

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

(Assembly resolution A/RES/57/141)

PRELIMINARY CONSIDERATIONS

In accordance with the request made by the Legal Counsel, Under-Secretary-General for Legal Affairs of the United Nations in his letter to the Secretary-General of IMO dated 17 December 2002, this contribution focus on major developments on ocean issues within the areas of competence of IMO during the year 2002.

Issues have been selected bearing in mind the outcome of the 3rd. meeting of the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS).

The 1982 Convention on the Law of the Sea is referred throughout this contribution as "UNCLOS" or "the Convention".

I

**THE GLOBAL MANDATE OF IMO IN THE FIELD OF SAFETY OF
NAVIGATION AND PREVENTION OF MARINE POLLUTION FROM
VESSELS' SOURCE**

During the year 2002 IMO continued focusing its activities on the adoption and implementation of international rules and standards for the safety of navigation and prevention of the pollution of the marine environment from vessels' source. It also intensified its treaty making activity aimed at ensuring that prompt and adequate compensation is paid to victims of maritime accidents.

Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of Annex VIII), several provisions in the Convention refer to the "competent international organization" to adopt international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping.

In such cases the expression "competent international organization", when used in the singular in UNCLOS, applies exclusively to IMO, bearing in mind the global mandate of the Organization as a specialized agency within the United Nations system established by the Convention on the International Maritime Organization (the "IMO Convention").

The wide acceptance and uncontested legitimacy of IMO's universal mandate in accordance with international law is evidenced by the following facts:

- 162 sovereign States representing all regions of the world are Members of IMO;
- all Members may participate at meetings of IMO bodies in charge of the elaboration and adoption of recommendations containing safety and antipollution rules and standards. These rules and standards are normally adopted by consensus; and
- all States, irrespective of whether they are or are not Members of IMO or the United Nations, are invited to participate at IMO conferences in charge of adopting new IMO conventions. All IMO treaty instruments have so far been adopted by consensus.

At present, between 110 and 146 States (depending on the treaty) have become Parties to the main IMO conventions. Since the general degree of acceptance of these shipping conventions is mainly related to their implementation by flag States, it is of paramount importance to note that States Parties to these Conventions in all cases represent more than 90 per cent of the world's merchant fleet.

Adoption of new treaties, and amendments to existing ones, have been guided by adherence to the philosophy according to which rules and standards should be developed in order to prevent accidents at sea, and not in response to them. Accordingly, operational features are constantly under review in order to ensure that shipping activities conform to the highest possible safety and anti-pollution preventative regulations.

IMO attaches the highest priority to the need of ensuring that its numerous rules and standards contained in these treaties are properly implemented. In order to help ensuring this implementation IMO focuses on the continuous strengthening of regulations to ensure that flag and port States and shipowners develop their capacities and exert their responsibility to the fullest. Technical co-operation has been intensified by the operation of the Integrated Technical Co-operation Programme aimed at ensuring that funds from different donor sources are properly channelled towards the execution of projects under the supervision of IMO as executing agency aimed at strengthening the maritime infrastructure of developing countries.

II

**IMPLICATIONS OF THE UNITED NATIONS CONVENTION ON
THE LAW OF THE SEA FOR THE
INTERNATIONAL MARITIME ORGANIZATION**

An undated version of the IMO study ¹ on Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization incorporates developments occurred since 1997 and 2002. Main objective of the study is to explain who IMO fulfils its role under UNCLOS as a "competent international organization in the field of safety of navigation and prevention of marine pollution from vessels' source.

II

SAFETY OF NAVIGATION

MARITIME SECURITY

In paragraph 29 of resolution 57/141 the General Assembly welcomes initiatives at the IMO to counter the threat to maritime security from terrorism and encourages States fully to support this endeavour. In particular the paragraph refers to the IMO Diplomatic Conference on Maritime Security which took place in December 2002.

A new, comprehensive security regime for international shipping is set to enter into force in July 2004 following the adoption by the Conference of a series of measures to strengthen maritime security and prevent and suppress acts of terrorism against shipping. The Conference adopted a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS), the most far-reaching of which enshrines the new International Ship and Port Facility Security Code (ISPS Code). The Code contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B). The Conference also adopted a series of resolutions designed to add weight to the amendments, encourage the application of the measures to ships and port facilities not covered by the Code and pave the way for future work on the subject.

The ISPS Code takes the approach that ensuring the security of ships and port facilities is basically a risk management activity and that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.

¹ LEG/ MISC/3

The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.

To begin the process, each Contracting Government will conduct port facility security assessments. Security assessments will have three essential components. First, they must identify and evaluate important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged, could cause significant loss of life or damage to the port facility's economy or environment. Then, the assessment must identify the actual threats to those critical assets and infrastructure in order to prioritise security measures. Finally, the assessment must address vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, and other areas within a port facility that may be a likely target. Once this assessment has been completed, Contracting Government can accurately evaluate risk.

This risk management concept will be embodied in the Code through a number of minimum functional security requirements for ships and port facilities. For ships, these requirements will include:

- ship security plans
- ship security officers
- company security officers
- certain onboard equipment

For port facilities, the requirements will include:

- port facility security plans
- port facility security officers
- certain security equipment

In addition the requirements for ships and for port facilities include:

- monitoring and controlling access
- monitoring the activities of people and cargo
- ensuring security communications are readily available

Because each ship (or class of ship) and each port facility present different risks, the method in which they will meet the specific requirements of this Code will be determined and eventually be approved by the Administration or Contracting Government, as the case may be.

In order to communicate the threat at a port facility or for a ship, the Contracting Government will set the appropriate security level. Security levels 1, 2, and 3 correspond to normal, medium, and high threat situations, respectively. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for the ship and for the port facility.

The preamble to the Code states that, as threat increases, the only logical counteraction is to reduce vulnerability. The Code provides several ways to reduce

vulnerabilities. Ships will be subject to a system of survey, verification, certification, and control to ensure that their security measures are implemented. This system will be based on a considerably expanded control system as stipulated in the 1974 Convention for Safety of Life at Sea (SOLAS). Port facilities will also be required to report certain security related information to the Contracting Government concerned, which in turn will submit a list of approved port facility security plans, including location and contact details to IMO.

Under the terms of the Code, shipping companies will be required to designate a Company Security Officer for the Company and a Ship Security Officer for each of its ships. The Company Security Officer's responsibilities include ensuring that a Ship Security Assessment is properly carried out, that Ship Security Plans are prepared and submitted for approval by (or on behalf of) the Administration and thereafter is placed on board each ship.

The Ship Security Plan should indicate the operational and physical security measures the ship itself should take to ensure it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the ship itself can take to move to and operate at security level 2 when instructed to do so. Furthermore, the plan should indicate the possible preparatory actions the ship could take to allow prompt response to instructions that may be issued to the ship at security level 3.

Ships will have to carry an International Ship Security Certificate indicating that they comply with the requirements of SOLAS chapter XI-2 and part A of the ISPS Code. When a ship is at a port or is proceeding to a port of Contracting Government, the Contracting Government has the right, under the provisions of regulation XI-2/9, to exercise various control and compliance measures with respect to that ship. The ship is subject to port State control inspections but such inspections will not normally extend to examination of the Ship Security Plan itself except in specific circumstances.

The ship may, also, be subject to additional control measures if the Contracting Government exercising the control and compliance measures has reason to believe that the security of the ship has, or the port facilities it has served have, been compromised.

Each Contracting Government has to ensure completion of a Port Facility Security Assessment for each port facility within its territory that serves ships engaged on international voyages. The Port Facility Security Assessment is fundamentally a risk analysis of all aspects of a port facility's operation in order to determine which parts of it are more susceptible, and/or more likely, to be the subject of attack. Security risk is seen a function of the threat of an attack coupled with the vulnerability of the target and the consequences of an attack.

On completion of the analysis, it will be possible to produce an overall assessment of the level of risk. The Port Facility Security Assessment will help determine which port facilities are required to appoint a Port Facility Security Officer and prepare a Port Facility Security Plan. This plan should indicate the operational and physical security measures the port facility should take to ensure that it always

operates at security level 1. The plan should also indicate the additional, or intensified, security measures the port facility can take to move to and operate at security level 2 when instructed to do so. It should also indicate the possible preparatory actions the port facility could take to allow prompt response to the instructions that may be issued at security level 3.

Ships using port facilities may be subject to port State control inspections and additional control measures. The relevant authorities may request the provision of information regarding the ship, its cargo, passengers and ship's personnel prior to the ship's entry into port. There may be circumstances in which entry into port could be denied.

Contracting Governments have various responsibilities, including setting the applicable security level, approving the Ship Security Plan and relevant amendments to a previously approved plan, verifying the compliance of ships with the provisions of SOLAS chapter XI-2 and part A of the ISPS Code and issuing the International Ship Security Certificate, determining which port facilities located within their territory are required to designate a Port Facility Security Officer, ensuring completion and approval of the Port Facility Security Assessment and the Port Facility Security Plan and any subsequent amendments; and exercising control and compliance measures. It is also responsible for communicating information to the International Maritime Organization and to the shipping and port industries.

Contracting Governments can designate, or establish, Designated Authorities within Government to undertake their security duties and allow Recognised Security Organisations to carry out certain work with respect to port facilities, but the final decision on the acceptance and approval of this work should be given by the Contracting Government or the Designated Authority.

The Conference adopted a series of Amendments to the 1974 SOLAS Convention, aimed at enhancing maritime security on board ships and at ship/port interface areas. Among other things, these amendments create a new SOLAS chapter dealing specifically with maritime security, which in turn contains the mandatory requirement for ships to comply with the ISPS Code.

Modifications to Chapter V (Safety of Navigation) contain a new timetable for the fitting of Automatic Information Systems (AIS). Ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 50,000 gross tonnage, will be required to fit AIS not later than the first safety equipment survey after 1 July 2004 or by 31 December 2004, whichever occurs earlier. Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information."

The existing SOLAS Chapter XI (Special measures to enhance maritime safety) has been re-numbered as Chapter XI-1. Regulation XI-1/3 is modified to require ships' identification numbers to be permanently marked in a visible place either on the ship's hull or superstructure. Passenger ships should carry the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

A new regulation XI-1/5 requires ships to be issued with a Continuous Synopsis Record (CSR) which is intended to provide an on-board record of the history of the ship. The CSR shall be issued by the Administration and shall contain information such as the name of the ship and of the State whose flag the ship is entitled to fly, the date on which the ship was registered with that State, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address. Any changes shall be recorded in the CSR so as to provide updated and current information together with the history of the changes.

A brand-new Chapter XI-2 (Special measures to enhance maritime security) is added after the renumbered Chapter XI-1.

This chapter applies to passenger ships and cargo ships of 500 gross tonnage and upwards, including high speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages.

Regulation XI-2/3 of the new chapter enshrines the International Ship and Port Facilities Security Code (ISPS Code). Part A of this Code will become mandatory and part B contains guidance as to how best to comply with the mandatory requirements.

The regulation requires Administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag. Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if that security level is higher than the security level set by the Administration for that ship.

Regulation XI-2/4 confirms the role of the Master in exercising his professional judgement over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the Company, the charterer or any other person in this respect.

Regulation XI-2/5 requires all ships to be provided with a ship security alert system, according to a strict timetable that will see most vessels fitted by 2004 and the remainder by 2006. When activated the ship security alert system shall initiate and transmit a ship-to-shore security alert to a competent authority designated by the Administration, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised. The system will not raise any alarm on-board the ship. The ship security alert system shall be capable of being activated from the navigation bridge and in at least one other location.

Regulation XI-2/6 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented and reviewed in accordance with the ISPS Code.

Other regulations in this chapter cover the provision of information to IMO, the control of ships in port, (including measures such as the delay, detention,

restriction of operations including movement within the port, or expulsion of a ship from port), and the specific responsibility of Companies.

The conference adopted 11 resolutions, the main points of which are outlined below.

Conference resolution 1 (Adoption of amendments to the annex to the international convention for the safety of life at sea, 1974, as amended), determines that the amendments shall be deemed to have been accepted on 1 January 2004 (unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments) and that the amendments would then enter into force on 1 July 2004.

Conference resolution 2 (Adoption of the International Ship and Port Facility Security (ISPS) Code) adopts the International Ship and Port Facility Security (ISPS) Code, and invites Contracting Governments to the Convention to note that the ISPS Code will take effect on 1 July 2004 upon entry into force of the new chapter XI-2 of the Convention;

Conference resolution 3 (Further work by the international maritime organization pertaining to the enhancement of maritime security) invites the International Maritime Organization to develop, as a matter of urgency, training guidance such as model courses for ship security officers, company security officers and port facility security officers; performance standards for ship security alarms; performance standards and guidelines for long-range ship identification and tracking systems; guidelines on control of ships; and guidelines on "Recognized security organizations", and to adopt them in time before the entry into force of the amendments to the Convention adopted by the Conference.

Conference resolution 4 (Future amendments to Chapters XI-1 and XI-2 of the 1974 SOLAS Convention on special measures to enhance maritime safety and security) recommends that future amendments to the provisions of chapters XI-1 and XI-2 of the Convention should be adopted by either the Maritime Safety Committee of the International Maritime Organization or by a Conference of Contracting Governments to the Convention.

Conference resolution 5 (Promotion of technical co-operation and assistance) strongly urges Contracting Governments to the Convention and Member States of the Organization to provide, in co-operation with the Organization, assistance to those States which have difficulty in meeting the requirements of the adopted amendments; and to use the Integrated Technical Co-operation Programme of the Organization as one of the main instruments to obtain assistance in advancing effective implementation of, and compliance with, the adopted amendments.

It also requests the Secretary-General of IMO to make adequate provision, within the Integrated Technical Co-operation Programme, to strengthen further the assistance that is already being provided and to ensure that the Organization is able to address the future needs of developing countries for continued education and training and the improvement of their maritime and port security infrastructure and measures;

and invites donors, international organizations and the shipping and port industry to contribute financial, human and/or in-kind resources to the Integrated Technical Co-operation Programme of the Organization for its maritime and port security activities.

It also invites the Secretary General to give early consideration to establishing a Maritime Security Trust Fund for the purpose of providing a dedicated source of financial support for maritime security technical-co-operation activities and, in particular, for providing support for national initiatives in developing countries to strengthen their maritime security infrastructure and measures.

Conference resolution 6 (Early implementation of the special measures to enhance maritime security) refers to the difficulties experienced during implementation of the International Safety Management (ISM) Code and draws the attention of Contracting Governments and the industry to the fact that chapter XI-2 of the Convention does not provide for any extension of the implementation dates for the introduction of the special measures concerned to enhance maritime security. It urges Contracting Governments to take, as a matter of high priority, any action needed to finalize as soon as possible any legislative or administrative arrangements, which are required at the national level, to give effect to the requirements of the adopted amendments to the Convention relating to the certification of ships entitled to fly their flag or port facilities situated in their territory. It also recommends that Contracting Governments and Administrations concerned designate dates, in advance of the application date of 1 July 2004 by which requests for certification should be submitted in order to allow for completion of the certification process and for companies and port facilities to rectify any non-compliance. It also recommends that Contracting Governments and the industry should take early appropriate action to ensure that all necessary infrastructure is in place in time for the effective implementation of the adopted measures to enhance maritime security on board ships and ashore.

Conference resolution 7 (Establishment of appropriate measures to enhance the security of ships, port facilities, mobile offshore drilling units on location and fixed and floating platforms not covered by chapter XI-2 of the 1974 SOLAS Convention) invites Contracting Governments to establish, as they might consider necessary, appropriate measures to enhance the security of ships and of port facilities other than those covered by chapter XI-2 of the Convention; it also encourages Contracting Governments to establish and disseminate, in an appropriate manner, information to facilitate contact and liaison between company and ship security officers and the authorities responsible for the security of port facilities not covered by Chapter XI-2, prior to a ship entering, or anchoring off, such a port;

Conference resolution 8 (Enhancement of security in co-operation with the International Labour Organization) invites the ILO to continue the development of a Seafarers' Identity Document as a matter of urgency, which should cover, among other things, a document for professional purposes; a verifiable security document; and a certification information document, and invites IMO and the ILO to establish a joint ILO/IMO Working Group to undertake more detailed work on comprehensive port security requirements.

Conference resolution 9 (Enhancement of security in co-operation with the World Customs Organization) invites the WCO to consider urgently measures to enhance security throughout international closed CTU movements and requests the Secretary-General of IMO to contribute expertise relating to maritime traffic to the discussions at the WCO.

Conference resolution 10 (Early implementation of long-range ships' identification and tracking) recalls that long-range identification and tracking of ships at sea is a measure that fully contributes to the enhancement of the maritime and coastal States security and notes that Inmarsat C polling is currently an appropriate system for long-range identification and tracking of ships. It urges Governments to take, as a matter of high priority, any action needed at national level to give effect to implementing and beginning the long-range identification and tracking of ships and invites Contracting Governments to encourage ships entitled to fly the flag of their State to take the necessary measures so that they are prepared to respond automatically to Inmarsat C polling, or to other available systems. It also requests Governments to consider all aspects related to the introduction of long-range identification and tracking of ships, including its potential for misuse as an aid to ship targeting and the need for confidentiality in respect of the information so gathered.

Conference resolution 11 (Human element-related aspects and shore leave for seafarers) urges Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of chapter XI-2 of the Convention and the International Ship and Port Facility (ISPS) Code. It also encourages Governments, Member States of IMO and non-governmental organizations with consultative status at the Organization to report to the Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention or the Code. It also requests the IMO Secretary-General to bring to the attention of the Maritime Safety Committee and the Facilitation Committee of the Organization, any human element related problems, which have been communicated to the Organization as a result of the implementation of chapter XI-2 of the Convention or the Code.

AMENDMENTS TO THE SUA TREATIES

Paragraph 28 of resolution 57/141 urges States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol (the "SUA treaties") and invites States to participate in the review of those instrument by the IMO Legal Committee.

In line with the decision adopted at its previous session and IMO Assembly resolution A.924(22), the Legal Committee at its 84th session held in April 2002² began its consideration of possible amendments to the SUA treaties. It established a

² LEG/84/14

Correspondence Group which developing a working paper on the scope of possible amendments for consideration at the 85th session of the Committee. The longer term aim would be a recommendation to the 23rd session of the IMO Assembly (to be held in November-December 2003 to convene a conference to consider amendments to these instruments. At its 85 session (October 2002)³, the Legal Committee started the consideration of the scope for draft protocols to the SUA treaties. In this regard the Committee held a preliminary discussion on matters such as new offences, accomplice liability, elimination of the political offence exception and transfer of persons to assist in investigations and prosecutions.

PIRACY AND ARMED ROBBERY AGAINST SHIPS

IMO compiles and distributes monthly, quarterly and annual reports on piracy and armed robbery against ships submitted by Governments and international organizations. Monthly reports list all incidents reported to the Organization. Quarterly reports are composite reports accompanied by an analysis, on a regional basis, of the situation and an indication whether the frequency of incidents is increasing or decreasing and advising on any new feature or pattern of significance.

At its 75th. Session held in May 2002 the IMO's Maritime Safety Committee (MSC)⁴ noted that the number of acts of piracy and armed robbery against ships which had occurred in 2001, as reported to the Organization, was 370, a decrease of 101 by number and 21 per cent over the figure for 2000. The total number of incidents of piracy and armed robbery against ships, reported to have occurred from 1984 to the end of April 2002, was 2,650. The MSC observed that, although this latest reduction was a welcome development, more needed to be done to reduce this menace.

The areas most affected in 2001 (i.e. five or more incidents reported) were the Far East, in particular the South China Sea and the Malacca Strait, the Indian Ocean, West Africa, South America and the Caribbean and East Africa.

Comparing the figures for 2000 with 2001, the number of incidents reported to have occurred or to have been attempted increased from 33 to 58 in West Africa, remained at two in the Mediterranean Sea and decreased from 112 to 58 in the Malacca Strait, from 140 to 120 in the South China Sea, from 109 to 86 in the Indian Ocean, from 29 to 22 in East Africa and from 41 to 23 in South America and the Caribbean.

Most of the attacks worldwide were reported to have occurred in the territorial waters of the coastal States concerned while the ships were at anchor or berthed. The MSC was particularly concerned that, during 2001, 17 crew members had been killed, 42 wounded and five more reported missing. Sixteen ships were hijacked, two ships went missing and one ship had been lost, while on four occasions, the attackers had used explosive devices.

³ LEG 85/11

⁴ MSC 75/24

The MSC once again urged all Governments (of flag, port and coastal States) and the industry to intensify their efforts to eradicate these unlawful acts, noting the maritime community could no longer tolerate the situation and the serious repercussions it had on the safety of passengers and crews.

At its 76th session (December 2002)⁵ The MSC noted with concern the latest statistics on incidents of piracy and armed robbery at sea, in particular the identified 20% increase in the reported acts of piracy and armed robbery against ships. This worrying development was a cause for concern and much needed to be done to reduce this menace.

The number of acts of piracy and armed robbery against ships during the first eight months of 2002, as reported to the Organization, was 228, a marginal decrease of 1% over the figure for the corresponding period of 2001. However, comparing the figures for the first ten months of 2001 (263) with the corresponding period of 2002 (315) there was an increase of approximately 20%. The total number of incidents of piracy and armed robbery against ships, reported to have occurred from 1984 (when the organization began recording reports of piracy and armed robbery incidents) to the end of October 2002, had risen to 2,880. Between 1 January and 31 October 2002, twelve ships had been hijacked and eight ships had gone missing. From the reports received it had also emerged that the areas most affected (i.e. five incidents reported or more) were the Far East, in particular the South China Sea and the Malacca Strait, the Indian Ocean, the Caribbean, South America (Pacific and Atlantic) and West and East Africa. Most of the attacks worldwide were reported to have taken place in territorial waters while the ships were at anchor or berthed. In many of the reports received, the crews had been violently attacked by groups of five to ten people carrying knives or guns. During the same period, four passengers and one crew member of the ships involved had been killed, two crew members and four entire crew had been reported missing and seventy-one crew members and twelve passengers of the ships involved had been wounded.

Although after the 11 September attacks emphasis had been placed on **security**, the issue of piracy and armed robbery against ships continued to cast a black spot on the image of the shipping industry as a whole. The maritime community could no longer tolerate this situation and the serious repercussions it had on the security of passengers and crews and the safety of ships, not to mention the impact on the marine environment if a piracy/armed robbery incident resulted in oil or other hazardous and noxious cargoes escaping into it. The MSC urged, once again, all Governments and the industry to intensify their efforts to eradicate these unlawful acts.

Implementation of anti-piracy project

At its 75th session the MSC extensively reviewed the report of the second assessment mission and regional meeting on piracy and armed robbery against ships for Latin American and Caribbean countries (held in Guayaquil, Ecuador - 25 and 26 September 2001) and an oral report on the third and last assessment mission and regional meeting for selected West African countries (Accra, Ghana, 25 and 26 March 2002).

⁵ MSC 76/23

The MSC noted and concurred with the recommendations and conclusions of both meetings, including:

- The Guayaquil meeting's agreement on the need for the review of the relevant IMO instruments on the prevention and suppression of acts of terrorism against ships, their passengers and crews - with action already being undertaken by the Legal Committee within the context of resolution A.924(22);
- the Guayaquil meeting's agreement on the need for the Secretariat to communicate with the relevant industry organizations to urge their members to instruct ship masters to ensure that all attacks or attempts thereof are reported promptly to the nearest RCC, the designated focal point of the coastal State concerned and the flag State concerned (in accordance with the procedure set out in MSC/Circ.622/Rev.1.)
- the Accra meeting's recommendation that participating Governments identify, on the basis of experience and statistical information, vulnerable areas off their coasts and in their ports, directing their resources to cope with the increased risks to safe navigation and environmental protection in such areas, and providing specific advice for ships on protective measures and local reporting procedures.
- the Accra meeting's agreement that IMO be requested to assist the countries in the sub-region with regard to the implementation of, and amendments to, IMO instruments related to the prevention and suppression of acts of terrorism against shipping; that the international maritime community and industry, through IMO, be requested to assist the countries in the sub-region for capacity and infrastructure building on security issues; and that the Maritime Organization for West and Central Africa (MOWCA) be associated to the fullest possible extent in the process.
- the Accra Meeting had encouraged participating countries to take appropriate action to ensure co-operation and co-ordination of different national administrations in their overall tactical response to piracy and armed robbery attacks and, in particular, to take account of any related unlawful activities, such as illicit drug trafficking, illegal migration, stowing away, etc.;
- the Accra Meeting had agreed to make use of all possible means to develop a sustainable sub-regional approach to the problem of violence at sea, taking into account the existence of MOWCA, as the main sub-regional organization, as well as the Abuja MoU on Port State Control and the recent initiative aiming at the creation of Coastal Patrol Guards to cover the area from Angola to Senegal;
- the Accra meeting had also agreed to invite MOWCA to undertake, in co-operation with IMO, consultations with Governments in the sub-region for the purpose of convening, at an appropriate time, a meeting to consider widening the scope of the sub-regional strategy on maritime security to cover co-operation and co-ordination on the prevention and suppression of piracy and armed robbery against ships;
- the Accra meeting had suggested that, similar to the role of IMO regarding the development of regional agreements on port State control, IMO should initiate a process leading to the adoption of sub-regional agreements on security matters and the creation of sub-regional systems dealing with maritime security issues;
- the Accra meeting had recognized that, in many ports in the sub-region, wrecks

were used by pirates and armed robbers as bases for their illegal activities. The Meeting, therefore, recommended that IMO should assist coastal States in the removal of such wrecks in the sub-region; and

- the Accra meeting had identified the need for an increased policing of the registration and identification of small boats, since they are frequently used in the context of piracy and armed robbery attacks against ships.

Currently, the IMO Secretariat was consulting with Governments interested in receiving technical assistance in relation to implementation of measures to prevent and suppress acts of piracy and armed robbery against ships, and was also co-ordinating missions to countries which were expected to request such assistance.

Regional agreements on co-operation against piracy and armed robbery against ships

The MSC was also updated on meetings in South-East Asia, following the March 2001 regional meeting in Singapore after which countries had been invited by the IMO Secretary-General to participate in a regional meeting to consider concluding a regional agreement on co-operation against piracy and armed robbery against ships.

Although so far only two countries (out of the ten which had participated at that Meeting) had responded positively to the Secretary-General's invitation, there had been three relevant meetings.

An EU-ASEAN Experts meeting on maritime security (held Manila, 25 and 26 February 2002), was hosted by the Government of the Philippines.

A meeting in Jakarta (5 to 7 March 2002) was held to facilitate and strengthen further co-operation in the field of anti-piracy activities, including follow-up activities to the Regional Conference and Combating Piracy and Armed Robbery against Ships held in Tokyo in April 2000 and some progress was made towards concluding a regional agreement.

A meeting in Tokyo (12 and 13 March 2002) considered regional co-operation issues among maritime policy authorities and private maritime-related concerns, and the meeting agreed that it was necessary to:

- continue efforts to establish and maintain international co-operation;
- improve the flow of information on piracy;
- initiate appropriate national response measures on the basis of the current trend of piracy acts; and
- enhance maritime security to suppress piracy.

The MSC urged Member Governments to give more urgent consideration towards promoting and concluding viable regional agreements to combat piracy and armed

robbery against ships, given that the issue was progressing rather slowly. The MSC also instructed the IMO Secretariat to follow-up the proposals, involving ROCRAM and MOWCA, towards convening regional meetings to promote the case of regional co-operation in appropriate areas.

The MSC noted that the second phase of the anti-piracy project was now complete and it was the intention of the Secretariat to make every effort to provide technical assistance and co-ordinate missions to countries which were expected to request assistance.

The MSC also invited the Secretariat to follow closely the developments at United Nations level, in particular the "open-ended" Informal Consultative Process on Oceans and Law of the Sea (UNICPOLOS) which is considering, *inter alia*, the issue of maritime piracy with the prospect of drafting appropriate text for submission to the General Assembly for consideration and action.

The Committee was updated on the implementation of the IMO anti-piracy project. Phase one, a number of regional seminars and workshops attended by Governmental representatives from countries in piracy-infected areas of the world, had been completed. In phase two, a number of evaluation and assessment missions had been made, to: Jakarta, Indonesia (13 and 14 March 2001); Singapore (15 and 16 March 2001) for countries in the South China Sea, the Malacca and Singapore Straits and the Eastern Indian Ocean; Guayaquil, Ecuador (25 and 26 September 2001) for South America and the Caribbean Sea countries; and Accra, Ghana (25 and 26 March 2002) for Western and Central African countries. Regional meetings had been held alongside these missions.

Currently, the IMO Secretariat was consulting with Governments interested in receiving technical assistance in relation to implementation of measures to prevent and suppress acts of piracy and armed robbery against ships, and was also co-ordinating missions to countries which were expected to request such assistance.

PERSONS RESCUED AT SEA

The MSC at its 75th session reviewed issues relating to the rescue of persons at sea, following the adoption by the IMO Assembly in November 2001 of resolution A.920(22) - *Review of safety measures and procedures for the treatment of persons rescued at sea*, including preliminary work by the Sub-Committee on Radiocommunications and Search and Rescue (COMSAR) - 6th session: 18-22 February 2002. The resolution requested the Maritime Safety Committee, the Legal Committee and the Facilitation Committee, under the direction of the Council, to review, on a priority basis, all relevant IMO instruments under their scope for the purpose of identifying any existing gaps, inconsistencies, ambiguities, vagueness or other inadequacies in relation to the rescue of persons at sea.

The Committee noted that the Secretary-General had brought the issue of persons rescued at sea to the attention of a number of competent United Nations specialized agencies and programmes pointing out the need for a co-ordinated approach to all

attendant aspects at the United Nations inter-agency level. The Secretary-General had also proposed the establishment of a co-ordinating mechanism (possibly in the form of an inter-agency co-ordinating panel to be activated when the circumstances so dictate) to ensure that the response of the United Nations in any future emergency could be co-ordinated in a consistent manner. As a result, a meeting was being organized between representatives of the United Nations Division for Ocean Affairs and the Law of the Sea, the Office of the United Nations High Commissioner for Refugees (UNHCR), the UN Office for Drug Control and Crime Prevention (ODCCP), the Office of the UN High Commissioner for Human Rights (UNCHR), the International Organization for Migration (IOM) and the IMO Secretariat, to take place at the UNHCR Headquarters on 2 and 3 July 2002 to consider and agree on how to take their task forward.

The MSC discussed the issue extensively and agreed on further work as follows:

- to continue the review of the provisions of the SOLAS and SAR Conventions regarding the treatment of persons rescued at sea, based on the requests of resolution A.920(22). The review should be given high priority and should be completed at COMSAR 8. The results to be reported to the Committee should, if appropriate, include specific proposals for amendments to these Conventions;
- to consider whether additional guidance should be developed for masters, RCCs, coastal States and other interested parties to ensure that persons rescued at sea are delivered to a place of safety;
- to identify other issues raised during its debate and include them in the report to MSC 77 as issues that the Organization should forward to other international organizations that have responsibilities related to this issue;
- to also consider the possible need for, or desirability of, effecting amendments to the FAL and SALVAGE Conventions regarding provisions relating to persons rescued at sea or in distress at sea. This task, which would involve the FAL and LEG Committees respectively, should be given lower priority than the review of the SOLAS and SAR Conventions.

PLACES OF REFUGE

The MSC approved, in principle, the proposed general framework concerning future work on places of refuge developed by the Sub-Committee on Safety of Navigation. Future work places high priority on the safety of all involved in any operation concerning the provision of places of refuge, with due attention to all environmental aspects associated with these operations. This will include the preparation of guidelines for:

1. actions a master of a ship should take when in need of a place of refuge (including actions on board and actions required in seeking assistance from other ships in the vicinity, salvage operators, flag State and coastal States).
2. the evaluation of risks, including the methodology involved, associated with the

provision of places of refuge and relevant operations in both a general and a case by case basis; and

3. actions expected of coastal States for the identification, designation and provision of such suitable places together with any relevant facilities.

The Sub-Committee on Safety of Navigation will co-ordinate the work, while input should also come from the Sub-Committee on Radiocommunications, Search and Rescue (COMSAR) and the Marine Environment protection Committee (MEPC).

PROVISION OF HYDROGRAPHIC SERVICES COLLECTING AND FORWARDING OF T

New SOLAS Chapter V, due to enter into force on 1 July 2003 includes a regulation (nr. 9) on hydrographic services according to which contracting Governments undertake to arrange for the collection and compilation of hydrographic data and the publication, dissemination and keeping up to date of all nautical information necessary for safe navigation. In particular Governments are requested to prepare and issue nautical charts, sailing directions, lists of lights, tide tables and other nautical publications, where applicable, satisfying the need of safe navigation. They should also promulgate notice to mariners in order that nautical charts and publications are kept, as far as possible up to date. Regulation 9 also requires that Governments provide data management arrangement to support these services. Contracting Governments should in accordance to paragraph 2 of new regulation 9 undertake to ensure the greatest possible uniformity in charts and nautical publications and to take into account, whenever possible, relevant international resolutions and recommendations.

In order to help full implementation of new SOLAS regulation V (9) the International Hydrographic Organization (IHO) in liaison with the IMO Secretariat, has prepared a draft revised text of resolution A.532 (13) adopted in 1983 by the IMO Assembly. The draft Assembly resolution on provision of hydrographic services will be considered by the IMO Assembly at its 23rd. session to be held in November-December 2003.

The draft recommends that Governments take all necessary measures to arrange for or encourage the prompt transmission of new hydrographic information to the International Hydrographic Bureau or to the hydrographic authorities in those countries which issue charts covering waters off their shores and otherwise ensure the earliest and widest dissemination of hydrographic information. It also invites Governments ensure that hydrographic surveying is carried out, as far as possible, adequate to the requirements of safe navigation and according to the hydrographic survey standards established by the IHO. Governments are also invited to:

prepare and issue nautical charts, sailing directions, lists of lights, tide tables and other nautical publications, where applicable, satisfying the needs of safe navigation taking into account the appropriate resolutions and recommendations adopted by the IHO;

promulgate notices to mariners in order that nautical charts and publications are kept, as far as possible, up to date;

provide data management arrangements to support these services;

promote, through their national maritime administrations, the use of Electronic Chart Display and Information Systems (ECDIS) together with official Electronic Navigational Charts (ENCs);

co-operate with other Governments having little or no hydrographic capabilities as appropriate in the collection and dissemination of hydrographic data;

promote in consultation with, and with the assistance of, the Organization and the International Hydrographic Organization support for a Government which may request technical assistance in hydrographic matters; and

establish Hydrographic Offices, where they do not exist, in consultation with the IHO.

PROPOSED IMO MODEL AUDIT SCHEME

At its 76th session the MSC agreed a list of safety and security critical areas for the proposed IMO Model Audit Scheme. These would include Member States duties with respect to the following instruments: the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended; the International Convention on Load Lines, 1966 (LL 66), as amended; the International Convention on Standards of Training, Certification and Watchkeeping (STCW) for Seafarers, 1978, as amended; the Convention on the International Regulations for Preventing Collisions at Sea, 1972, (COLREG 72), as amended; the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69) and the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

Consideration should be given to the inclusion in the Scheme of responsibilities of Member States with respect to maritime security based on measures adopted by the Diplomatic Conference on Maritime Security. In addition, development of the proposed Scheme should also take account of ongoing work within the FSI Sub-Committee relating to the Self Assessment Forms and proposed amendments to resolution A.847(20) on Guidelines to assist flag States in the implementation of IMO instruments.

The proposed IMO Model Audit Scheme would be designed to help promote maritime safety and environmental protection by assessing how effectively Member States implement and enforce relevant IMO Convention standards, and by providing them with feedback and advice on their current performance.

The MSC agreed to a joint MSC/Marine Environment Protection Committee (MEPC)/Technical Co-operation Committee (TCC) Working Group on the voluntary IMO Model Audit Scheme, to meet during the MSC's 77th session in mid-2003.

LIABILITY AND COMPENSATION FOR DAMAGE TO SEA PASSENGERS AND THEIR LUGGAGE

Compulsory insurance to cover passengers on ships will become international law and limits of liability will be raised under amendments to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, adopted at a diplomatic conference held from 21 October to 1 November at IMO Headquarters in London.

The amendments to the Convention are contained in the 2002 Protocol to the Athens Convention.

For some time now it had been recognized that the limits of liability in the 1974 Convention were no longer adequate to meet the needs of the international community. An 1990 Protocol, in the eyes of many States, suffered from the same defect. Therefore it never entered into force.

The new protocol instrument will remedy this deficiencies by providing for adequate compensation for death and personal injury claims and claims for loss of or damage to luggage and vehicles.

As well as raising limits of liability for passenger claims, the Protocol also introduces other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims.

The limits contained in the Protocol set a maximum limit, empowering – but not obliging – national courts to compensate for death, injury or damage up to these limits.

The Protocol also includes an “opt-out” clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers who are subject to the jurisdiction of their courts.

The 2002 Protocol will enter into force 12 months after being accepted by 10 States,

A new Article 4bis of the Convention requires carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the Convention in respect of the death of and personal injury to passengers.

The limit of the compulsory insurance or other financial security shall not be less than 250,000 Special Drawing Rights (SDR) (about US\$325,000) per passenger on each distinct occasion. Ships are to be issued with a certificate attesting that insurance or other financial security is in force and a model certificate is attached to the Protocol in an Annex.

The limits of liability have been raised significantly under the Protocol, to reflect present day conditions and the mechanism for raising limits in the future has been made easier. The liability of the carrier for the death of or personal injury to a passenger is limited to 250,000 SDR (about US\$325,000) per passenger on each distinct occasion.⁶

The carrier is liable, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If the loss exceeds the limit, the carrier is further liable - up to a limit of 400,000 SDR (about US\$524,000) per passenger on each distinct occasion - unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect lies with the claimant.

The liability of the carrier only includes loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, lies with the claimant.

The Protocol allows a State Party to regulate by specific provisions of national law the limit of liability for personal injury and death, provided that the national limit of liability, if any, is not lower than that prescribed in the Protocol. A State Party, which makes use of this option is obliged to inform the IMO Secretary-General of the limit of liability adopted or of the fact that there is none.

The liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR (about US\$2,925) per passenger, per carriage.

- liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12,700 SDR (about US\$16,250) per vehicle, per carriage.
- liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR (about US\$4,390) per passenger, per carriage.
- The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR in the case of damage to a vehicle

and not exceeding 149 (about US\$220) SDR per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

The Protocol introduces a new procedure for amending the limits of liability under the Convention, so that any future raises in limits can be achieved more readily. Under the 1974 Convention, limits can only be raised by adopting amendments to the Convention which require a specified number of States' acceptances to bring the amendments into force. This has meant, for example, that the 1990 Protocol, which was intended to raise the limits, has not yet entered into force and indeed is being superseded by the 2002 Protocol.

The 2002 Protocol therefore introduces a tacit acceptance procedure for raising the limits of liability. A proposal to amend the limits, as requested by at least one-half of the Parties to the Protocol, would be circulated to all IMO Member States and all States Parties and would then be discussed in the IMO Legal Committee. Amendments would be adopted by a two-thirds majority of the States Parties to the Convention as amended by the Protocol present and voting in the Legal Committee, and amendments would enter into force 18 months after its deemed acceptance date. The deemed acceptance date would be 18 months after adoption, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the IMO Secretary-General that they do not accept the amendment.

For the first time in an IMO Convention, a regional economic integration organization may sign up to the Protocol. An article in the Protocol states that a Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to the Protocol. A Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.

The Protocol states that Articles 1 to 22 of the Convention, as revised by the Protocol, together with Articles 17 to 25 of the Protocol and the Annex thereto, shall constitute and be called the **Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002**.

States who ratify the 2002 Protocol are required to denounce the 1974 Convention and its 1976 and 1990 Protocols, if they are Party to the 1974 Convention and those Protocols.

The Conference adopted the following resolutions:

Conference Resolution 1 - Regional Economic Integration Organizations

The resolution notes that the 2002 Protocol to the Athens Convention allows Regional Economic Integration Organizations and their sovereign Member States to become parties to the Protocol and recognizes that States may, in the future, establish or become Members to various forms of regional economic integration organizations to which they may opt to transfer competencies or functions governed by treaties and

exercise these in a shared manner. The resolution requests IMO to carry out a study of the issue, and, if found necessary, to develop appropriate provisions which may be considered in new treaties it may develop, or in amendments to existing treaties, when there will be a need for such provisions to be included so as to enable present and future regional economic integration organizations and their Member States to become parties to such treaties.

Conference Resolution 2 - Certificates of insurance or other financial security and ships flying the flag of a State under the terms of a bareboat charter registration

The resolution addresses the fact that a number of States allow ships to fly their flag under the terms of bareboat charter, through which the bareboat charterer assumes all the duties and responsibilities of the owner for the operation of the ship whilst the ownership and encumbrances remain registered in another State which suspends the right of the ship to fly its flag. The resolution requests IMO to carry out a study of the issuing of certificates of insurance or financial security in these cases and, if found necessary, to develop appropriate guidelines.

Conference Resolution 3 - Framework of Good Practice with respect to carriers' Liabilities

The resolution requests IMO to develop appropriate guidelines on the provision of insurance or financial security for compensation for claims for death of or personal injury to passengers which will establish an appropriate framework of good practice to ensure that all carriers take steps to maintain full insurance or financial security to meet their full level of liability provided for in the Protocol.

DRAFT CONVENTION ON WRECK REMOVAL

The Legal Committee of IMO at its 85th session held respectively October 2002, considered submissions on the result of intersessional consultations regarding the development of the draft wreck removal convention (DWRC), the relationship between the draft convention and the Intervention Convention and a proposal to reinstate the definition of "flag State" throughout the draft. It also considered other pending issues in the draft convention including financial liability for locating, marking and removing wrecks, evidence of financial security, measures to facilitate the removal of wrecks, and the question of whether a State would be deemed to give advance consent to the exercise by a coastal State of authority to remove wrecks, where this was not otherwise permitted under international law.

In the course of its discussion on financial security, the Committee considered whether the term "act of terrorism" should be expressly included in the draft. The matter was referred back to the Working Group with the instruction that account was to be taken of the insurance implications and to investigate whether the solution might lie in excluding the word "wholly" from draft article 11(1)(b).

The Committee approved in principle the contents of article 12, which aimed at ensuring that the DWRC did not overlap and conflict with other liability regimes. The Committee also broadly supported the inclusion of article 10 on measures to

facilitate the removal of wrecks but noted the diverging views on whether to replace the expression “State of the ship’s registry” with “flag State” as well as with regard to the power of the Coastal State to remove wrecks.

A debate was held on the contents of Article 13 regulating financial security. The Committee invited the representative of the International Group of P&I Clubs to submit a written proposal on the features and extent of the evidence of financial security, covering in particular, the effect of a valid Certificate of Entry in a Club Member.

The Committee decided to delete Article 2(4), in terms of which a State would be deemed to give advance consent to coastal States to rescue wrecks where this was not otherwise permitted under international law.

The Committee deferred consideration of several issues under discussion to a Working Group. In connection with measures to facilitate the removal of wrecks, the Working Group requested the Secretariat to prepare a document on the mandate of the IMO to regulate the coastal State’s intervention powers in the EEZ, within the framework of international law, including UNCLOS.

OTHER AMENDMENTS TO SOLAS ADOPTED 2002

During the 75th session of the MSC, the Committee expanded to include all Parties to SOLAS adopted the following amendments to this treaty.

Making the IMDG Code mandatory - the amendments to SOLAS VII (Carriage of Dangerous Goods) make the International Maritime Dangerous Goods Code (IMDG Code) mandatory. The MSC also adopted the IMDG Code in a mandatory form.

However, as the MSC has agreed, the provisions of the following parts of the Code will remain recommendatory:

- chapter 1.3 (Training);
- chapter 2.1 (Explosives, Introductory Notes 1 to 4 only);
- chapter 2.3, section 2.3.3 (Determination of flashpoint only);
- chapter 3.2 (columns 15 and 17 of the Dangerous Goods List only);
- chapter 3.5 (Transport schedule for Class 7 radioactive material only),
- chapter 5.4, section 5.4.5 (Multimodal dangerous goods form), insofar as layout of the form is concerned;
- chapter 7.3 (Special requirements in the event of an incident and fire precautions involving dangerous goods only).

In practice, this means that from the legal point of view, the whole of the IMDG Code is made mandatory, but provisions of recommendatory nature are editorially expressed in the Code (e.g. using the word “should” instead of “shall”) to clarify their status.

The mandatory IMDG Code incorporates certain changes relating to specific products, as well as relevant elements of the amendments to the UN

Recommendations on the Transport of Dangerous Goods, Model Regulations adopted by the UN Committee of Experts on the Transport of Dangerous Goods at its twenty-first session in Geneva from 4 to 13 December 2000.

The mandatory IMDG Code will take effect on 1 January 2004, but the MSC agreed that Contracting Governments to SOLAS may apply the IMDG Code in whole or in part on a voluntary basis as from 1 January 2003.

Updates to Chapter IV - Radiocommunications – The amendments to this chapter relate to changes following the full implementation of the Global Maritime Distress and Safety System (GMDSS) on 1 February 1999, which renders some of the provisions relating to implementation dates in the current chapter IV superfluous.

The amendments also state that a listening watch on VHF Channel 16 for distress and safety purposes should continue until 2005.

Carriage requirement for IAMSAR Manual – The amendment to Chapter V – Safety of Navigation, requires ships to carry an up-to-date copy of Volume III of the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual.

The MSC also adopted amendments to the **1988 Protocol** to SOLAS, 1974, relating to updates to the Record of Equipment for the Passenger Ship Safety Certificate (Form P); Record of Equipment for the Cargo Ship Safety Radio Certificate (Form R); Record of Equipment for the Cargo Ship Safety Certificate (Form C).

III

MARINE POLLUTION FROM VESSELS' SOURCE

PARTICULARLY SENSITIVE SEA AREAS (PSSA) AND SPECIAL AREAS UNDER MARPOL

A Particularly Sensitive Sea Area (PSSA) is an area that needs special protection through action by IMO because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage by international maritime activities.

In Annexes I, II and V, MARPOL 73/78 defines certain sea areas as "special areas" in which, for technical reasons relating to their oceanographical and ecological condition and to their sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required. Under the Convention, these special areas are provided with a higher level of protection than other areas of the sea.

The criteria for the identification of particularly sensitive sea areas and the criteria for the designation of special areas are not mutually exclusive. In many cases a Particularly Sensitive Sea Area may be identified within a Special Area and vice versa. When an area is approved as a particularly sensitive sea area, specific measures can be used to control the maritime activities in that area, such as routing measures, strict application of MARPOL discharge and equipment requirements for ships, such as oil tankers; and installation of Vessel Traffic Services (VTS).

The IMO Marine Environment Protection Committee (MEPC) at its 47th session adopted resolutions granting Particularly Sensitive Sea Area (PSSA) status to:

1. Malpelo Island proposed by Colombia; and
2. Around the Florida Keys proposed by the United States.

The other two PSSAs already adopted by IMO are the Great Barrier Reef, Australia and the Sabana-Camagüey Archipelago in Cuba.

At its 48th session the MEPC agreed to designate the Wadden Sea area in Northern Europe as a PSSA. The Committee also agreed, in principle, to designate the Paracas National Reserve in Peru as a PSSA, pending consideration of a separate proposal from Peru for an "Area to be Avoided" by the NAV Sub-Committee and approved by the Maritime Safety Committee.

The Committee also agreed to issue a circular containing a guidance document to help Member States in preparing proposals for areas to be designated as PSSAs. The guidance contains a framework of what needs to be included in a proposal.

At the same session the MEPC agreed that the Oman Area of the Arabian Sea be designated as a Special Area under Annex I of MARPOL 73/78, which is expected to be adopted by MEPC 49 in July 2003.

BALLAST WATER

Ballast water management is to become a major consideration in the design of new vessels following the approval by IMO of a series of measures aimed at reducing the harmful effects of marine organisms transported in ballast water and the risks involved in some ballast water management techniques.

The 47th session of the MEPC approved a Circular containing a raft of design suggestions for ballast water and sediment management options in new ships. As a fundamental principle, the Circular states that ballast water management and the processes chosen to achieve it should be considered as a basic component of a ship's design and that ballast tank design should facilitate all aspects of ballast water management.

Installation of recording equipment should be considered for all ballast water operations and treatment actions and it should be possible for these records to be readily available to appropriate authorities that may request copies.

The Circular goes on to state that ballast water system designs should take special account of the increased need for content sampling, with an aim to enhancing the quality and ease of sampling of ballast water and sediments, without the need to enter potentially dangerous spaces or to partially fill ballast tanks.

Where ballast water exchange at sea is the chosen method, the overall design, strength and stability of the ship should be sufficient to permit its execution on all ballast voyages and in all except severe weather conditions. For the guidance of the master, the maximum sea state and swell conditions identified by the builder, if any, in which ballast water exchange can safely be carried out should be recorded in a Ballast Water Management Plan, which should be created for every ship. This plan should give guidance on safe and effective operation of the various ballast water management and treatment options that are considered appropriate for the ship.

The design of the ship should include consideration of the consequences of ballast water exchange at sea including: stability, hull girder strength, shear forces, resonance, sloshing, stemming, propeller immersion, limitations brought about by insufficient strength in various parts of the ship when the tanks are sequentially emptied and appropriate strengthening incorporated to allow this operation to be conducted safely.

A draft international convention for the control and management of ships' ballast water and sediments as well as associated guidelines for its implementation is being developed for consideration and adoption by a diplomatic conference scheduled for 2003. However, until this convention is adopted and enters into force, IMO Member Governments should apply the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens, adopted by resolution A.868(20) in 1997 and also the guidance contained in the Circular mentioned above. Governments are invited to bring the guidance to the attention of attention of ship-builders, ship-owners, shipmasters and other parties concerned.

A Working Group at MEPC 47 further developed a draft text of the proposed convention. In particular, the Group developed a section on Special Requirements in Certain Areas and developed text for the criteria for establishing a ballast water discharge control area, and requirements for ships discharging ballast water within such areas. However, the text is very much provisional until decisions have been taken regarding the choice of one or more ballast water treatment standards. If these special requirements – so-called “Tier 2” requirements – are agreed, these would come on top of the general requirements – “Tier 1” – applicable to all ships carrying ballast water.

A key part of the convention will be to agree on standards, which should guide the development of ballast water treatment techniques. These techniques should be applied on board a vessel and should be: (1) safe for the ship and crew; (2)

environmentally acceptable; (3) practical; (4) cost effective; and (5) biologically effective.

The Committee concurred with the Working Group that the ballast water exchange standard would be one of the tools within the legal instrument, alongside one or more treatment standards. There will be provision for the review of both ballast water exchange and treatment standards based upon submissions to the Organization in view of developing technology.

The Working Group agreed that only a 100% removal or inactivation standard can be guaranteed to be effective in eliminating the transfer of unwanted organisms and pathogens, but that standards based on a lesser percentage have an unquantifiable benefit. A large proportion of the Group was of the opinion that a 95% reduction would achieve a worthwhile reduction of risk and would be a practicable and achievable solution in the medium term. Others were concerned that this was not a scientifically supportable conclusion.

The Committee agreed to re-establish the Correspondence Group on ballast water management to carry out a detailed comparative assessment of each of the proposed standards, taking into account the various technologies that might be used to achieve these standards and all other relevant factors and considerations, with particular attention to practicality, biological effectiveness, cost-benefit and the timeframes within which the standards could practically be implemented; and to prepare a report with recommendations that will enable the Committee to decide on the standards that should be included in the text of the Convention.

The GEF/UNDP/IMO GloBallast Programme (see <http://globallast.imo.org/>) is partly aimed at helping Member States to prepare in advance so that they will be in a position to implement fully the provisions of the Convention when it enters into force.

The following activities under the GEF/UNDP/IMO GloBallast Programme have been carried out since MEPC 46 in April 2001:

- 1 Port Baseline Surveys have been completed successfully in all the six demonstration sites (Sepetiba, Brazil; Dalian, China; Mumbai, India; Kharg Island, Iran; Saldanha, South Africa; Odessa, Ukraine).
- 2 The legislative review under the Programme has been completed and the final report, including the outcome of the 1st International Workshop on Legal Aspects of Ballast Water Management and Control, held in November 2001, and hosted by the World Maritime University (Malmö, Sweden), will be available shortly;
- 3 Substantial progress has been made in fostering regional co-operation at each demonstration site. The most significant achievement in regional cooperation has been the establishment of the Regional Project Task Force in the Black Sea region. During the Black Sea Conference on Ballast Water Management and Control, held in October 2001, the six coastal states involved adopted a Resolution to approve the Regional Action Plan and to urge IMO, UNDP and GEF to secure continuation of the GloBallast Programme within the timeframe

- needed to ensure a seamless implementation of the forthcoming IMO Convention; and
- 4 In January 2002, at the Global Project Task Force Meeting in Goa (India), all the six pilot countries expressed strong support for the extension of the GloBallast Programme by one year.

The priorities of the GloBallast Programme during the coming months include initiation of risk assessment activities in all the pilot countries and continuing of regional co-operation focusing on the replication of the experience achieved through the Kharg Island demonstration site for the ROPME Sea Area in the other countries of the region.

The Committee is to recommend to the IMO Council that a Diplomatic Conference be convened in early 2004 to adopt a draft convention on ballast water management, following substantial progress made on the issue at this meeting and at the intersessional working group on the subject that had met prior to MEPC.

Among the outstanding issues to be resolved was the development of appropriate standards for ballast water treatment. At the previous meeting of the MEPC, 14 separate options had been developed. These have now been reduced to just two options for short term standards and a single option for long term standards which is linked to what the draft Convention is trying to achieve, a substantial reduction in the risk of transfer of harmful aquatic organisms through ballast water.

SHIP RECYCLING

IMO's role in the recycling of ships, the terminology used to refer to ship scrapping, was first raised at the 44th MEPC session in March 2000 following which a correspondence group was established to research this issue and provide a range of information about current ship recycling practices and suggestions on the role of IMO.

At its 47th session the MEPC reviewed the issue of ship recycling and generally agreed that IMO has an important role to play in ship recycling, including developing measures covering the preparation of a ship before recycling commences, and a co-ordinating role in relation to the International Labour Organization (ILO) and the Basel Convention (on the Control of Transboundary Movements of Hazardous Waste and Their Disposal) in recycling matters.

The MEPC agreed that IMO, for the time being, should develop recommendatory guidelines to be adopted by an Assembly resolution. The MEPC agreed to use as a basis for the guidelines the "Industry Code of Practice", which was developed by an Industry Working Party on Ship Recycling.

At its 48th session the MEPC discussed in detail draft IMO Guidelines on ship recycling were discussed in detail, with a view to producing a final draft for adoption by the next IMO Assembly in 2003.

The draft guidelines note that, in the process of recycling ships, virtually nothing goes to waste. The materials and equipment are almost entirely reused. Steel is

reprocessed to become, for instance, reinforcing rods for use in the construction industry or as corner castings and hinges for containers. Ships' generators are reused ashore. Batteries find their way into the local economy. Hydrocarbons on board become reclaimed oil products to be used as fuel in rolling mills or brick kilns; light fittings find further use on land etc. Furthermore, new steel production from recycled steel requires only one third of the energy used for steel production from raw materials. Recycling makes a positive contribution to the global conservation of energy and resources and, in the process, employs a large, if predominantly unskilled, workforce. Properly handled, ship recycling is, without question, a "green" industry.

However, the guidelines recognize that, while the principle of ship recycling may be sound, the working practices and environmental standards in the yards often leave much to be desired. While ultimate responsibility for conditions in the yards has to lie with the countries in which they are situated, other stakeholders must be encouraged to contribute towards minimising potential problems in the yards.

The guidelines have been developed to give advice to all stakeholders in the recycling process, including administrations of ship building and maritime equipment supplying countries, flag, port and recycling states, as well as intergovernmental organizations and commercial bodies such as shipowners, ship builders, repairers and recycling yards.

The concept of a "Green Passport" for ships is included in the guidelines. It is envisaged that this document, containing an inventory of all materials potentially hazardous to human health or the environment, used in the construction of a ship, would accompany the ship throughout its working life. Produced by the shipyard at the construction stage and passed to the purchaser of the vessel, the document would be in a format that would enable any subsequent changes in materials or equipment to be recorded. Successive owners of the ship would maintain the accuracy of the Green Passport and incorporate into it all relevant design and equipment changes, with the final owner delivering it, with the vessel, to the recycling yard.

The MEPC agreed to refer certain key outstanding issues to various IMO Sub-Committees for further consideration.

The Ship Design and Equipment Sub-Committee (DE) and the Sub-Committee on Bulk Liquids and Gases (BLG) will be asked to produce a list of potentially hazardous materials which might be found on board ships. Such materials may be inherent in the structure of the vessel or its equipment, carried as stores or spares or generated during the normal operations of the vessel including cargo residues. The Sub-Committee on Flag State Implementation (FSI) will be asked to look into the possible future need to examine the issue of last voyages and port State control.

GREENHOUSE GAS EMISSIONS

During the 47th session of the MEPC an MEPC Working Group considered issues relating to greenhouse gas emissions during the session. Although their contribution is relatively small, ships nevertheless do emit greenhouse gases and, because they operate worldwide, IMO has been specifically requested to deal with emissions from

ships under the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC).

Following discussion in the Working Group and in plenary, the MEPC agreed to establish a Correspondence Group to collate information received and prepare an IMO Strategy/Policy on greenhouse gas emissions from ships. This would include development of a draft Assembly resolution on the matter.

The Working Group noted that one approach included the idea of an environmental indexing system for ships, to assess an individual ship's environmental performance in relation to greenhouse gas emissions. The Committee agreed that the idea provided a basis for future work.

At its 48th session the Committee made progress in developing a draft Assembly resolution on greenhouse gas emissions from ships and invited Members to submit comments on the draft to the next meeting of the MEPC. The Committee agreed that policy issues on greenhouse gas emission in the context of Article 2.2 of the Kyoto Protocol needed to be resolved before further action was taken on the draft resolution.

In its draft form the resolution urges the MEPC to identify and develop the mechanism or mechanisms needed to achieve the limitation or reduction of GHG emissions from international shipping, and in doing so give priority to the establishment of a GHG emission baseline, the development of a methodology to describe the GHG-efficiency of a ship expressed as a GHG-index for that ship, recognizing that CO₂ is the main greenhouse gas emitted by ships. It also calls for the establishment of Guidelines by which the GHG emission index may be applied in practice. The Guidelines would take into account related cost-benefit evaluations and verification procedures and be based on an evaluation of technical, operational and market-based solutions.

It also calls for Governments, in co-operation with the shipping industry, to promote and implement voluntary measures to limit or reduce GHG emissions from international shipping, when the GHG emission indexing scheme is developed by the Marine Environment Protection Committee.

HARMFUL EFFECTS OF THE USE OF ANTI-FOULING PAINTS FOR SHIPS

At its 48th session the MEPC considered follow-up action to the adoption in October 2001 of the International Convention on the control of harmful anti-fouling systems on ships. Under the terms of the new Convention, Parties to the Convention are required to prohibit and/or restrict the use of harmful anti-fouling systems on ships flying their flag, as well as ships not entitled to fly their flag but which operate under their authority and all ships that enter a port, shipyard or offshore terminal of a Party.

The MEPC requested the Flag State Implementation (FSI) Sub-Committee to urgently develop the following guidelines as a matter of urgency, as required by the Convention:

1. Guidelines for brief sampling of ships anti-fouling systems;

2. Guidelines for inspection of ships anti-fouling systems; and
3. Guidelines for survey.

The MEPC requested the FSI Sub-Committee to give priority to the development of the Guidelines on Surveys of Anti-fouling Systems which should be finalized by the end of 2002.

The harmful environmental effects of organotin compounds were recognized by IMO in 1989. In 1990 IMO's Marine Environment Protection Committee (MEPC) adopted a resolution which recommended that Governments adopt measures to eliminate the use of anti-fouling paint containing TBT on non-aluminium hulled vessels of less than 25 metres in length and eliminate the use of anti-fouling paints with a leaching rate of more than four microgrammes of TBT per day.

In November 1999, IMO adopted an Assembly resolution that called on the MEPC to develop an instrument, legally binding throughout the world, to address the harmful effects of anti-fouling systems used on ships. The resolution called for a global prohibition on the application of organotin compounds which act as biocides in anti-fouling systems on ships by 1 January 2003, and a complete prohibition by 1 January 2008.

The new convention will enter into force 12 months after 25 States representing 25% of the world's merchant shipping tonnage have ratified it.

Annex I attached to the Convention and adopted by the Conference states that by an effective date of 1 January 2003, all ships shall not apply or re-apply organotin compounds which act as biocides in anti-fouling systems.

By 1 January 2008 (effective date), ships either:

- (a) shall not bear such compounds on their hulls or external parts or surfaces; or
- (b) shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems.

This applies to all ships (excluding fixed and floating platforms, floating storage units (FSUs), and Floating Production Storage and Offtake units (FPSOs)).

The MEPC noted information provided by the delegate of the European Commission that a ban on the marketing of organotin-based anti-fouling systems would come into force in all 15 EU Member States starting on 1 January 2003.

INADEQUACY OF RECEPTION FACILITIES

At its 47th session MEPC discussed the issue of inadequate reception facilities for waste (such as oily waste or garbage) in view of the small number of official reports on alleged lack of adequate reception facilities received each year, despite the evidence from industry organizations, which receive reports from their members, that the provision of adequate facilities in many ports is apparently lacking.

The MEPC agreed to further consider implementation of the reporting mechanism of inadequate reception facility at MEPC 48 in October 2002.

The MEPC also strongly encouraged the Member States, particularly those Parties to MARPOL 73/78 as port States, to fulfil their treaty obligations on providing adequate reception facilities.
