

From MARPOL to contracts

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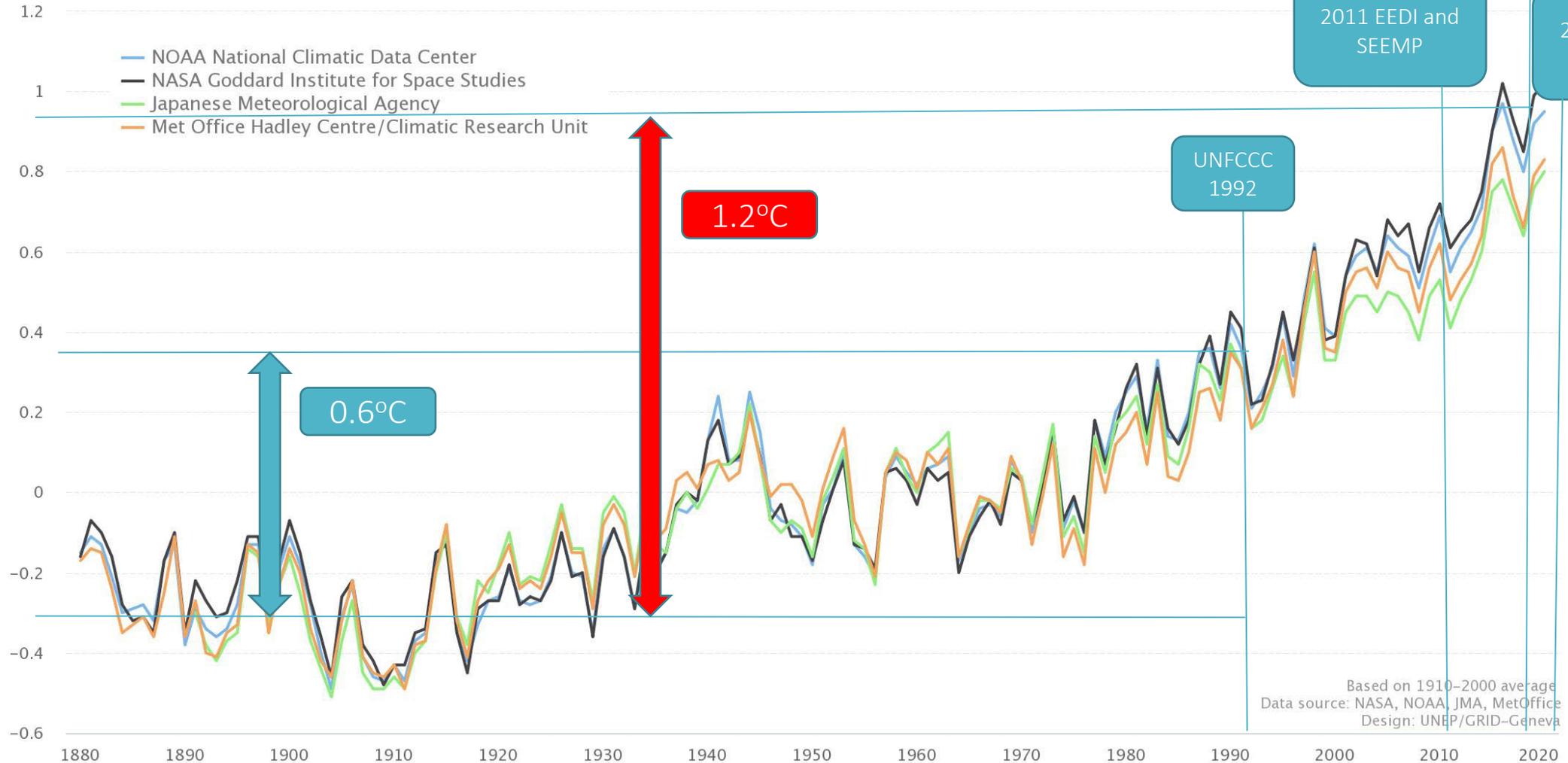
**SHOC Conference: Carbonfree shipping and shipping carbon -
contracts in context**

EEDI (from 2013 - Energy Efficiency Design Index)
EEXI (from 2023) is the EEDI for existing ships
SEEMP Ship Energy Efficiency Management Plan
CII Carbon Intensity Index

Global Surface Temperature

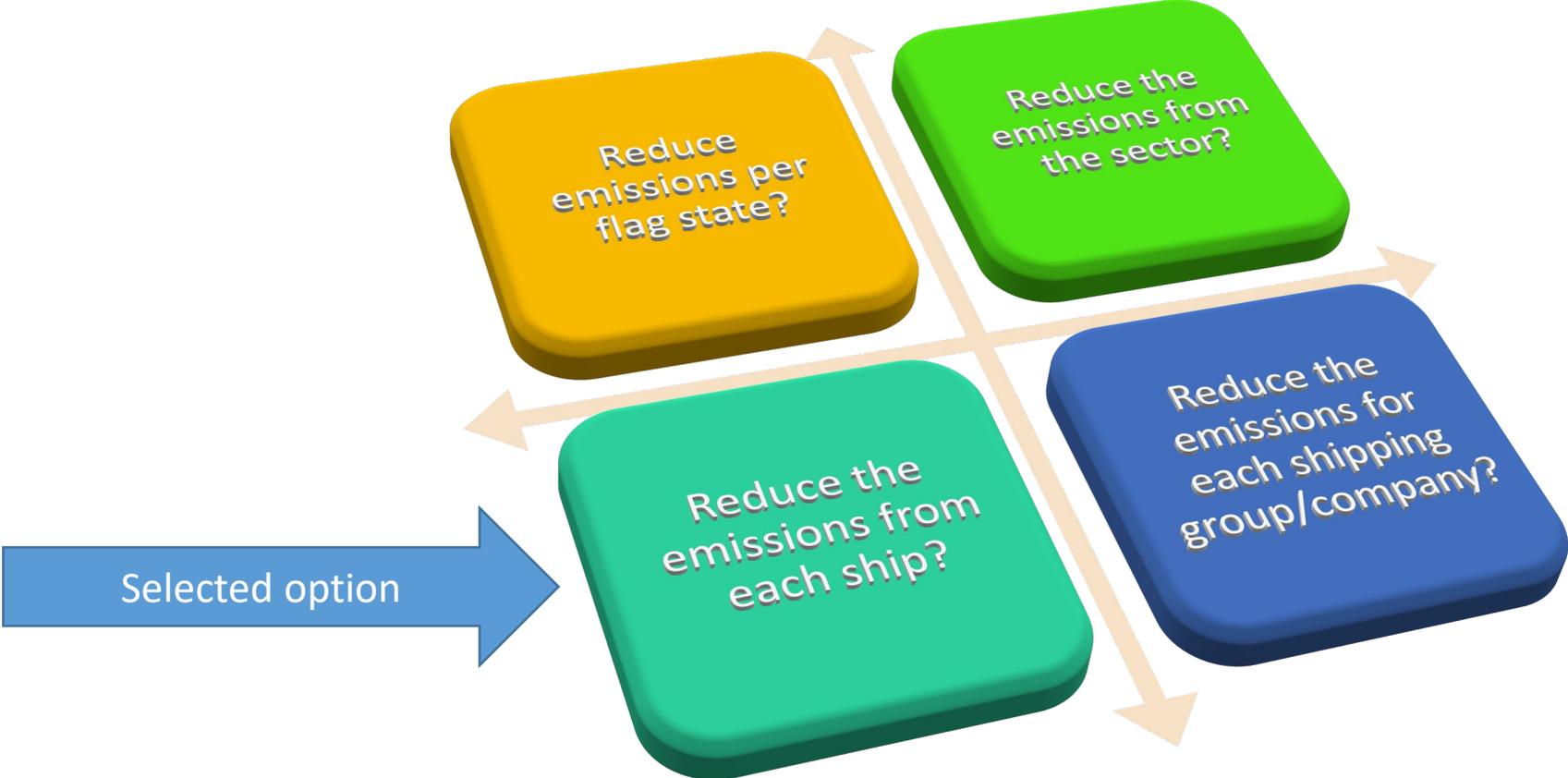
Temperature Anomaly (°C)

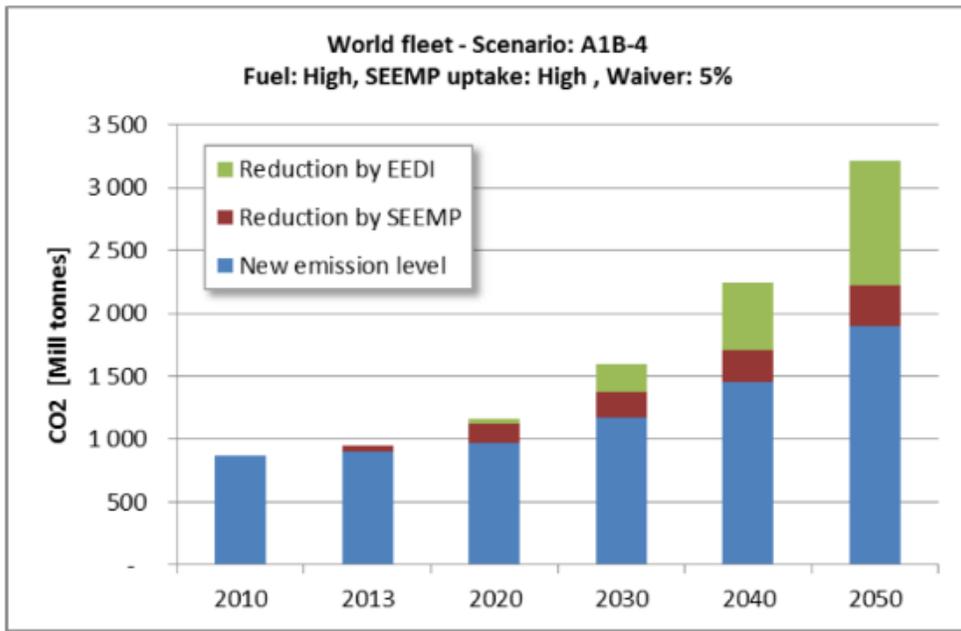
Four independent data sources show nearly identical long-term warming trends



Neither EEXI or CII are emission reductions ONLY increases in energy efficiency PER ship

The policy options





EEDI and SEEMP will not lead to reductions in emissions by reference to current emissions.

Figure ii - Annual emission reduction by 2050 and new emissions levels (scenario A1B-4)

EEXI will affect emissions from most existing ships by less than 2%. (icct working paper, October 2020)

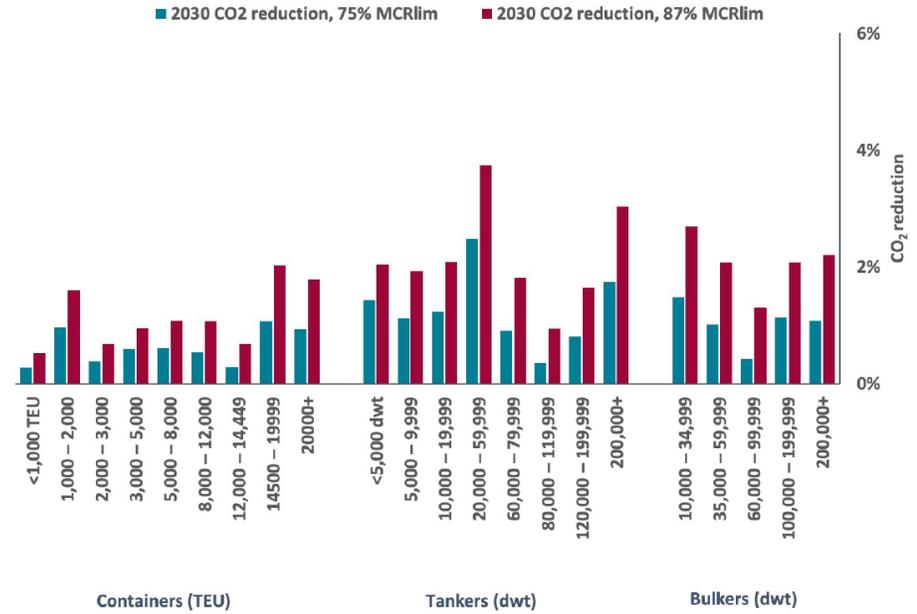


Figure 6. CO₂ reduction for three major ship types in 2030 by EEXI evaluation condition, 75% and 87% MCR_{lim}

Lights and shapes
"no need" for
construction
standards

Maritime
Conference

Lloyd's Register Freeboard
Table

Plimsoll Lines -UK
CMI

Exemption of existing ships and
control through certification

Construction standards
for NEW ships- old ships a
matter for the flag state

SOLAS

US Maritime
Conference on Oil
pollution (failed)

Trail Smelter
Arbitration

IMCO

IMCO established

OIPOL

"A" history of shipping regulation

Marine
Environment
Protection
Committee
Legal Committee

IMO

IMO established

Torrey Canyon
CLC, Intervention C.

MARPOL 73/78

LOSC, Paris MOU
MARPOL in force

Implementation Sub-
committee

1972 Stockholm Declaration

Rio Declaration
UNFCC
Biodiversity Convention

Paris Agreement

EEDI/SEEMP

Audit Scheme Compulsory

Initial GHG Strategy

EEXI/CII agreed

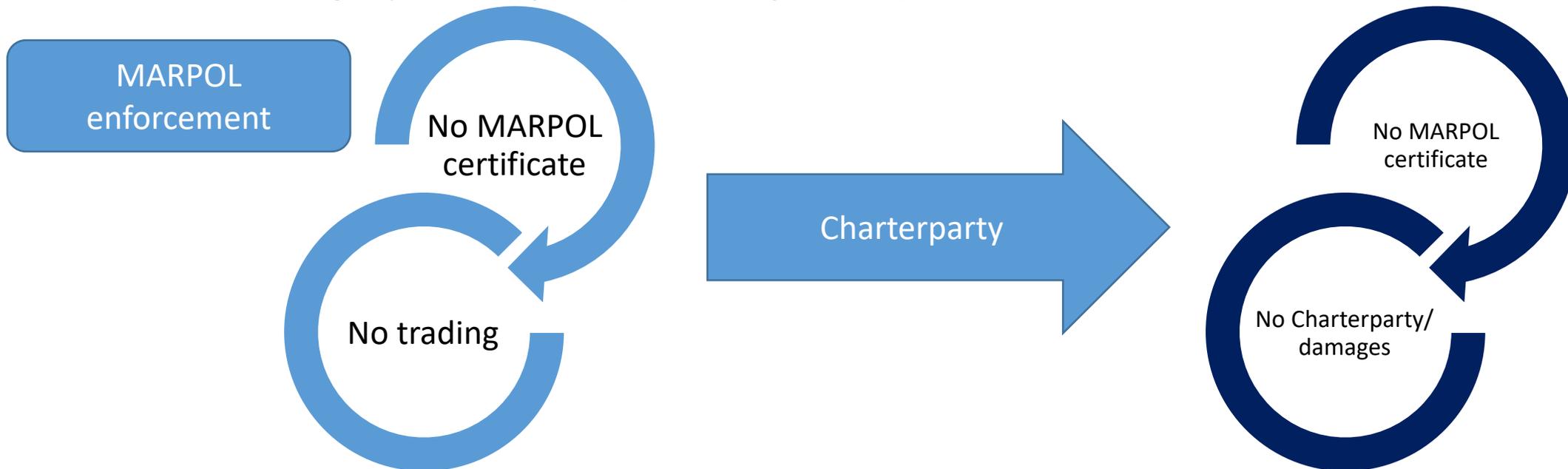
EEXI/CII required

Discussion on strategy

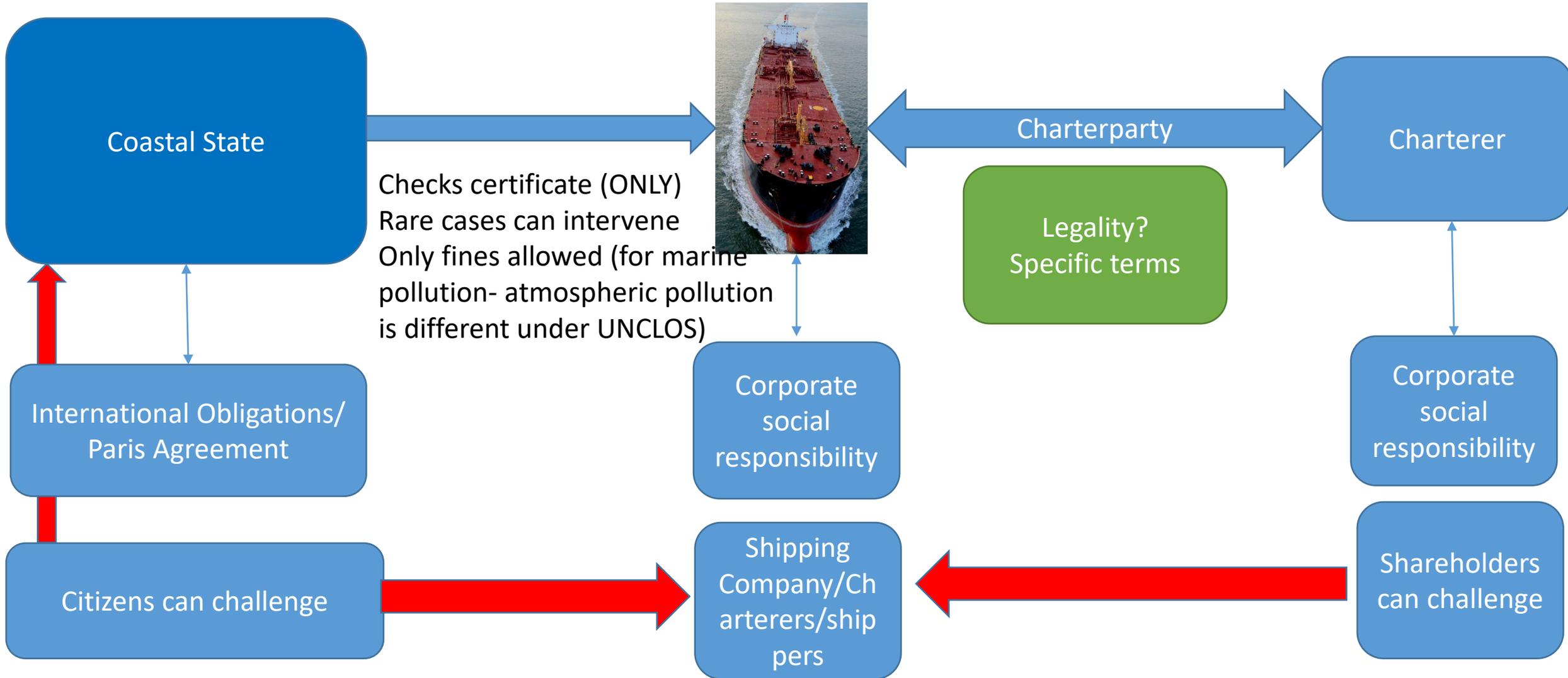
1835	1889	1894	1897	1912	1914	1926	1941	1948	1954	1958	1967	1969	1975	1982	1983	1992	2011	2015	2016	2018	2021	2023
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The use of contracts for enforcement/evolution of standards

- MARPOL Compliance
 - No MARPOL compliance
 - *The Elli and The Frixos; The Arctic and others.*
- Standard setting
 - Vetting by oil majors (*The Seaflower*)



The changing social background



The reasonable person may be argued to expect contractual performance consistent with the Paris Agreement aim (1.5 deg C)

Not all clauses work: Begum v Maran Ltd. (CA)

“Clause 22 imposed an obligation on the buyer (in this case Hsejar) to confirm that they would only sell to a yard that would perform the demolition "in accordance with good health and safety working practices..." In other words, the inclusion of provisions requiring safe demolition in the contract of sale was well within the reasonable control of the Appellant. The evidence was that clauses like clause 22 were standard, so ensuring that they had real force might perhaps become standard too.

The problem is that, on the evidence, both Hsejar, the buyer, and the Appellant, the seller of the vessel, knew that clauses like clause 22 would be entirely ignored. That appears to be part of the unhappy reality of the shipbreaking business: everyone turns a blind eye to what they know will actually happen. A seller in the position of the Appellant would have no interest in ensuring the performance of clause 22 as it stands, and a buyer in the position of Hsejar could therefore be in breach of that provision without any sanction. Even if it was in breach of clause 22, it would argue that the seller had suffered no loss as a result. However, if the payment arrangements had been different, then both buyer and seller would have had a very real interest in ensuring that provisions like clause 22 were more than words on a piece of paper.”

What type of clause?

- Termination rights when performance is substandard
 - Suspension of performance rights for substandard performance
 - Damages to (charterer's/shipper's) reputation
 - General duty to minimise emissions at specific level
-
- Failure to perform efficiently must trigger a disincentive which benefits the other party (or perhaps a third party)

Conclusions

- Contractual clauses can help towards emission reductions and compliance
- Practically, probably not worth the effort given the inefficiency of the agreed IMO measures
- Developing efficient contractual mechanisms would be crucial in establishing “sustainable” practice as the norm in contractual performance
- “(g) The Owners and Charterers shall give due consideration to environmental factors, including emission reductions, when determining the reasonableness of any orders given under this Clause”

The BIMCO Sea Traffic Management Clause

Thank you

Climate change: New Zealand's plan to tax cow and sheep burps

By Peter Hoskins
BBC News

9 June



New Zealand has unveiled a plan to tax sheep and cattle burps in a bid to tackle one of the country's biggest sources of greenhouse gases.

It would make it the first nation to charge farmers for the methane emissions from the animals they keep.

New Zealand is home to just over five million people, along with around 10 million cattle and 26 million sheep.

