections, especially those for oil tankers. It has been observed that these inspections can lead to substantial cost savings for the industry in terms of avoidance of casualties and pollution incidents (Knapp et al. 2011). General cargo ships do not have such an industry vetting inspection regime, which might explain why this is the worst performing ship type in terms of detentions and deficiencies found during port State controls (Knapp and Franses, 2007).

Certification of ships

Another important component of flag State implementation is certification of ships. States must ensure that vessels flying their flag or of their registry carry on board relevant certificates required by IMO instruments. All ships are required to carry certificates that establish their seaworthiness, type of ship, competency of seafarers etc. The Convention on Facilitation of International Maritime Traffic (FAL Convention) includes a list of documents which public authorities can demand of a ship and recommends the maximum information and number of copies which should be required. The certificates, which are issued by the officers of flag State Administrations or ROs/nominated surveyors authorised for the purpose, are subject to inspection by port State control officers. Additionally, the flag State has an obligation to undertake not only initial surveys as a prerequisite for the issuance of certificates, but also periodical and intermediate inspections and surveys, in order to verify that the certificates conform to the actual condition of the vessels.

Certification of seafarers

One of the key regulatory mechanisms within the IMO is the certification of seafarers, via nationally accredited institutions. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended, sets the standards of competence for seafarers internationally. Amongst its provisions is a requirement for Parties to the Convention to communicate information to

IMO on the measures adopted to implement the Convention nationally. That information is subject to an independent evaluation by suitably qualified persons, independent of, or external to, the unit or activity being evaluated, to ensure that the Convention is being given 'full and complete effect' and, if this is so, the Party features on the "List of confirmed STCW Parties" and "Information related to Reports of Independent Evaluation".

The STCW Convention requires that training leading to the issuance of a certificate is approved by Member Governments Parties to the STCW Convention. Only institutions offering training and assessments of sufficient quality should receive an accreditation. Amongst other things, the Convention requires that training and assessment of seafarers are administered, supervised and monitored in accordance with the provisions of the STCW Code; and those responsible for training and assessment of competence of seafarers are appropriately qualified in accordance with the provisions of the Code.

Additionally, an IMO white list is in place since 2000 that consists of the countries where accredited maritime colleges and training centres (METs) meet high standards of teaching and learning in conjunction with guidelines of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The aim of the white list is to avoid seafarers from non-approved countries (countries not on the white list) being employed by international ship operators. Ships employing seafarers from these 'non-white list' countries could be expected to be detained by port State control officers, thereby incurring considerable costs.

Outside of IMO's remits, another form of certification exists with respect to labour standards. The ITF, a global labour union operating in 142 countries, has created a certificate that it gives to States that are in compliance with ILO standards on issues such as wages, holidays and working conditions. If a ship does not have an ITF certificate when it is in a port, it is given the opportunity at that point to accept the required standards; if this is not accepted the ITF can try to convince workers to refuse to service the ship or encourage a work boycott. This approach has been observed to have increased compliance to labour standards, as the costs of an ITF-sponsored boycott can be much larger than the cost of paying ITF-acceptable wage rates (DeSombre, 2008).

Industry guidelines

The major industry actors have begun to work together to increase flag State standards. The major organisations of ship-owners, for example, created the "Shipping Industry Guidelines on Flag State Performance" in 2003 which ranks flag States based on port State control records, use of

recognised classification societies and ratification of international agreements. The idea is that this would encourage ship-owners to pressure the registry operators to improve their records and give them opportunity to choose registries that meet their needs for level of regulation.

Technical assistance

In addition, the IMO provides technical assistance. It created a technical assistance programme in the 1960s that was expanded in the 1980s. Technical co-operation concentrates mainly on assisting countries in building and enhancing their human and institutional capacities for uniform and effective implementation of the Organization's regulatory framework, including safer and more secure shipping, enhanced environmental protection and facilitation of international maritime traffic. The IMO has successfully provided maritime assistance to developing countries in all its fields of competence. The following are examples of some of the achievements of IMO's technical co-operation programme:

- preparation of model maritime legislation that countries can adapt to their circumstances;
- establishment and upgrading of national maritime administrations;
- establishment and upgrading of national, regional and global maritime training institutions;
- support for regional networks of maritime authorities; and
- development of regional port State control mechanisms.

Furthermore, the IMO has established five regional co-ordinators for technical co-operation activities, in Côte d'Ivoire, Ghana, Kenya, Philippines and Trinidad and Tobago. As part of the IMO technical assistance programme the World Maritime University was founded in Malmö (Sweden) in 1983. Since then, the University has established an excellent reputation as the global centre for advanced education, training and research for specialist personnel from the international maritime community. In 1988, the IMO International Maritime Law Institute (IMLI), located in Valletta, Malta, was founded, with the objective of training experts in international maritime law. The IMO also has an important peer review function, via the Voluntary Audit Scheme, described in more detail in the sections below.

Peer reviews: The Voluntary Audit Scheme and Goal-based standards audit

The voluntary IMO Member State Audit Scheme, introduced in 2006, is designed to assess how effectively Member States implement and enforce relevant IMO Convention standards. In the process, the audit scheme

provides Member States with feedback and advice on their current performance. As such the scheme could help to identify needs for technical assistance that could be provided by the IMO or its Member States. The scheme, which draws on the Universal Safety Oversight Audit Programme of the International Civil Aviation Organization (ICAO), was proposed by nineteen Member States, mostly traditional maritime States, as well as some of the largest flag States. The audit scheme is driven directly by the Council, contrary to other monitoring instruments that are more sectorally organised, characterised by Committees having the exclusivity to monitor compliance within the context of its assigned responsibility under a respective treaty (Barchue, 2006). The voluntary audit scheme was elaborated by a joint working group of several IMO Committees.

The audits are applied according to a uniform procedure, but the scope of the audit depends on how many of the ten IMO treaties covered by the Scheme have been ratified by the State being audited. As part of the audit procedure a questionnaire is sent out that the audited State needs to answer and an audit mission takes place in the Member States. This audit takes place in the timeframe of one week, and is carried out by a team of three auditors coming from IMO's Member States. This could be considered a contribution in kind by Member States; in addition the costs for the audited State are approximately GBP 11 000. The audit team consists of a team leader, an experienced auditor and a less experienced auditor; this composition is applied so that the auditor with the least experience can learn from the other members and become a team leader in the future. The IMO secretariat is not part of the audit team, but it provides an auditor's manual, training courses for auditors and it checks the audit report. On average ten different voluntary audits have been carried out each year since 2006. The audited Member State can choose to publicly release the audit report, or to keep it confidential. The IMO publishes a summary of the report for its Member States in which the name of the audited State is not mentioned. Although the audit scheme is supposed to provide an overall assessment of the system, the themes covered in the audits differs per case, depending on the specific challenges of that State. The scope of the audit is expressed in a Memorandum of Understanding between the Secretary-General of the IMO and the Member States.

The IMO Assembly has decided that the scheme should be made mandatory, likely to enter into force in 2016. This mandatory programme will replace the voluntary scheme, and increase the coverage of the audit scheme. The mandatory audits will take into account the voluntary audits, so give priority to Member States that have not been audited yet, so as to quickly achieve a set of comprehensive baseline data. The current objective is to have a complete cycle of audits completed within seven years, which implies that approximately 24 audits will be carried out per year.

Alongside, the audit scheme that has aimed at increasing enforcement in Member States, the IMO is implementing a goal-based ship construction standards audit. IMO goal-based standards are broad, over-arching safety, environmental and/or security standards that ships are required to meet during their lifecycle irrespective of ship design and technology, and they are specific enough in order not to be open to differing interpretations. The aim of these ship construction standards is to permit innovative designs but at the same time ensure that ships are constructed in such a manner that, if properly maintained, they could remain safe throughout their economic life.

The verification of the conformity with goal-based ship construction standards for bulk carriers and oil tankers of individual recognized organizations and/or national maritime administrations will be carried out by international GBS Audit Teams established by IMO, in accordance with the GBS Guidelines. Recognized organizations and/or national maritime administrations submit requests for verification of their ship construction rules to the Secretariat that will forward these requests to the Audit Teams for verification through an independent review. The final reports of the Teams with relevant recommendations will then be forwarded to the MSC for consideration and approval. By the end of 2013, 12 International Association of Classification Societies (IACS) members (recognized organizations: ROs) and one non-IACS RO had submitted requests for GBS verification audits and commenced the GBS verification process, in accordance with the GBS Guidelines.

Review of stocks: Administrative simplification

The IMO is engaged in a process to reduce administrative burdens. This follows a resolution by the Assembly in November 2011 to adopt a process of periodic review of administrative requirements in mandatory instruments. Within that context an Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR) was established in order to develop recommendations on how to alleviate administrative burdens created by IMO regulations. Some Member States proposed a quantitative burden reduction target (e.g. a 25% reduction goal, in line with their national burden reduction programmes), but this suggestion was not retained (IMO, 2011). As part of the work of the SG-RAR an Inventory of Administrative Requirements in mandatory IMO instruments was conducted, which identified 560 administrative requirements, addressing a variety of stakeholders, including governments, IMO, manufacturers and equipment suppliers, maritime administrations, masters and ship's crew, port authorities, recognised organisations, shipbuilders and repairers and shippers (IMO, 2013). In relation to this a public consultation process was launched in 2013, which generated 3 329 responses, which will be used when developing recommendations to alleviate the administrative burdens in 2014.

Assessment of the impact of regulatory co-operation through the IMO

Benefits, costs and challenges of regulatory co-operation

There are various indications of positive impacts of the IMO regulations. Safety standards around the world are generally good and have improved considerably since the late 1970s, when IMO treaties began to enter into force and the number of acceptances rose to record levels. Oil spills from shipping have decreased significantly over the last 30 years. Ratification of key IMO conventions has led in many cases to a decline in accident rates according to Knapp and Franses (2009): for every "milestone" convention that entered into force during recent decades, accident rates have gone down, according to the study. According to the US Environmental Protection Agency, the North American ECA should save more than 14 000 lives annually by 2020, and improve the respiratory health of some 5 million people in the United States and Canada. However, the evidence is fairly piecemeal; the IMO does not engage in *ex post* regulatory impact assessments. The extent to which IMO regulations can achieve positive impacts is dependent on the implementation by IMO Member States; so any impact assessment of IMO regulations needs to address the quality of implementation.

In general, standards tend to improve over time. Once a registry enters the world market, a variety of actors begin efforts to increase the standards followed by ships in those registries. This process has been aptly described by DeSombre (2008) as a "race to the regulatory middle", with standards increasing upwards until they reach an equilibrium where open registries require more environmental, safety and labour protections than they initially did, but fewer than adopted originally by most of the traditional registries. Such a tendency of open registries to develop into high quality standards is also visible within the IMO, where some of the largest flag States supported the creation of a mandatory IMO audit scheme.

Verification of international conventions has reduced the deficiencies of individual vessels. This can be concluded from a study on inspections by the Swedish Maritime Administration over 1996-2001, in which analysis of repeated inspections made clear that following a port State control inspection, the reported deficiencies during next inspection is reduced by 63% (Cariou et al. 2008). Similar positive results were found using data on 42 000 vessels/inspections carried out by 18 State members of the Indian Ocean MoU between 2002-09 (Mejia et al., 2010): there is a positive trend of improvement in the condition of vessels between two successive inspections, a finding that holds for the various types of vessels. The development of number of ship detentions over time also bears witness to

the relative success to reduce sub-standard ships: ship detentions in the Paris MoU fell from 1699 vessels in 2001 (representing 9% of ship inspections) to 669 in 2012 (3.6% of inspections). Port State control has created an incentive for increased standards. Vessels registered in flag States with bad reputations have more probability to be inspected. Individual vessels would evidently prefer not to be detained, and flag States do not want to gain a reputation for requiring more than their fair inspections, especially since their attractiveness as a registry decreases with the inconvenience borne by vessels flying their flag (DeSombre, 2008). The proliferation of regional MoUs has significantly diminished the potential for sub-standard ships to call at ports (Hare 1997). Moreover, port State control has accomplished the collection of baseline data on substandard ships in the region, increased enforcement of standards and led to closer regional co-operation resulting in more efficient employment of maritime safety enforcement resources (Payoyo, 1994). By working together in regional groupings, nations have been able to reduce the transaction costs of enforcement (Valencia, 1996).

Assessment of success

Comprehensiveness

Membership and coverage of conventions is very comprehensive. As mentioned before, the IMO currently has 170 Member States which represent 96.51% of the world tonnage in 2014. These members have almost all ratified IMO's main conventions: as of September 2014 the coverage rate for the 1974 SOLAS Convention was 98.60%, for STCW 1978 98.62% for MARPOL 73/78 ranging between 89.85% and 98.58% (depending on which annex). Not only is the IMO very comprehensive in this respect, but it also seems to benefit from broad support by its Member States, as illustrated by the large number of Member States that pay their contributions in time.

The composition of the bodies of the IMO is generally representative of its members. The convention that created the IMO reflected the balance of power in shipping just after the Second World War, when shipping was dominated by a relatively small number of countries, nearly of then from the northern hemisphere; these countries tended to dominate the Council and the Committees, such as the MSC. The emergence of open shipping registries has radically changed the hierarchy of largest flag States, which is now reflected in the composition of IMO's main bodies.[10] The IMO Committees now consist of all Member States, whereas membership was restricted to a certain number of Member States in the past, mostly from traditional maritime States. The number of Council members has been gradually increased (from 18 to 24, to 32 and finally to 40 members), in order to accommodate representing of new maritime States, mainly from developing

countries. Since 2002, the Council consists of 40 Member States, currently composed of ten with the largest interest in providing international shipping services[11], ten other States with the largest interest in international seaborne trade[12], and yet twenty other 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.[13]

Level of implementation

There have been attempts to reduce regulatory avoidance via "flagging out", by underlining that there must be a "genuine link" between the State and the ship, as Stated by the International Law Commission in the 1958 Geneva Convention on the High Seas. There has been a lot of discussion on what this genuine link should be, and it has become part of a UN convention, the 1986 UN Convention on the Conditions for Registration of Ships (UNCCORS), which requires of a registry that "a satisfactory part of its complement consisting of officers and crew of ships flying its flags be nationals or persons domiciled or lawfully in permanent residence of that State". However, this convention has not entered into force and it is not expected that it ever will. Even the major maritime States that have complained about the emergence of open registries have not ratified UNCCORS, which might indicate that they benefit sufficiently from the open registry system that they do not want to work to undermine it entirely (DeSombre, 2006).[14] Port State control serves its vital complementary role, with a crucial role for port State control inspections. Other instruments treated below that could contribute to the level of implementation are certification and white lists; and peer reviews.

Quality and effectiveness of implementation and inspections

IMO was established to adopt legislation and Member States are responsible for implementing them. When a Member State accepts an IMO Convention it agrees to make it part of its own national law and to enforce it just like any other law. Enforcement of IMO safety and anti-pollution provisions has been strengthened by the incorporation of the International Safety Management Code (ISM) into SOLAS, under which companies operating ships are subject to a safety management system under the control of the administration of the flag State.

A challenge is that some countries lack the expertise, experience and resources necessary to implement IMO conventions and conduct inspections properly. There is demonstrated statistical evidence, when analysing the casualty rates or the port State control detentions, that a significant difference exists between the performance of States with a properly

organised maritime safety Administration, and other ones that are not in a position to properly fulfil the different tasks and responsibilities as a flag State. To improve the uniformity in the implementation of the IMO conventions by flag States, the IMO is also focusing on the development of standards for the effective implementation of the Conventions developed under its auspices. It therefore continually aims to identify the measures needed to ensure effective and consistent global instruments, including consideration of the special difficulties faced by developing countries. The IMO provides extensive assistance in the form of technical co-operation activities to assist developing countries in the implementation and enforcement of IMO instruments.

There is also a large variation in the outcomes of port State control. Some countries have shown lenient inspection practices, compared to its neighbouring countries, resulting in very high rates of inspections in which no deficiencies were found (Knudsen and Hassler, 2011). There is also a wide variation in global practice between the regional MoU-regimes, based on the probability of detention (Knapp and Franses, 2007). In addition, Inspectorates in some countries do not have access to electronic databases, and are therefore not able to target ships for inspection on the basis of the previous inspection record, and reports have been made in some countries that port State control is used as a pretext for local extortion (Bloor et al., 2006).

In addition, there is a lack of co-ordination amongst port State control regimes and industry inspections. There are efforts to encourage co-operation among the regional MoU regimes. To date, IMO already hosted six IMO Workshops for PSC MoU/Agreement Secretaries and Database Managers. The Workshops are funded by the IMO Technical Co-operation Fund and aim to provide support to regional port State control regimes by establishing a platform for co-operation and also providing a forum for the people involved to meet and exchange ideas and experiences; they also aim to encourage harmonisation and co-ordination of PSC activities and the development of practical recommendations which can be forwarded to IMO for further examination by the Organization's relevant Committees and Sub-Committees.

Certification of seafarers

The IMO provides several mechanisms to improve the standards of the competence for seafarers internationally. One key provision requires Parties to provide information to allow others to check the validity and authenticity of seafarers' certificates of competency. This is important as unqualified seafarers holding fraudulent certificates are a clear danger to themselves, others on board and the marine environment. In order to assist with uniform

interpretation of the STCW Convention, IMO has agreed a number of clarifications of the Convention's provisions and has also developed further guidance to assist Parties to meet their Convention obligations.

Besides, the white list of approved nations for seafarers is designed to ensure well-trained seafarers. The philosophy behind the white list is that only institutions offering training and assessments of sufficient quality receive accreditation. These accredited institutions can provide seafarer certification. In practice, there are various challenges: enforcement of international regulatory standards on training for seafarers lies with the government authorities of the labour supply countries, most of which are developing or middle-income countries. Some of these countries simply lack the skilled personnel and resources to effectively examine the enormous number of trained seafarers needed to maintain the million-strong labour pool required to crew the international merchant fleet (Bloor et al. 2013).

To support the process, the IMO has developed a series of model courses for maritime training institutes worldwide, which provide suggested syllabi, course timetables and learning objectives to assist instructors develop training programmes to meet the STCW Convention standards for seafarers. The courses are flexible in application; maritime institutes and their teaching staff can use them in organizing and introducing new courses or in enhancing, updating or supplementing existing training material. The model courses each include a course framework (detailing the scope, objective, entry standards, and other information about the course), a course outline (timetable), a detailed teaching syllabus (including the learning objectives that should have been achieved when the course has been completed by students), and guidance notes for the instructor and a summary of how students should be evaluated.

Peer reviews

The Member State audit scheme has worked as a catalyst for rule enforcement and resource mobilisation in Member States. As the scheme aims to provide a comprehensive systemic assessment, the different steps of the process (questionnaire, the visit) facilitate a dialogue between different stakeholders that otherwise might not have taken place. The decision of a Member State to apply for an audit, secures the involvement of political representatives (e.g. a minister) that can help to get maritime issues on the political agenda of the country. As such, the audit reports have in many countries facilitated speedier approval of IMO conventions and amendments, as well as more resources for national maritime administrations and instruments for enforcing maritime conventions. Until now, 84 Member States, representing over 95% of world tonnage, have volunteered to have their system audited, resulting in approximately ten

audits per year. This bears evidence to the perceived usefulness of the instrument by Member States. As mentioned above, the audit scheme is a pure peer-to-peer review, with the audits carried out by representatives of other Member States. The fact that the system has been able to run in this way, bears testimony to the large implication of Member States to the instrument of audit schemes and to peer-to-peer learning in general.

The audit instrument has not been designed to encourage "naming and shaming", even if it could potentially be used in that way. Already now there is some peer pressure to publish audit reports; and approximately ten of these reports are now publicly available. The summaries of the mandatory audit will no longer be anonymous as is currently the case with voluntary audit scheme. The mandatory audit scheme might thus gradually evolve into a benchmarking scheme, in which systems performance of one Member State could be compared with those of others. However, this is a delicate balance, as the evolution into a benchmarking system might undermine the willingness of Member States to participate in the system, so disclosure should not compromise the credibility of the scheme and its perceived possibility to devise appropriate assistance.

Factors of success

Ingenious institutional architecture

For the implementation of its standards, the IMO is dependent on its Member States, which can legislate to force private actors to follow the rules. It is the interplay of these actors with their various incentives that gives the institutional architecture of shipping regulation its ingenious nature. The role of national States is described below along the lines of their responsibility as flag States and port States. Their enforcement is facilitated by a constellation of private actors (classification societies, P&I Clubs, industry organisations and trade unions) that provide incentives for shipping companies, ship-owners, operators and vessel crews to adhere to international standards.

Strong industry support

The IMO benefits from strong support from maritime industry actors. This can be explained by the extensive consultations with the industry and other relevant actors, the composition of main IMO bodies with representatives having a shipping background, which ensures concrete and practical approaches that have a fair chance of being implemented by national maritime administrations and the industry.

Capacity to reach consensus

The IMO generally aims to achieve consensus on new activities or amendments of existing conventions, even if the voting rules of some conventions would not require this. Although this search for consensus arguably increases transaction costs, it could also be considered to increase general acceptance of the standard, increase the willingness to implement it and in this way lower compliance costs. A consequence of the search for unanimity is deadlocks in some areas, in particular the application of market-based mechanisms to reduce CO_2 emissions from ships, a case that will be elaborated below in the section on overlapping jurisdictions.

Relatively quick procedures

Over the last decades, various mechanisms have been introduced that have sped up decision making and adoption of the IMO conventions. These measures include the method of tacit acceptance that has improved IMOs ability to amend and modify legislation: Instead of requiring that an amendment shall enter into force after being accepted by, for example, two thirds of the Parties ("explicit acceptance"), the "tacit acceptance" procedure provides that an amendment shall enter into force on a set date unless they are specifically rejected by a specified number of countries.[15] As amendments are nearly always adopted unanimously, very few rejections have ever been received and the entry into force period has been steadily reduced, in some cases to just one year after being adopted. In addition the tacit acceptance has increased the transparency and predictability of entry into force, in contrast with the "explicit acceptance" system where entry in force is determined by the timing of the ratification of a certain number of countries. Tacit acceptance is now incorporated into most of IMO's technical Conventions.

Some observers are of the opinion that there is a risk of overload of instruments, with risks of crowding, missing rule application and inconsistent rule application. Some conventions overlap, amendments often do not apply retrospectively making it difficult to determine the complete and exact rage of regulations and recommendations that apply to specific situations and ship types at any given time (OECD, 1996). Whereas the tacit amendment procedure has shortened the time between adoption and entry into force, the currently ongoing exercise to reduce administrative burdens could help to rationalise the existing stock of instruments. The widely supported aim to apply this instrument on a periodic basis guarantees that the rationalisation is not a one off-exercise, but that streamlining of the body of regulations will be a continuous process.

Capacity to adapt to new developments

Openness to change has become a basic characteristic of the IMO; it eagerly takes up new challenges. This can be illustrated by the large number of conventions and successive amendments to the original conventions. In its desire to be proactive and responsive, IMO maintains a high output of new decisions with relatively limited attention to implementation issues. Examples of this include the adoption of ballast water treatment regulation where some argued that approved equipment was not available (Roe, 2013) and the reduction of emission caps in ECA's without clear industry consensus on the most appropriate way to achieve this (fuel switch, LNG, or scrubbers). The tacit acceptance procedure of the IMO facilitates quick decision-making, so new developments can be quickly adopted. According to some observers, the IMO is too adaptive, which creates an overload of new regulations (Knudsen and Hassler, 2011). Although this tendency might exist – in the same way as it exists for all standard setting organisations that want to remain relevant and adapt to new circumstances – various mechanisms have been put in place to counterbalance an overload of regulation, including the on-going stocktaking of administrative burdens and the emphasis of the Secretary-General on implementation of existing regulation. At the same it is clear that various IMO conventions on essential issues, such as ballast water and ship recycling, have not entered into force because signatories fall short of the ratification threshold, which presents gaps in international regulation.

Co-ordination in case of overlapping jurisdictions

There are overlaps between international organisations with respect to marine policies in a broad sense, where jurisdictions of different UN agencies are related, but where co-ordination has increasingly been taking place. The wider global marine policy making is split between different specialised agencies (IMO, ILO, FAO and UNESCO/IOC) and the UNEP programme that each have their sectoral focus (shipping, fisheries, oceanography and the environment) and each headquartered in a different city (London, Rome, Paris and Nairobi). This is due to the design of UN specialised agencies as sectoral agencies, with headquarters in different places, which makes inter-agency co-ordination challenging (Hinds, 2001). However, co-operation has emerged in the form of the incorporation of specific policy input provided by IMO organs within decisions of other UN bodies, for example input concerning IUU fishing and related matter (FAO), seafarer issues (ILO), management of regional pollution response centres (UNEP). In addition, there are joint working groups established with FAO, ILO, UNESCO/IOC and UNEP concerning marine issues and there is a number of partnerships on regulatory and technical co-operation (FAO), regulatory co-operation (ILO) and technical co-operation (UNEP).[16]

Despite overlap between IMO and supra-national organisations such as the EU, the two organisations are mostly complementary. The overlap with the EU is most intense because the European Commission has the most extensive range of responsibilities of all regional supra-national organisations. The EU has its own maritime policy, its own specialised agency (the European Maritime Safety Agency) and other policy objectives (e.g. on climate change) that have interfered with IMO mandates. This has led to some conflict in the last decade. Roe (2013) mentions how the European Commission has tried to push for a separate seat for the EU at the IMO, against the will of Member States. The European Commission has also attempted to provoke a breakthrough on market-based mechanisms to reduce GHG emissions from shipping at the IMO-level by setting a deadline after which it would introduce its own scheme, for example by introducing shipping into the EU-Emissions Trading Scheme. Despite these overlaps, working relations between the two organisations have generally been good. The co-operation between IMO and EU, for example, has worked well on piracy, because IMO has global coverage and EU has the funds to implement necessary measures.

Also the approach to policy-making is complementary. It has been observed that the IMO, due to its decision-making processes – based on negotiations between national officials of Member States with close connections to the maritime sector – has regulations that are more in tune with national policies, than those of the EU standards (Gulbrandsen, 2013). Moreover, the IMO has important peer review capacities that the EU lacks.

Overlap with national regulations is inevitable and generally not problematic. There are various instances of national regulations anticipating or overriding IMO regulations. Following the disaster of the Erika single-hull oil tanker in 1999, France and Spain unilaterally introduced legislation on double hulled tankers in anticipation of IMO proposals. In response to the 2003 voluntary ship scrapping policies of the IMO that were perceived by some as inadequate, Denmark and the Netherlands stopped the export of scrap vessels to India, and the United Kingdom decided that all the government-owned ships would be scrapped within the OECD (Roe, 2013). Also sub-national regulations could anticipate IMO rules; for example the State of California has ship emission laws that go beyond IMO regulations. The consensus-driven approach of the IMO has to a large extent guaranteed enforcement of the adopted conventions. Considering the global character of shipping, global rules generally make sense, but this evidently cannot preclude nations from defining stricter rules to prevent general interests. Global standard setting becomes more challenging if it has to reconcile existing national rules; the IMO could be used as a platform to make sure that the regulation of various nations in anticipation of international rules is somehow harmonised or following similar approaches.

Conclusion

Shipping is a unique test case for international regulatory co-operation, considering its global reach, impact and potential for free-riding behaviour. Regulatory avoidance in shipping was pursued, and the emergence of open shipping registries (and the simultaneous decline of national registries) illustrates the tendencies of a global industry to relocate to places with lower regulatory standards or more advantageous commercial conditions. Although port State control has counterbalanced these tendencies, it is itself also to some extent subject to regulatory avoidance, with substandard ships increasingly being deployed in zones with limited port State control implementation capacity.

Overall, international regulatory co-operation in shipping can be considered a relative success story. Thanks to the adoption and enforcement of IMO conventions, shipping has become safer and less polluting. Main conventions have comprehensive coverage and appear to be fairly well enforced, depending on geographical zone. The IMO as a global regulatory system and standard-setting authority for the globalised shipping industry has large credibility and legitimacy in the maritime sector, also thanks to its application of various regulatory instruments, including consultation, peer reviews, ex ante impact studies and administrative burden reduction. The IMO has large membership that is well represented in its main bodies, considered to be efficient, professional and adaptive, also thanks to mechanisms such as the tacit acceptance procedure that have shortened internal procedures. This success can be explained by an ingenuous interplay of public and private incentives as well as shared responsibilities of flag States, port States, training institutions and classification societies. Substandard ships are more likely to be subject to port State controls, also because substandard ships will not be classed by reputable classification societies and will have to pay higher insurance fees for protection and indemnity (P&I). This mix of public-private incentives has also contributed to higher regulatory standards by the largest open registries, with their competitiveness depending on improving their regulatory performance and reputation.

Nevertheless, there are remaining challenges to resolve. The IMO faces these challenges with the strengthening of technical co-operation activities. In order to better assist developing countries, the Secretariat is adopting a more targeted approach when planning the integrated technical co-operation programme (ITCP), making such an approach more closely aligned to the real needs of developing countries. These needs should be the priorities of the ITCP rather than the thematic areas identified by technical committees. The implementation of the country maritime profile (CMP), based on

defined capacity-building needs, provides a useful tool for ensuring an effective delivery of the ITCP. The proposed country maritime profile has two main aspects, the creation of an interactive mechanism of co-operation between the Secretariat and Member States aimed at identifying the real needs of the countries concerned and a database of the country profiles, which would complement the gathering of information and be linked to the outcomes of the Member State audits. It is expected that Member States play a key role by providing information and feedback in the process of developing country profiles. In this regard, more needs assessment missions might also be fielded to those developing countries where there is insufficient or out-of-date information. Additionally, it is expected that the information gathered from the country maritime profile will provide an opportunity for the development of maritime clusters in developing countries and for the formulation of national maritime transport strategies and policies in order to ensure sustainable maritime development.

Notes

1. E.g. a sub-standard ship is more likely to be the vessel involved in support of terrorist activities or to convey a weapon of mass destruction (WMD) or associated materials rather than a more respectable vessel operated by law-abiding owners or ship operators. Enhancing port State control to enforce IMO regulations on maritime safety and marine environment protection has been identified as probably the most effective method of combating a wide variety of maritime crime including trafficking (Griffiths and Jenks, 2012).
2. E.g. the environmental externalities of industrial activity attracted via lower environmental standards mainly impact the State's territory
3. There are even ship registries in land-locked countries such as Bolivia.
4. In some cases States use ship registration as a loss leader to lure industries to their tax havens and other offshore activities. Offering both a tax haven and a ship registry can be attractive to shipping companies that can incorporate in the same location in which they register and thereby avoid taxes on all their business (DeSombre, 2006).

5. In addition: better performance of a flag is enhanced when the flag State is actively involved in the works of the IMO. Being an IMO Council member improves performance further (Corres and Pallis, 2008).

6. The Convention of the International Maritime Organization, as amended by the Resolution 371(x) of November 9, 1977.

7. Other large flag States include Liberia, Marshall Islands, United Kingdom, Hong Kong, Bahamas, Singapore, Malta, Greece, China and Japan.

8. The Marine Environment Protection Committee (MEPC) of the IMO amended MARPOL Annex VI in 2011, adding a new chapter on "Regulations on Energy Efficiency for Ships". It includes two measures that came into force in early 2013 and apply to all vessels over 400 gross tonnage: the Energy Efficiency Design Index (EEDI) for all new ship constructions, and the Ship Energy Efficiency Management Plan (SEEMP) for existing ships. The EEDI phases in progressively stringent criteria into the building standards for different types and sizes of ship. Energy efficiency levels are measured in CO2 emissions per capacity mile, and are designed to bear upon all production components of a given ship. The SEEMP constitutes a mechanism for benchmarking and improving operable ships, mainly through the Energy Efficiency Operator Indicator (EEOI) instrument. Under the SEEMP, owners and operators are periodically brought to review and upgrade their energy performance, focusing on such measures as engine tuning and monitoring, propeller upgrades, trim/draft improvement and enhanced hull coating.

9. Or rules mandated by the international organisation of classification societies to which it belongs.

10. In the convention that created the IMO, membership of the Maritime Safety Commission (MSC) was allocated by designating eight of the fourteen positions to representatives of the eight largest ship-owning nations. By the time the agreement entered into force in 1959, the growth in open registry shipping meant that Liberia and Panama were among the eight largest registries, and these States attempted to claim their place on the MSC. Their bid was opposed by the traditional maritime States, and neither was elected to the commission. The dispute was eventually decided by the International Court of Justice the following year in favour of Liberia and Panama. Subsequently, the MSC was expanded to 16 members by the 1965 Amendments and then to the entire IMO membership by the 1974 amendments.

11. China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States.

12. Argentina, Bangladesh, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden.

13. Australia, Bahamas, Belgium, Chile, Cyprus, Denmark, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey.

14. The likely price for the willingness of the most powerful States not to undermine the open registry system seems to be a reduced degree of sovereignty. An example of this is Effective US Controlled (EUSC) fleet that applies to some open registries, which refers to ships majority-owned by US citizens and registered in these locations that may be called into service by the US government in case of war or national emergency. As such ship-owners may assume they will enjoy greater US protection should the need arise. EUSC-provisions apply to some of the largest open ship registries, including Panama, Liberia, the Bahamas, Honduras and the Marshall Islands (DeSombre, 2006).

15. For example, in the case of the 1974 SOLAS Convention, an amendment to most of the Annexes (which constitute the technical parts of the Convention) is 'deemed to have been accepted at the end of two years from the date on which it is communicated to Contracting Governments...' unless the amendment is objected to by more than one third of Contracting Governments, or Contracting Governments owning not less than 50% of the world's gross merchant tonnage. This period may be varied by the Maritime Safety Committee with a minimum limit of one year.

16. One of the counter-examples – illustrating a problematic side of the jurisdictional overlap – relates to the overlap with the United Nations Framework Convention on Climate Change (UNFCCC) on greenhouse gas (GHG) emissions from shipping. Although GHG emissions from international shipping are recognised in Article 2.2 of the Kyoto protocol, which establishes a formal link to the IMO by recognising the role of the IMO in limiting and reducing GHG emissions from international shipping, GHG emissions from shipping are currently not part of national inventories under the Kyoto Protocol and therefore not subject to binding emission reduction targets agreed in the Kyoto protocol. IMO has adopted technical standards for new ships to curb emissions from shipping, but have not been able to agree on market-based mechanisms to reduce GHG emissions from shipping, similar to the mechanisms introduced in the Kyoto protocol. The reason why no compromise has been found on shipping emissions is the conflicting regulatory philosophies of the IMO and UNFCCC: One of the major IMO principles is commonly referred to as "no more favourable treatment" or "equal or non-discriminatory regulation of all ships in international trade irrespective of flag and ownership can be applied to all vessels, regardless of their flags" (IMO,

2009). This principle is implemented by giving enforcement power to both flag States and port States, so as to ensure that all ships, regardless of their flags, will have to abide by its conventions. Instead, the UNFCCC climate regime is based on the principles of "common but differentiated responsibilities and respective capabilities" (UNFCCC, 1992). No consensus could be reached on the underlying principles, as some countries (mainly industrialised countries) prefer to apply IMO principles whereas other countries (mostly developing countries) prefer UNFCCC principles as leading. The first set of countries fears that not addressing shipping emissions on the basis of "no more favourable treatment" would create loopholes for vessels to circumvent with any international regulation, where the second group of countries considers that such policies would impose an additional burden on the development path of developing countries, so these plea for recognition of the specific needs and special circumstances of the developing countries. According to Hackman (2012), a compromise should be possible between the two value systems, using market-based mechanisms, using a fair and appropriate share of the revenues of such instruments to assist developing countries in addressing climate change.

Bibliography

Barchue, L. (2006), "Making a case for the Voluntary IMO Member State Audit Scheme", International Maritime Organization, London.

Bateman, S. (2012), "Maritime security and port state control in the Indian Ocean Region", *Journal of the Indian Ocean Region*, Vol. 8, No. 2, pp. 188-201.

Bloor, M. et al. (2013), "Room for Manoeuvre? Regulatory Compliance in the Global Shipping Industry", *Social & Legal Studies*, Vol. 22, No. 2, pp. 171-189.

Bloor, M., R. Datta, Y. Gilinskiy and T. Horlick-Jones (2006), "Unicorns among the Cedars: On the Possibility of Effective 'Smart Regulation' of the Globalized Shipping Industry", *Social & Legal Studies*, Vol. 15, No. 4, pp. 534-551.

Bloor, M. and H. Sampson (2009), "Regulatory enforcement of labour standards in an outsourced globalised industry: The case of the shipping industry", *Work, Employment & Society*, Vol. 23, No. 4, pp. 711-726.

Bloor, M., H. Sampson and V. Gekara (2013), "Global governance of training standards in an outsourced labor force: The training double bind in seafarer license and certification assessments", *Regulation & Governance*, DOI: 10.1111/rego.12042.

Campe, S. (2009), "The secretariat of the International Maritime Organization: A tanker for tankers", in Biermann, F., Siebenhüner, B. (eds.), *Managers of Global Change: The Influence of International Environmental Bureaucracies*, MIT Press, Cambridge, pp. 143-168.

Cariou, P., M. Mejia and F. Wolff (2007), "An econometric analysis of deficiencies noted in port state control inspections", *Maritime Policy & Management*, Vol 34, No. 3, pp. 243-258.

Cariou, P., M. Mejia and F. Wolff (2008), "On the effectiveness of port state control inspections", *Transportation Research*, Part E, Vol. 44, pp. 491-503.

Corres, A. and A. Pallis (2008), "Flag State Performance: An Empirical Analysis", *WMU Journal of Maritime Affairs*, Vol. 7, No. 1, pp. 241-261.

Degré, T. (2008), "From Black-Grey-White Detention-based Lists of Flags to Black-Grey-White Casualty-based Lists of Categories of Vessels?", *The Journal of Navigation*, Vol. 61, pp. 485-497.

DeSombre, E. (2006), *Flagging Standards: Globalization and Environmental, Safety and Labour Regulations at Sea*, The MIT Press, Cambridge Massachusetts, London, England.

DeSombre, E. (2008), "Globalization, Competition, and Convergence: Shipping and the Race to the Middle", *Global Governance*, Vol.14, pp. 179-198.

Griffiths, H. and M. Jenks (2012), "Maritime transport and destabilising commodity flows", *SIPRI Policy Paper 32*, Stockholm International Peace Research Institute.

Gulbrandsen, C. (2013), "Neptune or Poseidon: implementing EU and global maritime safety law in a national agency", *International Review of Administrative Sciences*, Vol. 79, No. 3, pp. 505-522.

Hackmann, B. (2012), "Analysis of the governance architecture to regulate GHG emissions from international shipping", *International Environmental Agreements*, Vol. 12, pp. 85-103.

Hinds, L. (2001), "Policy implications and reconstruction of marine institutional architectures: the regional indigenous organization (RIO) option", *Marine Policy*, Vol. 25, pp. 415-426.

IMO (2013), "Periodic Review of Administrative Requirements in Mandatory IMO instruments", Progress Report to the Assembly in compliance with resolution A.1043 (27), International Maritime Organization, London.

IMO (2011), "Reduction of administrative burdens; periodic review of conventions and other mandatory instruments, Submitted by Australia, the Bahamas, China, Cyprus, Denmark, Iran, Italy, Malaysia, the Marshall Islands, the Netherlands, Norway, Panama, Republic of Korea, Singapore, South Africa, Sweden, the United Kingdom, the United States of America, BIMCO and ICS", International Maritime Organization, London.

IMO (2009), "Second IMO GHG Study 2009", International Maritime Organization, London.

Knapp, S. (2007), "The econometrics of maritime safety; Recommendations to enhance safety at sea", Ph. Thesis Erasmus University Rotterdam.

Knapp, S., G. Bijwaard and C. Heij (2011), "Estimated incident cost savings in shipping due to inspections, Accident Analysis and Prevention", Vol. 43, No. 4, pp. 1532-1539.

Knapp, S. and P. Franses (2007), "A global view on port state control: econometric analysis of the differences across port state control regimes", *Maritime Policy & Management*, Vol. 34(5), pp. 453-482.

Knapp, S. and P. Franses (2008), "Econometric analysis to differentiate effects of various ship safety inspections", *Marine Policy*, Vol. 32, pp. 653-662.

Knapp, S. and P. Franses (2009), "Does ratification matter and do major conventions improve safety and decrease pollution in shipping?", *Marine Policy*, Vol. 33, pp. 826-846.

Knapp, S. and P. Franses (2010), "Comprehensive Review of the Maritime Safety Regimes: Present Status and Recommendations for Improvements", *Transport Reviews*, Vol. 30 (2), pp. 241-270.

Knudsen, O. and B. Hassler (2011), "IMO legislation and its implementation: Accident risk, vessel deficiencies and national administrative practices", *Marine Policy*, Vol. 35, pp. 201-207.

Lloyd's Register (2011), "Assessment of IMO Mandated Energy Efficiency Measures for International Shipping; Estimated CO_2 Emissions Reduction from Introduction of Mandatory Technical and Operational Energy Efficiency Measures for Ships", Lloyd's Register, London and DNV, Oslo.

Mejia, M., P. Cariou and F. Wolff (2010), "Vessels at risk and the effectiveness of Port State Control inspections", *LEMNA Working Paper* 2010/15, Université de Nantes.

Mitroussi, K. (2004), "Quality in shipping: IMO's role and problems of implementation, *Disaster Prevention and Management*, Vol. 13, No. 1, pp. 50-58.

OECD (2001), "The Cost to Users of Substandard Shipping", OECD, www.oecd.org/sti/transport/maritimetransport/1827388.pdf, Paris.

OECD (1996), "Competitive advantages obtained by some shipowners as a result of non-observance of applicable international rules and standards", OECD, www.oecd.org/sti/transport/maritimetransport/2754615.pdf Paris.

Payoyo, P. (1994), "Implementation of international conventions through port state control: an assessment", *Marine Policy*, Vol. 18 (5), pp. 379-392.

Rodriguez, E. and E. Piniella (2012), "The New Inspection Regime of the Paris Mou on Port State Control: Improvement of the System", *Journal of Maritime Research*, Vol. IX, No. 1, pp. 9-16.

Roe, M. (2013), "Maritime Governance and Policy-Making", Springer.

Rojon, I. and C. Dieperink (2014), "Blowin'in the wind? Drivers and barriers for the uptake of wind propulsion in international shipping", *Energy Policy*, Vol. 67, pp 394–402.

Sampson, H. and M. Bloor (2007), "When Jack Gets out of the Box: The Problems of Regulating a Global Industry", *Sociology*, Vol.41, No. 3, pp. 551-569.

Stiles, K. (2010), "Who is keeping the sea safe? Testing theories of international law compliance", *Cooperation and Conflict*, Vol. 45, No. 2, pp. 139-161.

UNCTAD (2013), "Review of Maritime Transport 2013", United Nations Conference on Trade and Dvelopment, Geneva.

UNFCCC (1992), "United Nations framework convention on climate change", Geneva, United Nations.

Valencia, M. (1996), "Regime Theory and Maritime Regime Building", in: *Maritime Regime for North-East Asia, Hong Kong*, Oxford University Press.

Wu, B. and H. Sampson (2004), "Reconsidering the Cargo Sector's Seafarer Labour Market: A 211st Century Profile of Global Seafarers", *Ocean Yearbook*, Vol. 19, pp. 357-380.

Annex A

Agenda and summary record of the meeting held on 16 April 2014

Meeting

International Regulatory Co-operation:

The Role of International Organisations

OECD Conference Centre

16 April 2014

The OECD is convening this closed-door meeting that will bring together officials from international organisations (IOs) and member countries to share their experience in supporting regulatory co-operation across jurisdictions in a range of policy sectors, including health, food and agriculture, trade, labour and environment. The meeting is structured in several roundtables introduced by leading academics, building on preliminary case studies, to maximise the opportunities for discussion and inputs from the participants.

International organisations play a growing role as standard setting bodies – in some cases explicit but in many cases not. IOs are developing these standards in response to the increasing needs of globalisation. These international rules help to harness the movement of goods, services, capital and individuals across borders, as well as to reach beyond national boundaries to nurture global goods and mitigate the spread of global "bads". However, the structured evidence on the impacts of the rule making activities of IOs remains scant (economic and social gains, but also in terms of increased administrative efficiency and capacity). Current trends also raise important risks, including potential fragmentation or regionalisation of regulatory co-operation, competition among IOs and with new actors,

mission creep with underfinancing and limited impacts. In addition, although institutional arrangements, operational modalities and regulatory tools have proved to be critical determinants at the domestic level of the quality of regulatory governance, there is evidence that regulatory management disciplines could be more actively used in international rule-making by IOs to garner greater legitimacy and accountability in their standard setting role.

This meeting seeks to establish a dialogue among international organisations and their constituent representatives to exchange information on the ways, means and impacts of their rule-making activities, and to work together towards improved practices in international rule-making. The immediate aim of the meeting is to strengthen the information base on the impact and the internal rule making processes of IOs as standard setters. This objective will be supported through a series of case studies being developed by the OECD and other IOs. A longer-term objective would be for IOs to develop and sign on to shared principles underpinning the development of international standards. In that perspective, the meeting could endorse the establishment of a core group of international organisations that would work together on the development of the guidance and report to the broader group.

9:30 am	**Welcome and Introduction by Gary Banks, Dean of Australia and New Zealand School of Government and Chair, OECD Regulatory Policy Committee**
10:00-12:45 pm	**The role and impact of international organisations in support of IRC** The OECD 2013 publication *on International Regulatory Co-operation: Addressing Global Challenges* identifies the prominent role that international organisations play in supporting regulatory co-operation in multiple areas. They do so by offering platforms for continuous dialogue on regulatory issues and the development of common standards, and guidance. Beyond standard setting, these discussions and tools foster regulatory co-operation through facilitating the comparability of approaches and practices, consistent application and capacity building in countries with a less developed regulatory culture. As permanent fora for discussion, they may also provide member countries with flexible mechanisms to identify and adapt to new and emerging regulatory areas/issues and contribute to the development of common language. However, the structured evidence on the impact of these activities remains scant.

	The two morning sessions will aim to a frank exchange among international organisations on their role and impact in supporting more coherent regulatory frameworks. Discussions seek to identify the existing evidence and remaining information and analytical gaps that future joint work could address. *Chair: Rolf Alter, Director, Public Governance and Territorial Development, OECD*
10:00 am	***1rst round of discussion*: The growing trend in international regulatory co-operation and the role that IOs play in its support** ***Introductory remarks:*** Kenneth W. Abbott, Professor of Global Studies, Arizona State University ***Open discussion*** ***Key issues*** • How is rule-making adapting to the progressive emergence of an open, dynamic, globalised economy, and the intensification of global challenges? • What do we know of the role and impact of IOs in support of more coherent regulatory frameworks?
11:00 am	***Coffee break***
11:30 am	***2nd round of discussion:* The impacts of IOs as transnational standard setters** ***Introductory remarks:*** OECD, APEC, IMO ***Open discussion*** ***Key issues*** • What have we learnt from years of experience with IOs on their strengths and weaknesses in support of IRC? • What have been the success factors and successful instruments of regulatory co-operation? • What are the information and other gaps to fill to improve the IRC agenda of IOs?
12:45 pm	**Lunch**

2:15-6 pm	**The rule-making practices of international organisations** International organisations have over the years developed processes and practices to support their rule-making – such as consultation mechanisms and impact evaluation. The experience of countries has shown that good regulatory management practices are critical determinants of the success of rule-making – in particular they determine the successful implementation of rules by ensuring their credibility and the buy-in of regulators, regulated entities and the public at large. However the evidence on internal regulatory management discipline of IOs remains scant. More systematic exchange of information and experience would enable these organisations to capitalise on lessons learnt and maximise the potential of existing governance arrangements and instruments, thereby improving international rule- making. Two afternoon sessions will aim to a frank exchange among international organisations on their governance arrangements, operational modalities and tools in support of their rule-making activities. The discussions will seek to identify the good regulatory management practices used by IOs. *Chair: Nicola Bonucci, Director, Legal Directorate, OECD*
2:15 pm	***1rst round of discussion*: Governance arrangements and operational modalities of IO in the development of standards** ***Introductory remarks:*** Benedict Kingsbury, Director, Institute for International Law and Justice, New York University School ***Open discussion*** ***Key issues*** • How do IOs organise to support IRC, through which governance arrangements and operational modalities? • What regulatory policy tools are used by IOs – public consultation, simplification, implementation mechanisms, and evaluation – in support of their standard development activity?
3:15 pm	***2nd round of discussion:* Good practices and challenges in the mechanisms and procedures for standard-setting within IOs** ***Introductory remarks:*** OECD, European Commission

	Open discussion ***Key issues*** • What have we learnt on the good practices of IOs in support of international rule-making? How can these practices be further improved? • What are common bottlenecks to the standard setting activity of IOs and how can they be overcome?
4:15 pm	***Coffee break***
4:45 pm	**Next steps: Towards dialogue and shared principles for the development of standards** The last session will provide an opportunity to IOs to discuss potential future joint work, in particular the possibility of developing case studies on impact and rule-making activity of specific IOs; and the establishment of a working group of IOs that would lead the work on shared principles underpinning the development of international standards. ***Introductory remarks:*** OECD ***Open discussion*** ***Key issues*** • How can IOs work together towards improved IRC? • What could be the next steps in a closer co-operation of IOs on IRC?
5:45-6 pm	***Close of the meeting*** **– Yves Leterme, Deputy Secretary General, OECD**
6 pm	***Cocktail – G. Marshall Room***

Summary record

This meeting convened by the OECD sought to establish a dialogue among international organisations (IOs), OECD member and non-member countries and experts to exchange information on the ways, means and impacts of the rule-making activities of IOs. The meeting provided an opportunity to launch a discussion on potential collaborative work among IOs. The meeting built on the contributions of two respected academics, as well as on two draft case studies: one on the OECD and one on the International Maritime Organisation.

Short summary of key points

The meeting gathered participants from 16 international organisations, from 15 member and non-member countries, as well as from stakeholders. The participants welcomed the initiative to engage in a dialogue and agreed on the value of exchanging information and ideas on internal procedures and impacts of rule-making activities of IOs. The initiative was deemed timely in a context where a number of IOs are considering the ways of improving the impact and processes of their rule-making. In that context, learning from other IOs' experience and brainstorming collectively on some of the critical issues related to IO rule-making was deemed particularly useful.

The discussions highlighted the growing trend in international regulatory co-operation (IRC) over the last 25 years and the role that IOs play in its support. IOs promote IRC by providing institutionalised platforms for continuous dialogue that help forge common language on regulatory issues. They support regulatory harmonisation through the development of common norms and standards and facilitate regulatory implementation and enforcement through peer pressure and other mechanisms. They can also help to resolve disputes by providing mediation instances or, in some cases, formal dispute resolution mechanisms. An important – but often underestimated – contribution by IOs is the reduction in administrative costs and the multiplier effect allowed by pulling efforts and resources.

However, growing IRC has also been accompanied by a proliferation of co-operation approaches and instruments, deepening the complexity of the world in which the IOs operate (a number of participants described the IRC world as "untidy"). Today countries and IOs have a vast array of tools and mechanisms that they use and combine to achieve their regulatory co-operation objectives. The discussions highlighted the variety of processes and tools across IOs, some of which are explained by divergences in mandates, but not all. Structured and systematic information with regard to the final impacts of these various approaches and instruments downstream (i.e. the implementation stage at country level) remains scant, with the consequence that decisions on the use of IRC tools are *ad hoc*, i.e. not informed by evidence.

Participants generally agreed that, although challenging for a number of reasons, greater understanding of the impacts of rule-making of IOs would be useful. Work could develop on two fronts: *i)* develop greater understanding of the chain of effects of IO rule-making from the design of rules to their implementation and final impacts in countries, possibly differentiating between outputs, outcomes and impacts as suggested by Professor Abbott; *ii)* working with governments and stakeholders to improve the availability of information in support of such understanding.

Among the challenges which many IOs face is the question of how to ensure that their instruments are fit for purpose and remain relevant over time. A substantial share of the discussions was spent on the internal disciplines and tools to ensure the quality of IOs rule-making. Professor Kingsbury and several participants confirmed that IOs generally have a commitment to good processes and disciplines to ensure the quality of their rule-making. However, often good processes are developed internally and with few reference points. This is an area where the lessons learnt from the application of Administrative Law and regulatory policy (in line with the OECD's work on this issue) could usefully inform a more systematic approach to rule-making disciplines among IOs. In particular, IOs agreed with the need to consider the potential for greater implementation of the key principles of transparency, participation, review and revision, accountability, for structuring and rationalising rule-making of IOs. In doing so, they acknowledged that a balance needed to be struck between the benefits of these disciplines and their costs.

For example, the discussion clearly highlighted both the importance and the challenges raised by transparency and (public) consultation. Critical issues raised included the trade-off that IOs face between their transparency and confidentiality requirements; the stage of the regulatory cycle at which to apply transparency and/or resort to consultation; the use of modern communication tools to promote transparency, while respecting

accountability etc. Similarly, the discussion highlighted the challenges raised by other regulatory policy tools such as Regulatory Impact Assessment (RIA) – in particular the quantification of the benefits and costs of new regulations and the importance of making this a serious exercise of comparing diverse scenarios (and not a mere formality). There was broad agreement among participants that more collective reflection was needed in these areas.

Discussions also highlighted the importance of a stronger focus in the rule-making activities of IOs on two inter-linked areas: the mechanisms to foster the implementation and the enforcement of rules and the need to reduce administrative burdens (through for instance a more consistent layering of rules). Implementation of IOs global standards relies strongly on relays at national levels. Peer review mechanisms have proved to strongly support implementation. However, other factors or levers clearly contribute to facilitating implementation. In particular, a more consistent and streamlined layering of rules is likely to foster both greater implementation and enforcement by making it easier and less costly to comply. At the same time, attention should be paid to avoiding the risk of lowering regulatory standards.

Finally, several participants highlighted the important trend towards the development of soft law and voluntary approaches, as well as the explosion of transnational private regulation. Conversely, the experiences of the IMO and the EU point to a shift towards increasingly mandatory schemes, away from voluntary approaches. The drivers behind these trends, as well as the interplay between soft law and hard law, and the role of private schemes in rule-making, are important fields for further consideration in public policy. In particular, participants raised the question of whether there should be differentiated processes to ensure the quality of rule-making for soft law and hard law instruments.

How can IOs work together?

Several substantive areas for collective efforts were identified, including:

- Clarifying the various terminology used in relation to rule-making of IOs.
- Contributing to a greater understanding of the impacts of IOs rule-making; and improving the availability of related information.
- Analysing the practices and instruments of good rule-making of IOs.

There was a broad agreement on the need for *case studies*, not only as a tool to share information among IOs but, also, as a mechanism to identify gaps and support internal discussions. There was broad agreement that the case studies developed for the OECD and the IMO provided a good starting point and a good structure to organise the information. However, the structure may need to be revised and fleshed out to incorporate additional dimensions. It could also be useful to focus additional case studies on specific instruments to gather insights into the use of different types of instruments.

Several IOs expressed their interest in participating in a *core group* of IOs that would guide the work and report back to the broader group of IOs. Members of the core group could suggest ways to move forward the collective work (one of the first tasks could be to propose amendments to the outline for the case studies), define the scope of joint work, provide preliminary feedback on outputs produced by the group and contribute case studies.

Progress by the core group could be discussed at regular intervals, e.g. through *annual meetings*. A broader group of IOs could be called to contribute (including IOs which did not participate in the first meeting).

While inputs from IOs will be a necessary condition for the collective work to progress, *a broader group of stakeholders* could be invited to feed in and support the collective work of IOs – in particular, academic work could usefully complement the collective thinking of the IOs. Partnerships with selected universities could be sought (the NYU could be an important contributor, for example).

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