

MARITIME SAFETY COMMITTEE
89th session
Agenda item 25

MSC 89/WP.1/Add.1
18 May 2011
Original: ENGLISH

DISCLAIMER

As at its date of issue, this document, in whole or in part, is subject to consideration by the IMO organ to which it has been submitted. Accordingly, its contents are subject to approval and amendment of a substantive and drafting nature, which may be agreed after that date.

**DRAFT REPORT OF THE MARITIME SAFETY COMMITTEE
ON ITS EIGHTY-NINTH SESSION
(continued)**

[For items 1, 2, 4 (part), 5 (part), 7, 8, 11, 16 (part) and 18 (part) see MSC 89/WP.1]

9 STABILITY, LOAD LINES AND FISHING VESSELS SAFETY

REPORT OF THE FIFTY-THIRD SESSION OF THE SUB-COMMITTEE

9.1 The Committee approved, in general, the report of the fifty-third session of the Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF) (SLF 53/19 and MSC 89/9) and took action as indicated hereunder.

Second generation intact stability criteria

9.2 The Committee noted that SLF 53, having considered the recommendation contained in paragraph 3.7 of part B of the 2008 IS Code, which states that the GM should not exceed 3% of the beam, had agreed to include excessive stability of timber deck carriers in the plan of action for the development of second generation intact stability criteria and that no action should be taken at this time regarding a possible revision of the 1966 LL Convention and 1988 LL Protocol.

Safety of small fishing vessels

9.3 The Committee approved the Guidelines to assist competent authorities in the implementation of Part B of the Code of Safety for fishermen and fishing vessels, the Voluntary Guidelines for the design, construction and equipment of small fishing vessels and the Safety Recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels (hereinafter referred to as "Implementation Guidelines"), set out

in annex ..., and requested the Secretariat to forward them to FAO and ILO for concurrent approval, as appropriate.

9.4 In this connection, the representatives of FAO informed the Committee that the FAO Committee on Fisheries (COFI) would consider the text of the Implementation Guidelines at its next session, to be held from 9 to 13 July 2012, and stated that the Implementation Guidelines would be a very useful guide for Governments in the implementation of Part B of the Code of Safety for Fishermen and Fishing Vessels, Voluntary Guidelines and Safety Recommendations into their domestic legislation and/or codes of safe practice, or other measures in consultation with all stakeholders in the industry. The representative of ILO, associating himself with FAO, thanked the Sub-Committee for the work done and stated that the Governing Body of ILO would consider the text of the Implementation Guidelines upon its receipt.

9.5 The Committee also agreed to the request by SLF 53 to make the Implementation Guidelines publicly available on the IMO website, after approval by all parties concerned, and instructed the Secretariat to take action accordingly.

9.6 As requested by SLF 53, the Committee invited the Technical Co-operation Committee to consider including the Implementation Guidelines within the Integrated Technical Co-operation Programme (ITCP) and, when implementing a related TC activity, securing funding for translation of the Implementation Guidelines into the language of the recipient countries, if it is not one of the six official languages of IMO.

Options to improve effect on ship design and safety of the 1969 TM Convention

9.7 The Committee decided to consider the Sub-Committee's decisions on the best way to improve the effect of the 1969 TM Convention on ship design and safety, including the following documents submitted on the matter:

- .1 MSC 89/9/5 (Germany), containing another option to improve the effect on ship design and safety within the 1969 TM Convention, taking into account the need to further enhance working and living conditions on board; and
- .2 MSC 89/9/8 (ILO), commenting on the submission by Germany,

under agenda item 22 (Work programme) in conjunction with the justification for the inclusion of a new planned output on "Development of provisions to ensure the integrity and uniform implementation of the 1969 TM Convention", as proposed by SLF 53 (see paragraph 22...).

Stability and sea-keeping characteristics of damaged passenger ships in a seaway when returning to port by own power or under tow***Draft unified interpretations related to safe return to port and safe areas***

9.8 The Committee noted that SLF 53 had considered the draft Interpretations to SOLAS regulation II-2/21 (Safe return to port and safe areas), in respect of the Interim Explanatory Notes for the assessment of passenger ship systems' capabilities after a fire or flooding casualty (MSC.1/Circ.1369), which were under the purview of the Sub-Committee, and that the outcome had been forwarded to FP 55 for coordination purposes.

9.9 In this regard, the Committee noted that the delegation of the United States did not agree with the aforementioned draft interpretations for inclusion in the Interim Explanatory Notes for the assessment of passenger ship systems' capabilities after a fire or flooding casualty (MSC.1/Circ.1369). The delegation was of the opinion that these draft interpretations could allow essential systems to be located adjacent to the side or bottom shell and be considered to remain operational after a flooding casualty if they could withstand the pressure of the water expected.

Draft amendments to SOLAS regulation II-1/8-1

9.10 In considering the draft amendments to SOLAS regulation II-1/8-1, which introduces a mandatory requirement for either onboard stability computers or shore-based support, the Committee noted the comments from some delegations that the draft amendments needed further consideration and editorial corrections, specifically with regards to the words "in accordance with guidelines developed by the Organization", which may imply a mandatory nature to the guidelines, and decided to place the words "in accordance with" in square brackets, for further consideration prior to adoption.

9.11 Subsequently, the Committee approved the draft amendments to SOLAS regulation II-1/8-1, as set out in annex ..., and requested the Secretary-General to circulate the proposed amendments, in accordance with SOLAS article VIII, for consideration with a view to adoption at MSC 90.

9.12 In this connection, the Committee considered document MSC 89/9/4 (Germany), supporting the development of guidance to Administrations for the approval of damage stability modules for safe return to port, and following discussion referred the document to SLF 54 for consideration under "Any other business" with a view to advising MSC 90

accordingly. Subsequently, the Committee invited Member Governments and international organizations to submit proposals to SLF 54.

Guidelines on operational information for masters of passenger ships for safe return to port by own power or under tow

9.13 The Committee approved MSC.1/Circ.... on Guidelines on operational information for masters of passenger ships for safe return to port by own power or under tow. In this connection, the Committee noted that SLF 53 had referred the matter of additional training for masters and crew members assigned to operate stability computers to the STW Sub-Committee for further consideration.

Safety provisions applicable to tenders operating from passenger ships

9.14 The Committee noted that SLF 53 had considered the draft Guidelines for passenger ship tenders, prepared by the DE Sub-Committee, and had referred its comments to DE 55 for coordination purposes.

Legal and technical options to facilitate and expedite the earliest possible entry into force of the 1993 Torremolinos Protocol

Legal options prepared by SLF 53

9.15 In considering the draft Agreement (option 1) and the draft Assembly resolution (option 2) prepared by SLF 53 in order to facilitate the implementation of the 1993 Torremolinos Protocol, the Committee noted the comments from the Chairman of the SLF Sub-Committee that, at SLF 53, all Member Governments that spoke on the matter expressed support for the Agreement option. In this regard, he pointed out that this is the third attempt of IMO to develop and put into force regulations related to fishing vessels safety. He informed the Committee that, although the discussions at SLF 53 were lengthy and there was a spirit of co-operation, the Sub-Committee was unable to reach consensus on the conditions of entry into force of the Agreement option.

9.16 Commenting on the points raised by the SLF Sub-Committee Chairman, the Committee noted the view of the delegation of South Africa that 34 years have passed after the first attempt to put in place a convention that would give a measure of protection to a maritime sector, which is estimated to employ 15 million persons, of which approximately 1.5 million seafarers work on fishing vessels of 24 m in length and over; with the highest death rate of any industry in the world. They further pointed out that a second attempt was also made 17 years ago, again unsuccessfully. It was their concern that a failure to make

progress with the implementation of the 1993 Torremolinos Protocol, at this stage, would make it difficult for IMO to adopt a viable safety regime for this sector in the foreseeable future. The delegation was of the opinion that the 1993 Torremolinos Protocol should be further amended/updated after it enters into force, taking into account the technological developments and operational changes related to fishing vessels, and would recommend that the matter be considered in the future.

9.17 The Committee further noted the concerns expressed by the delegation of the United States that, from a legal perspective, regarding the proposed way ahead for facilitating the implementation of the 1993 Torremolinos Protocol, the intended way forward appears to involve two possible tracks, each containing a legal instrument which could come into force independently governing the same conduct (i.e. the 1993 Protocol and Agreement). The delegation considered that the best way forward would be to pursue a single new Agreement that incorporates all the provisions of the 1993 Protocol and amends those provisions that are in need of updating, which would avoid the possibility of having two legally binding instruments covering the same subject matter.

9.18 In response to the above concerns raised about the possibility that both the proposed Agreement and the 1993 Protocol could come into force independently and address the same subject matter, the Committee noted the clarification by the Secretariat (representative of the Legal Office), which recalled that the proposed Agreement had been developed originally by a legal consultant (Dr. Mensah), who had been asked to identify a legally viable means of bringing the technical requirements of the 1993 Protocol into force subject to some revisions, taking into account the status of that Protocol. The draft Agreement has a special legal feature to allow any Contracting State to the 1993 Protocol to follow a simplified procedure to give its consent to be bound to the Agreement provided that the procedure was permitted under its constitution. While it was theoretically possible that the 1993 Protocol could come into force (if States ignored the existence of the Agreement and submitted ratifications), this was highly unlikely; and the new Agreement would supersede the 1993 Protocol and would be seen as the IMO instrument governing the subject matter. The conference adopting the Agreement could also adopt a resolution calling on States not to ratify the 1993 Protocol.

9.19 Following an extensive discussion and having considered the two options prepared by SLF 53 to facilitate the implementation of the 1993 Torremolinos Protocol, the Committee unanimously agreed to proceed with the draft Agreement (option 1).

Entry into force criteria for the Agreement option

9.20 In considering the entry into force criteria for the draft Agreement, the Committee noted that SLF 53 had agreed to the following criteria for bringing the Agreement into force, as set out in article 4 of the draft Agreement:

- .1 3,000 vessels + 15 States;
- .2 1,800 vessels + 20 States; and
- .3 1,800 vessels + 30 States,

and that FAO had been invited to provide updated information on the number of fishing vessels operating on the high seas, in the context of the FAO Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (Compliance Agreement). In this connection, Member Governments were also invited to submit the number of fishing vessels of 24 m in length and over under their flag, identifying vessels operating on the high seas, to the Organization, if possible prior to MSC 89.

9.21 In this connection, the Committee considered document MSC 89/9/6 (FAO), providing the latest FAO data on the number of fishing vessels of 24 m in length and over operating on the high seas, which was 5,415 vessels, to assist with resolving the text in square brackets (i.e. 3,000 or 1,800) in paragraph 1 of article 4 of the draft Agreement. In this regard, the Committee also noted with appreciation the new information on the number of fishing vessels operating on the high seas provided by the delegations of China (788) and the Republic of Korea (379).

9.22 In the ensuing discussion, the Committee noted the following views expressed during the debate:

- .1 that the term "operating on the high seas" should be included in the articles to the Agreement and that an appropriate definition or reference should be added to the Agreement (i.e. UNCLOS 86);
- .2 while some delegations felt the entry into force criteria should require at least 50% of the vessels operating on the high seas, others felt that 30% was a sufficient number; and

- .3 that the data on the number of vessels operating on the high seas should be based on reports from States to IMO, while others expressed the view that the FAO data should be used as the basis.

9.23 The Committee also noted the statement by the delegation of China, supported by other delegations, that countries with the large fishing fleets would be the most affected by the entry into force of the Agreement and, therefore, they supported 50% of the fishing vessels operating on high seas as the entry into force criteria (the full statement of the delegation of China is set out in annex ...).

9.24 The Committee further noted the statement by the delegation of Belgium that, in Belgium, like in other EU Member States, there needed to be higher safety rules for fishing vessels than those of the Torremolinos Protocol. The delegation stated that these higher safety standards apply to foreign flagged fishing vessels operating in the fishing zones of the European Community and the territorial waters of the member States of the European Union or vessels landing their catch in a port of a member State of the European Union.

9.25 In considering the above views and following an extensive discussion, the Committee noted that the majority of those that spoke on the matter were in favour of an entry into force criteria of 15 States and 1,800 fishing vessels of 24 m in length and over operating on the high seas, to facilitate the entry into force of the draft Agreement. Notwithstanding the above views, the Committee agreed to retain the square brackets in paragraphs (1) and (3) of article 4 of the draft Agreement since the entry into force criteria would be a decision taken at the adoption of the draft Agreement.

Draft amendments to the 1993 Torremolinos Protocol

Draft amendments to regulation I/2 (Definitions)

9.26 In considering document MSC 89/9/1 (Secretariat), containing proposed amendments to regulation I/2 (Definitions) to the 1993 Torremolinos Protocol, related to the word "baseline" defined in regulation I/2(14), which is not used anywhere in the Protocol, except in the definition itself, the Committee noted the view expressed by the delegation of Spain that the definition of "baseline" in regulation I/2 (Definitions) of draft amendments can be incompatible with the geographic baseline, and although the definition is not used anywhere in the Protocol, except in the definition itself, from the point of view of Naval Architecture the definition is necessary for the determination of the depth and length, which are parameters that define the scope of application of the 1993 Torremolinos Protocol.

Following the discussion and taking into account that the majority of the delegations supported the deletion of the definition, the Committee agreed to delete the definition of "baseline" (regulation I/2(14)) and the footnote in the proposed amendments to Protocol regulation I/3(3) (subparagraph .3), referring to UNCLOS.

Draft amendments to regulation VII/5 (Number and types of survival craft and rescue boats)

9.27 Having considered documents MSC 89/9/3 (Norway) and MSC 89/9/9 (Argentina), proposing amendments to regulation 5 of chapter VII in order to clarify matters related to the carriage of survival craft, the Committee, taking into account that the majority of the delegations supported the proposal by Norway, agreed to a new paragraph to regulation 5 of chapter VII, as contained in paragraph 7 of document MSC 89/9/3.

Draft amendments to regulation I/2(25) (definition of "A common fishing zone")

9.28 In considering document MSC 89/9/7 (FAO), providing a proposal for modifications to the definition of "A common fishing zone" in regulation I/2(25), the Committee noted the proposal by the delegation of Belgium to include the words "or other authorized vessels" in the definition of "A common fishing zone", as follows:

"... an agreement between such States wherein fishing vessels entitled to fly the flag of those States or other authorized vessels may have access and fish in accordance with the terms and conditions set in such an agreement .".

9.29 In this connection, the Committee noted the views of the representative of FAO that the proposed amendment by Belgium broadens the scope of the exemption unnecessarily. In their view, the effect of such additional language (i.e. "or other authorized vessels") would be that any two or more countries with adjoining EEZs would create an exemption, within the common fishing zone (CFZ), for any authorized vessels, including foreign sea-going vessels, from complying with the Torremolinos Protocol. The Committee noted that the FAO proposal starts with the words, "A common fishing zone, for the purposes of this [Agreement] ...", which restricts the use of the term CFZ only to the Agreement (or whatever instrument that will amend the Torremolinos Protocol).

9.30 Following an in-depth discussion, the Committee agreed to the proposal by FAO regarding modifications to the definition of "A common fishing zone" in regulation I/2(25) of the draft amendments to the 1993 Torremolinos Protocol, as contained in paragraph 3 of

document MSC 89/9/7, with the addition of the words "or other authorized vessels", as proposed by the delegation of Belgium.

Draft amendments to the 1993 Torremolinos Protocol

9.31 In light of the above decisions, the Committee agreed on the draft Agreement on the Implementation of the 1993 Protocol relating to the 1977 Torremolinos Convention on the Safety of Fishing Vessels, as set out in annex ... The Committee also agreed that any further proposals for amendments to the 1993 Torremolinos Protocol should be submitted to the Organization prior to adoption.

9.32 The Committee noted the statement by the delegation of South Africa that, once the Agreement is adopted, it intends to submit a new output proposing a comprehensive review of the technical provisions of the 1993 Torremolinos Protocol with a view to updating such provisions.

Adoption of the draft Agreement

9.33 The Committee considered document MSC 89/9/2 (Secretariat), proposing that the adoption of the draft Agreement on the Implementation of the 1993 Torremolinos Protocol takes place in 2012, through a three-day diplomatic conference of all Member Governments, and noted the views of many delegations that the Agreement should be adopted as soon as possible and that the Assembly would be the best option for the adoption, while other delegations were of the view that a separate diplomatic conference would be a more appropriate means for the adoption of a new international treaty instrument, taking into account that a number of issues still needed to be resolved. Furthermore, the Committee was informed by South Africa that it was considering inviting the diplomatic conference to be held in South Africa in 2012.

9.34 Having considered the above views, the Committee, taking into account that the Council would be the final arbiter of the best option for adoption of the new instrument, agreed that the following three options should be forwarded to C 106 for consideration:

- .1 to adopt the Agreement at the twenty-seventh of the Assembly;
- .2 to hold a three-day diplomatic conference at, or before, MSC 91 and reduce the number of meeting days for MSC 91 to five days in order to cover the cost of the conference; or

- .3 to hold a separate diplomatic conference in 2012, in South Africa at no cost to the Organization, subject to a concrete proposal put forward to the Council by South Africa,

taking into account that a separate diplomatic conference would require a six-month circulation period for all the instruments to be adopted, while the Assembly option would utilize the Committee's report as the means for circulation of the draft text of the Agreement. In this regard, the Committee authorized the Secretariat to review the instruments to be adopted to ensure editorial and legal consistency of the draft texts and to prepare recommendations, as appropriate.

9.35 In regard to the option for adopting the new Agreement at the next Assembly (see paragraph 9.34.1), the Committee noted the information provided by the Director of the Legal Division that there is no legal obstacle to this option. However, noting the present rules of procedure of the Assembly for adoption requires only a simple majority and having considered the need to adopt the Agreement by two-thirds majority as pointed out by the Director, the Committee agreed to recommend, through the Council, the Assembly to adopt a specific rule for adopting the new instrument by a two-thirds majority in case the Assembly option was to be pursued.

Amendments to the 1966 LL Convention

9.36 The Committee approved the draft Assembly resolution on amendment to the 1966 LL Convention, as set out in annex ..., shifting the Winter Seasonal Zone off the southern tip of Africa further southward by 50 miles, and requested the Secretary-General to circulate the draft amendments in accordance with article 29 of the 1966 LL Convention, with a view to adoption at MSC 90 and A 28.

Amendments to the 1988 LL Protocol

9.37 Subsequently, the Committee also approved a corresponding draft amendment to the 1988 LL Protocol, as set out in annex ..., and requested the Secretary-General to circulate the draft amendment in accordance with article VI of the 1988 LL Protocol, with a view to adoption at MSC 90.

10 TRAINING AND WATCHKEEPING

REPORT OF THE FORTY-SECOND SESSION OF THE SUB-COMMITTEE

10.1 The Committee approved, in general, the report of the forty-second session of the Sub-Committee on Standards of Training and Watchkeeping (STW) (STW 42/14 and MSC 89/10) and took action as indicated hereunder.

Unlawful practices associated with certificates of competency

10.2 The Committee agreed to place the information relating to fraudulent certificates detected/found on board ships during inspections or reportedly being used, as reported to the Secretariat (STW 42/4), on the IMO public website to assist all concerned in ensuring that no seafarer serving on board ships was holding fraudulent certificates of competency.

Revision of the Recommendations for entering enclosed spaces aboard ships

10.3 The Committee noted that no further amendments were required to the draft revised recommendations as prepared by DSC 15, since training relating to entry into enclosed spaces was already covered in chapters V and VI of the STCW Code.

Development of model procedures for executing shipboard emergency measures

10.4 The Committee endorsed the Sub-Committee's decision that there was no need to establish procedures to respond to emergency situations, as it was the responsibility of the shipping company to do so under the provisions of section 8 of the ISM Code.

Development of unified interpretations for the term "approved seagoing service"

10.5 The Committee endorsed the Sub-Committee's decision that there was no need for a unified interpretation (UI) for the term "approved seagoing service".

Joint MSC/MEPC Working Group on the human element

10.6 The Committee recalled that, at MSC 88, the delegation of the Netherlands had proposed that the general subject of the human element could well be included within the responsibility of the STW Sub-Committee where human element experts could attend on a regular basis and advise the Committees accordingly. In this context, they had advised the Committee of their intention to submit proposals on this issue to the current session and MEPC 62.

10.7 Australia *et al.* (MSC 89/10/4) proposed to discontinue the Joint MSC/MEPC Working Group on the Human Element and, subsequently include the general subject of the human element within the responsibility of the STW Sub-Committee. In this context, they also provided the associated draft revised terms of reference for the Sub-Committee.

10.8 Germany, commenting on document MSC 89/10/4, expressed the view that the discontinuation of the Joint MSC/MEPC Working Group on the Human Element under the auspices of the two Committees would affect the structured approach for addressing human-element issues in a holistic way, as set out in resolution A.947(23). Accordingly, they recommended the continuation of the Joint MSC/MEPC Working Group on the Human Element and, in case the scheduling of regular meetings of the Joint Working Group became difficult due to the workload of the Committees, consideration could be given to convening the Working Group during the meetings of sub-committees, when an appropriate timeslot was available for a Working Group session, under the direction of both the Maritime Safety Committee and the Marine Environment Protection Committee.

10.9 The United Kingdom, commenting on document MSC 89/10/4, expressed concern that subsuming the role of the Joint MSC/MEPC Working Group on the Human Element under a sub-committee risked diminishing the importance given to the subject of the human element by the Organization and would not convey a positive message that the human element was being treated with the seriousness it deserved. Due to the prominent and comprehensive nature of issues across the broad spectrum of the human element, these should remain, in their opinion, under the authority and strategic direction of the two Committees. In order to facilitate the workload of the Committees, they were not opposed, in the short term, to the Joint Working Group on the Human Element being hosted by an appropriate sub-committee; however, it should remain as a separate group under the auspices of the Committees and this particular issue should be also discussed at MEPC 62 under the agenda item "Role of the Human Element".

10.10 During the ensuing discussions, the following views were also expressed:

- .1 a holistic approach to human element issues was necessary to include all aspects of shipping including the entire chain of responsibility and should not be restricted to shipboard operations;
- .2 there was a need for a fixed and permanent time slot within the IMO meeting schedule for consideration of human element matters *vis-à-vis* the

-
- current alternation between MSC and MEPC which did not work satisfactorily;
- .3 transferring the responsibility to the STW Sub-Committee would indeed increase the importance of human element issues and provide a regular and continuous forum and focus on such matters;
 - .4 in accordance with the provisions of Assembly resolution A.974(23), matters relating to human element issues should remain within the purview of MSC and MEPC so as to provide a holistic approach;
 - .5 the broad spectrum of human element issues could not be considered by only one particular sub-committee and, therefore, the existing arrangements should remain;
 - .6 Member Governments would need to adjust the composition of their delegations to include human element experts to attend the STW Sub-Committee in case the responsibility was transferred;
 - .7 the transfer of responsibility to the STW Sub-Committee did not mean that matters relating to human element issues would no longer be considered by the Organization, to the contrary, it provided the possibility of a new beginning and fresh approach;
 - .8 the two Committees still retained the ultimate responsibility for human element matters, since the STW Sub-Committee reported to them both;
 - .9 certain issues relating to the human element issues were not within the expertise of the STW Sub-Committee and should be considered by other bodies, as appropriate; and
 - .10 the issue needed also to be considered and agreed to by MEPC 62 based on consideration of document MEPC 62/17 (Australia *et al.*) and the outcome of this current session.

10.11 After an in-depth discussion, the Committee agreed, in principle, to entrust a leading and coordinating role for the implementation of the Organization's strategy to address the human element to the Sub-Committee, subject to the concurrence of MEPC 62, and

instructed the working group to be established under this agenda item to prepare revised draft terms of reference of the Sub-Committee accordingly, for consideration by the Committee (see also paragraph 10...).

Date of the forty-third session of the Sub-Committee

10.12 The Committee decided that the next session of the Sub-Committee would take place from 30 April to 4 May 2012.

Issues emanating from the implementation of the 2010 Manila Amendments to the STCW Convention and Code

10.13 The Islamic Republic of Iran (MSC 89/10/2) identified different implementation dates between the "application of Bridge Resource Management (BRM) and Engine-room Resource Management (ERM) principles in maintaining watches" and the "BRM and ERM principles for training" requirements and, in order to avoid the problem of different interpretations and to ensure uniform implementation of the provisions of section A-VIII/2, part 3 internationally, invited the Committee to consider the matter and, if deemed necessary, issue appropriate advice.

10.14 The Islamic Republic of Iran (MSC 89/10/3) proposed that a circular should be issued to avoid the problem of different interpretations in respect of the implementation date/timeline for the new security-related training requirements and to ensure uniform implementation internationally.

10.15 Bearing in mind Resolution 4 of the 2010 Manila STCW Conference, encouraging the orderly transition to full and effective implementation of the amendments and in order to reduce the possibility of different interpretations among member countries, including port State control authorities, the United States (MSC 89/10/5) proposed that an STCW circular should be issued, clarifying that:

- .1 STCW regulation I/15 should be applied in such a way that certificates issued in accordance with the provisions of the Convention which applied immediately prior to 1 January 2012 could be revalidated until 1 January 2017 or up to five years at any time, provided that the requirements of the 2010 amendments were met; and

-
- .2 all amendments, except for STCW regulations II/5, III/5, and section A-VI/6, should follow the transitional provisions in STCW regulation I/15 and should be fully implemented by 1 January 2017.

10.16 During the ensuing discussions, the following views were expressed:

- .1 there seemed to be a lack of common understanding on the scope of application of the transitional provisions and consequently there existed different interpretations about the implementation dates of the various amendments;
- .2 although there was a general agreement that the transitional provisions in regulation I/15 related to the "certification of seafarers", it was not unmistakably clear as to which provisions came under the term "certification of seafarers";
- .3 consideration of provisions of chapters I to VII, including table B-I/2, in a holistic approach was necessary to minimize as much as possible the potential problem of different interpretations regarding the scope of application of transitional provisions;
- .4 port State control officers would need to be advised on the common understanding on the application of transitional provisions in order to avoid undue delays to ships;
- .5 the requirements for bridge and engine resource management are provided in chapters II and III for the training of seafarers, while watch-keeping principles in section A-VIII/2 are provided for each individual ship and should not be clubbed together. Consequently, there was no need to provide any clarifications;
- .6 transitional provisions in the 2010 Manila Amendments would apply to those seafarers who had commenced their training prior to 1 January 2012. Any further clarifications relating to section A-VI/6, as proposed, would lead to the replacement of the existing transitional provisions with new ones; and

- .7 the lack of guidance on which documentation seafarers should hold to meet transitional provisions in paragraphs 5 and 9 of section A-VI/6, would lead to different interpretations by Administrations and port State control officers and might result in ships being unduly delayed.

10.17 After an extensive discussion, the Committee agreed to forward the documents to the working group to be established under this agenda item to prepare a STCW.7 circular on Clarifications relating to the 2010 Manila Amendments to the STCW Convention and Code for consideration by the Committee.

Establishment of working group

10.18 Having considered the above issues, the Committee established the Working Group on Implementation of the Manila Amendments and Future Terms of Reference for the STW Sub-Committee and instructed the group, taking into account the comments and decisions made in plenary, to:

- .1 prepare revised terms of reference of the Sub-Committee to entrust a leading and coordinating role for the implementation of the Organization's strategy to address the human element to the Sub-Committee;
- .2 consider the harmonized implementation of the 2010 Manila Amendments, as set out in documents MSC 89/10/2, MSC 89/10/3 and MSC 89/10/5, and prepare a STCW.7 circular on Clarifications relating to the 2010 Manila Amendments to the STCW Convention and Code for consideration by plenary; and
- .3 if time permits, consider other issues of uniform implementation of the 2010 Manila Amendments to the STCW Convention and Code and advise the Committee accordingly.

SECRETARY-GENERAL'S REPORT PURSUANT TO STCW REGULATION I/7, PARAGRAPH 2

10.19 The Committee noted that no reports pursuant to STCW regulation I/7, paragraph 2 had been submitted to this session.

10.20 The Committee recalled that the Cook Islands had communicated information pursuant to STCW regulation I/7 on 1 August 2001 and MSC 78 had confirmed that the Cook

Islands was giving the relevant provisions of the STCW Convention full and complete effect. Accordingly, MSC 78, noting that New Zealand had previously extended the application of the Convention to the Cook Islands, included the Cook Islands as a footnote to New Zealand in the list of Parties so far found to be giving the relevant provisions of the STCW Convention full and complete effect. Subsequently, the Cook Islands had acceded to the STCW Convention on 17 February 2010 with a date of entry on 17 May 2010.

10.21 Bearing in mind that MSC 78 had confirmed that the information communicated by the Cook Islands had demonstrated that it was giving full and complete effect to the Convention, the Committee agreed to include the Cook Islands henceforth independently in the list of Parties so far found to be giving the relevant provisions of the STCW Convention full and complete effect. In this context, the Committee instructed the Secretariat to revise circular MSC.1/Circ.1163/Rev.6 accordingly and issue updated MSC.1/Circ.1163/Rev.7.

SECRETARY-GENERAL'S REPORT PURSUANT TO STCW REGULATION I/8

10.22 In introducing his report (MSC 89/WP.2), the Secretary-General advised the Committee that, in preparing the reports required by STCW regulation I/8, paragraph 2, he had solicited and taken into account the views of the competent persons selected from the list established pursuant to paragraph 5 of the regulation and circulated as MSC/Circ.797. Each report, as required by MSC/Circ.997, was comprised of:

- .1 the Secretary-General's report to the Committee;
- .2 a description of the procedures followed; and
- .3 a summary of the conclusions reached in the form of a comparison table.

10.23 The Committee was subsequently invited to consider the reports attached to document MSC 89/WP.2 for the purpose of confirming that the information provided by six STCW Parties pursuant to STCW regulation I/8 confirmed that full and complete effect was given to the provisions of the STCW Convention.

10.24 As was the case with the Secretary-General's reports to previous sessions of the Committee, the Committee agreed to consider each Party report individually in order to:

- .1 identify, from the Secretary-General's report, the scope of information evaluated by the panels;
- .2 review the procedures report to identify any entries requiring clarification;
- .3 review the information presented in comparison table format; and
- .4 confirm that each report reflected that the procedures for the assessment of the information provided by the Parties concerned had been correctly followed.

10.25 The Committee confirmed that the procedures for the assessment of information provided had been correctly followed in respect of 6 STCW Parties and instructed the Secretariat to update MSC.1/Circ.1164/Rev.8 accordingly and issue it as MSC.1/Circ.1164/Rev.9.

APPROVAL OF COMPETENT PERSONS

10.26 The Committee approved additional competent persons nominated by Governments (MSC 89/10/1 and Add.1) and instructed the Secretariat to update MSC.1/Circ.797/Rev.20 accordingly and issue the updated circular as MSC.1/Circ.797/Rev.21.

OTHER ISSUES

Follow-up actions relating to the IMO/ILO *Ad Hoc* Working Group on Guidelines for medical examination of seafarers and contents of ships' medicine chests

10.27 The Committee recalled that MSC 88 had agreed to:

- .1 re-convene the IMO/ILO *Ad Hoc* Working Group on Guidelines for Medical Examination of Seafarers and Contents of Ships' Medicine Chests, in the last quarter of 2011, subject to the concurrence of the International Labour Organization's (ILO) Governing Body; and

-
- .2 request the Secretariat, in co-operation with ILO, to contact the World Health Organization (WHO) to seek their co-operation on all health-related matters pertaining to seafarers, as the expertise of all three agencies was necessary to ensure the safety, health and well-being of seafarers.

10.28 The Committee was informed that the Secretary-General had written to the Director-General of WHO seeking their co-operation, as requested by MSC 88.

10.29 The Committee was further informed that WHO had expressed its interest in the continued collaboration in the revision of the Guidelines on Standards for Medical Fitness for Seafarers and the International Medical Guide for Ships, 3rd edition and its Quantification Addendum. However, their collaboration was dependent on two factors, namely:

- .1 the drafting and revision process of these guidelines would need to comply with WHO's Guidelines Review Committee requirements, adopted by the WHO Assembly in 2008; and
- .2 joint identification of resources for the revision of these guidelines.

Presently resources were not available within the WHO's regular budget.

10.30 In this regard, ILO (MSC 89/10/6) proposed that:

- .1 the next and final meeting of the *Ad Hoc* Working Group should be held from 26 to 30 September 2011 to finalize the revision of the existing Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations of Seafarers;
- .2 the revised Guidelines should also apply to fishers with the possibility of the adoption of an annex to the main guidelines for seafarers which would address the special concerns of the fishing industry; and
- .3 due to the complexity of the ships' medicine chests, a separate tripartite meeting should be convened by the ILO, in co-operation with the IMO and the WHO, at a later date in 2011, to review the preparatory work of the Joint ILO/IMO Working Group. The tripartite meeting would be composed of

three Government representatives nominated by WHO and IMO respectively, as well as three seafarer representatives and three shipowner's representatives, nominated by the Workers' and Employers' groups of the Governing Body. The revised requirements would be submitted to the ILO Governing Body.

Furthermore, ILO was continuing to discuss with WHO an appropriate mechanism for the periodic review of the International Medical Guide for Ships.

10.31 The ILO observer informed the Committee that WHO had confirmed that the revised Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations of Seafarers should be issued as joint IMO/ILO guidelines and that WHO would continue to provide technical inputs as and when necessary. Furthermore, WHO could not withdraw the Addendum to the International Medical Guide for Ships, 3rd edition. However, WHO was prepared to consider its revision subject to the availability of appropriate financial resources.

10.32 After a brief discussion, the Committee agreed that:

- .1 the next and final meeting of the *Ad Hoc* Working Group should be held from 26 to 30 September 2011 to finalize the revision of the existing Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations of Seafarers as a matter of priority;
- .2 there was no need, at this stage, to extend the applicability of the revised Guidelines to fishers, since this would entail a change of the corresponding provisions of the STCW-F Convention which had not entered into force yet. This work could be taken up at a later stage after the finalization of the guidelines for seafarers; and
- .3 due to the complexity of the ships' medicine chests, a separate tripartite meeting might be convened by the ILO, in co-operation with IMO and WHO, at a later date to consider the revision of the Addendum to the International Medical Guide for Ships, 3rd edition after the financial resources had been identified by WHO.

[more to come]

12 FLAG STATE IMPLEMENTATION

GENERAL

12.1 The Committee considered urgent matters referred to it (MSC 89/12) by the nineteenth session of the Sub-Committee (FSI 19/19 and Add.1) and took action as indicated hereunder.

PIRACY-RELATED MATTERS

12.2 The Committee noted the discussions which took place at FSI 19 on piracy-related matters and considered them further under item 18 on piracy and armed robbery against ships (see paragraph 18...).

CONSTRUCTION AND INSTALLATION OF ONBOARD LIFTING APPLIANCES

12.3 The Committee noted the recommendation of the Sub-Committee to include winches in the spectrum of its consideration of document MSC 89/22/12 (Chile *et al.*) in view of the very serious and serious incidents reports which have been analysed and decided to further consider the matter under agenda item 22 (Work programme) when considering the above document (see paragraph 22...).

PORT STATE CONTROL

Guidelines for PSC officers related to LRIT

12.4 Having recalled that MSC 87 had referred the issue of whether guidance on LRIT-related matters for port State control officers (PSCOs), including the understanding of technical difficulties with shipborne equipment, would be required to the Sub-Committee, the Committee considered the inclusion of draft Guidelines for PSCOs related to LRIT as Appendix 9 of the draft revised PSC procedures.

12.5 In considering the above guidelines, the Committee agreed to:

- .1 add the following words "taking into account the guidance set out in MSC.1/Circ.1298" at the beginning of paragraph 4;
- .2 delete the words "and operational" in paragraph 3.1.1.3, while retaining the footnote; and

- .3 include the text of editorial improvements proposed by the Secretariat under paragraphs 2.2, 3.1.1, 3.2.1.4 and 3.3.2.3 of the draft Guidelines, with removal of the square brackets.

12.6 Having considered the above issues, the Committee approved the draft Guidelines for PSCOs related to LRIT, for inclusion as Appendix 9 of the draft revised PSC procedures (see paragraph 12.8), and agreed to keep the above Guidelines under review for future possible amendments. Flag States and PSC regimes were invited to provide the Sub-Committee with any necessary feedback on the implementation of the Guidelines.

Safety of pilot transfer arrangements

12.7 As a follow-up to the instruction by MSC 87 for the Sub-Committee to take appropriate action in encouraging PSC regimes to formally include pilot ladders as part of the safety equipment that their PSCOs would be examining in the course of a port State inspection, the Committee approved the expansion of the draft Revised PSC procedures to include pilot transfer arrangements in the context of the initial and more detailed inspections (see paragraph 12.8) and approved MSC.1/Circ.... on Safety of pilot transfer arrangements.

Draft revised PSC procedures

12.8 The Committee, subject to MEPC's concurrent decision, approved the draft Procedures for Port State Control, 2011, and the associated draft Assembly resolution, as set out in annex ..., for submission to the twenty-seventh session of the Assembly for adoption.

Guidelines for PSCOs related to the ISM Code

12.9 Recalling MSC/Circ.890 – MEPC/Circ.354 on Interim guidelines for PSC related to the ISM Code and MSC/Circ.1059 – MEPC/Circ.401 on Procedures concerning observed ISM Code major non-conformities, the Committee noted that FSI 19 had recommended that a further development of the guidelines for PSCOs related to the ISM Code should be carried out, where appropriate, in cooperation with the STW Sub-Committee (see paragraph 10...).

12.10 The Committee approved, subject to MEPC's concurrent decision, the further development of the Guidelines for PSCOs related to the ISM Code by the Sub-Committee under the existing agenda item on "Harmonization of PSC activities", in cooperation with the STW Sub-Committee (see paragraph 10...), as appropriate.

Concentrated inspection campaigns

12.11 The Committee endorsed the request to the Secretariat to call the attention of the DE Working Group on Lifeboat Release Hooks, DE 55 and STW 43 to the findings of the concentrated inspection campaigns on lifeboat launching arrangements, which are substantiated in documents FSI 19/INF.7 and FSI 19/INF.9, having noted that DE 55 had decided to take the information contained therein into account in its discussions (see paragraph 8...).

SURVEY GUIDELINES UNDER THE HARMONIZED SYSTEM OF SURVEY AND CERTIFICATION

12.12 The Committee approved, subject to MEPC's concurrent decision, the draft Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2011, as consolidated by the Secretariat, and the associated draft Assembly resolution, as set out in annex ..., for submission to the twenty-seventh session of the Assembly for adoption.

CODE FOR THE IMPLEMENTATION OF MANDATORY IMO INSTRUMENTS**Draft mandatory Code for implementation**

12.13 With regard to the proposed title of the new Code for implementation of mandatory IMO instruments (Code for implementation), the Committee agreed, subject to MEPC's concurrent decision, that the name of the new Code for implementation should be "IMO Instruments Implementation Code (III Code)" in its mandatory form.

12.14 The Committee, in considering document MSC 89/12/1 (Secretariat) on the outcome of the fourth session of the Joint Working Group on the Member State Audit Scheme (JWGMSA), agreed to use paragraph 7.1 of the draft revised Framework for the IMO Member State Audit, as developed by the group, as a replacement text for paragraph 4 of the draft III Code.

12.15 The Committee also considered documents MSC 89/12/2 (Austria *et al.*) and MSC 89/12/3 (United States *et al.*) for deciding on the issue of retaining or removing the draft text which the United States had proposed at FSI 19 and which was shown within square brackets in both the draft III Code and the draft Code for Recognized Organizations (RO Code) (see paragraph 12...).

12.16 During an extensive debate, the proposal to remove the square brackets and to retain the text contained therein (MSC 89/12/3) was supported by a wide majority of

delegations^{*}, while a lesser number of delegations supported the proposal to delete the text within square brackets (MSC 89/12/2).

12.17 In an attempt to put forward a compromise solution to allow unanimous acceptance of the proposed text, the delegation of Sweden suggested, without gaining sufficient support, to insert the following text in the draft III Code as a new paragraph under paragraphs 5 or 18 and in the RO Code under paragraph 6.1:

"No flag State shall be prohibited from applying, as a condition for recognition by that flag State, requirements on the organizations it recognizes that go beyond Convention requirements and the mandatory instruments of the Organization in the interest of safety, security, environmental protection and other legitimate interests of that State."

12.18 The Committee, therefore, agreed, subject to MEPC's concurrent decision, to delete the square brackets around the proposed text in both draft instruments and approved the draft III Code, as set out in annex ..., for submission to the Assembly at a future session, i.e. after the forthcoming session of the Assembly, for adoption. In this context, the Committee recorded several reservations which were entered by some Member States^{**} with regard to its decision on the two draft instruments.

12.19 The Committee, having noted the considerations at FSI 19 for the process of making the III Code and auditing mandatory and rationale thereof, requested the Secretariat to provide the Sub-Committee with a comprehensive review of the options available and also agreed to consider, at its next session, the draft amendments to mandatory IMO instruments, as prepared by the Secretariat and reviewed by FSI 20, together with the course of action for adoption of, and future amendments to the III Code in its mandatory form.

^{*} Argentina, Australia, Bahamas, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Cook Islands, Dominica, Ecuador, Honduras, Jamaica, Japan, Kenya, Kiribati, Liberia, Malaysia, Marshall Islands, Mexico, Morocco, New Zealand, Nicaragua, Panama, Papua New Guinea, Peru, Philippines, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Thailand, Tuvalu, Uruguay, United States, Venezuela and Hong Kong, China.

^{**} Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom.

Draft non-mandatory Code for implementation

12.20 The Committee, subject to MEPC's concurrent decision, approved the non-mandatory draft Code for the implementation of mandatory IMO instruments, 2011, as consolidated by the Secretariat, and the associated draft Assembly resolution, set out in annex ..., for submission, through the Council at its twenty-sixth extraordinary session, to the twenty-seventh session of the Assembly for adoption.

DRAFT CODE FOR RECOGNIZED ORGANIZATIONS

12.21 The Committee, subject to MEPC's concurrent decision, agreed to extend the target completion date of the output on the development of a Code for Recognized Organizations (RO Code) to the year 2012 (see paragraph 22...).

12.22 With regard to the nature of the RO Code, the Committee noted the request to the Secretariat to prepare the draft text of a relevant instrument to adopt the RO Code and draft amendments to existing instruments to make the RO Code mandatory, and the future consideration of the time period between the adoption of the RO Code and the entry into force of the regulations mandating the RO Code.

12.23 Further to its earlier decision on the matter (see paragraph 12.18), the Committee agreed, subject to MEPC's concurrent decision, to delete all square brackets and retain the text of the draft RO Code, as prepared by the Sub-Committee, which is being progressed intersessionally with a view to completion at FSI 20 for submission of the draft RO Code to MSC 90 and MEPC 64.

MEASURES TO PROTECT THE SAFETY OF PERSONS RESCUED AT SEA

12.24 The Committee noted the Sub-Committee's decision to await the outcome of COMSAR 15 and FAL 37 before considering further the measures to protect the safety of persons rescued at sea and agreed to extend the current target completion date to 2012 and to include this output as an accepted output for the next biennium (see paragraphs 13... and 22...).

SHIPPING INDUSTRY FLAG STATE PERFORMANCE TABLE

12.25 The delegation of Panama, referring to the consideration during FSI 19 of documents FSI 19/INF.16 (ICS, *et al.*) and FSI 19/3/1 (Ireland), related to the latest Shipping Industry Flag State performance Table, 2010, accompanying the "Shipping Industry

Guidelines on Flag State Performance", reiterated the concerns that the table was inaccurate and misleading. The delegation indicated that a document would be issued as a guidance for appropriate use of these external statistics by companies. The full text of their statement is set out in annex ...

23 ELECTION OF CHAIRMAN AND VICE-CHAIRMAN FOR 2012

23.1 The Committee, having been informed of the Chairman's decision not to stand for re-election, expressed its deep appreciation to Mr. Neil Ferrer (Philippines) for the outstanding contribution he had made over many years to the attainment of IMO's objectives in general and to the work of the Organization, especially the Committee which he had chaired with unique distinction, and wished him success in all his professional undertakings.

23.2 The Committee unanimously elected Mr. Christian Breinholt (Denmark), current Vice-Chairman, as Chairman for 2012, and unanimously elected Capt. M. Segar (Singapore) as Vice-Chairman for 2012.

[more to come]
