

IFLOS Maritime Talks 2014

Conference Report

by *Martin Fischer**

SHIPPING AND GREENHOUSE GAS EMISSIONS – EUROPEAN AND INTERNATIONAL EFFORTS

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At the International Tribunal for the Law of the Sea, Hamburg

On March 22nd the International Foundation for the Law of the Sea (IFLOS), in cooperation with Bucerius Law School (BLS) and the Federal Maritime and Hydrographic Agency (*Bundesamt für Seeschifffahrt und Hydrographie*, BSH) invited to the 10th Maritime Talks at the International Tribunal for the Law of the Sea (ITLOS) in Hamburg. The Maritime Talks on Shipping and Greenhouse Gas Emissions in 2014 served as the anniversary-conference in the sound tradition of the annual Maritime Talks at ITLOS in Hamburg. As in the past years, the conference was supported by the Edmund-Siemers-Trust (*Edmund-Siemers-Stiftung*) and the German Shipowners' Association (*Verband Deutscher Reeder*, VDR).

I. Welcome and Opening Addresses

H.E. Judge *Shunji Yanai*, President of the ITLOS, welcomed the participants in his opening address. He pointed out the 10 year “tradition” of the Maritime Talks and emphasized that throughout this time, IFLOS has shown a constant talent to figure out relevant, interesting and

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prevailing topics for the annual conference. With respect to this year's topic – Shipping and Greenhouse Gas Emissions – he mentioned the important role that the International Maritime Organisation (IMO) has always played during the years in this field, e.g. by developing the International Convention for the Prevention of Marine Pollution from Ships (MARPOL) in 1973 and the ongoing implementation of the Convention. H.E. *Yanai* indicated that – even though the pollution caused by the shipping industry amounts to “only” 2.7% of the global greenhouse gas emissions (GHG) – climate change is one of the biggest challenges in international affairs. He closed his speech with the consideration, that the 10th Maritime Talks hence can be a contribution to the efforts to face this challenge.

Following the President's introduction, *Ralf Nagel*, CEO of the German Shipowners' Association gave a welcome address on behalf of the VDR. He particularly pointed to the good cooperation between the VDR and IFLOS. Furthermore, *Ralf Nagel* underlined that the climate change (to which the problem of pollution of ships is in part attributed) is a long lasting but nevertheless “hot” topic where the question is not *if* there are purposeful efforts to be taken but rather *how* these efforts have to be shaped.

Finally *Prof. Dr. Doris König*, Chair of the IFLOS, professor for public international law and dean at BLS, welcomed the speakers and the audience on behalf of IFLOS. After introducing the foundation and its work – which besides organising the Maritime Talks e.g. also involves the annual Summer Academy at ITLOS – she gave a short overview of the topic of GHG and the efforts that have been taken during the last decades in this area. Afterwards she shortly introduced the speakers and gave a brief overview of their professional background.

II. Proposal for an EU-Regulation on Monitoring, Reporting and Verification (MRV) of Carbon Dioxide Emissions from Maritime Transport – *Maja-Alexandra Dittel*

The conference's first speech was held by *Maja-Alexandra Dittel* from the Directorate General (DG) for Climate Action of the European Commission. In her speech, Ms Dittel gave an interesting insight-view to the Commission's current work on the development of an MRV system for the shipping sector within the EU. Her presentation considered the question of why the EU is about to take legislative measures, the preparatory work of the DG, an explanation of the EU's strategy, the proposals in detail and, finally, an outlook to future prospects and the aims of the MRV system.

So far, GHG emissions in the shipping transport sector have not been part of legislative measures of the EU, so Alexandra Dittel started by answering the question *why* the EU wants to take action in the field of MRV whereat she didn't leave out to mention that even though the EU is on her way to implement its “own” MRV system (contrary to a worldwide IMO-lead system which has not been possible so far) the EU does not want to isolate itself from future global or multilateral measures. Nevertheless, an MRV system is needed due to the facts, that e.g. the maritime GHG emissions in EU have increased by 25% since 1990 to a

total amount of approximately 180 mio. t CO₂ in 2010; further growth is expected if no action is taken. Also the abatement technology would already be available in many cases but their use is still hampered by so-called market barriers. Consequently, regulatory action has to be taken to overcome such barriers. She let no doubts that in order to successfully reduce the maritime GHG emissions, an efficient system of monitoring, reporting and verification plays a crucial role.

Thereafter Ms Dittel focused on the preparatory work and gave a detailed view into the proposals. In consideration of these preparatory works she revealed that in 2011 and 2012 the Commission has carried out extensive stakeholder consultations on possible options for EU action and also conducted a considerable impact assessment. Particularly for the definition of the reduction targets and market based regulatory measures, the MRV system becomes necessary, considering that no emission figures are available so far.

She commented on the scope of the MRV system proposals, e.g. the application to all voyages related to the EU, the principles of flag-neutrality, or the exclusion of small emitters and special purpose ships and focussing on CO₂ as the predominant GHG. Also she explained the interaction of the different measures *monitoring*, *reporting* and *verification*: The *monitoring* is about to focus on fuel consumption and efficiency related informations such as distance, cargo carried or time spent at sea. These data then must be annually *reported* what finally leads to the *verification* which is carried out by an independent verifier whose tasks are to ensure the conformity of the monitoring plan, and to issue a document of compliance.

After presenting the mechanisms of the EU MRV system, Ms Dittel gave a brief outlook to the future prospects and aims e.g. the scalability of the EU model in order to establish and include a global MRV-system. She closed her speech pronouncing her hope that after the accreditation of the first verifiers in 2017, the EU-wide monitoring system will start working in 2018.

III. MRV of Carbon Dioxide Emissions and Shipping – Some Practical Observations - *Wolfram Guntermann*

The first contribution was followed by some practical observations concerning the MRV system, given by *Wolfram Guntermann*, former master on several Hapag-Lloyd vessels and now Director of Environmental Fleet Management at Hapag-Lloyd Ship Management. After learning about the proposed MRV system, the audience thus had the chance to get an impression of the opinion of the involved industry.

Concerning the proposed MRV system, Mr Guntermann voiced some criticism, which involved the status quo of the MRV debate, the reporting mechanisms which are already in place and the existing difficulties among the complex system of certification, that might be emphasized by an EU MRV system.

His presentation concentrated on the question, whether or not the proposed measures of the Commission within the MRV system, are too detailed, close-meshed and – economically spoken – too expensive.

Summarising the forthcoming reporting obligations – which in detail contain an all-over report to the aggregated emissions from all voyages within the EU, departing and going to EU ports, a carbon dioxide report while the vessel is in port, reporting the total distances travelled, the total time spent at sea, the total transport work, the total cargo carried etc. – he came to the conclusion, that the MRV system will give birth to an “administrative data Leviathan”, whom neither the shipping industry would be able to feed, nor the monitoring agencies would be able to handle. Even though a reliable performance evaluation is necessary and beneficial in his opinion, the proposed MRV system of the Commission would be too expansive.

Furthermore he emphasised his preoccupation about the Emission Trading System (ETS) which will be provided by the EU in the future via the MRV system. He made clear that such an ETS, would result in major additional costs for the shipping industry (without major benefits for the environment on the other hand) and would also be unable to implicate any financial incentives which are not already given by virtue of the highly increased bunker price (more than 50% of the operating costs today are fuel costs, thus being the most decisive driver for efficient operation).

In the end Mr Guntermann discussed the existing and imminent problems about certification which would increase under the regime of the MRV system as proposed. Already nowadays there is an immense variety of different (and often incompatible) standards, measurement instrumentations etc. and in consequence of that, implementing new obligations would – so he states – be to the benefit especially of the classification societies; hence, a more useful option would be – primarily – to align the existing standards or certificates (e.g. *Environmental Shipping Index*, *Clean Shipping Index*, *Rightship*, *VesselsValue.com*, etc.).

IV. Regulation of Greenhouse Gas Emissions from Maritime Transport on the International Level – what has been achieved, what remains to be done – *Torsten Mundt*

After a coffee break the floor was given to *Torsten Mundt*, senior engineer in the department Environmental Research & Development, Det Norske Veritas Germanischer Lloyd (DNV·GL). So, once again the audience was given the opportunity to take a look at the MRV system from a new perspective, this time more technical. Mr Mundt also enriched the conference, which so far had focussed to a greater or lesser extent on the MRV debate, with an overview of other instruments, especially IMO covered measures.

Mr Mundt started his presentation with a short introduction of the merged group of DNV·GL and a brief summary of the versatile business segments, pointing out that the maritime research segment of DNV·GL is covering a broad range wherein the work on reducing GHG emissions from shipping plays a major role.

Turning to the conferences issue, Mr Mundt initially located the current IMO activities concerning GHG emissions in the broader context of United Nations activities, inter alia The United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol and the UNFCCC tasked Subsidiary Body for Scientific and Technological Advice (SBSTA) which invited the IMO to report on its own activities. At this juncture he put

attention on the measures covered by IMO that have already been developed and established so far, like the mandatory Energy Efficient Design Index (EEDI) for new ships, the mandatory Ship Energy Efficiency Management Plan (SEEMP) or the voluntary Energy Efficiency Operational Indicator (EEOI) for ships in service. With regard to the fact that the audience of the Maritime Talks does regularly not consist of engineers, Mr Mundt abstained from explaining the functioning of the EEDI in detail and alluded that – even though it would be hard to imagine from a legal perspective – the calculation of the EEDI is much more sophisticated than estimating the fuel consumption of a vehicle.

Finally, Mr Mundt commented on further measures to reduce GHG emissions in addition to the before-mentioned technical and operational measures. Insofar as Market Based Measures (MBM) are concerned, he stressed that an IMO covered procedure (e.g. an ETS or a fund) is not to expect “for the time being”. He summed up, that in matters of MBM a large problem lies within the global competition that would require mechanisms to differentiate e.g. between developed and developing countries concerning the particular measure.

V. Emission Trading Systems – Legal Aspects – *Mathias Mailänder*

Mathias Mailänder, lawyer at Luther Rechtsanwaltsgesellschaft Hamburg, Practice Group Environment, Planning, Regulatory (EPR), had the honour to be the conference’s last speaker. In his presentation Mr Mailänder, speaking about the legal aspects of a future Emission Trading System (ETS) in the shipping sector in the EU, made clear, that such an ETS cannot be seen isolated but has to be seen in conjunction with the necessarily accompanying measures.

His first concern was to illustrate the larger context of an ETS and the surrounding implications. For this purpose he arranged his speech along the questions of *why* the EU is taking action, *which* policy options are being considered by the EU, *what* the costs and benefits are and which course of action will be taken by the EU in the future.

Relating to the question why the EU is taking action, Mr Mailänder shortly summarised the climatologic implications which had already been mentioned during the day and – concerning the fact that in the field of MRV e.g. the IMO might also have been an adequate forum – he reminded the audience of the EU’s position, that if no international agreement through the IMO or through the UNFCCC has been approved by the member states of the community until December 2011, the EU would take action itself. Moving on to the considerable policy options of the EU he stressed different concepts beside the MRV system, like a levy on bunker fuel sales, taxes on emissions from fuel consumed, a contribution based compensation fund or a target based compensation fund. However, due to the fact his concern was to explicate the ETS, he just touched upon these other possible options of policy action.

Explaining the ETS in further details, Mr Mailänder illustrated the inevitable relationship between a functioning ETS and the MRV system as a necessary precondition therefor. Hence, a validated and functioning MRV system in this respect is – as he mentioned – the crucial factor. Without leaving any doubts Mr Mailänder made clear, that no trading system will ever be successful without having established a monitoring system beforehand. Consequently he

concluded with a brief summary of the actions to be taken for establishing the ETS: *Establishing* the MRV system, setting emission *reduction targets* for shipping and introducing a *market-based* mechanism.

VI. Panel Discussion

Following the presentation of Mr Mailänder, *Doris König* went about to lead the panel discussion, which gave the audience the opportunity to address remaining questions or comments to the panellists.

First, *Anthony Amos Lucky*, Judge at the ITLOS, commented on the difficulties of enforcement of any GHG emission controlling or environmental protection system, be it MRV, EEDI, or anything else, illustrating the resulting challenges for the competent national authorities. In response to this comment *Wolfram Guntermann* pointed out, that, like the environmental protecting measures differing regionally, port state control would be the most effective instrument in opinion, whereas *Torsten Mundt* took into consideration that, though port state control is an instrument of enforcing, it is not the only one: A vessel's emissions for instance could never be measured properly while a vessel lays in the port (he vividly illustrated this by mentioning that no one would really like to see a full-speed engine test in his port); on behalf of energy efficiency, hence, other instruments like classification and verification will still play a major role.

Afterwards, *Frank Leonhardt* of the shipping company Leonhart & Blumberg, Hamburg, commented on the before-mentioned market based mechanisms. He stated that although IMO would no longer focus on these measures due to the crisis and the increased bunker costs, the industry would pay attention to efficient – and therefore ecological – shipping anyhow. *Prof. Dr. Peter Ehlers*, former president of the BSH and now member of the IFLOS board of trustees, expressed his opinion, that the proposed MRV system of the EU would have the capability to become a “bureaucratic monster” and asked about the verifiers within the MRV regime. *Maja Dittel* replied to these concerns, that – in order to establish a functioning regime to reduce the GHG emissions from shipping – simply no alternative exists: “We really need data”.

At the end of the discussion *Prof. Doris König* proposed the idea of a lean approach, implying slow-steaming or other measures and, following, asked *Mathias Mailänder* which of the possible EU actions to reduce GHG emissions from shipping he would prefer and why – after Mr Mailänder's opinion – an ETS would have the chance to get functioning, bearing in mind that the first attempts within the heavy industry did not produce visible results.

Referring to this question *Mr Mailänder* presumed that the Commission's ability to reasonably control the prices of the emitted certificates will play a crucial role. He expressed his hope, that in the light of the expectable data and with regard to the know-how that has been gained from prior experiences with ETS e.g. in the heavy industries, the ETS can and will be established efficiently.

Subsequent to the last question it was to *Doris König* to close the 10th Maritime Talks by addressing her thanks to all speakers and guests.