

Protection of the Marine Environment

by Louise de La Fayette*

Although no new legal instruments were adopted in 1998, substantial progress was made in the negotiation of several texts in both the Legal Committee and the Marine Environment Protection Committee of the International Maritime Organisation. In addition, work was ongoing to promote the implementation of agreements adopted in previous years. As in many other sectors and organisations, henceforth, at IMO the focus will be primarily on implementation of and compliance with existing instruments, with special attention given to the “human factor”, since human error is the main cause of accidents.

A. IMO Legal Committee

The IMO Legal Committee held its 77th session on 20–24 April 1998 and its 78th session on 19–23 October 1998. As in the previous year, the focus was on financial security, wreck removal, and compensation for pollution

from ship’s bunkers. However, unlike the situation in 1997, in 1998 there was no resistance to work proceeding on any of the topics.

Compulsory Financial Security

Led by the United Kingdom, a group of states submitted for the consideration of the Committee a draft IMO Code on the provision of financial security by all sea-going ships. Although most shipowners voluntarily arrange for insurance or other financial security to cover third-party claims, including those for pollution damage, a significant minority do not. Because earlier proposals for compulsory insurance had met with some resistance, the UK and others proposed instead a voluntary code of practice setting universal minimum standards to be implemented and enforced by flag states. Although the International Chamber of Shipping (ICS) and some states believed that adoption of the code would obviate the need for provisions for compulsory insurance in the draft conventions on bunkers and on wreck removal, most states disagreed, holding that compulsory insurance provisions were still necessary to ensure proper financial security in relation to specific types of claims. A number of suggestions were made for amendments to the draft code, which will be revised and re-submitted to the next meeting of the Committee. ➤

* Senior Research Fellow in International Law, University of Southampton, U.K.
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Wreck Removal Convention (WRC)

The Committee discussed the report of the Correspondence Group which is elaborating a new Convention on Wreck Removal. The purpose of the draft convention is to require the identification, marking and removal of



wrecks posing a “hazard”, in particular to the safety of navigation. The first issue was whether or not to include potential damage to the environment as a hazard which would require the removal of a wreck. After an exchange of views, including an intervention by the IUCN in favour of covering environmental hazards, it was decided to include them, but with the qualification that the potential damage must be “significant,” in order to warrant the removal of the wreck. In addition to wrecks *per se*, *i.e.* sunken or stranded ships, the convention will cover casualties and drifting ships which are expected to become wrecks, and cargo and other objects which have accidentally fallen off ships and which may pose a hazard to navigation or the environment. As to the geographic scope of the Convention, it was decided that it would cover wrecks and drifting ships in the exclusive economic zones (EEZ) or equivalent zones of states parties. The question whether cargo owners should contribute to the cost of wreck removal was unresolved. This and other issues, including drafting changes, were to be considered by the correspondence group, which will present a revised draft to the next session of the Committee.

Compensation for Pollution from Ship's Bunkers

A number of delegations led by Australia presented the Committee with a revised draft International Convention on Civil Liability for Bunker Oil Pollution Damage. The regime elaborated in the draft articles was based upon: 1) strict liability, 2) a single tier of compensation (unlike the two tier systems in the IOPC Fund Convention and the HNS Convention), 3) limited liability, 4) liability on the person actually operating the ship, and 5) compulsory financial security. Unlike the International Convention on Civil Liability for Oil Pollution Damage (CLC), which applies only to oil tankers and other ships carrying oil as cargo, the new convention would apply to all ships, because all ships carry bunker fuel oil.

This proposal was strongly supported by the International Association of Ports and Harbours, which submitted a document enunciating its view that there was a compelling need for the convention. In a document designed to dispell the concerns of some delegations that the provision of financial guarantees required by such a

convention would be expensive and difficult to administer, the United States explained its national system for establishing and verifying financial responsibilities for pollution damage. Fortunately, the previous resistance of some delegations to the convention appears to have dissipated. Although they had initially been concerned about the cost to all ships of providing the necessary financial guarantees, eventually they realized that they were all vulnerable to pollution damage by bunker oil, which could be even more costly to clean up than most crude oil carried by tankers.

On the question of who should be liable for pollution damage caused by bunker fuel oil, four options were presented in the draft, all of which used the term “shipowner”, but defined in different ways. In the CLC Convention and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (HNS Convention), liability is channelled to the registered shipowner, for three main reasons: first, because it would be easier for the victim to secure compensation from a single, easily identifiable source; second, because it is more efficient and economical for only one person to buy insurance; and third, because, under the principle of liability for risk, if the shipowner decides to take the risk of using his vessel to transport hazardous cargo, he should be liable for any adverse consequences.

However, the case of bunker fuel oil is very different, for fuel is required by all ships to run the engines, and the person responsible in fact for ensuring that the fuel is handled in a safe and environmentally sound manner is the person actually operating the ship. Because many ships are chartered in various ways, rather than operated by the registered owner, the owner may have no knowledge or control over how the fuel is handled and how the ship is operated. For this reason, many delegations believed that it would be more appropriate to place liability on the charterer, manager or operator of the ship, rather than the owner. Further, because there would be no recourse to a second tier for compensation if the shipowner would or could not pay, many delegations believed it to be advisable to place liability on more than one person.

At the conclusion of the discussion, it was decided to retain only options 2 and 3, which read as follows:

Option 2

“Shipowner” means the owner, charterer, manager and operator of the ship; and

“Responsible party” means the owner of the ship, or any other organisation or person who or which has assumed responsibility for compliance with the insurance requirements of this Convention.

Option 3

“Shipowner” means the owner of the ship, or any other organization who or which has assumed responsibility for the operation of the ship.

As to limitation of liability, the draft text offered two options for the consideration of the Committee: 1) appli-

cation of the limitation provisions of the 1976 Convention on the Limitation of Liability for Maritime Claims (LLMC), as amended by the 1996 Protocol, with the option of the application of national law in square brackets; or 2) the inclusion of the limits of the 1996 Protocol to the LLMC in the new Convention, to enable it to function as a free-standing instrument. There was no support for option 2. As to option 1, one delegation proposed as an alternative simply to delete the provision, arguing that if there were no provision on limitation in the Convention, the limits would be those in whichever international instrument or national law was applicable to the ship in question. As a compromise, another delegation suggested redrafting the provision so as to provide to the shipowner a right to limit its liability under whichever regime was applicable. To attempt to find a generally acceptable solution, the question of limitation was discussed in an informal group, whose report will be examined at the next session of the Committee. During the inter-sessional period, delegations supporting the draft convention will revise it in the light of the discussion.

Offshore Crafts and Structures

The Comité Maritime International (CMI) submitted information regarding the status of its work on a possible international convention on offshore crafts and structures. Whilst concentrating on mobile offshore craft, the prospective convention could also include provisions on fixed structures. The observer delegation of the Oil Industry International Exploration and Production Forum (E&P Forum) expressed its preference for regional rather than global regulation of the offshore oil industry. Governments were invited to study the CMI submission during the inter-sessional period.

B. The Marine Environment Protection Committee (MEPC)

Despite an extremely heavy agenda, MEPC made significant progress on a number of topics, giving rise to expectations that several new instruments might be adopted in the period 2000–2002. The Committee met on 30 March to 3 April (MEPC 41) and 2 to 6 November 1998 (MEPC 42).

1. Implementation and Revision of MARPOL

In its consideration of the report of the Sub-Committee on Bulk Liquids and Gases (BLG), MEPC noted the progress made on the revision of Annex I (oil) of MARPOL. (MARPOL: International Convention for the Prevention of Air Pollution from ships.) As regards the revision of Annex II (noxious liquid substances), because the work is dependent upon the preparation of new GESAMP Hazard Profiles for all products in the International Bulk Chemical (IBC) Code, it cannot be finished until the new Hazard Profiles are complete. Consequently, the Committee approved the General

Action Plan for the Sub-Committee, with a new completion date for the revision of Annex II of 2002. The Committee approved amendments to the IBC Code, including a Japanese proposal permitting states to relax requirements for small craft under 500 tonnes, to come into force on 2 July 2002, under both MARPOL and SOLAS. MEPC approved amendments to requirements for shipboard emergency plans under Annex II, to be circulated with a view to adoption by the parties to MARPOL at its next session. Also approved was a Japanese proposal to revise regulation 13G of MARPOL Annex I to subject tankers carrying persistent oil products to the same requirements as crude oil carriers. The United States reserved its position on the latter provision.

In relation to Annex III of MARPOL (dangerous goods in packages), Norway elicited sufficient support to prevent the immediate deletion of “tainting” as a criterion for assessing the pollution potential of packaged goods. The issue was referred to the DSC Sub-Committee for further analysis. On the question of the status of the IMDG Code, the Committee decided to make it mandatory under MARPOL, as well as under SOLAS. As for Annex IV, which regulates the disposal of ship’s sewage, 25 years after being adopted it had still not come into force. (Whereas acceptance of Annexes I and II of MARPOL is mandatory upon ratification of the Convention, adherence to Annexes III to VI is voluntary and subject to separate ratification.) A questionnaire had been sent to states parties requesting them to indicate why they had not ratified Annex IV. In the discussion it emerged that a number of states were reluctant to ratify Annex IV, because they did not wish to provide the requisite reception facilities, which they considered unnecessary in certain areas. Determining that further information was required as to how to make Annex IV more acceptable, the Committee requested the secretariat to write to those parties which had not ratified the Annex and had not responded to the questionnaire.

The Netherlands raised the issue of updating existing standards under MARPOL for pollution equipment. In a written submission, the Netherlands proposed to develop terms of reference and a time schedule for a partial revision of the relevant IMO resolutions. The Russian Federation and the United Kingdom also made proposals on this subject. The Committee agreed that it was necessary to amend existing standards for shipboard pollution prevention equipment contained in resolutions MEPC.60(33) and A.586(14), and referred the matter to the DE Sub-Committee as a priority item, bearing in mind that the revision of MARPOL Annexes I and II is due to be completed in 2002.

HNS Protocol to the OPRC Convention

Considerable progress was made on the elaboration of the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (HNS), which was prepared in the OPRC Working Group. Although the draft Protocol was approved in principle by MEPC, some drafting problems still have to be

resolved before it can be approved in detail and adopted by a diplomatic conference, probably in the year 2000. In essence, the HNS Protocol adapts and applies the provisions of the Convention on Oil Pollution Prevention, Response and Co-operation (OPRC Convention) to hazardous and noxious substances. Thus, chemical spills will benefit from the same prevention, response and co-operation regime as oil spills. The Committee also agreed with the proposals of the Working Group on topics for resolutions to be adopted at the diplomatic conference.

In relation to the implementation of the OPRC Convention, the Working Group expressed concern that the obligations of the Organization under the Convention were not being fulfilled, due to a lack of resources. In effect, the International Maritime Organization is in breach of the Convention. The Committee decided to transmit these concerns to IMO Council, together with a request to provide resources to establish a Pollution Preparedness, Co-ordination and Support Unit on a permanent basis.

Alien Organisms in Ballast Water

Marine organisms transported in ship's ballast water from one maritime ecosystem to another, on a regional or a global scale, can pose serious risks to marine organisms already existing in the area where they are released. In a number of cases, alien organisms carried in ships' ballast water have completely destroyed native species. In recent years, the problem has been exacerbated by the general increase in maritime trade and by the increased speed of vessels using modern technology, which shortens voyage times, thereby enabling more organisms to survive. In view of these problems, MEPC decided that there was a clear need for a legally binding international instrument to minimise the risk of transferring harmful aquatic organisms and pathogens with ships' ballast water. However, although it discussed both the content and possible form of such an instrument, it could not arrive at firm conclusions on either.

As to the form, the Secretariat was requested to prepare a document examining the relative merits of three options: 1) amendments to an existing annex to MARPOL; 2) a protocol to add a new annex to MARPOL; and 3) a new free-standing convention. Member governments are to consider their preferences in preparation for the next session. The Committee reviewed in some detail the principles of the draft regulations prepared by the Ballast Water Working Group. There was no agreement as to whether the regulations should apply to all ships, or only to ships on international voyages, or only to ships in special "ballast water management areas," and on whether small ships should be exempted. Several delegations supported an Australian compromise proposal that port states be allowed to opt-out of some provisions. Friends of the Earth International (FOEI) stated that small ships could cause as much damage as large ones, and also reminded the Committee of the need to apply the precautionary principle. The United States proposed the inclusion of provisions for alternative compliance mechanisms and methods to accept new ballast

water management techniques which might be developed in future.

The observer delegations from ICS and INTERTANKO presented proposals for a standard reporting format and a Model Ballast Water Management Plan, which met the requirements of Assembly Resolution A.868(20). INTERTANKO also proposed that states should apply risk assessment techniques to determine in which areas ballast water management would be necessary. Brazil reported on the successful results of tests of a new ballast water management technique, called the "dilution method." The Committee agreed to refer all these matters to the Ballast Water Working Group for further consideration. It also requested the DE and SLF Sub-Committees to review the safety aspects of the draft regulations and the proposed Ballast Water Management Code.

At the end of its discussion, MEPC confirmed its view that a legally binding instrument should be adopted and considered that it should be able to complete a draft in its next two sessions in time for adoption in the biennium 2000–2001. It agreed that IMO Council be invited to approve preparations for the convening of a diplomatic conference to adopt the instrument.

Inadequacy of Reception Facilities

The existence and adequacy of port reception facilities is essential for the implementation of MARPOL. Simply prohibiting the discharge of hazardous substances and wastes from ships at sea will have no effect in the absence of adequate reception facilities, for if ships cannot dispose of their wastes in port, they will have no option but to dispose of them at sea. MEPC 41 established a Correspondence Group on port reception facilities to prepare for the creation of a Working Group on the same issue at MEPC 42. The Working Group made considerable progress and the Committee took action on a number of its conclusions. MEPC approved a format for reporting on the adequacy of reception facilities, and requested that it be circulated as MEPC/Cir.349 as soon as possible. Also approved was a revised Chapter 11 of the Comprehensive Manual on Port Reception Facilities, which is to be incorporated into the existing Manual and published as soon as possible.

On the definition of the adequacy of reception facilities, MEPC determined that in order to achieve "adequate reception facilities," ports should have regard to the operational needs of users and should provide reception facilities for the types and quantities of waste from ships normally using the port, without causing undue delay for the ships. Considering that additional work on the issue of reception facilities had to be undertaken, the Committee established a Correspondence Group to prepare a base document for submission to its next session.

Harmful Effects of Toxic Anti-Fouling Paints

The question of a global regime for the prevention of pollution by toxic anti-fouling paints has become more urgent as evidence mounts as to the toxic effects of such

paints on marine organisms, and as some states, such as Japan, have banned the use of such paints on vessels in their waters. However, heretofore, action has been hindered by the insistence of some states and ICS that the availability of effective alternatives must be ensured before the adoption of a prohibition on organotin-based paints. Due to efforts by a number of states and environmental NGOs to demonstrate that such alternatives were already available, opposition was overcome, and a Working Group established at MEPC 42 made remarkable progress. The Working Group decided that IMO should conclude a legally binding instrument containing a prohibition on the use of organotin-based paints by 1 January 2003, and prepared a draft resolution on the subject for adoption at the 1999 meeting of the IMO Assembly.

The Committee approved the draft resolution for submission to the Assembly, and invited states to consider what the form of the instrument should be containing the prohibition, as well as what methodology should be used for considering the acceptability of alternative anti-fouling systems. As to the question of form, the options are similar to those relating to ballast water: either a new annex to MARPOL or a new free-standing convention. One consideration to take into account is the question of the length of time it would take for the instrument to come into force. Because rapid implementation would be possible if the instrument were adopted as an amendment to SOLAS, the Japanese delegation made a proposal to this effect. However, the Committee rejected this proposal, because SOLAS addresses problems of ship safety and the question of toxic anti-fouling paint was not a safety matter, but an environmental one. Further details of the contents of the measure, its form, and the question of when the new instrument will be adopted will be considered at the next session of MEPC in July 1999.

Guidelines for Particularly Sensitive Sea Areas

MEPC 41 decided to establish a Correspondence Group to review the 1991 Guidelines on the identification and protection of special areas and particularly sensitive sea areas (PSSAs), adopted by Assembly Resolution A.720(17). MEPC noted the conclusions of the report on the views of the majority of its members:

1. There was a need to revise the guidelines to produce simple, expeditious procedures. A clear majority support the division of the guidelines into two distinct documents: one dealing with special areas under MARPOL and the other dealing with PSSAs. All agreed that the initial focus should be on PSSAs.
2. The United States submission on procedures for the identification and adoption of PSSAs should be used as a basis for further deliberation on the review of the guidelines, although there was a need for consideration and review of all issues and aspects.
3. Consideration should be given to shortening the guidelines by removing sections paraphrasing other IMO instruments, but only if the guidelines remain clear and readily understood.

4. MEPC should consider the development of a layman's guide or model proposal after the revision is completed.

5. Environmental, ship safety and navigational aspects should not be considered in isolation from each other.

6. The Guidelines should be re-assessed in relation to the UN Convention on the Law of the Sea (UNCLOS).

A Drafting Group was established to consider these matters. Due to a difference of views on certain issues, it could not complete its work, but merely reported orally to the Committee. The Drafting Group requested MEPC to decide whether applications for the designation of PSSAs had to be accompanied by proposals for protective measures. Although some delegations expressed the opinion that this was unnecessary, there was not sufficient time for a general exchange of views. Discussions in the Drafting Group will continue at the next session, after the Committee as a whole makes a decision.

Also discussed were the protective measures to be applied in the PSSA designated in the Cuban Archipelago of Sabana-Camaguey. As explained by the Cuban delegation, some of the measures already taken were in conformity with regulations under MARPOL, and therefore did not require any further action. Cuba was requested to report on the availability of reception facilities. As to routing measures, although traffic separation schemes in the area had already been adopted by IMO, the proposed area to be avoided had not. This latter proposal was referred to the Navigation Sub-Committee for consideration before final adoption by MEPC.

Sub-Committee on Flag State Implementation (FSI)

Although the Committee approved in general the report of the FSI Sub-Committee, some delegations regretted what they viewed as a lack of progress on the assessment of flag state implementation. These delegations proposed amendments to SOLAS for compulsory reporting requirements. As an initial response, the Chairman pointed out, first, that it was not within MEPC's remit to propose amendments to SOLAS and, second, that the question of implementation also related to requirements under MARPOL. Finally, he noted that the matter of flag states fulfilling "their obligations under various conventions and some form of accountability checking against agreed criteria [was] a much broader policy matter than simply amending SOLAS and MARPOL and perhaps the Loadline Convention." In his view, this was an issue which required careful high-level consideration.

There followed a general discussion, which focussed on a draft "Self-Assessment Form" developed by FSI to be used by flag states to evaluate their own performance. Some delegations expressed concern about how the form would be used and questioned what benefits it would provide. They wondered whether it would result in flag states being judged by other states, and were concerned about a possible "impingement on sovereign rights." From the opposite perspective, other states expressed concern about the consequences of the lack of implementation of the requirements of IMO conventions.

After detailed consideration, the Committee approved the Self-Assessment form, subject to drafting changes to refer to all MARPOL Annexes, and referred the form to the Maritime Safety Committee for its approval.

Prevention of Air Pollution from Ships

Under this Agenda item, the Committee considered follow-up action to Annex VI to MARPOL on Regulations on the Prevention of Air Pollution from Ships, and to the resolutions which accompanied the adoption of Annex IV at a diplomatic conference held in September 1997. The IMO Secretariat reported on its communications with the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC). The Secretariat of the UNFCCC had transmitted a copy of the Revised 1996 Guidelines for National Greenhouse Gas Inventories, whilst pointing out that states had to report separately on emissions from ships or aircraft fuel. After a general discussion on greenhouse gas emissions, the Committee noted that in response to the Kyoto Conference, IMO had a clear mandate to address the problem of greenhouse gas emissions from ships. It invited members to submit for the next session comments and proposals for a policy document on greenhouse emissions from ships to be forwarded to the UNFCCC. This policy document would take account of an IMO study on CO₂ emissions from ships proposed by the United States and agreed to by the Committee.

With respect to NO_x emissions, MEPC agreed that new engines installed on ships on or after 1 January 2000 should, on a voluntary basis, comply with the requirements of the NOX Technical Code. In order to assist states in the implementation of this measure, the Committee adopted Interim Guidelines for the Application of the NOX Technical Code. Also as part of the follow-up to Annex VI, the Committee considered draft Guidelines for monitoring the sulphur content of residual fuels, with a view to their adoption at its next session. Finally, although recognising that Annex VI might not enter into force for some time, INTER-TANKO submitted a proposal that oil terminals report to IMO as soon as possible on their future requirements for vapour recovery systems, so that shipowners could prepare for them in advance. MEPC agreed to issue to member governments the circular "Notification to the Organization on Ports and Terminals where Volatile Organic Compounds (VOCs) Emissions are to be Regulated".

Follow-up Action to the United Nations Conference on Environment and Development (UNCED)

In relation to the follow-up action to UNCED, IMO is responsible for implementing the provisions of Agenda 21 in relation to the prevention, reduction and control of marine pollution caused by shipping and offshore oil and gas production. The Netherlands and Brazil reported to MEPC 41 and 42 on their jointly-sponsored Expert Meeting on Environmental Practices in Offshore Oil and Gas Activities, held in November 1997. Among the conclusions of the Meeting was the belief that, in relation to oil and gas activities,

"Sustainable Development" can be made operational in the form of a joint development of environmental best practice guidelines in offshore oil and gas activities, obtained through open discussion between industries, Governmental organisations and other interested parties within the framework of regional or local environmental and socio-economic conditions."

This conclusion was commensurate with the oil industry preference for regional regulation and voluntary instruments. The conclusions of the Expert Meeting will be discussed at the 1999 session of the Commission on Sustainable Development (CSD). On the same topic, the Committee noted information on the outcome of the Fourth International Conference on Health, Safety and Environment in Oil and Gas Exploration and Production.

The Committee also discussed and adopted its report to the CSD on follow-up action taken by IMO to the UNCED and on the implementation of Agenda 21.

Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-level Radioactive Wastes in Flasks on Board Ships (INF Code)

MEPC concurred with the decision by the Maritime Safety Committee to make the INF Code mandatory under SOLAS and approved the requisite amendments to Chapter VII and the INF Code. As to the question of voyage planning for INF shipments, the Committee noted that the Navigation Sub-Committee (NAV) was in the process of preparing a draft decision for the IMO Assembly on Guidelines for Voyage Planning for all ships. It decided to defer further discussion of the issue until NAV had completed its work. MEPC agreed with the decision of MSC not to proceed further with the question of prior notification of the passage of INF shipments to coastal states. Both Committees believed that requiring such notification might create an undesirable precedent for other types of cargo, and that notification might lead to interference by terrorists. Finally, the Committee was informed that the Secretariat was in the process of selecting consultants to conduct a literature search on specific hazards associated with the carriage of INF material and the consequences of accidents.

C. The Maritime Safety Committee (MSC)

This report will cover only those items dealt with by MSC which relate directly to the protection of the marine environment. MSC 69 and MSC 70 met from 7–11 December 1998.

Flag State Implementation (FSI)

Following a detailed intervention from the Secretary General underlining the importance of assessing flag state implementation, the Committee exchanged a wide range of views on the draft Self-Assessment Form, which had been forwarded to it by MEPC. On the one hand, strong reserva-

tions were expressed by a small group of states, whilst on the other hand, another small group proposed amendments to SOLAS to impose obligations upon states to report on implementation to the Committee. Most states supported a compromise proposal advanced by France for an Assembly resolution urging states to use the Self-Assessment Form for the purpose of identifying their weaknesses (if any) in discharging their responsibilities as flag states under various IMO conventions, and suggesting that they might also use the form when applying for technical assistance, but on a voluntary basis only. France also proposed that in the same resolution, members might be invited to communicate strictly voluntarily to IMO a copy of their form to enable the FSI to compile a data base of relevant information. MSC accepted this proposal and took decisions to implement it. In addition, it instructed the FSI to develop criteria against which states' performance might be assessed.

Port State Control

The Memorandum of Understanding on Port State Control in the Indian Ocean (Indian Ocean MOU) was signed in June 1998. MSC approved a joint MSC/MEPC Circular (MSC/Circ.890/MEPC/Circ.354) on Interim Guidelines for Port State Control related to the ISM Code. As FSI had been unable to come to a consensus on detainable and non-detainable deficiencies, MSC decided to adopt the following text:

“A more detailed inspection of the Safety Management System (SMS) should be carried out if clear grounds are established. Clear grounds may include absent or inaccurate ISM Code certification or detainable or many non-detainable deficiencies.”

MSC concurred with the view of the Sub-Committee that port states should be urged to ensure that Port State Control Officers do not require compliance with the ISM Code from vessels which are not subject to SOLAS regulation IX/2.

Navigation in the Turkish Straits

As in previous years, the Committee discussed the question of navigation through the Turkish Straits.

Briefly, a number of states are opposed to elements of domestic Turkish regulations regarding navigation through the Turkish Straits. Turkey insists that the regulations are necessary for reasons of safety and environmental protection, to prevent groundings and collisions. It also avers that it is within its sovereign rights to adopt such regulations and that other states had no right to question or interfere with them. After consideration of the subject by a working group and a rather heated debate in plenary, which took into account environmental information provided by Turkey, the Committee was unable to come to any conclusions. The discussion will continue at the next session of MSC.

Mandatory Ship Reporting to Save Endangered Northern Right Whales

The Committee adopted a proposal by the United States for a mandatory ship reporting system “Off the northeastern and the southeastern coasts of the United States” designed to protect northern right whales, which are in danger of extinction. Scientific studies have shown that collisions with ships are currently the greatest non-natural cause of death among right whale populations in the areas in question. Ships passing through areas of habitat critical for whale survival will report their positions and be provided with information on the location of whales, so that the ships may avoid striking them. In response to concerns expressed regarding a possible proliferation of such systems, the United States proposed criteria for evaluating future proposals. MSC adopted the criteria that ship reporting systems may be warranted where there is clear scientific evidence that:

1. the population of a marine species is immediately threatened with extinction;
2. major shipping routes pass through an area or areas of habitat critical for the population;
3. the greatest known threat to the survival and recovery of the population is posed by direct physical impacts of ships, such as collisions.

The system was implemented on 1 July 1999. □