

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

(Assembly resolution A/RES/58/240)

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 30 December 2003, this contribution focus on major developments on ocean issues within the areas of competence of IMO during the year 2003.

Issues have been selected bearing in mind the outcome of the 5th. 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 2003 IMO continued focusing its activities on the adoption and implementation of international rules and standards for the safety of navigation, prevention of the pollution of the marine environment from vessels' source, and maritime security. 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:

- 163 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 125 and 147 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.

An updated 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. The main objective of the study is to explain how 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.

¹ LEG/ MISC/3/Rev.1 dated 6 January 2003

II

SAFETY OF NAVIGATION

MARITIME SECURITY

In paragraph 34 of resolution 58/240, the General Assembly invites the International Maritime Organization to strengthen its functions with regard to port State control in relation to safety and pollution standards as well as maritime security regulations.

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.

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 amendments would enter into force on 1 July 2004.

AMENDMENTS TO THE SUA TREATIES

Paragraph 38 of resolution 58/240 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 to strengthen the means of combating such unlawful acts, including terrorist acts, and further urges States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea.

The Legal Committee continued its consideration of a draft protocol to the SUA Convention and Protocol submitted by the United States as lead country for an

intersessional Correspondence Group. This revised draft protocol had been prepared on the basis of the Committee's deliberations at its previous session and contributions received from the members of the Group.

Extensive consideration was given to a new draft article including new offences. The Committee supported the introduction in the *chapeau* of a terrorist motive as a condition for incrimination. The Committee discussed the merits and shortcomings of the various options in connection with offences consisting of actions involving discharges and transport of dangerous material or substances and concluded that for the next session it would be necessary to reduce the number of options so as to make some clear choices.

Several delegations questioned the notion of "transports" in several provisions of the draft as being too imprecise for the purposes of criminal prosecution which requires a high degree of precision. With respect to "environmental damage" there was a conflict of opinion within the Committee, with some delegations suggesting that environmental damage could be considered as part of the wider concept of damage to property. Other delegations insisted however that this notion should be maintained, so as to cover cases such as ecological terrorism, which exceeds the notion of damage to property.

The Committee unanimously reaffirmed its concerns about the safety of international shipping and the proliferation of weapons of mass destruction (WMD). The view was expressed, in particular, that the inclusion of this paragraph in the SUA treaties could result in undue restrictions on the concept of freedom of navigation. In this connection, there was a general recognition of the need to revise the treaties but, at the same time, to do this in a way that would attract a large number of ratifications. Some delegations were in favour of deleting this paragraph altogether. Those delegations that were ready to accept in principle the introduction of provisions on WMD suggested several modifications. Reference was made to the need to protect the master and crew who under normal circumstances would have no control over, and often be ignorant of the reasons for, the transport of substances carried on board, and who were themselves the subject of contractual obligations.

While there seemed to be general acceptance in the Committee on the need to include provisions concerning boarding in the draft protocol, it was clear that the present draft text would require substantial modification. It was also generally accepted that the principle of flag State jurisdiction must be respected to the utmost extent, recognizing that a boarding by another State on the high seas could only take place in exceptional circumstances. Several options were considered in this regard.

In general there was support for adding a reference to human rights. However, further consideration was required. In particular, it was noted that the proposal required application of human rights law only under the law of the State in the territory of which the person in custody is present, though in the draft protocol the issue might also arise in situations when a ship is boarded on the high seas.

The Committee briefly considered draft final clauses prepared by the Secretariat and noted the need to take several decisions previous to decide on a final

text. In particular, a decision was needed on whether a tacit amendment process was appropriate for amending the Annex in the draft protocol, and secondly on whether, if such a process was introduced, the process should be along the lines set out in the current draft or follow the formula used in other IMO Conventions. The Committee noted that the tacit amendment process had been employed in IMO instruments for some time for amending technical matters, and, more recently, for amending limitation amounts in liability and compensation conventions.

PIRACY AND ARMED ROBBERY AGAINST SHIPS

General

During the period under review, the Committee continued monitoring developments concerning piracy and armed robbery against ships on the basis of statistical information, progress in the implementation of the anti-piracy projects run by the Organization and devised plans for future action, as outlined in the following paragraphs.

Statistical information

Based on statistical information provided by the Secretariat at MSC 77, the Committee noted that the number of acts of piracy and armed robbery against ships, which had occurred during the calendar year of 2002, as reported to the Organization, amounted to 383 representing an increase of nearly 4% over the annual figure for 2001. This brought the total number of incidents of piracy and armed robbery against ships, reported to have occurred from 1984 to the end of March 2003, to 3,041.

In further considering the statistical information for the period between 1 January and 31 December 2002, MSC 77 noted with deep concern that twelve ships had been hijacked and eight ships had gone missing. From the reports received, it had also emerged that the areas most affected in 2002 (i.e. five incidents reported or more) were the Far East, in particular the South China Sea and the Malacca Strait, South America and the Caribbean, the Indian Ocean and West and East Africa. Over the same year, the number of acts reported to have occurred or to have been attempted had increased from 2 to 3 in the Mediterranean Sea, from 120 to 140 in the South China Sea, from 23 to 67 in South America and the Caribbean and from 22 to 24 in East Africa. However, it had decreased from 58 to 47 in West Africa, from 58 to 34 in the Malacca Strait and from 86 to 66 in the Indian Ocean, over the 2001 figures. Most of the attacks worldwide were reported to have occurred or to have been attempted in the territorial waters of the coastal States concerned while the ships affected were at anchor or berthed. The Committee was particularly concerned to note that, during the same period, ship crews had been violently attacked by groups of five to ten people carrying knives or guns. During the same period, six crew members of the ships involved had been killed, fifty had been wounded, thirty-eight had been reported missing and another thirty-eight had been thrown overboard (although they were later rescued) in the reported incidents.

To ensure the protection of ships and crew from piracy and armed robbery attacks, the Committee, at MSC 77, invited Member Governments, especially those

with responsibility for identified high risk areas, to promulgate appropriate security advice to port facilities within their territory, as well as to ships prior to entering a port or whilst in a port within their territory (as required by the new SOLAS regulation XI-2/3).

The Committee, having observed that, although after the 11 September 2001 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, urged, once again, all Governments and the industry to intensify their efforts to eradicate these unlawful acts.

Implementation of the anti-piracy project and co-ordinated plan of action for future activities

At MSC 76, the delegation of the United Kingdom, supported by other delegations, outlined the need for the Organization to assess the progress made so far in the implementation of the 1998 anti-piracy project following the conclusion of the assessment and evaluation mission phase to Singapore, Guayaquil (Ecuador) and Accra (Ghana) undertaken in 2001 and 2002 and to develop a co-ordinated plan of action for future activities to tackle piracy and armed robbery against ships through the conclusion of regional agreements. The Committee endorsed that proposal and, at MSC 77, considered a submission by the Secretariat outlining a co-ordinated plan of action for future activities to prevent and suppress piracy and armed robbery against ships.

REGIONAL AGREEMENTS AND SUB-REGIONAL AND REGIONAL MEETINGS

At MSC 77, the Committee, having received the report on a regional Meeting the Secretariat had organized in Accra in March 2003, considered and endorsed the Secretariat plans to organize a meeting for South American and Caribbean countries in September 2003 and later on another meeting for the Asia and Pacific region to update participants on the initiatives taken in other parts of the world and the progress which had been achieved therein; and to promote the conclusion of regional agreements/MoUs on the prevention and suppression of piracy and armed robbery against ships in the regions concerned.

TECHNICAL ASSISTANCE

MSC 76 was informed by the Secretariat that, following completion of the second phase of the anti-piracy project, the Secretariat was consulting with Governments interested in receiving technical assistance and was also co-ordinating missions to countries which were expected to request such assistance, using, for this purpose, the answers to the questionnaires handed over to the participants to the Singapore, Guayaquil and Accra Meetings.

Subsequently, the Committee noted that, through an analysis of the outcome of the aforementioned three Meetings, a number of commonalities had been identified and also that a number of countries had requested additional technical assistance to enable them to take measures to prevent and suppress acts of piracy and armed robbery against ships in their waters. Such assistance could be in the form of expert

assessment and advisory services as well as in the form of national seminars and workshops for training purposes.

At MSC 77, the Committee also endorsed, in addition to the sub-regional/regional meetings referred to above, the Secretariat plans to undertake, in agreement with, and upon request by, countries concerned, expert missions to other regions of the world; and agreed that IMO should continue to take the lead in the proposed development of regional co-operation activities and agreements/arrangements.

PERSONS RESCUED AT SEA

MSC 77 noted that the United Nations General Assembly resolution 57/141 on Oceans and the Law of the Sea, in operative paragraph IX.34, had welcomed the initiatives by the International Maritime Organization, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration to address the issue of the treatment of persons rescued at sea.

MSC 77 considered the actions taken by the Sub-Committee on Radiocommunications and Search and Rescue (COMSAR) at its seventh session and a new proposal on "safeguard provisions" for inclusion in the SAR and SOLAS Conventions, which would assure shipmasters that they would be permitted and able to deliver persons rescued at sea to a place of safety in some suitable State in all cases and circumstances.

The Secretariat informed MSC 77 of a recent communication with UNHCR on the issue of the latter updating, possibly in co-operation with IMO, their guidelines to masters and the understanding reached between the two organizations that such an exercise could be undertaken after IMO had decided on the regulatory regime which would govern the treatment of persons rescued at sea, presumably through the contemplated amendments to the SOLAS and SAR Conventions.

The Secretariat further clarified that the purpose of the inter-agency initiative launched by the Secretary-General in 2001 was to create a mechanism of co-operation and co-ordination among the United Nations agencies and programmes involved to respond to emergency situations in a co-ordinated and consistent manner; and not to seek regulatory arrangements for which the Secretariat had had no mandate and which were the prerogative of Governments party to relevant Conventions such as SOLAS and SAR.

During the debate on the issue some delegations pointed out that more time would be needed to consider the proposed amendments; however, taking into account the importance and complexity of the issue they agreed to consider a proposal jointly submitted by Australia, France, Norway, Sweden, the United Kingdom and the United States providing draft MSC resolutions on adoption of amendments to the SAR and SOLAS Conventions, as a carefully drafted compromise text.

After considerable discussion and, taking into account the various views expressed and comments made by COMSAR 7, MSC 77:

- .1 approved the proposed draft amendments to the SOLAS and SAR Conventions and associated draft MSC resolutions, with a view to adoption at MSC 78;
- .2 established a correspondence group co-ordinated by the United States to prepare draft guidelines based on a proposed outline and report to COMSAR 8; and
- .3 instructed COMSAR 8 to finalize the draft guidelines referred to in the proposed draft amendments to the SOLAS and SAR Conventions and submit them to MSC 78 for appropriate action.

The ninetieth session of the Council congratulated the Maritime Safety, Legal and Facilitation Committees on the significant progress made in their consideration of a complex, complicated and sensitive issue with humanitarian connotations and also congratulated the Secretary-General for progress made in his initiative to seek co-ordination in the response of United Nations specialized agencies and programmes through his inter-agency initiative. The Council decided that the three Committees concerned should continue to work on the subject, that the Secretary-General should pursue his initiative further and that all of them should report progress to the Council in due course.

PLACES OF REFUGE

In paragraph 25 of resolution A/58/240, the General Assembly welcomed the work of the International Maritime Organization in developing guidelines on places of refuge for ships in need of assistance and encourages States to draw up plans and to establish procedures to implement those guidelines for ships in waters under their jurisdiction.

In the aftermath of a number of tanker incidents which had taken place since 1999, the Committee decided to consider the issue of places of refuge mainly from the navigational safety viewpoint and assigned the Sub-Committee on Safety of Navigation (NAV) Sub-Committee as the co-ordinator of the work of all other co-competent sub-committees. The Committee instructed the Sub-Committee to prepare 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.

At MSC 76, the Committee noted the progress the NAV Sub-Committee had made in the preparation of draft Guidelines and authorized that Sub-Committee to submit the final text of the two draft resolutions directly to the 23rd session for the Assembly after it had taken into account any proposals and comments by MSC 77, COMSAR 7, MEPC and the Legal Committee.

MSC 76 also invited the Legal Committee to consider the work in progress from the point of view of issues within its competence and, in particular, with respect to the provision of financial security to cover either expenses which the coastal State might have incurred or to provide adequate compensation to meet any liabilities of the shipowner which might arise. At MSC 77, the Committee noted that, at LEG 86, there had been wide agreement that ships in distress situations were covered by the current liability and compensation regime, i.e. by conventions already in force (such as the 1992 CLC and the 1992 IOPC Fund Conventions) along with others which had not yet entered into force (i.e. HNS, Bunkers and the 1996 LLMC Protocol), as well as those under development (such as the one on Wreck removal and on the Protocol to the 1992 Fund Convention the latter adopted by the May 2002 Conference). The Committee further noted that the Legal Committee had, however, recognized that there might be gaps in the existing regime since not all ships were subject to compulsory insurance requirements and not all States were party to the relevant instruments. LEG 86 had also supported the need for the adoption of guidelines on places of refuge urgently and had agreed that the draft guidelines should contain a caveat stating that the guidelines did not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge. LEG 86 had further agreed to recommend to MSC 77 and NAV 49 the addition of an operative paragraph to the draft Assembly resolution on Guidelines on places of refuge for ships in need of assistance, requesting the Legal Committee to consider, as a matter of priority, the Guidelines from its own perspective, including the provision of financial security to cover coastal State expenses and for compensation issues; and to take action as it might deem appropriate; to refer to the 1992 CLC Convention and the 1973 Intervention Protocol in appendix 2 of the annex to the guidelines containing a list of “international conventions applicable”; and to urge States which had not already done so to implement the existing liability and compensation regimes.

MSC 77 instructed NAV 49 to further amend the draft Guidelines on places of refuge for ships in need of assistance on the basis of decisions made by the Committee and submit the draft resolution, as amended, directly to A 23 for adoption*. It also decided that, for the time being, there was no need to develop an IMO Convention on places of refuge. The Guidelines were subsequently adopted by the Assembly in resolution A.949(23).

PROVISION OF HYDROGRAPHIC SERVICES

New SOLAS Chapter V, which entered 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, prepared a revised resolution A.958 (23) on provision of hydrographic services which was adopted by the IMO Assembly.

The resolution 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

In paragraph 30 of resolution A/58/240, the General Assembly *Encourages* the acceleration of the work of the International Maritime Organization in developing a voluntary model audit scheme and urges the Organization to strengthen its draft implementation code.

At its 23rd session, the IMO Assembly adopted resolution A.946(23) on the Voluntary IMO Member State audit scheme. In this resolution, the Assembly endorsed the decisions of the Council relating to the development of a Voluntary IMO Member State Audit Scheme in such a manner as not to exclude the possibility in the future of it becoming mandatory; approved the establishment and further development of the Voluntary IMO Member State Audit Scheme to be implemented on a voluntary basis; requested the Council to develop, as a matter of high priority, procedures and other modalities for the implementation of the scheme; urged Governments to volunteer to be audited in accordance with the scheme and its principles, when developed, to assist the Organization in its efforts to achieve consistent and effective implementation of IMO instruments, recognizing that the principle of sovereignty should be fully respected; resolved that the process and results of the audits be used for further enhancing the implementation of instruments and for determining technical co-operation assistance needs of audited States that would otherwise be unable to remediate identified shortcomings and enhance further their recognized efforts on critical areas of implementation; and decided that, within the context of resolution A.901(21) on IMO and Technical Co-operation in the 2000s, technical co-operation is provided as appropriate, including capacity-building aspects of the pre and post audit process.

LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

Increased levels of compensation will in future be available for victims of oil pollution from oil tanker accidents, following the adoption of a Protocol establishing an International Oil Pollution Compensation Supplementary Fund by a diplomatic conference held at IMO Headquarters in London.

The aim of the established Fund is to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional, third tier of compensation. The Protocol is optional and participation is open to all States Parties to the 1992 Fund Convention.

The total amount of compensation payable for any one incident will be limited to a combined total of 750 million Special Drawing Rights (SDR) (just over US\$1,000 million) including the amount of compensation paid under the existing CLC/Fund Convention.

The supplementary fund will apply to damage in the territory, including the territorial sea, of a Contracting State and in the exclusive economic zone of a Contracting State.

Annual contributions to the Fund will be made in respect of each Contracting State by any person who, in any calendar year, has received total quantities of oil exceeding 150,000 tons. However, for the purposes of the Protocol, there is a minimum aggregate receipt of 1,000,000 tons of contributing oil in each Contracting State.

The Assembly of the Supplementary Fund will assess the level of contributions based on estimates of expenditure (including administrative costs and payments to be made under the Fund as a result of claims) and income (including surplus funds from previous years, annual contributions and any other income).

The new Fund will come into existence three months after at least eight States have ratified the Protocol, who have received a combined total of 450 million tons of contributing oil. The Protocol will be opened for signature from 31 July 2003.

Amendments to the compensation limits established under the Protocol can be adopted by a tacit acceptance procedure, so that an amendment adopted in the Legal Committee of IMO by a two-thirds majority of Contracting States present and voting, can enter into force 24 months after its adoption.

The Conference adopted three resolutions:

Conference resolution 1: Financing of the International Conference to adopt a Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 - acknowledges that the funding of the International Conference was made available on the understanding that the amount paid to IMO for convening and holding the Conference would be reimbursed, with interest, by the Supplementary Fund to the 1992 Fund, and urges the Contracting States to the Protocol, when it has entered into force, to ensure that the amount paid to IMO is reimbursed by the Supplementary Fund, with interest, to the 1992 Fund.

Conference resolution 2: Establishment of the International Supplementary Fund for Compensation for Oil Pollution Damage - requests the Assembly of the International Oil Pollution Compensation Fund, 1992 (1992 Fund), to authorise and instruct the Director of the 1992 Fund to take on administrative and other functions relating to the setting up of the supplementary Fund; recommends the two Funds to share a single Secretariat and Director; and recommends meetings on 1992 Fund and supplementary Fund to be held simultaneously and in the same place.

Conference resolution 3: Review of the international compensation regime for oil pollution damage for possible improvement - requests the 1992 Fund Assembly to consider enhancements that could be made to the 1992 Liability Convention and the 1992 Fund Convention; urges all Contracting States to the Conventions to place a high priority on ongoing work towards a comprehensive review of the Conventions;

and requests IMO to take action as necessary based on the outcome of the deliberations of the 1992 Fund Assembly.

DRAFT CONVENTION ON WRECK REMOVAL

At its eighty-sixth session, the Legal Committee continued with its consideration of the development of the draft wreck removal convention (WRC). The Committee based its consideration on submissions concerning the results of intersessional consultations which highlighted two major issues which required resolution by the Committee, namely, jurisdiction in respect of the removal of wrecks and compulsory insurance or evidence of financial security. The Committee also took into consideration a submission by the Secretariat which noted that IMO's competence to consider and adopt a treaty regulating coastal State intervention in the EEZ for the purposes of wreck removal coincides with IMO's universal mandate to adopt global regulations for the safety of navigation and the prevention of marine pollution; and the United Nations Convention on the Law of the Sea (UNCLOS) does not inhibit the development of new treaty instruments, which IMO may develop even if the UNCLOS is silent on this matter, provided only that any such instruments are not inconsistent with the provisions of UNCLOS.

In the course of its discussion on Jurisdiction, the Committee overwhelmingly endorsed the views stated by the Secretariat on the mandate of IMO to adopt rules concerning coastal State intervention powers to regulate wreck removal in the EEZ, provided that any such rules did not conflict with the principles contained in UNCLOS.

Broad support was expressed in general for article 10 of the draft WRC and, in particular, there was general agreement that paragraph 9 of this article, which obliges States parties to ensure that their registered owners comply with obligations to facilitate the removal of wrecks, represented an important improvement to the draft and was a step in the right direction. Some delegations expressed their reservations regarding the applicability of the prospective WRC to wrecks of flag States which were not parties to the convention.

With regard to financial security, the Committee discussed the proposal submitted by the International Group of P&I Clubs to amend article 13 of the draft WRC to provide for evidence of financial security by way of a ship's certificate of entry issued by the International Group of P&I Clubs, rather than by way of the CLC type of certification currently provided for in article 13 of the draft WRC. The majority of delegations which spoke restated their opposition to this proposal and reiterated their support for the present draft article 13.

The Committee deferred consideration of several issues under discussion to a Working Group. The Group met from the afternoon of Monday, 28 April to the evening of Wednesday 30 April 2003 and reported orally to the Committee on 1 May 2003. The report is attached at Annex 2 to LEG 86/15. The Committee agreed to the continuation of the intersessional Correspondence Group with the task of further refining the draft WRC. The Committee also agreed to consider the report of the

Working Group at its eighty-seventh session, together with the revised draft WRC articles, and to allocate sufficient time for this discussion.

At its eighty-seventh session, the Legal Committee continued with its consideration of the development of the draft wreck removal convention (DWRC). The Committee based its consideration on a submission by the Netherlands, as lead country for the intersessional consultations, which highlighted the major issues that required resolution by the Committee, namely: reporting requirements; exclusion of acts of terrorism; relationship to other liability instruments; and safeguarding sovereign rights on the high seas. The Committee also considered a submission on the need to reconcile the DWRC with the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), particularly on the issue of flag State consent. In this connection, the co-sponsors proposed the addition of a new paragraph in article 10 to provide for flag State consent to the exercise of jurisdiction by a coastal State, where such jurisdiction is not provided for under other existing treaties.

With regard to reporting requirements, the Committee requested the Working Group to examine whether the obligation to report should be placed on the registered owner or whether it might be better for other parties, such as the operator or the manager of the ship, to assume this obligation. The Working Group was also directed to discuss whether to insert a time limit for reporting.

Concerning the exclusion of acts of terrorism, the Committee, after an initial consideration, decided that this issue required further consideration by the Working Group.

With regard to the relationship to other liability instruments, the Committee agreed in principle on the need to avoid double compensation for the location, marking and removal of wrecks and requested the Working Group to examine this further, taking into account that there may also be situations in which, although the matter might be within the scope of another liability convention, that convention might exclude the award of compensation.

Concerning safeguarding sovereign rights on the high seas, the Committee considered a proposal developed during the intersessional consultations. The Committee agreed that the proposed text reflected a general principle of treaty law, to the effect that States Parties under the draft convention were not entitled to claim sovereign rights over any part of the high seas. However, given the diverse views expressed on the necessity to restate that principle in the DWRC, the Committee requested the Working Group to consider the matter further.

Broad support was expressed in principle that the draft convention should include a provision on flag State consent to the effect that, by becoming a State Party to the convention, a State would automatically give its consent (as a flag State) to the State Party whose interests are most directly threatened by the wreck to act under paragraphs 4 to 8 of article 10.

The Committee then considered the amended text of the DWRC and in particular the bold underlined text contained in it, which had been developed and agreed during the intersessional consultations but which had not yet been considered

by the Committee. The Committee reached agreement on some of that text, while it deferred consideration of several issues under discussion to the Working Group.

The Working Group met during the session and the Chairman made an oral report to the Committee. The Committee agreed to the continuation of the intersessional Correspondence Group with the task of further refining the draft WRC. The Committee also agreed to consider the report of the Working Group at its eighty-eighth session, together with the revised draft WRC articles, time permitting.

OTHER AMENDMENTS ADOPTED IN 2003

In separate expanded sessions held during MSC 77, the Committee considered and adopted amendments to:

.1 SOLAS chapter V and determined, in accordance with SOLAS article VIII, that they should enter into force on 1 July 2006 if deemed accepted on 1 January 2006; and

.2 the 1988 Load Lines Protocol and determined, in accordance with the amendment provisions of the Protocol, that they should enter into force on 1 January 2005 if deemed accepted on 1 July 2004.

In separate expanded sessions held during MSC 77, the Committee considered and adopted amendments to the Guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18), as amended) and determined, in accordance with the provisions of SOLAS article VIII, that they should enter into force on 1 January 2005 if deemed accepted on 1 July 2004.

III

MARINE POLLUTION FROM VESSELS' SOURCE

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

In paragraph 61 of resolution A/58/240, the General Assembly noted with interest the ongoing discussions in the Marine Environment Protection Committee of the International Maritime Organization on designation of the Western European Atlantic Coast and the English Channel as a Particularly Sensitive Sea Area and encouraged that Organization to consider the eventual adoption of the proposed associated protective measure as long as it is consistent with the Convention (UNCLOS).

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 49th session adopted a resolution granting Particularly Sensitive Sea Area (PSSA) status to the Paracas National Reserve of Peru.

The other PSSAs already adopted by IMO include the Great Barrier Reef, Australia; the Sabana-Camagüey Archipelago in Cuba; Malpelo Island (Colombia); around the Florida Keys (United States); and the Wadden Sea Denmark, Germany and the Netherlands.

MEPC 49 also gave in-principle endorsement to a proposal from Australia and Papua New Guinea for the extension of the Great Barrier Reef PSSA to cover the Torres Strait Region, together with Associated Protective Measures, subject to clarification on the compulsory pilotage measures by NAV 50 in July 2004. The extended PSSA will be further considered for designation at MEPC 52 in October 2004.

At its 49th session, the MEPC also considered a proposal from Belgium, France, Ireland, Portugal, Spain and the United Kingdom to designate certain areas of the Western European waters as a PSSA.

During the discussion of the issue, the proposing countries agreed to reduce the area to bring the easterly line off the Shetlands Isles to 0° longitude and withdrew the measure to ban carriage of heavy fuel oil in single-hull tankers as an associated protective measure for the proposed PSSA. The associated protective measure for the PSSA, therefore, would, at this stage, be the proposed 48-hour reporting system for ships carrying certain cargoes entering the PSSA, which was referred to NAV 50 in July 2004 for further consideration.

Delegations which had raised potential legal issues relating to the proposed West European PSSA were invited to direct their concerns to the Legal Committee, which is scheduled to meet in October 2003 and April 2004.

After extensive discussions, MEPC 49 gave in-principle endorsement to the proposal for the Western European waters PSSA, which will be further considered for designation at MEPC 52 in October 2004.

At its 87th session, the Legal Committee considered a submission on legal implications of the proposal to designate a Western European PSSA and its associated protective measure. The Committee also noted the comments made by the Division for Ocean Affairs and the Law of the Sea of the United Nations (DOALOS) on the relationship of the PSSA designation and the United Nations Convention on the Law of the Sea (UNCLOS) in particular, article 211(6). At the request of the Committee these comments were reproduced as a Working Paper. The Committee noted that these comments were intended as a contribution to the debate and did not represent a conclusive opinion, as it was a matter for States to interpret the Convention.

Diverging views were expressed as to the validity of the WE PSSA, some agreeing that it exceeded the restrictive framework regulated by article 211(6) of UNCLOS, while others reaffirmed the validity of its designation.

Diverging views were also expressed with regard to the associated protective measure. In this connection, note was taken of the assurance given by some delegations to the effect that the 48 hours notification measure would not be used as a basis to prohibit legitimate use of the PSSA by shipping in accordance with the principle of freedom of navigation.

Several delegations noted the need for further study of the legal implications of the designation of the WE PSSA area, in particular in the light of the comments made by DOALOS. In this regard, it was noted that, while the Marine Environment Protection Committee had not referred the question to the Legal Committee, any delegation was free to bring questions of a legal nature to it, which would be dealt with under "Any other business".

It was noted also that the Committee should not engage in a re-argument of the technical case for the designation of this PSSA or its associated protective measure, since these matters are beyond the purview of the Committee.

BALLAST WATER

In paragraph 60 of resolution A/58/240, the General Assembly welcome the convening by the International Maritime Organization of a diplomatic Conference to adopt an international convention for the control and management of ships' ballast waters and sediments.

The MEPC has continued its consideration of the draft International Convention for the Control and Management of Ships' Ballast Water and Sediments.

MEPC 47 considered a number of principal areas of concern including the objectives of the Convention, the concept of acceptable ballast water, Tier Two

requirements and ballast water treatment standards, and developed a revised draft text of the Convention.

MEPC 48 recognised that substantial progress had been made by the Ballast Water Working Group in formulating the revised draft Convention which provides a sound framework for discussion at the Diplomatic Conference; however MEPC 48 considered that the draft Convention should be further reviewed by MEPC 49 in July 2003 and the draft text of the Convention should be circulated six months before the Diplomatic Conference.

As approved by the Council at its eighty-ninth session, a second intersessional meeting of the Ballast Water Working Group was held from 3 to 7 March 2003 to refine the draft Convention. The outcome of the intersessional meeting of the Working Group was presented to MEPC 49 for consideration.

MEPC 49 conducted an article-by-article review of the draft Convention, taking into account the report of the second intersessional meeting of the Ballast Water Working Group.

After an extensive discussion both in the plenary and in the Working Group on Ballast Water, MEPC 49 agreed with the draft Convention and decided to hold the diplomatic conference in February 2004 with a view to adopting the Convention in accordance with the timetable already approved by the Council.

SHIP RECYCLING

The Marine Environment Protection Committee has continued to consider matters relating to ship recycling and confirmed IMO's overall responsibility associated with ship recycling. It agreed at its 47th session that IMO, for the time being, should develop guidelines to be adopted by an Assembly resolution, while recognizing the need for continued co-operation with ILO and the Secretariat of the Basel Convention (SBC).

MEPC 48 considered the draft IMO guidelines prepared by the Working Group on Ship Recycling and agreed that the draft guidelines needed further development before submission to the Assembly for adoption. MEPC 48 requested inputs from the DE, BLG and FSI Sub-Committees and decided to establish an intersessional correspondence group on the matter and to reconvene the Working Group on Ship Recycling during MEPC 49.

MEPC 49 finalized and approved the draft Assembly resolution on IMO Guidelines on Ship Recycling and it was adopted by the twenty-third session of the Assembly (A.962(23)).

GREENHOUSE GAS EMISSIONS AND PREVENTION OF AIR POLLUTION FROM SHIPS

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.

MEPC 49 adopted the Guidelines for on-board NO_x verification procedure – Direct measurement and monitoring method by resolution MEPC.103(49).

MEPC 49 approved the draft Assembly resolution on IMO policies and practices related to the reduction of greenhouse gas emissions from ships, and this resolution was adopted by the twenty-third session of the Assembly (A.963(23)).

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.

MEPC 49 also noted that the requirements for entry into force of MARPOL Annex VI on Regulations for prevention of pollution by air pollution from ships (adopted in 1997) were nearly satisfied. As of 20 June 2003, Annex VI had been ratified by 11 States representing well over 50% of the gross tonnage of the world's merchant shipping and ratifications by only four more States were required to satisfy the conditions for entry into force.

MEPC 49 was informed by a number of countries that they would be able to deposit their instrument of ratification for Annex VI shortly. This would mean that the Annex might satisfy the entry into force conditions around the end of year 2003, and would enter into force 12 months later.

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

At its 48th and 49th sessions 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 following three sets of guidelines were considered and adopted by MEPC 48 and MEPC 49 respectively:

- .1 Guidelines for Survey and Certification of Anti-fouling Systems on Ships by resolution MEPC.102(48);
- .2 Guidelines for brief sampling of anti-fouling systems by resolution MEPC.104(49); and
- .3 Guidelines for inspections of ships anti-fouling systems by resolution MEPC.105(49).

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 organotins 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).

SINGLE-HULL TANKER PHASE-OUT

IMO has adopted a revised, accelerated phase-out scheme for single hull tankers, along with other measures including an extended application of the Condition Assessment Scheme (CAS) for tankers and a new regulation banning the carriage of Heavy Grade Oil (HGO) in single-hull tankers.

The amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) were adopted at the 50th session of IMO's Marine Environment Protection Committee (MEPC) and are expected to enter into force on 5 April 2005, under the tacit acceptance procedure.

Under a revised regulation 13G of Annex I of MARPOL, the final phasing-out date for Category 1 tankers (pre-MARPOL tankers) is brought forward to 2005, from 2007. The final phasing-out date for category 2 and 3 tankers (MARPOL tankers and smaller tankers) is brought forward to 2010, from 2015.

The full timetable for the phasing out of single-hull tankers is as follows:

Category of oil tanker	Date or year
Category 1	5 April 2005 for ships delivered on 5 April 1982 or earlier 2005 for ships delivered after 5 April 1982
Category 2 and Category 3	5 April 2005 for ships delivered on 5 April 1977 or earlier 2005 for ships delivered after 5 April 1977 but before 1 January 1978 2006 for ships delivered in 1978 and 1979 2007 for ships delivered in 1980 and 1981 2008 for ships delivered in 1982 2009 for ships delivered in 1983 2010 for ships delivered in 1984 or later

Under the revised regulation, the Condition Assessment Scheme (CAS) is to be made applicable to all single-hull tankers of 15 years, or older. Previously it was applicable to all Category 1 vessels continuing to trade after 2005 and all Category 2 vessels after 2010. Consequential enhancements to the CAS scheme were also adopted.

The revised regulation allows the Administration (flag State) to permit continued operation of category 2 or 3 tankers beyond 2010 subject to satisfactory results from the CAS, but the continued operation must not go beyond the anniversary of the date of delivery of the ship in 2015 or the date on which the ship reaches 25 years of age after the date of its delivery, whichever is earlier.

In the case of certain Category 2 or 3 oil tankers fitted with only double bottoms or double sides not used for the carriage of oil and extending to the entire cargo tank length or double hull spaces, not meeting the minimum distance protection requirements, which are not used for the carriage of oil and extend to the entire cargo tank length, the Administration may allow continued operation beyond 2010, provided that the ship was in service on 1 July 2001, the Administration is satisfied by verification of the official records that the ship complied with the conditions specified and that those conditions remain unchanged. Again, such continued operation must not go beyond the date on which the ship reaches 25 years of age after the date of its delivery.

A new MARPOL regulation 13H on the prevention of oil pollution from oil tankers when carrying heavy grade oil (HGO) bans the carriage of HGO in single-hull tankers of 5,000 tons dwt and above after the date of entry into force of the regulation (5 April 2005), and in single-hull oil tankers of 600 tons dwt and above but less than 5,000 tons dwt, not later than the anniversary of their delivery date in 2008.

Under the new regulation, HGO means any of the following:

- a) crude oils having a density at 15°C higher than 900 kg/m³;
- b) fuel oils having either a density at 15°C higher than 900 kg/ m³ or a kinematic viscosity at 50°C higher than 180 mm²/s;
- c) bitumen, tar and their emulsions.

In the case of certain Category 2 or 3 tankers carrying heavy grade oil as cargo, fitted only with double bottoms or double sides, not used for the carriage of oil and extending to the entire cargo tank length, or double hull spaces not meeting the minimum distance protection requirements which are not used for the carriage of oil and extend to the entire cargo tank length, the Administration may allow continued operation of such ships beyond 5 April 2005 until the date on which the ship reaches 25 years of age after the date of its delivery.

Regulation 13(H) also allows for continued operation of oil tankers of 5,000 tons dwt and above, carrying crude oil with a density at 15°C higher than 900 kg/ m³ but lower than 945 kg/ m³, if satisfactory results of the Condition Assessment Scheme warrant that, in the opinion of the Administration, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship and provided that the continued operation shall not go beyond the date on which the ship reaches 25 years after the date of its delivery.

The Administration may allow continued operation of a single hull oil tanker of 600 tons deadweight and above but less than 5,000 tons deadweight, carrying heavy grade oil as cargo, if, in the opinion of the Administration, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship, provided that the operation shall not go beyond the date on which the ship reaches 25 years after the date of its delivery.

The Administration of a Party to the present Convention may exempt an oil tanker of 600 tons deadweight and above carrying heavy grade oil as cargo if the ship is either engaged in voyages exclusively within an area under the Party's jurisdiction, or is engaged in voyages exclusively within an area under the jurisdiction of another

Party, provided the Party within whose jurisdiction the ship will be operating agrees. The same applies to vessels operating as floating storage units of heavy grade oil.

A Party to MARPOL 73/78 shall be entitled to deny entry of single hull tankers carrying heavy grade oil which have been allowed to continue operation under the exemptions mentioned above, into the ports or offshore terminals under its jurisdiction, or deny ship-to-ship transfer of heavy grade oil in areas under its jurisdiction except when this is necessary for the purpose of securing the safety of a ship or saving life at sea.

Resolutions adopted

The amendments to MARPOL regulation 13G, the addition of a new regulation 13H, consequential amendments to the IOPP Certificate and the amendments to the Condition Assessment Scheme were adopted by the Committee as MEPC Resolutions

Among other resolutions adopted by the Committee, another on early implementation urged Parties to MARPOL 73/78 seriously to consider the application of the amendments as soon as possible to ships entitled to fly their flag, without waiting for the amendments to enter into force and to communicate this action to the Organization. It also invited the maritime industry to implement the aforesaid amendments to Annex I of MARPOL 73/78 effectively as soon as possible.
