

CONTRIBUTION OF THE INTERNATIONAL MARITIME ORGANIZATION TO THE UN SECRETARY-GENERAL'S REPORT ON OCEANS AND THE LAW OF THE SEA

PRELIMINARY CONSIDERATIONS

In accordance with the request made by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, in a letter dated 11 May 2018, this contribution focuses on main developments on ocean issues and the law of the sea within the areas of competence of IMO between September 2017 and May 2018 (inclusive).

In particular, this report highlights the way in which General Assembly resolution 72/73 on Oceans and the Law of the Sea has been implemented by referring to the relevant paragraphs of the resolution.

MARITIME SAFETY AND SECURITY

IMO takes first steps to address autonomous ships

(paragraphs 107, 108 and 177 of the UN General Assembly Resolution 72/73 refer)

The Maritime Safety Committee (MSC) has commenced work to look into how safe, secure and environmentally sound Maritime Autonomous Surface Ships (MASS) operations may be addressed in IMO instruments. To this end, MSC endorsed a framework for a regulatory scoping exercise, for the purpose of which MASS is defined as a ship that, to a varying degree, can operate independently of human interaction.

Initially the scoping exercise will identify current provisions in an agreed list of IMO instruments and assess how they may or may not be applicable to ships with varying degrees of autonomy and/or whether they may actually preclude MASS operations.

Thereafter an analysis will be conducted to determine the most appropriate way of addressing MASS operations, taking into account, inter alia, the human element, technology and operational factors.

The Legal Committee also agreed to include on its agenda a new work programme item on MASS, with a target completion year of 2022, which will complement the scoping exercise to be carried out by MSC on autonomous vessels. The aim is to carry out a gap analysis of existing liability and compensation treaties and other instruments emanating from the Legal Committee and a scoping exercise in relation to maritime autonomous surface ships.

In particular, the impact on seafarers and questions in relation to the United Nations Convention on the Law of the Sea would demand consideration.

Polar Code – second phase

(paragraphs 107, 108 and 179 of the UN General Assembly Resolution 72/73 refer)

The MSC considered how the safety measures of the International Code for Ships Operating in Polar Waters (Polar Code) – which entered into force in January 2017 under both the SOLAS and MARPOL treaties – might be applied in the future to non-SOLAS vessels operating in polar waters, with a particular focus on fishing vessels, pleasure yachts above 300 gross tonnage not engaged in trade, and cargo ships below 500 gross tonnage down to 300 gross tonnage.

Concrete proposals from Member States and interested international organizations are expected at the next session of MSC in December 2018.

New ships' routing measures in Bering Sea adopted

(paragraphs 153 - 155 of the UN General Assembly Resolution 72/73 refer)

The MSC adopted new and amended ships' routing measures in the Bering Sea and Bering Strait, aimed at reducing the risks of incidents - the first measures adopted by IMO for the Arctic region where the Polar Code applies.

Also adopted were: a traffic separation scheme and other routing measures In Dangan Channel (China) and In the vicinity of Kattegat (Denmark and Sweden); and an area to be avoided off the coast of Ghana in the Atlantic Ocean (Ghana).

Piracy and maritime security

(paragraphs 118 – 145 and 148 of the UN General Assembly Resolution 72/73 refer)

In 2017 the Organization received reports of 203 incidents of piracy and armed robbery against ships worldwide, the lowest for over 20 years, confirming the current downward year on year trend, with a reduction of about 8% at the global level.

In particular, MSC noted that Somalia based piracy had been suppressed, but not eradicated. In 2017 a total of six incidents were reported. So far, in 2018 there had been two reported incidents of attempted piracy.

In the Gulf of Guinea, the number of incidents reported to the Organization decreased last year to 48 incidents recorded in the IMO GISIS database, against 62 in 2016. However, in the first four months of 2018, the number of incidents significantly increased in the region, with 37 incidents reported, some resulting in the hijacking of ships and holding of crew members for ransom. On a more positive note, the Committee noted that naval forces in the region were showing an increased interest and capability to intervene in such incidents.

In response to the threats and recent incidents arising from the conflict in Yemen, such as sea mines and waterborne improvised explosive devices, the Combined Maritime Forces (CMF), ICS, BIMCO and INTERTANKO had published interim guidance on maritime security in the southern Red Sea and Bab al-Mandeb.

The majority of signatory States to the Djibouti Code of Conduct expressed their intention to widen the scope of the Code to cover other illicit maritime activities, including human trafficking and illegal, unreported and unregulated (IUU) fishing. The Jeddah Amendment to the Djibouti Code of Conduct 2017 was adopted at a high-level meeting of signatories to the Djibouti Code of Conduct, held in Jeddah, Saudi Arabia, from 10 to 12 January 2017. There are now 15 signatories to the Jeddah Amendment.

Unsafe mixed migration by sea

(paragraphs 147 – 150 of the UN General Assembly Resolution 72/73 refer)

In October 2017, IMO hosted a high-level inter-agency meeting involving international organizations and the main stakeholders of the maritime industry to further discuss the issue of unsafe mixed migration by sea. Representatives from IOM, UNCHR, OHCHR, UNODC, EU NAVFOR, ICS, BIMCO, IFSMA and ITF participated in the meeting.

The record of views of the participants was submitted to the Special Representative of the Secretary-General for International Migration and to the Permanent Representative of Mexico to the United Nations and the Permanent Representative of Switzerland to the United Nations (the two co-facilitators to lead the intergovernmental consultations and negotiations on issues related to the global compact for safe, orderly and regular migration), for their consideration.

Recognition of services provided by Iridium Satellite LLC for use in the GMDSS

(paragraphs 166 and 167 of the UN General Assembly Resolution 72/73 refer)

Iridium Satellite LLC was recognized as a mobile satellite communication service provider in the Global Maritime Distress and Safety System (GMDSS).

IMO number scheme extended to fishing vessels and other vessels

(paragraphs 115 – 117, 137 and 176 of the UN General Assembly Resolution 72/73 refer)

The Assembly agreed to extend the IMO Ship Identification Number Scheme to more vessels, on a voluntary basis, to support ship safety and pollution prevention, by being able to more easily identify vessels.

The number scheme applies to ships over 100 GT and is mandatory for passenger ships of 100 gross tonnage and upwards and all cargo ships of 300 gross tonnage and upwards.

Identifying and tracking fishing vessels operating at sea and being able to establish their ownership is an important part of ongoing work to tackle illegal, unreported, unregulated (IUU) fishing. IMO is working closely with the Food and Agriculture Organization of the United Nations (FAO) and the International Labour Organization (ILO) as well as other stakeholders, to tackle IUU fishing.

IMO is also encouraging States to ratify the Cape Town Agreement on fishing vessel safety, to bring this important treaty into force.

Seafarer abandonment cases

(paragraph 111 of the UN General Assembly Resolution 72/73 refers)

The continuous increase in the number of reported cases of abandonment of seafarers was highlighted during the meeting of Legal Committee. The joint ILO/IMO database recorded 55 such cases during 2017, against between 12 and 19 cases annually from 2011 to 2016.

In cases of abandonment, seafarers may be left without proper supply of food and fresh water, without wages and resources for their families and with no prospect of being repatriated. The 2014 amendments to the ILO Maritime Labour Convention (MLC 2006) require shipowners to have compulsory insurance to cover abandonment of seafarers, as well as claims for death or long-term disability of seafarers.

The IMO Secretariat will consult with the ILO in order to include information related to insurance, or lack thereof, in the database for each new case. The secretariats of IMO and ILO will consider creating a list of competent authorities and organizations who can assist in resolving the cases.

Seafarer shore leave extra protection

(paragraph 111 of the UN General Assembly Resolution 72/73 refers)

Seafarers' rights to shore leave have been strengthened through amendments of the Convention on Facilitation of International Maritime Traffic (FAL Convention), which entered into force globally on 1 January 2018. The FAL Convention aims to achieve the smooth transit in ports of ships, cargo and passengers.

The amendments to the international standard on shore leave added a new provision stating that there should be no discrimination on grounds of nationality, race, colour, sex, religion, political opinion, or social origin. The amendments also bring in a new requirement for national governments to introduce electronic information exchange, including electronic data interchange (EDI), to transmit information related to maritime transport. This should be in place by 8 April 2019, with provision for a transitional period of at least 12 months during which paper and electronic documents would be allowed.

Use of a "single window" for data is encouraged, to enable all the information required by public authorities in connection with the arrival, stay and departure of ships, persons and cargo, to be submitted via a single portal, without duplication.

Fraudulent registration of ships

(paragraphs 176 of the UN General Assembly Resolution 72/73 refers)

The Legal Committee added a new output to its agenda on "Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships", with a target completion date of 2021. This was in response to a number of Member States having contacted the IMO Secretariat over the past few years to report cases of fraudulent use of their flag.

The issue of ship registration was recognised as quite complex, as it involved aspects of public international law and private law. However, effective enforcement measures to discourage the practice and to prevent ships with fraudulent registration from operating must be considered. To this end the IMO Secretariat will conduct a study on the cases received and will provide information on the capabilities of IMO's Global Integrated Shipping Information System (GISIS) to address the issue.

MARINE ENVIRONMENT

Climate change strategy for shipping adopted

(paragraph 219 of the UN General Assembly Resolution 72/73 refers)

The Marine Environment Protection Committee (MEPC), adopted an initial strategy on the reduction of greenhouse gas emissions from ships, setting out a vision to reduce GHG emissions from international shipping and phase them out, as soon as possible in this century. The meeting was attended by more than 100 IMO Member States.

The initial strategy envisages for the first time a reduction in total GHG emissions from international shipping which should peak as soon as possible and to reduce the total annual GHG emissions by at least 50% by 2050 compared to 2008, while, at the same time, pursuing efforts towards phasing them out entirely.

The vision includes a specific reference to "a pathway of CO₂ emissions reduction consistent with the Paris Agreement temperature goals" and represents a framework for Member States, setting out the future vision for international shipping, the levels of ambition to reduce GHG emissions and

guiding principles; and includes candidate short-, mid- and long-term further measures with possible timelines and their impacts on States. The strategy also identifies barriers and supportive measures including capacity building, technical cooperation and research and development (R&D).

IMO has already adopted global mandatory measures to address the reduction in GHG emissions from ships. IMO is also executing global technical cooperation projects to support the capacity of States, particularly developing States to implement and support energy efficiency in the shipping sector.

Entry into force garbage requirements under MARPOL Annex V
(paragraph 216 of the UN General Assembly Resolution 72/73 refers)

Amendments to MARPOL Annex V on Prevention of pollution by garbage from ships entered into force on 1 March 2018. They relate to cargo residues of products which are hazardous to the marine environment (HME) and Form of Garbage Record Book.

The amendments require, inter alia, the shipper to declare whether or not they are classed as harmful to the marine environment and include a new category of garbage “e-waste”. E-waste is defined as electrical and electronic equipment used for the normal operation of the ship or in the accommodation spaces, including all components, sub-assemblies and consumables, which are part of the equipment at the time of discarding, with the presence of material potentially hazardous to human health and/or the environment.

Compensation regime for Hazardous and Noxious Cargoes a step closer
(paragraph 283 of the UN General Assembly Resolution 72/73 refers)

The 2010 Convention on the liability and compensation for the damage in connection with the carriage of hazardous and noxious substances by sea (2010 HNS Convention), has now four Contracting States. The treaty provides a global regime for liability and compensation in the event of an incident involving the international or domestic carriage by sea of Hazardous and Noxious Substances, such as chemicals, LPG and LNG. The recent ratifications by Canada, Norway Turkey and Denmark has brought the total quantity of contributing cargo to nearly 73% of that necessary to meet the second entry into force requirement. All States are encouraged to ratify the 2010 HNS Protocol as soon as possible.

Ballast Water Management Convention
(paragraphs 200 - 202 of the UN General Assembly Resolution 72/73 refer)

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM Convention), entered into force on 8 September 2017 and has, to date* been ratified by 73 States representing 75.35% of the world gross tonnage.

The BWM Convention aims to stop the spread of potentially invasive aquatic species in ships' ballast water and requires ships to manage their ballast water to remove, render harmless, or avoid the uptake or discharge of aquatic organisms and pathogens within ballast water and sediments. The MEPC has adopted amendments, which will enter into force on 13 October 2019, to make the Code for the approval of the ballast water management systems mandatory.

Focus on marine plastic pollution
(paragraphs 200 - 215 of the UN General Assembly Resolution 72/73 refer)

* As at 18 June 2018.

The Assembly recognized that the ongoing concern of marine plastic pollution required further consideration as part of a global solution within the framework of ocean governance. In response to that MEPC included a new output on its agenda to address the issue of marine plastic litter from shipping in the context of 2030 Sustainable Development Goal 14 (SDG 14). Member Governments and international organizations were invited to submit concrete proposals to the next meeting of the Committee in October 2018 on the development of an action plan. Meanwhile, the Food and Agriculture Organization (FAO) and other international organizations will keep the MEPC updated on their work related to addressing marine plastic litter.

Marine litter and microplastics were also on the agenda of the thirty-ninth Consultative Meeting of Contracting Parties to the London Convention and the 12th Meeting of Contracting Parties to the London Protocol. Parties to the London Convention and Protocol were urged to redouble efforts to share knowledge and technical expertise with regard to the analysis of plastics, including microplastics, in dredged material and sewage sludge; and encouraged to share information on successful and effective methods to reduce microplastics entering the environment through waste streams. The aim is to develop methods to enable routine, reliable monitoring, assessment and reporting of microplastic contaminant levels in such waste streams as soon as possible.

CAPACITY BUILDING

(paragraphs 26-28 and 43 of the UN General Assembly Resolution 71/257 refer)

The Assembly adopted two resolutions which are relevant for IMO's capacity-building work to support the implementation of the SDGs.

The first resolution covers the linkages between IMO's technical assistance work and the 2030 Agenda for Sustainable Development and requests the Technical Cooperation Committee to give high priority to those activities which not only promote the early ratification and effective implementation of IMO instruments but also contribute to the attainment of the SDGs, taking into account the special needs of the least developed countries (LDCs) and small island developing States (SIDS) and the particular maritime transport needs of Africa.

The second outlines guiding principles of IMO's integrated technical cooperation programme in support of the 2030 Agenda for Sustainable Development. It urges Member States to ensure the integration of maritime issues within their United Nations Development Assistance Frameworks (UNDAF) which will determine their national priority areas of funding and support for maritime technical assistance activities.

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