

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

## PRELIMINARY CONSIDERATIONS

In accordance with the request made by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, in a letter dated 6 May 2019, this contribution focuses on main developments on ocean issues and the law of the sea within the areas of competence of IMO between September 2018 and May 2019 (inclusive).

In particular, this report highlights the way in which General Assembly resolution 73/124 on Oceans and the Law of the Sea has been implemented by referring to the relevant paragraphs of the resolution.

## MARITIME SAFETY AND SECURITY

### **Regulatory Scoping Exercise for the Use of Maritime Autonomous Surface Ships (Mass)** *(paragraphs 107-110 of the UN General Assembly Resolution 73/124 refer)*

The Maritime Safety Committee (MSC) continued with the process of assessing the applicability of IMO instruments to ships with varying degrees of autonomy. To this end, the MSC endorsed the methodology and framework for the Regulatory Scoping Exercise (RSE) on Maritime Autonomous Surface Ships (MASS).

An analysis will be conducted to determine the most appropriate way forward to address MASS operations, taking into account a review of mandatory instruments.

The MSC identified 4 degrees of autonomy as follows:

1. Ship with automated processes and decision support.
2. Remotely controlled ship with seafarers on board.
3. Remotely controlled ship without seafarers on board.
4. Fully autonomous ship.

The scoping exercise will focus on degrees two and three. The initial review of mandatory instruments under the purview of the MSC will be conducted during the first half of 2019.

The mandatory instruments relate to safety (SOLAS); collision regulations (COLREG); loading and stability (Load Lines); training of seafarers and fishers (STCW, STCW-F); search and rescue (SAR); tonnage measurement (Tonnage Convention); Safe Containers (CSC); and special trade passenger ship instruments (SPACE STP, STP).

An intersessional MSC working group will meet in September 2019 with the aim of completing the regulatory scoping exercise in 2020.

The Legal Committee also began an analysis on the regulatory scoping exercise of conventions emanating from its work with regard to MASS. A web platform based on similar framework and methodology as undertaken by the MSC will be used to facilitate the work. The aim is to complete the review and analysis for consideration by the Legal Committee at its next session in March 2020.

Additionally, the Facilitation Committee agreed to review the Facilitation Convention as part of a regulatory scoping exercise for the use of MASS. The exercise will follow the same process being used to scope other instruments, such as those under the purview of the Maritime Safety and Legal Committees.

### **Goal-based Standards and Safety Level Approach**

*(paragraphs 107-110 of the UN General Assembly Resolution 73/124 refer)*

Following the adoption of Goal-based ship construction standards for bulk carriers and oil tankers (GBS) and the successful initial verification of 12 Recognized Organizations by IMO GBS audit teams at previous sessions, the MSC confirmed that the information submitted concerning the maintenance of verification by those 12 ROs demonstrated continued conformance with the Standards.

The experience gained in conducting GBS audits has highlighted the need to update the procedural requirements guiding the audits. The MSC therefore adopted Revised guidelines for verification of conformity with goal-based ship construction standards for bulk carriers and oil tankers, to come into effect on 1 January 2020.

The Committee also approved the *Interim Guidelines for development and application of the IMO goal-based standards safety level approach*.

The Committee considered a request for advice from the Sub-Committee on Ship Systems and Equipment (SSE) with respect to difficulties encountered in drafting goal-based regulations for onboard lifting appliances and anchor handling winches (OLAW). The MSC agreed to amend the Generic guidelines for developing IMO goal-based standards to aid their application by the bodies of the Organization. Member States and international organizations will submit relevant proposals to its next meeting.

### **Revised Guidelines on Fatigue Approved**

*(paragraphs 107-114 of the UN General Assembly Resolution 73/124 refer)*

The MSC approved the revised *Guidelines on fatigue*, which provide comprehensive information on the causes and consequences of fatigue, and the risks it poses to the safety and health of seafarers, operational safety, security and protection of the marine environment. The Guidelines will assist all stakeholders to contribute to the mitigation and management of fatigue.

### **Safety of Ships in Polar Waters**

*(paragraph 179 of the UN General Assembly Resolution 73/124 refers)*

The Committee discussed the development of possible mandatory and/or recommendatory measures for ships operating in polar waters which are not currently covered by the Polar Code<sup>1</sup>. A roadmap was agreed, which could see revisions to SOLAS and/or the Polar Code considered for adoption in 2022.

Preliminary draft text, which would extend the application of the Polar Code to all ships to which SOLAS chapter V (Safety of navigation) applies, was agreed. To this end, Member States and international organizations were invited to submit information to assist in determining the feasibility and consequences of applying the requirements in chapters 9 (safety of navigation) and 11 (voyage planning) of the Polar Code to non-SOLAS ships.

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<sup>1</sup> The Polar Code is only mandatory for certain categories of ships under the SOLAS and MARPOL Conventions

### **Sulphur 2020 Limit – Safety Issues**

*(paragraphs 107-110 and 184-186 of the UN General Assembly Resolution 73/124 refer)*

Member States and international organizations will submit concrete proposals on the development of further measures to enhance the safety of ships relating to the use of fuel oil, for consideration at the next meeting of the MSC. This followed concerns expressed on the potential need for guidance and advice regarding possible safety issues related to the implementation of the 0.50% limit of the sulphur content of fuel oil (outside emission control areas).

At the same time, the Committee endorsed the view that, while fuel safety was a longstanding existing concern needing thorough consideration, it should not affect Member States' commitment to implement the 2020 sulphur limit from the date of application (i.e. 1 January 2020).

The new 0.50% limit (reduced from 3.50% currently) on the sulphur content of ships' fuel oil will greatly benefit the environment and human health. In October 2018, the Marine Environment Protection Committee (MEPC) invited the MSC to consider relevant safety issues associated with the use of low-sulphur fuel oil. The MSC agreed to develop a joint-MSC-MEPC circular to ensure that fuel oil suppliers deliver compliant fuel oils. The MSC also noted the initiative of industry organizations to develop guidance to address potential safety and operational issues related to the supply and use of 0.50% sulphur fuels (refer to the paragraph on Sulphur 2020 Limit below).

### **Abandonment of Seafarers**

*(paragraphs 107-114 of the UN General Assembly Resolution 73/124 refer)*

The Legal Committee discussed the growing number of cases of abandonment and recognised the need for collective action to address the issue. Proposals for guidelines on cooperation between flag and port States to resolve seafarer abandonment cases will be discussed at its next session.

In 2017 and 2018, the cases reported increased drastically. In 2017, there were 55 cases reported, 14 of which were resolved that year and 8 of which were resolved in 2018. In 2018, the total number of reported cases was 44 and of those, 15 cases had been resolved as of 31 December 2018. Of the cases reported in 2018, eight involved flag States which had not ratified the MLC, 2006. None of the additional cases reported in 2018 were resolved in 2019. As of the end of March 2019, there had been 13 new cases reported for the year, none of which had been resolved.

### **Addressing Fraudulent Ship Registration**

*(paragraph 125 of the UN General Assembly Resolution 73/124 refers)*

The Legal Committee embarked on the discussion on "Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships". The issue of ship registration was recognised as quite complex, as it involved aspects of public international law and private law. The existing UN or IMO instruments do not adequately prevent fraudulent registration of ships. There is currently no binding international framework to regulate the registration process itself. The Committee supported the creation, in the publicly available Contact Points Module in the Global Integrated Shipping Information System (GISIS), of a comprehensive database of registries; and agreed on a procedure for the communication of this information to the Organization, through authorized diplomatic mechanisms.

The procedure is annexed to a draft Assembly resolution to be submitted to the IMO's thirty-first Assembly session, in October 2019, with a view for adoption.

Furthermore, the Legal Committee agreed that IMO should work with the United Nations Security Council to establish an easily searchable database, by IMO number and vessel name, of vessels currently the subject of, or designated pursuant to, United Nations Security Council resolutions.

The Committee further agreed on recommended best practices to assist in combating fraudulent registration of ships and will consider, at its future sessions, effective enforcement measures to discourage the practice and to prevent ships with fraudulent registration from operating.

## **MARINE ENVIRONMENT**

### **Reduction of Greenhouse Gas Emissions from Ships**

*(paragraphs 203 and 223 of the UN General Assembly Resolution 73/124 refer)*

The MEPC approved the Programme of follow-up actions of the initial IMO strategy on reduction of GHG emissions from ships up to 2023<sup>2</sup>.

Feeding in to the process towards adoption of a revised Strategy in 2023 will be the data collection system on fuel oil consumption of ships over 5,000 gross tons, which began on 1 January 2019. Also important is the fourth IMO GHG study which will provide an update of emissions estimates for international shipping for the period 2012 to 2018.

Moreover, the MEPC adopted the 2018 Guidelines on the method of calculation of the attained Energy Efficiency Design Index (EEDI) for new ships, incorporating updates to the 2014 Guidelines.

The MEPC also approved several measures to support the objectives set out in the initial IMO strategy on reduction of greenhouse gas (GHG) emissions from ships, in line with the Paris Agreement under UNFCCC and the United Nations 2030 Agenda for Sustainable Development. The measures aim in particular to strengthen existing mandatory requirements for new ships to be more energy efficient and to encourage cooperation with ports to reduce emission from shipping.

The Committee also approved a procedure for the impact assessment of new measures proposed and agreed to establish a multi-donor trust fund for GHG (refer to the paragraph on Capacity Building below).

### **Sulphur 2020 Limit**

*(paragraphs 184-186 of the UN General Assembly Resolution 73/124 refer)*

A new 0.50% limit on sulphur in ships' fuel oil will be in force from 1 January 2020, under the MARPOL treaty. The new limit will be applicable globally - while in designated emission control areas (ECAs) the limit will be even lower, at 0.10%.

The MEPC adopted a MARPOL amendment to prohibit the carriage of non-compliant fuel oil for combustion purposes for propulsion or operation on board a ship - unless the ship has an exhaust gas cleaning system ("scrubber") fitted.

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<sup>2</sup> The initial strategy refers to a range of candidate short-, mid- and long-term measures. Short term measures could be finalized and agreed between 2018 and 2023; mid-term measures, between 2023 and 2030; and long-term measures, beyond 2030.

Sulphur oxides (SO<sub>x</sub>) are known to be harmful to human health, causing respiratory symptoms and lung disease. In the atmosphere, SO<sub>x</sub> can lead to acid rain, which can harm crops, forests and aquatic species, and contributes to the acidification of the oceans. Consistent implementation of the 0.50% sulphur limit for all ships will ensure a level playing field and is expected to improve the environment and human health (refer to the paragraph on Sulphur 2020 Limit – Safety issues above).

### **Action Plan on Marine Plastic Litter Adopted**

*(paragraphs 207, 209-212, 214 and 221 of the UN General Assembly Resolution 73/124 refer)*

Progress continues on the IMO Action Plan to address marine plastic litter from ships, including the establishment of a Working Group. The action plan aims to contribute to the global solution for preventing marine plastic litter entering the oceans through ships.

Norway will support a proposed IMO/FAO/Norway GloLitter project to assist the IMO Action Plan. The project will also see the institution of an award to honour the contributions made by Ms. Joanna Toole (FAO), who lost her life in an air accident in March 2019 while on a UN mission.

### **Ballast Water Management Treaty Implementation**

*(paragraph 220 of the UN General Assembly Resolution 73/124 refers)*

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM Convention), entered into force in September 2017 and has been ratified, to date, by 81 countries, representing 80.76% of world merchant shipping tonnage. The BWM Convention aims to stop the spread of potentially invasive aquatic species in ships' ballast water and requires ships to manage their ballast water to remove, render harmless or avoid the uptake or discharge of aquatic organisms and pathogens within ballast water and sediments. In October 2019, the Code for the approval of the ballast water management systems will become mandatory.

The main focus for the convention now is on its effective and uniform implementation, and on an experience-building phase, including gathering data on application of the BWM treaty.

The MEPC approved the *Guidance on System Design Limitations of ballast water management systems and their monitoring*, as well as the *Guidance for the commissioning testing of ballast water management systems*. It also adopted amendments to update the Guidelines for ballast water management and development of ballast water management plans (G4) to address the incorporation of information on contingency measures in ballast water management plans.

The MEPC also approved amendments to the BWM Convention concerning commissioning testing of ballast water management systems and the form of the International Ballast Water Management Certificate. The amendments will be circulated with a view to adoption at the next session of the Committee. Furthermore, the MEPC approved several ballast water management systems that make use of Active Substances.

### **Ratifying and Implementing the HNS Convention**

*(paragraphs 228-231 of the UN General Assembly Resolution 73/124 refer)*

The Legal Committee encouraged Member States to ratify the 2010 HNS Protocol to enable the entry into force of the 2010 HNS Convention, which covers liability and compensation in the event of an incident involving hazardous goods. The number of ships carrying HNS cargoes is growing steadily with more than 200 million tonnes of chemicals traded annually.

Administrative preparations for the setting up of the HNS Fund, required under the treaty, are under way. Preliminary preparations have also been made for the first session of the HNS Assembly, which will be convened by the IMO Secretary-General, in accordance with article 43 of the 2010 HNS Convention, when all entry-into-force criteria of the 2010 HNS Protocol have been met.

### **Use and Carriage of Heavy Fuel Oil as Fuel by Ships in Arctic Waters**

*(paragraphs 203 and 339 of the UN General Assembly Resolution 73/124 refer)*

The MEPC has agreed that the Sub-Committee on Pollution Prevention and Response (PPR) should develop a ban on heavy fuel oil for use and carriage as fuel by ships in Arctic waters, based on an assessment to be carried out on the impacts of such a ban.

Currently, the use and carriage of heavy fuel oil is banned in the Antarctic under MARPOL Annex I, regulation 43. It is recommended in the Polar Code that the same rules are applied in the Arctic waters.

### **MARPOL Amendments- Substances with a High Viscosity or High Melting Point**

*(paragraphs 184-192 of the UN General Assembly Resolution 73/124 refer)*

The MEPC approved, for future adoption, draft amendments to MARPOL Annex II to strengthen, in specified sea areas, discharge requirements for tank washings containing persistent floating products with a high-viscosity and/or a high melting point that can solidify under certain conditions, e.g. certain vegetable oils and paraffin-like cargoes.

The draft amendments follow concerns about the environmental impact of permissible discharges of such products and would tighten requirements for the discharge from ships of tank washings containing such products.

### **Capacity Building**

*(paragraphs 25-27 and 41 of the UN General Assembly Resolution 73/124 refer)*

With a view to assisting developing countries to improve their ability to comply with international rules and standards relating to maritime safety and security and the prevention and control of marine pollution, IMO, through its Integrated Technical Cooperation Programme (ITCP), continued to deliver technical assistance to Governments which lack the technical knowledge and resources needed to operate a shipping industry safely, efficiently and in an environmentally friendly manner.

Priority was given to technical assistance programmes that focus on human resources development and institutional capacity-building, in addition to the implementation of the 2030 UN Agenda for Sustainable Development and the special needs of Small Island Developing States (SIDs) and Least Developed States (LDCs).

During the period under review, several technical cooperation activities were delivered, ranging from advisory and needs assessment missions and national and regional training events to the development of model maritime legislation. Moreover, through its two global maritime training institutions, namely, the World Maritime University (WMU) located in Malmo, Sweden and the IMO International Maritime Law Institute (IMLI) based in Malta, IMO continued to offer the international maritime community the possibility to access high level post graduate maritime education.

As part of the UN “Delivering as One” principle, IMO participated actively in the realignment of the Clusters of the Regional Coordination Mechanism for Africa (RCM-Africa) with the African Union Agenda 2063 as well as the 2030 Agenda and its Sustainable Development Goals. The realignments were meant to engender necessary human and institutional capacities to give effect to emerging issues. This is in consonance with the Framework for a Renewed United Nations-African Union Partnership on Africa’s Integration and Development Agenda 2017-2027.

The MEPC agreed to establish a voluntary multi-donor trust fund ("GHG TC-Trust Fund") to provide a dedicated source of financial support for technical cooperation and capacity-building activities to support the implementation of the Initial IMO Strategy on reduction of GHG emissions from ships.

An IMO-Norway GreenVoyage-2050 project was launched to demonstrate and test technical solutions for reducing GHG emissions in shipping, and it will run for an initial two-year period. More than 50 countries in 14 sub-regions across the globe are expected to participate, including developed countries and the private sector.

The project will also build capacity in developing countries, including SIDs and LDCs , to fulfil their commitments to meet climate-change and energy-efficiency goals for international shipping.

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