

**FOURTH MEETING OF THE OPEN-ENDED INFORMAL CONSULTATIVE
PROCESS ON OCEANS AFFAIRS AND THE LAW OF THE SEA
IMO INTERVENTION**

(Tuesday 3 June 2003, United Nations Headquarters, New York)

The International Maritime Organization (IMO) is the United Nations Specialized Agency competent to regulate matters relating to the safety of navigation, prevention of marine pollution from ships and the legal matters relating thereto. To put it briefly, safety of navigation, prevention of pollution, response in case of accidents, together with liability and compensation for damage, are the corner stones of the IMO activity.

The IMO work is carried out in close co-operation and co-ordination with the activity of the United Nations and of the other UN Specialized Agencies. Ongoing consultations with the UN over the years have assured that, ever since the adoption of UNCLOS, all IMO instruments conform with it.

Since the horrendous terrorist attacks of 11 September 2001, in the United States, IMO's main efforts also focused on the development of an entirely new set of measures on maritime security, which were adopted by a diplomatic conference in December 2002. The preparatory works for these measures was carried out by the Maritime Safety Committee and involved several weeks of intense meetings of the Committee and of its work group on maritime security. The new measures are set to enter into force on 1 July 2004.

Among the raft of measures that have been adopted, the most far-reaching is the International Ship and Port Facility Security Code (ISPS Code), which will be implemented through a new chapter XI-2 of the SOLAS Convention.

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

A description of the measures adopted by the Diplomatic Conference last December is contained in the IMO contribution to the report of the Secretary General. The maritime community has now a well-considered regime, on which to build an effective maritime security infrastructure. Because of the worldwide escalation of acts of terrorism, the challenge is now for all parties concerned to put in place all the necessary infrastructure as soon as possible, including the legislative, administrative and operational measures needed to give effect to the decisions of the Maritime Security Conference, without waiting for the entry into force date of 1 July 2004.

Work is also on going to address the legal aspects of ship security. The Legal Committee of IMO, at its 81st session in October 2001, included as a priority item in its work programme the revision of the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and of its Protocol of 1988 for the Suppression of Unlawful Acts Against the Safety of Fixed Platform on the Continental Shelf. Mindful of the fact that those responsible for perpetrating terrorist acts should not be allowed to escape prosecution and punishment, the scope of the revision is to ensure that these treaties, which provide for the prosecution or extradition of alleged criminals, wherever they happen to be, remain relevant in the light of the events of September 11.

The following issues are being considered, among others, for the purpose of the review of the so-called SUA Treaties:

- revision and expansion of the offences in article 3 to ensure that a wider range of unlawful acts are covered by the Convention in the light of the experience of 11 September;
- enlarging the scope of application to cover domestic cabotage navigation; and
- widening the regulations on jurisdiction and extradition, including for instance, making it obligatory not to use the political offence exception in order to deny extradition.

In order to progress speedily, the Committee has established a formal Correspondence Group under the leadership of the United States, with the task of studying and proposing necessary amendments to the two treaties in order to facilitate, strengthen and expand international co-operation and co-ordination as a means of combating unlawful acts, including terrorist acts.

On matters of relevance to this body, the Legal Committee, at its 86th session, noted that the new provisions on boarding should conform with the principles contained in UNCLOS, and should take into account existing precedents, such as, for example, the 1988 Vienna Drug Convention and the 2000 Protocol on Smuggling of Migrants. Account should also be taken of more recent experiences and practices, bearing in mind that these treaties have been drafted some time ago.

It was also noted that any new provisions on boarding of foreign ships must respect the jurisdiction of the flag State over its ships on the high seas. In this regard, a number of delegations expressed the view that boarding should take place only when the flag State has given explicit authorization.

The work on the revision will continue in the Legal Committee, as well as intersessionally. A diplomatic conference for the consideration and adoption of the revised treaties is provisionally scheduled to take place in the forthcoming biennium.

Co-Chairmen, work is in progress at IMO on several other issues of interest to this meeting, for example on Provision of Hydrographic Services. New SOLAS Chapter V, due to enter into force on 1 July 2003 includes regulation No.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 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, taking into account, whenever possible, relevant international resolutions and recommendations.

In order to help full implementation of the new SOLAS regulation, the International Hydrographic Organization (IHO) in liaison with the IMO Secretariat, has prepared a draft revised text of resolution A.532 (13) adopted in 1983 by the IMO Assembly. The content of the draft Assembly resolution on provision of hydrographic services is described in the 'IMO Contribution to the Report of the Secretary General' and will be considered by the IMO Assembly at its 23rd session to be held in November-December of this year.

Another important issue under consideration at IMO is a proposal to further accelerate the phase-out of single-hull tankers.

In the wake of the **Prestige** accident, the fifteen European Union Member States, and the European Commission, have submitted a proposal to the Organization to amend Annex I of MARPOL 73/78. The main thrust of the proposed amendments is to:

- further accelerate the phase-out of single-hull tankers:
- for Category 1 by 2005, this is two years less than under the present MARPOL requirements, and
- for Category 2 and Category 3 by 2010, this is five years less than under the present MARPOL requirements.

It is also proposed:

- To broaden the application of the Condition Assessment Scheme (CAS) to all Category 2 and Category 3 tankers of 15 years of age and over, if their operation goes beyond 2005; and
- To prohibit the carriage of heavy grades of oils by single hull tankers:
 - For single-hull tankers from 600 to 5000 DWT from 2008; and
 - For single-hull tankers from 5000 DWT and above, from 2005.

As requested by the 15 EU Member States, all Parties to the MARPOL Convention, the Secretary-General has circulated the proposed amendments to Annex I of MARPOL 73/78, in accordance with the relevant provisions of the treaty.

The proposed amendments will be considered by the Marine Environment Protection Committee (MEPC) at its 49th session in July 2003.

With a view to adopting the proposed amendments at the earliest opportunity, the IMO Council in June will consider the holding of an extraordinary session of the MEPC in December, during the IMO Assembly, for the purpose of consideration and adoption of the proposed amendments, subject to decision by the MEPC on the need for holding such extraordinary session.

In accordance with the tacit acceptance procedure, as stipulated in article 16 of the MARPOL 73/78, the earliest date of entry into force of the proposed amendments, if adopted by the extraordinary session of the MEPC in December 2003, would be in April 2005, since at least 16 months will be required from the date of adoption to the date of entry into force.

Another issue to be considered by the MEPC at its forthcoming session in July is the designation of a Western European Particularly Sensitive Sea Area. This measure has been proposed by several European States in the wake of the Prestige accident. It is accompanied by new protective measures, prohibiting the carriage of heavy grades of oil through the PSSA in vessels of more than 600 DWT, except in double-hull tankers, which will have to comply with a reporting obligation.

Stemming from the **Prestige** accident, are also the proposals by Spain to establish two additional lanes for ships carrying dangerous bulk cargoes in the existing *Cape Finisterre* traffic separation scheme. Spain has also proposed to extend the mandatory reporting area to the proposed additional lanes. Both proposals will be considered by the Sub-Committee on Safety of Navigation at its 49th session, at the end of this month. If approved, the measures will be submitted for adoption to the IMO Assembly at its 23rd session, in November-December this year.

Another important measure to be taken at IMO is intended to solve the problems faced by disabled ships and ships in distress, in finding places of refuge. It consists in the preparation of Guidelines for the Establishment of Places of Refuge, that will be adopted by the Assembly later this year. In this case, the real challenge is to find the proper balance between the duty of States to render assistance to ships in distress, and the rights of States to regulate entry into their ports and to protect their coastline from pollution. The adoption of these Guidelines will lead to positive interaction between flag and coastal States to ensure the application of basic principles of the Law of the Sea, and of international law.

No doubt, the proposals stemming from the **Prestige** accident and the preparation of the Guidelines on Places of Refuge show the will of States to implement UNCLOS through IMO rules and constitute some practical examples of what can be done, within the existing treaty law framework, provided by UNCLOS and the IMO treaties.

Distinguished delegates, before concluding my intervention, I would like to stress that the main responsibility for the implementation of IMO instruments rests on flag States. The responsibilities of flag States in implementing IMO standards are regulated by IMO treaties in a very precise way. States that do not comply with them in detail, commit a violation of international law. States comply with their international law obligations by ensuring that all ships flying their flags comply with IMO Treaties. Bearing all this in mind, IMO, through the initiative of the Secretary-General, the Maritime Safety Committee and the Sub-Committee on Flag State Implementation, continuously consider measures to enhance flag State implementation. Examples of these initiatives are the deliberations on the modalities of an IMO Model Audit Scheme, the preparatory works to adopt a Flag State Implementation Code and the measures proposed to enhance reports on violations.

These initiatives are described in the IMO contribution to the report of the Secretary-General.

Thank you Co-Chairmen.
