Report of the Chairman
of the
ASA Ship Insurance and Liability Committee
to the
27th Annual Meeting
of the
Asian Shipowners Association
Renaissance Harbour View Hotel
Thursday, 15th May 2018

Contents
A. Events held during the year
B. An Update of the Issues Discussed by the Committee
   1. Environmental Damage
      a. Prestige Judgement and effect on P&I
      b. France – Environmental Damage
      c. IOPC Funds
         i. Consistent application
         ii. Guidelines on Environmental Damage Claims
      d. EU Environmental Liability Directive
      e. Chinese Taipei Pollution Law
   2. HNS Convention
   3. Ports of Refuge – Asian response
   4. Ocean Governance
   5. MLC, 2006 – 2014 amendments
   6. Fair Treatment/Unfair Criminalisation of Seafarers
   7. Cyber Risks
   8. Unmanned ships
   9. Sanctions – Iran, Russia and North Korea
10. Report Items
   a. IG Reinsurance program
   b. ICS/CMI Ratification campaign

11. Any Other Business

A. Events held during the year

The ASA Ship Insurance and Liability Committee met for its 23rd Interim Meeting on Tuesday, 19 March 2018 in Hong Kong. Mr. Robert A. Ho, SILC Chairman, chaired the meeting. Attending the meeting were the ASA Secretary-General, and delegates from China, Chinese Taipei, Hong Kong, Japan, Korea and FASA, as represented by Malaysia, Thailand and Vietnam.

B. An Update of the Issues Discussed by the Committee

1. Environmental Damage
   a. Prestige Judgement and effect on P&I

The agenda notes of the Interim meeting of the Ship Insurance and Liability Committee held in 2016 contained a report of the two judgements of the Spanish Supreme Court dated 14 January 2016, which in part revoked the judgement given in the first instance in 2013 by the Provincial Court of La Coruña in respect of the criminal and civil responsibility for the sinking of the M/T “Prestige” off the Spanish coast in November 2002 and subsequent pollution. The Supreme Court held that the master was guilty of the crime of reckless damage to the environment and as a result the master and shipowner were not entitled to limit their liability under the CLC. The Supreme Court also established that the shipowner’s insurer, the London P&I Club, was liable for the damages to the environment as a result of the incident and could not limit its liability for the damages caused as a result of the spill under the 1992 CLC.

In November 2017, the Court in La Coruña (Audiencia Provincial) delivered a judgment on the quantification of the losses resulting from the Prestige incident. It confirmed that the 1992 Fund is liable for damages resulting from the spill in accordance with the 1992 Fund Convention. The Court recognised moral and environmental damages and has awarded over €1.6 billion in compensation. This amount includes €1.57 billion payable to the Spanish Government, €61 million to the French Government as well as various amounts to individual claimants. The judgment asserted that the London P&I Club had civil liability up to the limit of its insurance policy of US$1,000 million. The 1992 Fund is examining the judgment, which will be discussed at the April 2018 session of the 1992 Fund Executive Committee.

At a recent meeting in London, the representative of the London P&I Club reported that the Club was now considering its options. The Club was likely to appeal the judgement on the grounds of several obvious errors and was also considering a possible counterclaim. In addition, the Club was considering whether a negotiated settlement with the State claimants might be worth exploring as the case reduces in political profile within Spain. The Club recognised that it had to carefully consider the wider implications of any
settlement discussions because of the desirability of reducing the prospects for a reoccurrence of the deviation from the proper application of the CLC.

The Club had submitted the case of the Master, Captain Mangouras, to the European Court of Human Rights on the grounds that the legal process during the second hearing had been unfair, because it had taken place in the absence of the accused and the Spanish Government had withheld important evidence. The Club, however, has been told that the case had been dismissed as inadmissible on a preliminary review. This was a disappointing result, not least because the choice of the judge for the admissibility review gave grounds for doubt as to his impartiality. The Club has subsequently made an application to the President of the Court.

While it appears that Spanish political considerations remained a factor in the discussions, the momentum of the work has to be continued, not least to promote the consistent application of the Conventions. This issue is discussed under Agenda item 1.c.i below.

b. France – Environmental Damage

A bill to introduce liability for environmental damage into the French Civil Code, following the French Supreme Court’s decision in the Erika case, was adopted by the French Parliament on 8 August 2016. An English translation of the new law is attached at Annex 01. The new law is broadly framed: “Any person liable for an environmental damage must compensate (repair) it”. There is no provision for exemption for the shipping industry, or for any limitation of liability.

At the IOPC Funds meeting in April 2017, the French delegation confirmed that the IMO Conventions would prevail over the new French law in the event of environmental damage from a shipping incident. While this was felt to be helpful, it would be best if the law itself was amended or implementation guidance was developed. A legal declaration does not seem to be possible, however.

The French shipowners’ association, Armateurs de France (AdF), has sent a letter to the French Ministry of Justice setting out the industry’s interpretation of how the law was intended to interact with the international conventions, requesting the Ministry’s confirmation that this interpretation was correct. A response is awaited.

c. IOPC Funds

i. Consistent Application

The ICS and IG submitted a paper to the April 2017 meeting of the IOPC Funds on the wider implications of the Spanish Supreme Court judgement. The paper provoked debate during which concerns were expressed that courts in Member States were taking decisions that were not consistent with the intended application of the 1992 CLC and 1992 Fund Convention. A number of delegations stated that Member States had a collective responsibility to ensure the correct interpretation and application of the Conventions, noting that the success of the compensation regime depended on uniformity and that this would only be achieved if there was consistency. The Director of the IOPC Funds was requested to submit a document to the October 2017 meeting to progress matters further in relation to the consistent application of the 1992 Conventions amongst other issues.
The discussions at the October 2017 meeting, however, did not go as expected for a number of reasons. Vocal opposition from France and Spain and seemingly short memories of other delegates created sufficient confusion to stall the work. The matter had been left open for discussion. In the meantime, the most beneficial approach for industry appear to be to take the matter to the IMO with the aim of obtaining a Unified Interpretation of the key provisions of CLC. While time was too short to make a detailed presentation to the April meeting of the Legal Committee, it was important to keep the matter on the table. It appears that the political aspects of the discussion were much more important than the legal aspects.

In the meantime, it is felt important to encourage much wider ratification of the 2003 Supplementary Fund Protocol (attached at Annex 02), and to establish the reasoning behind the decision of major States not to ratify. ASA States that have ratified the protocol are Australia, Japan and Korea.

ii. Guidelines on Environmental Damage Claims

Revised “Guidelines on Presenting Claims for Environmental Damage” were adopted by the 1992 Fund Assembly in October 2017. The IOPC Funds Director has confirmed that the Secretariat does intend to develop a shorter version of the document in due course. It will be important that the shortened Guidelines make it clear that all claims must be within the parameters of the 1992 CLC and Fund Conventions.

Items 1.a) through 1.c) are closely related. ICS has reached out to the French Shipowners Association to request the French government to provide written confirmation that the provisions of International Conventions override local regulations. Verbal confirmation has been given to this, however the French Government has declined to provide written agreement. The Committee agreed to follow the developments to the cases closely.

In the ASA SILC interim meeting held, members were invited to explore reasons why major states were apprehensive of ratifying the Supplementary Fund Protocol. The members of the ASA associations are asked to encourage their member states to ratify the Protocol.

d. EU Environmental Liability Directive

As reported at the last Interim meeting, Directive 2004/35/EC, the Environmental Liability Directive (ELD), entered into force on 30 April 2004, and the completion of its transposition into domestic law by July 2010. The Directive was amended three times, through Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU. Attached at the Annex 03 is a summary of the ELD.

On the basis of national reports submitted in 2013 by EU Member States to the Commission and of other relevant information, the Commission had to report in 2014 on the experience gained in the application of the Directive. The report included a review and REFIT (Regulatory Fitness and Performance Programme) evaluation of the Directive, which, due to various delays, was only adopted in April 2016.

The report and evaluation were generally positive from the shipping industry’s perspective, in that the Commission proposed to maintain the exemptions for
environmental damage from shipping incidents that are covered by the IMO liability and compensation conventions (as listed in Annex IV of ELD). The report, however, expressed concern that the Directive and the IMO conventions have different remediation standards and proposed that this should be addressed by non-legislative means, for example through the IOPC Funds claims manual. The industry has been encouraged to assist with this work, and we understand that ECSA is currently meeting with Commission staff in this regard.

Concern was also expressed about the slow uptake of the HNS Convention, and that this Convention should be excluded from the list of Conventions in Annex IV unless there is clear evidence of EU Member States’ commitment to conclude the Convention. While it was very unlikely that the HNS convention would be in force by the time of the next review of the ELD in 2020/21, clear evidence of commitment by EU member States would appear to be sufficient to prevent the Convention being excluded.

The European Parliament had also decided to prepare an ‘own initiative’ report. While this report is not binding on the Commission, there is some careful lobbying underway to remind MEPs of the industry position.

In the ASA SILC interim meeting, the committee took note of the situation.

e. Chinese Taipei Pollution Law

In June 2017, the Chinese Taipei Environmental Protection Agency announced plans to amend the national Marine Pollution Control Act and invited comments on the proposals. The initial proposals could have had serious consequences for shipowners and their insurers, and so with the assistance of the HKSOA, the IG and ICS submitted joint comments on the proposals.

The Chinese Taipei Environmental Protection Agency would appear to have taken the ICS/IG comments seriously, and it was expected that further consultation sessions would take place before the proposals are made into law.

2. HNS Convention

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) was adopted by an international conference in 1996 and is based on the highly successful model of the Civil Liability and Fund Conventions which cover pollution damage caused by spills of persistent oil from tankers. As with the original oil pollution compensation regime, the HNS Convention will establish a two-tier system for compensation to be paid in the event of accidents at sea, in this case, involving hazardous and noxious substances such as chemicals. However, it goes further in that it covers not only pollution damage but also the risks of fire and explosion, including loss of life or personal injury as well as loss of or damage to property.

Tier one will be covered by compulsory insurance taken out by shipowners, who would be able to limit their liability. In those cases where the insurance does not cover an incident, or is insufficient to satisfy the claim, a second tier of compensation will be paid from a fund, made up of contributions from the receivers of HNS. Contributions will be calculated according to the amount of HNS received in each Party in the preceding calendar year.
This Convention was always going to be a difficult Convention to be ratified. In recognition of this, the original Convention was superseded by the 2010 Protocol which was designed to address practical problems that had prevented many States from ratifying the original Convention.

The industry is keen to see the Convention come into effect. The International Group has therefore established an inter-industry group in order to monitor the progress of States as they worked towards ratification, and to coordinate industry outreach work.

ICS, ECSA and BIMCO have all confirmed participation in the liaison group. The ASA has been invited to join, and although support has been expressed for the group’s activities, confirmation of participation has not yet been given. The IG, however, is keeping the ASA SILC on for copy of the group’s work.

The Japanese Government held a meeting on the implementation of the HNS Convention on 13 March, to which the Japan P&I Club and JSA had been invited to attend. Attached at the Annex 04, is a paper that the group has prepared.

The committee noted that the IG has sought the support of the ASA, by joining the inter-industry liaison group.

The committee noted the “HNS Questions” listed in the IG’s email, and it was suggested that the ASA should pass the same its member States.

In the ASA SILC Interim Meeting, it was agreed by the Committee to make a recommendation to the ASA Chairmen’s Committee that ASA joins the inter-industry liaison group.

3. Ports of Refuge – Asian response

This issue has been on the agenda of the Committee for some time, not because there have been incidents in Asia that require ports of refuge, but because it is always easier (politically) to obtain support for initiatives in ‘peace’ time.

The EU Operational Guidelines on Places of Refuge, which gained wide industry participation during their development, were finalized in November 2015 as “VTMIS Places of Refuge – EU Operational Guidelines”. The Guidelines were officially launched at a European Parliament event in January 2016. The purpose of the Guidelines is to ensure better co-ordination and exchange of information among the relevant authorities and industry stakeholders involved should a ship require assistance.

In May 2016, with industry support, the European Commission submitted the Guidelines to the IMO Maritime Safety Committee as a model approach that might be adopted by other IMO Member States. In response to a recent ‘table top’ exercise, the Guidelines have been revised – version 4 is attached at Annex 05.

As reported at the last Interim meeting, under the Cooperative Mechanism between the littoral States in the Singapore and Malacca Straits, Malaysia has embarked on a project to develop regional Places of Refuge Guidelines.

**FASA Malaysia updated the Committee (via email) on the progress of the project.**

At the last Interim meeting, this Committee agreed that ASA should become more involved in promoting the use of the EU Guidelines in Asia. No opportunities have arisen for this
work, and the absence of major incidents requiring Places of Refuge has meant that this issue has slipped from immediate notice.

In the ASA SILC Interim Meeting, the Committee agreed, that the matter be taken up in the ASA member associations to further, take up with their member states.

4. Ocean Governance

The United Nations has started high level negotiations on a new UNCLOS implementing agreement concerning Biodiversity in Areas Beyond National Jurisdiction (BBNJ). The work is likely to lead to the establishment of Marine Protected Areas on the high seas, which could affect the routing of shipping. The UN General Assembly has considered a Preparatory Committee report and has agreed to convene a diplomatic conference to elaborate the text of a legally binding instrument on BBNJ. Organisational meetings will take place in April, and the first of four planned negotiating sessions is likely to be held in the second half of 2018.

The industry, led by ICS, has been concerned to ensure that IMO remains the primary regulator for international shipping, and is working with the IMO secretariat in this regard. The planned meetings, however, will take place over periods of 10 days, and unfortunately the IMO has already made it clear that its budget for the meetings will be very limited. It will therefore be important for the entire maritime sector to engage with their maritime administrations about the work, and to keep abreast of the more general international discussion on ocean governance.

The Committee discussed the matter and agreed to monitor the developments.

5. MLC, 2006 – 2014 Amendments

The amendments to the Maritime Labour Convention, 2006 (MLC) that were adopted in 2014 came into force on 18 January 2017. These amendments dealt with the provision of financial security for abandonment (Regulation 2.5) and shipowner’s liability for compensation to seafarers and their families in cases of seafarer’s death of long-term disability (Regulation 4.2).

The last Interim meeting discussed the ‘lacuna’ that has arisen with the amendments. ILO instruments are not designed to be amended; if changes are required, then a new Convention or Recommendation is negotiated and adopted. The MLC is the first and only ILO instrument that has the provision for amendment, which is why the Convention does not have a number assigned to it. Under the provisions of the Convention, States that had ratified the MLC after the adoption of the amendments but before their entry into force have to make a specific declaration of acceptance of the amendments. There are 19 States that have not so far made the declaration of acceptance, including China.

The CSA representative briefed the Committee on the progress of China towards acceptance of the 2014 amendments. She advised the Committee that the matter was “in process”, albeit, would take the usual time it takes for deliberating amendments/ changes in China. She further advised that the Ministry of Transport of the P.R. C had issued a document asking shipowners to cater to the amendments in the interim so as to allow the vessels to continue trading, by complying with the regulation.
It is clear, however, that to comply with the ‘no more favorable treatment’ provision of Article V of the Convention, ships flying the flags of these States would either have to carry the necessary financial certificates, or a statement from the flag State noting that the 2014 amendments had not yet been accepted.

Attached at Annex 06, is a West of England circular which describes Liability for Uninsured MLC Liabilities. Similar circulars were issued by all IG Clubs. In response to questions from the industry, the International Group has given further advice, also attached at Annex 07.

6. Fair Treatment/Unfair Criminalisation of Seafarers

This issue has been well discussed at every recent interim meeting of this Committee.

It was reported at the last interim meeting that the research being carried out by Seafarers Rights International (SRI) into the application of the IMO Guidelines was presented to the 102\textsuperscript{nd} meeting of the IMO Legal Committee, held in April 2015.

SRI then updated the progress of this work at the 103\textsuperscript{rd} meeting of the IMO Legal Committee (LEG), held 8 to 10 June 2016, through submission of LEG 103/5 (attached at Annex 08), which described further work by SRI and requested the Legal Committee to encourage Member States to request regional or national technical cooperation activities on the implementation of the Guidelines. The Committee concluded that different approaches in the implementation of the Guidelines could be streamlined though the development of a guidance and therefore decided that a workshop proposed by ITF would be useful to provide assistance to Member States to give effect to the Guidelines in a uniform and consistent way. The Committee further invited Member States to continue to apply the Guidelines.

AT LEG 104, the ITF representative invited all members of the LEG Committee to a one-day workshop organized by the ITF and SRI and hosted by the IMO in June 2017 on the implementation of the Guidelines. ITF has submitted a paper to LEG 105, which will be held in April 2018, reporting on the workshop which was attended by some 175 participants. The workshop would appear to have achieved its desired aim, which was to educate, inform and encourage the use of the Guidelines. It would appear to be intended to take the work forward by means of regional and national workshops, the first of which will be held in Asia in 2018 (further information about this meeting would be appreciated).

Apart from the criminal judgement for Captain Mangouras (discussed under agenda item 1.a above) there have been no reported instances of unfair treatment of seafarers, but this is clearly an issue that requires constant reminder and vigilance. The meeting was brought up to date with the discussion in the IMO Legal Committee on the issue.

7. Cyber Risks

The issue of cyber-attacks has taken a prominent role in the discussion of imminent threats to shipping.

The Committee will recall that at the last interim meeting, it was noted that there would appear to be some uncertainty about the scope of cyber risk cover in the London market, particularly when exclusions such as CL380 are applied to Hull and Machinery and War policies. The Joint Hull Committee (JHC) has produced a circular in September 2016 which
notes that the actual risks of a cyber-attack on a ship, which could lead to a systemic loss, is considered to be a remote risk. This is an opinion that would appear to be shared amongst other insurance providers.

The JHC and JWC Chairmen have previously noted that the wording of the exclusion meant that it applied to willful or malicious attacks intended to inflict harm, and so would not apply to any accidental or negligent computer harm that caused a loss that would fall within the hull policy. The consequence of the inclusion of CL380 was to steer the risk from the marine policy to the war policy, providing insurers with the opportunity to cancel the policy and reinstate on more appropriate terms when considered necessary. The Chairmen accepted that the exclusion is sometimes also inserted in the war policy, and the risk could then be 'brought back' to the hull policy at a price to be agreed. It was confirmed that the Japanese, Danish and Norwegian War Pools, reinsured in London, are not subject to CL380.

From the P&I perspective, the IG Club Rules and the Group Pooling and General Excess Loss reinsurance arrangements contained no cyber risk exclusion, although if a cyber event were to fall within the war or terrorism cover exclusion, there would be no cover and the liability would rest with the Owner's war risk insurer under his standard war risk cover.

It would appear to be difficult at the moment to quantify the risk of a malicious attack, no matter how remote this might be, and the cumulative exposure that underwriters might face in a contagion like or massive attack. Due to these reasons, single risk policies would appear to be increasingly available, but without the exposure to a systemic collapse.

In the ASA SILC Interim Meeting, the Committee was given a brief on the HKSOA Joint Seminar “Use of Disruptive Technology against Cyber Threats”, (Cyber Smart). It was recommended that when renewing insurance cover, that Cyber Risk exclusions were negotiated out, and to check the extent of cover under liability insurance.

8. Unmanned Ships

The discussion of unmanned, or autonomous, ships is only just beginning, and even though many in the industry do not see this as something that will happen for some time, discussion of their impact on regulation is starting to take place. In Norway and China, plans are moving ahead for unmanned passenger and cargo ships to be tested and operate in restricted local waters, but since international regulations had not anticipated unmanned or autonomous ships, discussion is starting to take place at the IMO and in other organisations as to how these ships should be regulated and operated.

Work at the IMO and at CMI is intended to not only conduct regulatory scoping exercises, but more importantly to consider how technology may affect the way regulation is structured to avoid uncertainties, particularly regarding the safety performance of autonomous systems. As part of this initial work, the definition of an autonomous ship needs to be clearly laid out, since it could encompass a number of different technological stages.

The common IMO term for such ships is ‘Marine Autonomous Surface Ships’, or MASS. While the operation of such ships in international waters would appear to be some way off, it is important for the industry to be fully involved in these initial discussions.
Members mentioned how the prospect of having Unmanned Ships was still very far into the future. Various levels of autonomy for vessels were discussed. The eight stages of autonomy were discussed and it was suggested that the Committee closely follows developments in this field.

9. **Sanctions – Iran, Russia and North Korea**

The Committee is referred to a new online tool which very usefully summarises all EU and UN Sanctions [https://www.sanctionsmap.eu/#main](https://www.sanctionsmap.eu/#main)

Under the current US Presidency, there has been much uncertainty regarding the continuation of sanctions relief for Iran under the Joint Comprehensive Plan of Action (JCPOA) introduced in January 2016 by the US and EU. The EU remains supportive of JCPOA and many EU countries have made statements criticizing the US President’s October decision to decertify Iran’s compliance. The situation continues to be uncertain, and confusing, and so shipowners wishing to trade to Iran should take legal advice and liaise closely with their P&I Clubs to ensure they remain compliant with the various international sanctions regimes.

On 21 December 2017, the EU voted to further prolong the economic sanctions imposed on Russia as a result of its actions in Ukraine for a further six months, to 31 July 2018. Recent incidents reportedly involving Russian extraterritorial attempted murder and internet hacks could well increase the desire of the US and EU to continue or increase economic sanctions. Again, the situation is uncertain, and legal advice for those trading with Russia remains essential.

While it would appear that North Korea has held constructive talks with South Korea and agreed to talks with the US, promising to stop its nuclear program, history would tell us that this is not the end of things, and the progress made since the Winter Olympics might be very temporary. Attached at Annex 09, are circulars issued by the US Department of Treasury describing the US sanctions on North Korea. It is not expected that these will be rolled back anytime soon, and it is very likely that the intense scrutiny of ships apparently importing oil to North Korea will continue.

Members were advised to consult legal advice concerning the impact of sanctions at the time of fixing employment of vessels.

10. **Report Items**

   a. **IG Reinsurance program**

On 13th December 2017, the International Group announced that the arrangements for the renewal of the International Group Excess of Loss reinsurance contract and the Hydra reinsurance programmes for 2018/19 had been finalized. The IG Reinsurance Program for 2018-19 is attached at Annex 10.

The loss experience of the reinsurance programme on the 2012/13 to 2017/18 (year to date) policy years remains acceptable to reinsurers notwithstanding some claims development over the year. This, combined with continuing surplus market capacity, the continuing positive financial development of the Group captive, Hydra, and the use of a multi-year private placements, has enabled the Group to achieve satisfactory reinsurance...
renewal terms, which will result in a further year of reinsurance rate reductions across all vessel categories.

The result of the renewal negotiations and programme restructuring is a reduction in reinsurance cost of approximately 1.85% for all categories.

In the ASA SILC Interim Meeting, the Chairman shared with the Committee his efforts, as a board member of a P&I Club that is a member of the IG, to bring the overspill cap back to USD 3.1Billion. He further explained how, as things stand, the liability in the event of a case of pollution, is not limited solely to the company, but to the individuals, like directors etc. He urged members to further raise the matter with the boards of their respective P&I Clubs.

b. ICS/CMI Ratification campaign

The ICS/CMI campaign brochure was updated in November 2017. A copy of the brochure is attached at Annex 11, and further copies are available from the SILC secretariat if required.

Of importance to the industry, the campaign has highlighted the Ship Recycling (Hong Kong) Convention, the Supplementary Fund Protocol and the HNS Convention. In addition, the focus of the campaign is to promote proper implementation as well as ratification.

The campaign for promoting Maritime Treaty Ratification was discussed.

11. Any Other Business

JWC War Risk Areas - Members were advised that JWC maintains as “hazardous war risk areas” (WRAs), areas which are in excess of the amended HRA declared amongst multinational entities with varying interests such as UKMTO, MSCHOA, EU NAVFOR, CGPCS, SHADE. The direct consequence of this is that this area of Gulf Oman, lying north of 22 deg N Latitude and between Longitudes of 58 deg East and 65 deg East, is also considered by the JWC for the levy of additional war risk premium.

This area has no reported case or piracy or attempted piracy for the past several months. However, this area is an important channel for passage of all cargo that moves to countries East of India, which would include the ASA membership.

The Committee decided that ASA should take this issue up with the JWC. The ASA will also invite the ICS to join its efforts in doing so. It was also agreed to keep the SNEC on for copy of the correspondence as the same matter was brought to the notice of the SNEC.

IMO Sulphur CAP 2020 and installation of scrubbers and potential health related liabilities

In the ASA SILC Interim Meeting, the Chairman cautioned the Committee regarding potential occupational health issues arising from use of scrubbers onboard, leading to potential long tail liabilities for shipowners. He further sought the Committee members’ agreement to raise this matter in the upcoming AGM in May 2018.
Article 4 de la loi pour la biodiversité

The compensating of environmental damage and consequential losses

**Art. 1246.** – Any person liable for an environmental damage must compensate (repair) it.

**Art. 1247.** – Is deemed open to compensation under the present section any damage or loss to the environment consisting in a significant damage to the elements composing an ecosystem, and/or to the purposes this ecosystem serves and/or to the collective benefits that are being drawn by men from this ecosystem.

**Art. 1248.** – Is entitled to seek compensation for environmental damage or consequential loss before a court any party with an interest and capacity in taking such legal action, such as the State, the French Agency for Biodiversity, territorial authorities, public institutions, officially sanctioned non-profit environmental associations, and unsanctioned non-profit associations which purpose is to protect nature and the environment and having been founded at least five years prior to the date of the beginning of the proceedings.

**Art. 1249.** – Priority shall be given to compensation of environmental damage in kind.

Should a compensation in kind be rendered impossible de jure or de facto, or should the measures taken to repair a damage appear insufficient, the judge will be entitled to condemn the liable party to pay a plaintiff damages to be attributed to the repair of the damage. Should the plaintiff be unable to repair the damage himself, the judge may choose alternatively to allocate the said damages to the State.

The evaluation made of the loss shall take into account any measure already taken in order to repair the damage to the environment, especially those put in place within the frame set by Title VI of Book I of the French Environmental Code.

**Art. 1250.** – In case of a penalty, the Judge will decide when such shall be liquidated in favor of the plaintiff, who will then use it for the repair of the damage to the environment. Should the plaintiff be unable to repair the damage himself, the judge may choose alternatively to allocate the penalty to the State to serve the same purpose.

The liquidation of the penalty is left to the sole discretion of the Judge.

**Art. 1251.** – Any expense incurred in the prevention of an imminent damage, in avoiding its aggravation or to mitigate its impact is deemed eligible for compensation.
Art. 1252. – Aside from the compensation of the environmental damage / losses, the Court may, upon demand from one of the entitled parties listed in above art. 1248, order reasonable measures to prevent or stop the damage.

Art. 2226-1. – The applicable time bar for legal action against a party liable for environmental damage such as the one described under Chapter III of Section II of Title III of the present book shall be of 10 (ten) years from the date the party seeking compensation became aware of the fact that or should have known that an environmental damage was happening. (…)

Art. 2226-2. – (…) The above measures shall apply to the compensation of all losses which causal event took place prior to 01.10.2016. They however will not apply to losses having given way to legal actions before a court initiated prior to that date.

The above provisions shall apply in Wallis and Futuna as well as French austral and Antarctic territories.
PROTOCOL OF 2003 TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

THE CONTRACTING STATES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992¹ (hereinafter "the 1992 Liability Convention"),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter "the 1992 Fund Convention"),

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNIZING that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention,

Have agreed as follows:

¹ Treaty Section No.86 (1996) Cm3432
² Treaty Series No. 87 (1996) Cm 3433
General provisions

ARTICLE 1

For the purposes of this Protocol:


3. "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

4. "Contracting State" means a Contracting State to this Protocol, unless stated otherwise;

5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, "Fund" in that Convention means "Supplementary Fund", unless stated otherwise;

6. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures" and "Incident" have the same meaning as in article I of the 1992 Liability Convention;

7. "Contributing Oil", "Unit of Account", "Ton", "Guarantor" and "Terminal installation" have the same meaning as in article I of the 1992 Fund Convention, unless stated otherwise;

8. "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;

9. "Assembly" means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;

10. "Organization" means the International Maritime Organization;

11. "Secretary-General" means the Secretary-General of the Organization.
ARTICLE 2

1. An International Supplementary Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Supplementary Fund, 2003" (hereinafter "the Supplementary Fund"), is hereby established.

2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

ARTICLE 3

This Protocol shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Supplementary Compensation

ARTICLE 4

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.
2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2 (a) shall be converted in to national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

4. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

ARTICLE 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

ARTICLE 6

1. Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.

2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.
ARTICLE 7

1. The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol.

2. Where an action for compensation for pollution damage has been brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.

3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

ARTICLE 8

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.

2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.
ARTICLE 9

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.

3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Contributions

ARTICLE 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2 (a) or (b), has received in total quantities exceeding 150,000 tons:

   (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

   (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.
ARTICLE 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

   (i) Expenditure

      (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;

      (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

   (ii) Income

      (a) surplus funds from operations in preceding years, including any interest;

      (b) annual contributions, if required to balance the budget;

      (c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution:

   (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i) (a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and

   (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i) (b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.
4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2 (a) and funds received in accordance with paragraph 2 (b).

**ARTICLE 12**

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.

2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

**ARTICLE 13**

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

**ARTICLE 14**

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.

2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.
ARTICLE 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3 (a) (ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

Organization and administration

ARTICLE 16

1. The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.

2. Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

3. Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

ARTICLE 17

1. The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.
2. If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.

3. The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of article 30 of the 1992 Fund Convention as applied by article 16, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.

4. The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

5. The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

**ARTICLE 18**

**Transitional provisions**

1. Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2. If the application of the provisions in article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.
4. The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

Final clauses

ARTICLE 19

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.

2. States may express their consent to be bound by this Protocol by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.

3. Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.

4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

ARTICLE 20

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with article 19, paragraph 2 (a), or when depositing an instrument referred to in article 19, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.
ARTICLE 21

Entry into force

1. This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:

   (a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and

   (b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in article 14, paragraph 1.

2. For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.

3. Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

ARTICLE 22

First session of the Assembly

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

ARTICLE 23

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.
ARTICLE 24

Amendment of compensation limit

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in article 4, paragraph 2 (a), shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting there from and changes in the monetary values.

6. (a) No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this Article.

(b) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date when this Protocol is opened for signature to the date on which the Legal Committee's decision comes into force.

(c) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force twelve months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 26, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the twelve-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

**ARTICLE 25**

Protocols to the 1992 Fund Convention

1. If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in article 4, paragraph 2 (a), may be increased by the same amount by means of the procedure set out in article 24. The provisions of article 24, paragraph 6, shall not apply in such cases.

2. If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in article 4, paragraph 2, by application of the procedure in article 24 shall, for the purpose of article 24, paragraphs 6 (b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

**ARTICLE 26**

Denunciation

1. This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to article 34 of that Protocol.

5. Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in article 11, paragraph 2 (b), and occurring before the denunciation takes effect, shall continue to apply.

ARTICLE 27

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

ARTICLE 28

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in article 14, paragraph 1, falls below 350 million tons, whichever occurs earlier.
2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in article 29 and shall, for that purpose only, remain bound by this Protocol.

ARTICLE 29

Winding up of the Supplementary Fund

1. If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:

   (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

   (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under paragraph 1(a), including expenses for the administration of the Supplementary Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3. For the purposes of this article the Supplementary Fund shall remain a legal person.

ARTICLE 30

Depositary

1. This Protocol and any amendments accepted under article 24 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

   (a) inform all States which have signed or acceded to this Protocol of:

      (i) each new signature or deposit of an instrument together with the date thereof;

      (ii) the date of entry into force of this Protocol;

      (iii) any proposal to amend the limit of the amount of compensation which has been made in accordance with article 24, paragraph 1;
(iv) any amendment which has been adopted in accordance with article 24, paragraph 4;

(v) any amendment deemed to have been accepted under article 24, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;

(vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(vii) any communication called for by any article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with article 102 of the Charter of the United Nations.

ARTICLE 31

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May, two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

[Here follow the signatures]
Environmental Liability Directive:  
A Short Overview

Subject matter

The purpose of the Environmental Liability Directive ("ELD") is to establish a framework of environmental liability, based on the "polluter-pays" principle, to prevent and remedy environmental damage.

What is environmental liability?

The ELD aims at ensuring that the financial consequences of certain types of harm caused to the environment will be borne by the economic operator who caused this harm. Insofar as the ELD provides for the financial responsibility of an operator, it lays down a framework, based on the “polluter-pays” principle, which can be qualified as one of "environmental liability", even though liability under the ELD has few in common with standard civil liability rules. For instance, the ELD does not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage occurring.

The ELD’s own specific approach is shown by the role given to competent authorities to be designated by Member States. These competent authorities will ensure the effective implementation and enforcement of the ELD; they will also safeguard the legitimate interests of the relevant operators and other interested parties. Competent authorities will, for instance, be in charge of specific tasks such as assessing the significance of the damage and determining which remedial measures should be taken (in co-operation with the liable operator).

Against that background, it is important to know how the ELD defines “operator” and “environmental damage”.

Definition of operator

Operator means any natural or legal, private or public person who operates or controls the damaging occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity.

Definition of environmental damage

There are three categories of environmental damage under the ELD:

(a) “damage to protected species and natural habitats”, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The habitats and species concerned are defined by reference to species and types of natural habitats identified in the relevant parts of the Birds Directive 79/409 and the Habitats Directive 92/43;
(b) “water damage”, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in the Water Framework Directive 2000/60, of the waters concerned;

(c) “land damage”, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

Liability regimes under the ELD

The ELD provides for two liability regimes:

Under the first liability regime, operators of certain activities deemed to be of actual or potential concern, listed in Annex III to the ELD, can be held liable in the event of damage to protected species and natural habitats, water damage and land damage. Among the activities concerned, one shall find large industrial installations; waste management operations; certain installations releasing polluting substances into air; installations discharging polluting substances into water; manufacture, use, storage, processing, filling, release into the environment and onsite transport of dangerous substances and preparations; contained use of genetically modified micro-organisms and deliberate release into the environment, transport and placing on the market of genetically modified organisms.

The ELD does not require, as a prerequisite, that fault or negligence be established on the part of the operator for him to be held liable. There are, however, circumstances in which the operator may be relieved of his financial responsibility. For instance, the ELD does not apply to cases where environmental damage or an imminent threat of such damage is caused by an act of armed conflict, hostilities, civil war or insurrection, or a natural phenomenon of exceptional, inevitable and irresistible character. The same holds true, inter alia, in respect of damage caused by nuclear risks, national defence activities and incidents, such as oil pollution by sea-going ships, in respect of which liability or compensation falls within the scope of certain international conventions (listed in Annexes IV and V to the ELD).

In addition, Member States may allow the operator not to bear the cost of remedial actions where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

(a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;

(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

The second liability regime provided for by the ELD applies to damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.
This Directive does not apply to nuclear risks; similarly, it does not apply to activities the main purpose of which is to serve national defence or international security nor to activities, the sole purpose of which is to protect from natural disasters.

**Prevention and remediying of environmental damage**

Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures and, in certain cases, inform the competent authority of all relevant aspects of the situation, as soon as possible.

Where environmental damage has occurred, the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services, and

(b) the necessary remedial measures, in accordance with the relevant provisions of the ELD (its Annex II in particular).

Remediying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition. The ELD aims at ensuring that the environment be physically reinstated. This is achieved through the replacement of the damaged natural resources by identical or, where appropriate, equivalent or similar natural components, or, as appropriate, by the acquisition/creation of new natural components. If measures taken on the affected site do not allow achieving the return to the baseline condition, complementary measures may be taken elsewhere (for instance, an adjacent site). In any case, the scale of the remedial measures should be determined in such a manner as to compensate interim losses, that is, losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the environment is restored. Any significant risk of human health being adversely affected must also be removed.

As far as remediying of land damage is concerned, the necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health.

**How is the financial responsibility of the operator enforced?**

The operator liable under the ELD must bear the cost of the necessary preventive or remedial measures. He will do so either directly or indirectly:

- In the first case, the operator pays for the measures he takes himself or he entrusts a specialised undertaking to take them on his behalf.

- In the second situation, where a competent authority has acted, itself or through a specialised undertaking, in the place of the liable operator, that authority shall recover the costs it has incurred from the operator.
The competent authority may initiate cost recovery proceedings against the operator within five years from the date on which the measures have been completed or the liable operator has been identified, whichever is the later.

In case of multiple party causation, the ELD leaves to the Member States to decide how the costs will be allocated - on a proportional basis or jointly and severally - among the various operators concerned.

Request for actions by interested third parties, including NGOs, and judicial review

Natural or legal persons affected or likely to be affected by environmental damage, or having a sufficient interest, or whose rights have been impaired, may request the competent authority to take action under the ELD.

Those persons shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority.

Financial security

The ELD requires Member States to take measures to encourage the development of financial security instruments and markets with the aim of enabling operators to use financial guarantees to cover their responsibilities under the Directive.

The Commission reported on 12 October 2010 on the effectiveness of the Directive in terms of remediation of environmental damage and on the availability and affordability of financial security products. The report found due to the limited experience with the Directive it was premature to draw reliable conclusions as to whether a system of harmonised mandatory financial security should be established at European level. Among other issues (harmonisation of some options such as the extension of the scope for biodiversity damage or the issue of the optional defences), the report concluded that the Commission will look into this again in the next Commission report due by 2014.

Transboundary damage

Where environmental damage affects or is likely to affect several Member States, those Member States shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.

Temporal application

The ELD only applies to damage occurring after 30 April 2007; it has no retrospective effect.

Relations with national law

Member States may maintain or adopt more stringent provisions in relation to the prevention and remedying of environmental damage.

Relations with international law
The ELD does not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in its Annex IV, including any future amendments thereof, which is in force in the Member State concerned.

Among IV lists among others the following conventions:

(a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;

(b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;

(c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;

(d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

This ELD applies without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976.

1) Do you intend to ratify/accede to the HNS Convention 2010 within the next 5 years?
2) If you do not, is there a specific reason why you do not envisage doing so?
3) Are there particular legal or commercial obstacles that you or your industry are faced with that you feel are too burdensome or too complex?

The following are only relevant if you intend to ratify/accede in the next 5 years:

4) Have you started work on the implementation of a reporting system for contributing cargo?
5) If so, do you envisage such a reporting system to be finalised within 2-3 years’ time? Since it will need to be functioning at least 12 months advance of ratification/accession to allow contributors to report in order to allow the State to comply with its obligations under Articles 20 (4) and 21 of the HNS Convention.
6) If work has not started on a reporting system for contributing cargo, when do you envisage commencing work on the implementation of such a system?
7) Do you envisage simply amending the reporting system that you already have in place for reporting contributing cargo to the 1992 IOPC Fund?
8) Do you envisage being in a position to report any LNG imported cargoes?
9) Are you either engaged in discussions with neighbouring States or do you envisage engaging with them in order to ensure an equitable playing field for your industry in terms of reporting? This question is related to how you envisage dealing with transhipped cargo as per Article 1 (10) of the Convention i.e. cargo that may be in transit through one of your ports and where the final destination may be in another State Party.
10) Do you envisage undertaking a public consultation with stakeholders in advance of ratification/accession?
11) Whilst recognising that matters surrounding implementation are mostly related to the contributing cargo element of the Convention, is there any assistance on implementation that could be provided by the IG, ICS, BIMCO, ECSA?

Noting that as a 1992 IOPC Fund State Party with a reporting system already in place for persistent oil cargoes and that the reporting procedure for HNS has been simplified by means of the 2010 HNS Convention:
ASA Ship Insurance and Liability Committee
23rd Interim meeting

Agenda item 3 - Ports of Refuge, Asian Response

The following information gratefully received from FASA – Malaysia on 9 March 2018

1. Within the framework of the Co-operative Mechanism, Straits Project 11 namely Development of Guidelines on the Places of Refuge for Ships in Need of Assistance in the Straits of Malacca and Singapore, the Marine Department of Malaysia hosted four (4) day workshop between 7 - 10 February 2017 at the Granada Hotel, Johor Bahru, Malaysia. Representatives attended from the Marine Department of Malaysia, Indonesia, Singapore, the Port of Kuala Sungai Linggi, Malacca (T.A.G. Marine SDN BHD) and the IMO appointed technical expert, Mr Hugh Shaw, The UK Secretary of State’s Representative for Maritime Salvage and Intervention (UK Maritime and Coastguard Agency);

2. Workshop discussion

2.1. National Plans
Each of the States represented intimated that they had, in accordance with UNCLOS, National Contingency Plans outlining their response to maritime incidents. There was no evidence of separate national place of refuge plans although it was noted that the generic plans referred to such.

2.2. Decision Making / Competent Authority
Each of the States recognised the wide range of stakeholders that may be involved in the decision making for a place of refuge incident. The ‘competent authority’ responsible for the final decision across each of the States ranged from Port Authorities to Government Ministers depending upon the severity of the incident and the risk to human life and/or the environment.

It was recognised that designation of one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative could be extremely beneficial, in particular where a much wider range of stakeholders may prevent the necessary decision being taken in a timely manner.

It was also recognised that in many cases the person(s) responsible for the decision making may have had little or no exposure to the planning, exercising and/or training for such incidents.

2.3. EU Guidelines (modified for SOMS area)
There was general consensus that the work undertaken by the EU States could be modified for use within the SOMS area. The benefits of using a similar document for international co-ordination and decision making was generally welcomed and it could also be used to foster or facilitate improved cross government / industry co-operation. Adoption of some of the
templates – such as “Request for a Place of Refuge” would also add to the continuation of standardisation across the globe.

2.4. Places of Refuge Competent Authority Co-operation Group
All the delegates emphasised the importance of good co-operation and co-ordination and felt that it would be beneficial to consider the implementation of a Co-operation Group. There was willingness around the table to exchange good practices across the SOMS area. Areas for discussion could include previous incidents, the idea of table-top exercises, modification of existing EU Guidelines for local use and the sharing of information during place of refuge incidents.

3. Consideration by the littoral States

3.1. Each States’ National Plans to feature procedures for dealing with places of refuge incidents in accordance with IMO Resolution A.949(23).

Plans can be stand-alone or can be incorporated into National Contingency Plan but should contain sufficient information on the structure of the various organisations which are involved or will have to be involved in responding to place of refuge incidents for a ship in need of assistance. The ‘plan’ should also include responsibilities and capabilities, expert guidance, advice and analysis, communications and resources and equipment.

3.2. Decision Making / Competent Authority
Each States’ National Plans should clearly outline the decision making process and the designated person for the final decision on whether to grant, or not grant, a place of refuge. The designated person/competent authority should have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative. A list of national competent authorities for the accommodation of ships in need of assistance should be shared between SOMS States.

3.3. IMO expert visit to Malaysia, Indonesia and Singapore
IMO expert to visit each State within SOMS, review draft national place of refuge plan and meet key stakeholders within Government and port sector.

3.4. Develop modified EU Operational Guidelines for SOMS area use.
Working group to be established and interfaced with above visits. Composition of WG to include representatives States and Industry. (ISU, ICS, IGP&I)

3.5. Plan SOMS area Table Top Exercise (TTX)
Plan and execute TTX to test new SOMS area place of refuge guidelines. Opportunity to engage with industry.

3.6. Establish SOMS Area Place of Refuge Co-operation Group
Forum to enhance regional co-operation between SOMS States and Industry. Sharing experiences and learning from incidents. Forum to agree and plan place of refuge related exercises, regional guidelines and information sharing.
The Co-operation Group could also provide the focal point for meeting industry technical experts and for sharing expertise.

4. Planning

4.1 Marine Department of Malaysia planning to arrange the visit to the littoral States by the IMO Expert as para 3.3 on second quarter 2018. Following to it, 2nd workshop will be convened in August / September 2018 to discuss and finalise the guidelines.
Preface

Following recent maritime incidents involving ships in distress in waters outside the jurisdiction of any one State, the Member States of the European Union, together with the European Commission and the European Maritime Safety Agency (EMSA), decided to review the framework for co-operation and co-ordination between States in such cases, to improve the existing arrangements.

As a matter of principle, each State involved in the response operation should examine their ability to provide a place of refuge.

These Operational Guidelines have been prepared in a spirit of enhanced co-operation and coordination among all parties involved, including Member States' Authorities and concerned Industry.
Background

All States Parties to the UN Convention on the Law of the Sea (UNCLOS) have an obligation to protect and preserve the marine environment. In order to comply with this obligation, States should draw up and implement a National Contingency Plan for response to any maritime incident.

According to the IMO Guidelines on Places of Refuge\(^1\), when a ship has suffered an incident, “the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge as it is rarely possible to deal satisfactorily and effectively with a marine casualty in open sea conditions.” A place of refuge is a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment. It may include a port, a place of shelter near the coast, an inlet, a lee shore, a cove, a fjord or a bay or any part of the coast.

Because of the many variable factors involved (e.g. sea state, weather and condition of the vessel, required and available facilities), and the variety of risks involved when bringing a ship in need of assistance into a place of refuge a decision to grant access to a place of refuge can only be taken on a case-by-case basis.

Since 2009, under the terms of the VTMIS Directive\(^2\), EU Member States have been required to designate “one or more competent authorities, which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.”\(^3\) In setting up a system of competent authorities for managing places of refuge requests, the Directive also crystallises some of the recommendations of the IMO Guidelines into obligations for the different parties involved in such incidents.

Building on this framework, the EU Operational Guidelines provide practical guidance for the competent authorities (CA) and the main parties involved in managing a request for a place of refuge from a ship in need of assistance\(^4\), including where an incident occurs on the high seas or outside of the jurisdiction of any one Member State.

The EU Operational Guidelines do not cover SAR operations. The provisions of the SAR Convention\(^5\) take priority over these Guidelines at all times.

The EU Operational Guidelines do not apply to any incidents on inland waterways.

The EU Operational Guidelines, although non-mandatory in nature, are intended to support the more uniform application of the underlying legal provisions in Directive 2002/59/EC and must not be understood to imply any new or replace any existing legal obligations.

---

1. IMO Resolution A.949(23) GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE
4. As defined in Directive 2002/59/EC Article 3(v): “‘Ship in need of assistance’ means, without prejudice to the provisions of the SAR Convention concerning the rescue of persons, a ship in a situation that could give rise to its loss or an environmental or navigational hazard”.
They are drafted with a real operational situation for a vessel in need of assistance in mind. They aim at a robust operational process leading to well advised and, where possible, quicker decision making. At the same time they should contribute to promoting positive attitudes – within Governments, authorities, and Industry for the purposes of Places of Refuge, in the interest of the protection of human life, maritime safety, security and the environment. A key element for these purposes is timely and clear communication between the parties involved, in particular for cross-border situations.

The Guidelines support the requirement for national plans for accommodation of ships in need of assistance to include 'procedures for international coordination and decision-making' and the attainment of the objective for Member States and the Commission to cooperate in drawing up concerted plans to accommodate ships in need of assistance, as required by the VTMIS Directive.

As a matter of principle, each State involved in the operation should examine their ability to provide a place of refuge. A place of refuge request cannot be refused for commercial or financial reasons, nor should commercial interests become the main driver for the handling of PoR requests, or the selection of a potential PoR. Unless deemed unsafe, there should be no rejection without inspection.

**Context**

Many times situations leading to a request for a place of refuge involve only one Member State and will be handled by the same State, under its jurisdiction. There may however be cases where a purely national situation may turn into a situation involving neighbouring Member States or Member States in the vicinity of the incident. These Operational Guidelines should complement national plans and apply to situations where it is likely that more than one State may become involved, or where the incident falls outside the jurisdiction of any Member State.

It is important to note that there are obligations on Member States under the VTMIS Directive, to monitor any potential situation, and an obligation on Masters to report any such incidents, before they turn into a place of refuge situation.

Flowchart and sequence:
POR GUIDELINES – FLOW CHART
(QUICK REFERENCE)

OPERATIONS

<table>
<thead>
<tr>
<th>PHASE</th>
<th>DESCRIPTION OF ACTIONS</th>
<th>ROLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Incident Reporting, Monitoring &amp; Information gathering</td>
<td>Initial Incident</td>
<td>Member States</td>
</tr>
<tr>
<td></td>
<td>Monitoring the situation - p.18</td>
<td>CMS</td>
</tr>
<tr>
<td></td>
<td>Information Gathering – p. 20</td>
<td>SMS</td>
</tr>
<tr>
<td></td>
<td>Incidents within jurisdiction of a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Following SAR operation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No initial SAR operation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Incidents outside jurisdiction of any one Member State – p 25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Obligations on Co-ordinating Authority and Neighbouring Member States - p. 25</td>
<td>Member States</td>
</tr>
<tr>
<td></td>
<td>Transfer of co-ordination - p. 25</td>
<td>MRCC, MAS</td>
</tr>
</tbody>
</table>

Places of Refuge Co-ordination

Page 17

Page 24
<table>
<thead>
<tr>
<th>PHASE</th>
<th>DESCRIPTION OF ACTIONS</th>
<th>ROLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requesting a Place of Refuge</td>
<td>Appraisal of the situation – p.26</td>
<td>Member States</td>
</tr>
<tr>
<td></td>
<td>Identification of Hazards and Assessment of Associated Risks – p.26</td>
<td>CMS, SMS</td>
</tr>
<tr>
<td></td>
<td>Identification of Assistance / Services Required in place of refuge – p.26</td>
<td>MRCC, MAS</td>
</tr>
<tr>
<td></td>
<td>Transmission of request to the Member State and cooperation – p.26</td>
<td>Port authorities</td>
</tr>
<tr>
<td></td>
<td>Formal Request for a Place of Refuge – p.27</td>
<td>Ship owner / Operator / Company</td>
</tr>
<tr>
<td></td>
<td>EU Decision Methodology</td>
<td>Designated Person Ashore (DPA)/contracted salvor, Person in charge</td>
</tr>
<tr>
<td></td>
<td>Inspection / Expert Analysis – p. 29</td>
<td>Member States involved in handling a formal PoR request.</td>
</tr>
<tr>
<td>Risk Assessment &amp; Inspection</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Page 26
<table>
<thead>
<tr>
<th>PHASE</th>
<th>DESCRIPTION OF ACTIONS</th>
<th>ROLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Making &amp; Outcomes</td>
<td><img src="chart.png" alt="Flowchart with options" /></td>
<td>Member States CMS</td>
</tr>
<tr>
<td></td>
<td>Decision to grant a place of refuge</td>
<td>Member States SMS</td>
</tr>
<tr>
<td></td>
<td>– p. 30</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Decision not to grant a place of refuge</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subsequent Request to another MS to grant a POR</td>
<td></td>
</tr>
<tr>
<td></td>
<td>– p. 31</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Passage Plan &amp; Monitoring</td>
<td></td>
</tr>
<tr>
<td></td>
<td>– p. 31</td>
<td></td>
</tr>
</tbody>
</table>
### DEFINITIONS

**Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge**

- Responsibilities of Member States
  - Responsibilities of the Co-ordinating Member State (CMS)
  - Responsibilities of the Supporting Member States (SMS)
  - Role of Maritime Assistance Service and Maritime Rescue Coordination Centre
  - The Flag State
- The master
- Persons responsible for the vessel at the time of the incident
- The Classification Society
- The Salvor
- Port & Harbour Authorities
- Insurers

**Responsibilities of other involved parties**

- The master
- Persons responsible for the vessel at the time of the incident
- The Classification Society
- The Salvor
- Port & Harbour Authorities
- Insurers

### ADDITIONAL INFORMATION

<table>
<thead>
<tr>
<th>Topic</th>
<th>Details</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Security</td>
<td>Operational action points</td>
<td>Procedures in the national plans, information gathering aspects, decision making</td>
</tr>
<tr>
<td>Media and Information Handling</td>
<td>Key Principles</td>
<td>Media handling procedure</td>
</tr>
<tr>
<td></td>
<td>Key interest groups</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Key actions for persons handling incident</td>
<td></td>
</tr>
</tbody>
</table>
**EU Operational Guidelines on Places of Refuge**

### Lessons Learned

- National & Regional De-briefs
- Places of Refuge CA Co-operation
- Exercises & Workshops
- Best practices promotion

### APPENDIXES

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>List of MAS / MRCC</td>
<td>Operations</td>
</tr>
<tr>
<td>B</td>
<td>List of Competent Authorities</td>
<td>Operations</td>
</tr>
<tr>
<td>C</td>
<td>Formal Place of Refuge Request Form</td>
<td>Operations</td>
</tr>
<tr>
<td>D</td>
<td>Decision Making Tool</td>
<td>Operations</td>
</tr>
<tr>
<td>E</td>
<td>Integrated Maritime Services</td>
<td>Tools Available at EU level</td>
</tr>
<tr>
<td>F</td>
<td>Member State Handover Coordination Form</td>
<td>Operations</td>
</tr>
<tr>
<td>G</td>
<td>SITREP Template</td>
<td>Operations</td>
</tr>
<tr>
<td>H</td>
<td>International and European Law – relevant rules</td>
<td>Information</td>
</tr>
<tr>
<td>J</td>
<td>List of Websites/Contacts</td>
<td>Information</td>
</tr>
<tr>
<td>J</td>
<td>Financial Liability and Compensation</td>
<td>Information</td>
</tr>
</tbody>
</table>

### OTHERS

- List of Definitions
- List of Acronyms
Chapter 1

Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge

1.1. Responsibilities of Member States

Each Member State shall:

- designate one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance;

- establish assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge, in their plans for the accommodation of ships in need of assistance. Plans must also include procedures for international coordination and decision-making, which should be consistent with these Guidelines for the handling of requests for assistance and authorising, where appropriate, the use of a suitable place of refuge;

- examine their ability to provide a place of refuge;

- ensure due publicity for the name and up-to-date contact details of the competent authorities;

- ensure availability of information on plans for other neighbouring States and all parties involved in a response operation;

1.1.1. Member State’s Competent Authority

Responsible for:

- Taking independent decisions on the need for, and location of, a place of refuge for a particular ship in need of assistance

- Overall command and control of incident, taking steps leading up to accommodation in a place of refuge, including the ones listed in Annex IV of the Directive e.g. may direct a vessel in need of assistance to place(s) of refuge when judged appropriate

- Liaising with authorities likely to get involved and ensure that information on any potential hazard arising from the incident to other State(s) is made available to the other State(s) as soon as possible.

Direct access to the by the Member States designated competent authorities is via:

1.1.2. Co-ordinating and Supporting Member States

The Maritime Assistance Service (MAS) or the authority (or authorities) as referred to in Articles 20.1 and 20a.2(a) of Directive 2002/59/EC, as amended, which has assumed co-ordination, will be known as the Co-ordinating Member State (CMS). Other Member States supporting the CMS will be known, for the purpose of these Guidelines, as Supporting Member States (SMS).

1.1.3. Responsibilities of the Co-ordinating Member State (CMS)

The CMS will be responsible for:

- Ensuring that the competent authority (CA) is in charge of overall co-ordination of the incident;
- Initiating their national PoR procedure, in order to identify a potential site on their territory;
- Being the main point of contact for liaison with representatives of the involved parties, including the ship owner and/or operator, master, P&I club, salvors, and if necessary, the operator of a port of refuge;
- Where necessary, coordinating the response to the PoR request with potential Supporting Member States (SMS), in order to gain their assistance;
- Issuing SITREPS and alerting SMS and EMSA Maritime Services of the incident, actions taken to date and proposed plans;
- Determining whether a Member State Co-operation Group and a Secretariat should be set up for the incident;
- Organising evaluation teams: search for transportation, constitution of teams, in collaboration with the other states involved;
  - Undertaking a thorough analysis of the factors listed in these Guidelines in order to decide whether to allow a ship in need of assistance to proceed to a place of refuge (see Chapter 5); and
  - Communicating the results of that analysis, once complete, to the other authorities concerned and to the shipowner.
- Ensuring that those authorities who may become responsible for the vessel once in a place of refuge are:
  - informed as early as possible of that possibility;
  - involved in the risk assessment process and are given all relevant information.
- Following a balanced assessment of all the factors involved, providing a place of refuge whenever reasonably possible; OR
Where appropriate, initiating a dialogue to formalise the transfer of co-ordination to another State.

NB: The CMS considering a formal PoR request should not enter into direct contact with different port authorities or shore based authorities in another State. All information exchanges must go through the competent maritime authorities in the State concerned.

1.1.4. Responsibilities of the Supporting Member States (SMS)
The Member States supporting the CMS in handling the PoR request procedures include:

- those nearest the vicinity of the vessel in need of assistance;
and, if necessary,

- the Flag State;

Each SMS should:

- Ensure that any relevant incident related information is passed to the CMS without delay;
- Be prepared to examine any requests from the CMS for assistance (logistical, expertise or evaluation);
- Be prepared to examine a request for a place of refuge within their jurisdiction by the CMS or the salvor as mandated by the owner;

In particular,

- Neighbouring Member States should examine the possibility of granting a place of refuge in their territory – even though the incident, at the time, is taking place outside their area of jurisdiction.

1.1.5. Role of Maritime Assistance Service and Maritime Rescue Coordination Centre
In some EU Member States, the Maritime Assistance Service (MAS) and the Maritime Rescue Coordination Centre (MRCC) can be one and the same, or have been co-located and are available 24/7 to act as a single point of contact (SPOC) for refuge requests. A list of MAS/MRCCs in EU Member States can be found [link to Appendix A].

In the event of any maritime incident, the ship’s master and/or the salvor shall contact the appropriate MRCC/MAS, as designated in each EU Member State, to report the incident and initiate the necessary follow-up actions.

In emergency situations other than those defined in the SAR Convention, the Maritime Assistance Service (MAS):

- provides communication facilities for ships in need of assistance.

--- Click to come back to PoR Quick Reference ---

--- c.f. Article 17 in Directive 2002/59/EC as amended ---
In emergency situations as defined in the SAR Convention, including one that subsequently arises from efforts to assist a ship in need of assistance:

- the national or regional Maritime Rescue Co-ordination Centre (MRCC) is responsible for communication and the management of the search and rescue operation;
- the Maritime Assistance Service (MAS) should monitor developments, in case a need for a place of refuge arises, or if other measures (such as counter pollution activities) are required.

Once the SAR functions are completed, communication and incident management normally transfers to the MAS.

1.2. Responsibilities of other involved parties

1.2.1. The master

The master has the command of the vessel and remains in command of the vessel even when a salvage operation is underway, until such time that the master has relinquished his command and it comes under the responsibility of the salvor.

The master shall:

- inform the competent authorities (of the nearest coastal State(s)) of the incident as soon as possible issuing an incident report with at least the following details: (1) the ship's identity, (2) the ship's position, (3) the port of departure, (4) the port of destination, (5) Information about the on-board cargo, (6) the address from which additional information may be obtained on any oil and dangerous cargo on board (i.e. copy of cargo manifest) to the extent known, (7) quantity, location and type of bunkers on board, (8) the number of persons on board, and (9) details of the incident;
- inform the shipowner or the operator of the ship, in accordance with the ISM Code, of the incident;
- cooperate fully with the CAs;
- communicate all requested or pertinent information to CAs; and

The master should (with the assistance of the company and/or the salvor where necessary):

- assess the situation and identify the reasons why the ship needs assistance;
- carry out an appraisal of the threats (e.g. from fire, explosion, grounding etc.); and then
- estimate the consequences of the potential casualty, if the ship were to:
  - remain in the same position;
  - continue on its voyage;
  - reach a place of refuge; or
  - be taken out to sea.

The master (and/or the salvor) should (See further Chapter 4 on Requesting a Place of Refuge):

- identify the assistance required from the coastal State in order to overcome the inherent danger of the situation;
• make contact with the coastal State (through the coastal State’s MAS/MRCC – See Appendix A) in order to transmit:
  - the master’s appraisal of the situation (to the best of the master's ability or knowledge at the time of the situation)
  - the hazards and risks identified
  - the assistance required
  - the particulars required under the international conventions in force
  - if there is an emergency response services (ERS) onboard;
• undertake any relevant response actions to minimize the consequences of the casualty.

1.2.2. Persons responsible for the vessel at the time of the incident

- Ship operators, ship agents & charterers

For the purposes of these Guidelines, 'ship operator' is the owner or manager of a ship, 'ship agent' is any person mandated or authorised to supply information on behalf of the operator, and 'charterer' is the bareboat charterer of the ship.

The operator shall contact the CA and remain available for consultation and cooperation with the CA, as soon as it is informed of the incident.

The operator decides which external specialists, such as salvors, to contract to assist with the required response measures handling an incident.

It is important that ship charterers and/or agents contact the CMS at earliest opportunity to discuss the incident and provide relevant information.

Ship operators must cooperate fully with the CMS, in accordance with existing national and international law.

- Cargo Owners/shippers

For the purposes of the Guidelines, 'shipper' is any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier.

Initial requests for information about on-board cargo should be directed to the master in the first instance, who should have information of cargo on board, including its location and ownership through documentation on board, notably the ship and cargo manifest and the bill of lading (in the case of tankers Material Safety Data Sheets – ‘MSDS’ – will be used), and can, identify the bill of lading issuers, shippers and others who can be contacted for the purposes of identifying the cargo.

If the master has relinquished his command and/or is no longer in a position to provide the information, Cargo owners/ shippers have the most accurate information on cargo, which is particularly important in the case of dangerous goods.

--- Click to come back to PoR Quick Reference ---

--- Click to come back to PoR Quick Reference ---
It is important to ensure that commercial interests do not become the main driver for the handling of PoR requests, or the selection of a potential PoR.

1.2.3. The Flag State
The Flag State should be asked to cooperate with the CMS, if there is a need for specific information on the ship’s certificates and any other relevant documentation (i.e. safety and pollution prevention). There is an obligation on CMS to keep the Flag State aware of any developments. The Flag State can also act as SMS.

1.2.4. The Classification Society
Many classification societies have set up emergency response services (ERS) (ERS can provide information on damage stability and residual strength etc to the ship’s crew, salvors or the CMS.). Whereby the ship classification society has available a shore-based ERS it should be forthwith notified to the CMS. If the vessel in question carries an Emergency Response-Service, the availability should be notified to the CMS by the operator as soon as possible.

Following an incident, it is imperative for the classification society to be involved in the information gathering and risk assessment stage, in particular when a formal request for a place of refuge has been made, and to provide any information. A clear line of communication should be established between ERS and CMS. As the International Association of Classification Societies recommends, ERSs are to provide rapid technical assistance to the Master and to other authorities. The CMS should have access to all information that he deems necessary, i.e. ERS modelling, cargo manifests, etc. From the early critical stages through to repair, ERS provides support by evaluating the technical aspects of the casualty and identifying concerns and possible courses of action.

1.2.5. The Salvor
The duties of the Salvor are set out in Article 8 of the International Convention on Salvage 1989, which is incorporated into Lloyd’s Open Form, and will apply when no contract is in place. If a contract other than Lloyd’s Open Form is in place responsibilities will be different and will be specific to each casualty.

After the master has relinquished his command, the salvor is responsible for:

- Keeping the co-ordinating authority/CA fully informed about the condition of the vessel and the progress of the salvage operation.
- Cooperating fully with the CA in ensuring the safety of the ship, of persons, and the protection of the marine environment, by taking all appropriate measures.
- Submitting an outline salvage plan showing immediate intentions (detailed plan to be provided later) to the CA for approval before operations commence.
- (If there is an ERS in place), the salvors will be in direct contact with the classification society to provide them with updates on the condition of the vessel.

---

11 The most commonly used contract is the Lloyd’s Open Form which places onerous obligations on the salvor including a commitment to use “best endeavours” and “to prevent and minimise damage to the environment”.
12 see Article 19(1) and Annex IV of VTMIS Directive
The salvage team is led by the Salvage Master and will range in size depending on the incident. It may include Salvage Engineers, Naval Architects, Divers and Specialists, including Cargo Specialists.

**1.2.6. Port & Harbour Authorities**

Depending on circumstances and following the risk assessment a port or harbour may be identified as a potential PoR.

If a port or harbour is identified as a potential PoR for a vessel in need of assistance, the following issues will need to be considered:

- The availability of a suitable Berth, designated Emergency Reception Berth, or otherwise, place to accommodate the vessel.
- The risk to safety and/or human health, particularly if the port or harbour is in close proximity to populated areas.
- Technical considerations of the port’s operations (e.g. assessment of the potential risk of lengthy disruption, the vessel blocking or restricting access through navigation channels, damage to infrastructure).
- If the CA responsible at sea changes to the Authority responsible in the port or harbour, the continuity of all operation towards the vessel seeking a place of refuge regarding the vessel / port interface should be maintained without any loss. (Vessel/port Interface regarding waste management, cargo handling, safety and security etc. diverts from service on intact vessels.)

**1.2.7. Insurers**

**Protection & Indemnity (‘P&I’) Insurance** covers a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and dock damage. Generally, P&I Clubs also provide a wide range of services to their members on claims, legal issues and loss prevention, and often play a leading role in the management of casualties. Hence, establishing communication with the P&I Club as early as possible during an incident is important as they can be instrumental in obtaining relevant information from the ship operator.

In an incident, they may be asked to provide financial guarantees which may include guarantees for damages or losses to ports during the accommodation of a ship in need of assistance. (See Appendix J for more details)

**Hull & Machinery (‘H&M’) Insurance** covers damage to the vessel’s hull, machinery and equipment. This is often covered by two or more underwriters; hence, it is sufficient to obtain the contact details of the lead hull insurer, who is authorised to act on behalf of all followers. (See Appendix J for more details)

**Cargo insurance** covers damages to the cargo on board the vessel, including cargo contributions to the general average. (See Appendix J for more details)

--- Click to come back to PoR Quick Reference ---
Chapter 2

Initial Incident Reporting, Monitoring & Information gathering

2.1. Initial Incident Reporting

With a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, member States shall monitor and take all appropriate measures to ensure that the master of a ship sailing within their SRR/EEZ or equivalent, reports to the coastal station responsible for that geographical area.

Insofar as the vessel intends to call, or has called, in a European (EU) port, or has passed the Mandatory Reporting Systems (MRS) located in the waters of EU Member States; the relevant data on the vessel (e.g. persons on board, HAZMAT, ETA, ETD etc.) is available through the SafeSeaNet system (SSN) and allows their distribution to the relevant authorities along the planned route of the ship. Depending on the situation, there may already be some information available in the SSN that can be used, in accordance with incident reporting requirements and guidelines. The CMS will gather any new or additional information deemed necessary for the safe handling of the PoR request and will bring anything relevant to the attention of any other involved parties, whether public or private.

If not already available, as soon as it is practicable, when the PoR request is received, the following information should be collected by the CMS and circulated to other states who are, or who may become involved (SMSs):

- ship’s particulars: type, name, flag, IMO number
- vessel position
- Last and next port of call
- nature of the damage reported
- cargo on board
- total persons on board
- condition of the vessel at the end of the SAR operation (if appropriate).

---

13 The Incident Reporting Guidelines (link: http://emsa.europa.eu/documents/technical-documentation.html) describe how incidents covered should be reported and exchanged between Member States through the SafeSeaNet systems.
Situation Reports (SITREPS)\textsuperscript{14}

The CMS should draft and share situation reports (SITREPs) within the SSN system using the format in Appendix G on a regular basis, and to all other involved parties including to the master/salvor, at least at the following stages of the operation:

\begin{enumerate}
\item At the end of the initial information gathering phase, subsequent to the alert being given. These initial SITREPs should report on initial measures taken.
\item Upon receipt of the report of an evaluation / inspection team.
\item During the risk assessment process: successive SITREPs should be issued if new information about the vessel in need of assistance becomes available, or if any actions on the part of one Member State makes it necessary to formalise the information with all other parties involved.
\item When a decision on whether or not to grant a place of refuge is made.
\item Arrival of the damaged ship in the place of refuge
\end{enumerate}

SITREPs allow the formalisation and recapitulation of data that should already be made available through other EU information systems e.g. SafeSeaNet.

\textit{---- Click to come back to PoR Quick Reference ----}

2.2. Monitoring the situation

The EU has a number of operational information systems which gather, organise, integrate and exchange/share the data relative to vessels, its cargo and passengers with the purpose of facilitating the information sharing and cooperation between Member States.

The CMS should therefore consult SSN during the initial alert phase. The SMSs, if not already aware, once they have been made aware of the incident, should keep themselves updated via SSN.

During an operation, SSN can be used as follows:

\textbf{2.2.1. Obtaining information relative to the vessel and cargo:}

SSN provides updated information on the vessel identification, number of persons on board, voyage, incident reports, dangerous and polluting goods (Hazmat) carried on board if she has previously sent mandatory reports or if she has fulfilled her obligations prior to calling at an EU port.

\textbf{2.2.2. SafeSeaNet, information system relative to the event:}

\textsuperscript{14} The SITREP is the same as currently exchanged via SSN and the example provided in appendix 1 to the SSN IR Guidelines (Version 2.1, date: 07.07.2016) which includes a specific section related to the PoR specific information. Further guidance can be found in Annex G.
Use of SafeSeaNet by the CMS:

The CMS uploads the following on SSN with automatic notification of all other parties involved (as attachments):

- The information on the vessel involved and their representatives.
- Information on their site(s) regarded as potentially suitable places of refuge.
- Operational SITREPs (Appendix G, SITREP template including a section for PoR relevant information)
- Once the necessity of a place of refuge is ascertained or confirmed, the CMS defines a new list of addressees allowing for information sharing with the flag state (if EU), neighbouring Member States with whom operational agreements are in force, and neighbouring states liable to be involved in the process.

Note: the definition of an address list allows an automatic notification to the selected addressees. Every time new information is entered and distributed to the same address list, CMSs re kept informed of all new entries in SSN.

- Successive updates on SSN: each updated SITREP is available in SSN as an attachment (SSN shows only the latest attached document) and triggers an automatic notification to all CMSs selected. Those addressees need to open the attached document in order to read the SITREPs. In case these addresses are e-mail recipients, through this e-mail they will receive the necessary information to search for the SITREP details in the SSN central system.

- Validation, as SITREPS, of the information gathered by other member states. Validation means: confirmation and recognition of the information as pertinent to the situation and the operational parameters at hand.

2.2.3. Relative to dangerous, polluting and toxic goods

SSN provides the identification and details of the dangerous and polluting goods carried on board:

HAZMAT CARGO15 – Some of the data elements which have to be reported in accordance with the VTMIS Directive and FAL Form 7 may be obtained from:

---

15 According to Directive 2002/59/EC, as amended, Dangerous Goods means:
- goods classified in the IMDG Code,
- dangerous liquid substances listed in Chapter 17 of the IBC Code,
- liquefied gases listed in Chapter 19 of the IGC Code,
- solids referred to in IMSBC Code Appendix 4 – materials with Group (B) or (A+B)
- Also included are goods for the carriage of which appropriate preconditions have been laid down in accordance with paragraph 1.1.6 of the IBC Code or paragraph 1.1.6 of the IGC Code;
- while Polluting Goods means:
- oils as defined in Annex I to the MARPOL Convention,
- noxious liquid substances as defined in Annex II to the MARPOL Convention, and
- harmful substances as defined in Annex III to the MARPOL Convention.
the SafeSeaNet (SSN) Central HAZMAT Database (CHD).
A public open access is available to industry representatives and the general public, but with limited functionalities. Such guest users may access the application through the EMSA MAP using the general credentials mentioned in bold for guest users in the following EMSA webpage on Reporting of HAZMAT in SafeSeaNet.


Additional information relative to some dangerous good can be found in:

- **MAR-ICE network**
  MAR-ICE can provide upon request product specific information, trajectory forecasts of released chemicals and related risk assessments. The service is available 24/7 and can be accessed by maritime administrations through a dedicated MAR-ICE Contact Point. The MAR-ICE contact numbers and activation procedures have been distributed to the relevant national maritime administrations. Below the link to EMSA MAR-ICE network web page:


- **MAR-CIS**
  MAR-CIS (MARine Chemical Information Sheets): EMSA’s datasheets of chemical substances (primarily liquids) frequently transported in European waters. They contain concise and relevant information on the behaviour and properties of chemicals including maritime specific information (e.g. IMDG code, IBC code, GESAMP, seawater solubility, case histories, etc.) for supporting emergency responders to plan response operations safely and to minimise the potential adverse impacts to the environment and to the public. **MAR-CIS is only accessible through SSN.**

2.2.4. Integrated Maritime Services

[See Appendix E]

---- Click to come back to PoR Quick Reference ----

2.3. Information Gathering

It is critically important for a master, operator, owner or salvor to provide the authorities with correct/accurate information, and in a timely manner, as this will assist the CA in making the correct decision for the benefit of all.

It is imperative that commercial interests do not prevent the competent authorities from having access to all relevant and accurate data.

The operator, the master of the ship and, as the case may be, the owner of the dangerous or potentially polluting goods carried on board, are under an obligation to cooperate fully with the competent authorities.
2.3.1. Information sources and accessibility

It is essential that the CA makes an assessment of the situation and associated risks, using the available relevant information. The information required may be available from a number of sources, including the master.

All information received should be checked against all available sources, e.g. SafeSeaNet, THETIS and any other local systems which are used by neighbouring ports or States, as well as P&I Clubs. Other information can also be sought e.g. CleanSeaNet, such as oil spill modelling data, information on the residual strength of the vessel, weather forecast, etc. It is recognised that some place of refuge events present time-critical scenarios where the ability to collect and fully analyse all available data and involve all parties has to be balanced against the speed of response required.

2.3.2. Contacts

Competent Authorities and Member States should maintain good contacts with the Industry to facilitate information gathering. A list of contacts can be found in Appendix I and should include:

- Classification Societies who can also provide information on the availability of ERS (to evaluate vessel’s residual stability and damage calculations)
- Flag administrations
- Ship agents
- P & I Clubs
- ITOPF
- Salvage companies
- Maritime experts and surveyors
- Lead hull underwriter

Through the master, ship operator and/or salvor, or directly it is possible for the CA to access information provided by the ERS including information on:

- the residual strength of the vessel;
- outflow of oil and/or other substances (i.e. HNS) and water ingress;
- intact and damaged stability, including assessments at intermediate stages;
- floatability of the vessel;
- grounding forces, including the effects of tide.; and
- information on insurance coverage.

2.3.3. Information on insurance coverage

Possible sources of information on the insurance cover for vessels in need of assistance include THETIS and EQUASIS. EQUASIS (http://www.equasis.org/EquasisWeb/public/HomePage) provides a very useful tool for competent authorities, because the database already includes, inter alia, information on whether a vessel has insurance or not and, if so, the identity of the insurer (if the insurer is a member of the International Group of P&I clubs). In addition, a ship’s insurance cover arrangements can be verified by obtaining clarification directly from the operator and or the insurance provider. Details of the insurance arrangements for ships entered in one of the International Group of P&I Clubs can be checked immediately through the relevant Club’s publicly available ship search facility or 24 hour emergency telephone number (http://www.igpandi.org/Group+Clubs).
Once cover arrangements for the ship concerned are verified, the CA will have access to the identified insurance provider who will respond under the relevant IMO convention/s or national legislation. International Group Clubs may also provide a Letter of Undertaking following consultation with the affected State.
2.3.4. Actions in case of absence of proof of insurance

If the vessel in need of assistance cannot present proof of valid insurance, the State considering a request to accommodate the ship in a place of refuge can still request insurance information, or proof of a bank guarantee, directly from the company/shipowner\textsuperscript{16}.

Pending the request for a proof of insurance or a financial guarantee, the CA shall, in accordance with existing EU law\textsuperscript{17}, continue with the analysis of the PoR request and identify the best course of action for the protection of human life and the environment.

In practice, the search for proof of insurance must continue in parallel with the other steps in considering the PoR request.\textsuperscript{18}

Lack of proof of adequate insurance cover\textsuperscript{19} cannot in and of itself form sufficient reason to refuse such a request.\textsuperscript{20}

\textsuperscript{16} The shipowner/company must place itself at the disposal of the CA throughout the incident, in accordance with Article 19 (3) of Directive 2002/59/EC as amended, and relevant provision of the ISM Code.

\textsuperscript{17} Article 20c (2) of Directive 2002/59/EC.

\textsuperscript{18} Article 20c (1) of Directive 2002/59/EC.

\textsuperscript{19} In accordance with Article 6 of Directive 2009/20/EC, OJ L 131, 28.5.2009, p. 128.

\textsuperscript{20} Article 20c (1) of Directive 2002/59/EC.
Chapter 3

Places of Refuge Co-ordination

Many times situations leading to a request for a place of refuge involves only one Member State and will be handled by the same State, under their jurisdiction. There may however be situations progressing into a situation involving neighbouring Member States or Member States in the vicinity of the incident. These Operational Guidelines should complement national plans and apply to situations where it is likely that more than one State may become involved, or where it is outside of the jurisdiction of any one Member State. The principle is that each State involved starts to examine their ability to provide a place of refuge and that, in the interest of resolving the situation, there is direct contact between those CAs involved to decide who is best placed to take the coordinating role.

3.1. Incidents within jurisdiction of a Member State

3.1.1. Place of refuge request - following SAR operation

When a Place of Refuge (PoR) request immediately follows a SAR operation, the search and rescue region (SRR) in which the incident occurs should be the starting point for deciding who is responsible for the initial coordination of the PoR request. This is to ensure continuity of coordination throughout the handling of the incident.

As the case may be, the State whose MRCC has been coordinating the SAR phase should remain in charge of incident coordination, unless and until an agreement has been reached to transfer co-ordination to another coastal state.

If the initial position of the vessel making the PoR request is inside waters under the jurisdiction of the same Member State whose MRCC was co-ordinating the SAR operation, that Member State should retain co-ordination until the operation is completed and/or there is an operational requirement/agreement to handover to another Member State.

If the position of the vessel is outside waters under the jurisdiction of the Member State that was co-ordinating the SAR operation at the point a PoR request is made, then the Member State under whose jurisdiction the vessel now is shall take over co-ordination from presently co-ordinating Member and from then on be the CMS, unless otherwise agreed. Information gathering and transfer should be done as described in Chapter 3.

3.1.2. Place of refuge request – no initial SAR operation

If a PoR is requested when no SAR operation has taken place, the deciding factor should be the Maritime Assistance Service (MAS) declared by the state in whose area of jurisdiction the vessel is located. If there is no MAS declared, in the first instance the Member State with jurisdiction over the
waters in which the vessel is located (eg. through a declared EEZ) should co-ordinate the PoR request unless and until an agreement has been reached to transfer coordination to another coastal state.

3.2. Incidents outside jurisdiction of any one Member State

For PoR requests arising from an incident commencing outside the jurisdiction of any one Member State, the Search and Rescue Region (SRR) will be the deciding criterion for determining who should take on the co-ordination role in the first instance. The state in whose SRR the vessel is located will be deemed in charge of the coordination of the event in the first instance, even though there may or may not be a SAR component to the operation.

The Member State in whose SRR the vessel is located at the time of the PoR request should retain the coordination of the response to that request unless and until an agreement has been reached to transfer coordination to another coastal State in the region, which might grant a place of refuge.

Member States who are involved by virtue of geography, or because they are home to some of the vessel’s interests, support the action by co-operating with the co-ordinating state to: gather information; share expertise; provide logistical assets; participate in the risk assessment; and search for potential places of refuge in their territory.

--- Click to come back to PoR Quick Reference ---

3.3. Obligations on Co-ordinating Authority and Neighbouring Member States

When it has been decided that taking the vessel to a place of refuge is the most appropriate course of action, the Co-ordinating Member State should work with neighbouring states (using the Decision Methodology in Appendix D) to identify the nearest, most appropriate PoR, which may be in another state.

At all times, the principal focus should remain the protection of human life and the environment and the reduction of the hazard to navigation.

--- Click to come back to PoR Quick Reference ---

3.4. Transfer of co-ordination

Responsibility for co-ordinating the incident may be transferred, depending on the evolution of the situation aboard the vessel, or depending on agreements reached between the States involved i.e. the State able to offer a place of refuge. However, for reasons of operational continuity, it may be appropriate for the initial CMS to assume coordination throughout the entire process, with the agreement of the other coastal State(s) concerned.

The transfer of coordination to another coastal state is accomplished with a formal notification, preferably in an electronic format, from the state taking over coordination to the state initially in charge of the event (see Appendix F).

--- Click to come back to PoR Quick Reference ---
Chapter 4

Requesting a Place of Refuge

Where the safety of life is involved, the provisions of the SAR Convention should always take precedence. This chapter applies where a ship is in need of assistance, without prejudice to/ independently of SAR

4.1. Process
When a decision has been taken by a master, Salvor or other party in charge of the ship to make a formal PoR request, without prejudice to the CA's right to take the decision, the following process should be followed:

4.1.1. Appraisal of the situation
The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for the ship’s need of assistance. (See Appendix C)

4.1.2. Identification of Hazards and Assessment of Associated Risks
Having made the appraisal, the master, where necessary with the assistance of the company and/or the salvor, should estimate - taking into account the potential future risks - the consequences of the potential casualty taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board. (See Appendix C)

4.1.3. Identification of Assistance / Services Required in place of refuge
The master and/or salvor should identify the assistance they require from the coastal State to overcome the inherent danger of the situation. (See Appendix C)

4.1.4. Transmission of request to the Member State and cooperation
The formal request for a place of refuge shall be transmitted by the master using the fastest means available to the coastal State MAS/MRCC as designated in Appendix A and using the Request Form in Appendix C.

A formal request for a place of refuge may also be made by:
- Ship operator / company Designated Person Ashore (DPA)/contracted salvor

- Any other person who is in charge of the ship at the time, and is recognised by national law

The respective coastal State shall ensure that, where applicable, the request is forwarded to the CA as designated in Appendix B.

Unless in extremis, formal requests should be made to one CA only, through the national point of contact (MAS or MRCC), and should not be forwarded directly to ports or harbours, unless agreed with the MAS / MRCC and CA. The CA should always be informed if a third party was involved.

Except in very extreme circumstances, simultaneous requests to other MAS/MRCC should not be made.

4.2. Formal Request for a Place of Refuge

The formal request should include the information in Appendix C and should be made in writing or recorded in another way. The request should be sent either directly to the CA or via the MAS, MRCC, VTS or any other Station nominated by the individual Member State who would then immediately forward it to the CA, in accordance with local arrangements.

Any other information that the CA might require, for example, to ensure compliance with local legislation, such as cargo manifests, stowage plans and the salvor’s outline salvage plan should also be forwarded, together with the Formal Request Form.

As a matter of principle, while each state involved in the operation should examine their ability to provide a place of refuge, the final decision on granting a place of refuge is solely the responsibility of the Member State concerned. However, each State should share any information relative to the potential places of refuge they are examining with the other States involved.

4.3. Member States’ Plans for allocating a Place of Refuge

To help the efficient management of a PoR request involving more than one state, as the situation may demand or upon request, Member States share the methodology and the relevant parts of their national plan with their neighbouring states\(^\text{21}\).

\[^{21}\text{if requested by Member States, those receiving information shall be bound by an obligation of confidentiality.}\]
Chapter 5

Risk Assessment & Inspection

5.1. EU Decision Methodology

The EU Decision Methodology (EDM) aims to provide a structured and logical decision making process in response to a request for assistance from a vessel in need of assistance. The process can be used as a checklist or flowchart which provides the sequence of steps to be followed to enable a place of refuge assessment to be properly carried out. The EDM is a recommended process across the EU, which can be supported and implemented through individual Member States' national plans. It can be used by all Member States potentially or actually affected by an incident, providing a common foundation on which each Member State can conduct its own risk assessment.

The quicker the decision has to be taken, the priorities to be considered in the decision making process must be those which are considered to be key from a socio economic, public health and environmental perspective.

It follows that the Risk Assessment (RA) must be carried out with great pragmatism in scenarios where quick decision making is essential. In scenarios with a great number of unknowns the responders' risk assessment should be carried out with an appropriate safety margin. In some response scenarios the risk assessment(s) to be carried out must be dynamic in a potentially fast changing scenario. In such scenarios the ability for the response team to rapidly re-assess may be crucial. In some straightforward scenarios some steps may be unnecessary and therefore be omitted.

For the decision-making process to be reported in a transparent and reproducible way, the process must be documented precisely, including all considerations which were suggested and ultimately not included.

The EDM follows IMO Resolution A.949(23) Guidelines on places of refuge for ships in need of assistance. The EDM is designed exclusively for the use of Member States involved in handling a formal PoR request.

The allocation of a place of refuge shall, as far as possible, be made on the basis of actual verified information, within a stipulated time period. The rigour and duration of the process for collecting information, evaluating and considering alternatives, ahead of making a decision on a place of refuge, are affected by both the magnitude and urgency of the accident. Some incidents may present such urgency that responders have only hours and minutes to determine the response rather than days for consideration.

The EDM procedure describes the process methodology with the aim of having a pre-agreed and readily reproducible means of determining best practice for place of refuge identification. Every
maritime incident is different to some extent; the permutations for the range of possible scenarios mean that the factors to be considered ought to be broken down into logical information/data sectors. Depending on the situation at hand, the appropriate data needed to feed the EDM is described in Appendix D.

Implementation of EDM: Skills and tools: Who are the key information providers and how do responders engage, collaborate and communicate operationally?

The nature of the incident will determine which kind of information is key and what is desirable overall. The information requirement will determine the group of individuals (representing the data sources) providing that information. The most appropriate individuals will be specialists in their skill area and fully able to contribute effectively to the EDM process in challenging and dynamic situations. Notwithstanding the involvement of this group, the CA remains responsible for taking all final decisions in respect of the PoR request.

5.2. Inspection / Expert Analysis

Where it is deemed safe to do so and where time permits, an inspection team designated by the CMS should board the ship requesting a PoR, for the purpose of gathering evaluation data to support the decision making process (EDM).

The team should be composed of persons with expertise appropriate to the situation. Where one or more Member States may be involved with the incident, and where other parties may be potentially involved, then the formation of a multi-national or ‘regional’ inspection team should be considered. The CMS will retain responsibility for selecting the appropriate team members and inviting participation from other Member States. Due care should be exercised to ensure that formation of a multi-national / regional team does not delay the deployment of the inspection team.

The analysis or inspection should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- safeguarding of human life at sea;
- safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- risk of pollution (particularly in designated areas of environmental sensitivity);
- if the place of refuge is a port, risk of disruption to the port’s operation (channels, docks, equipment, other installations);
- evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance, as well as possible risks to navigation.

---- Click to come back to PoR Quick Reference ----
Chapter 6

Decision Making & Outcomes

6.1. Competent Authority Final Decision

6.1.1. Decision to grant a place of refuge
The decision by a State to grant a place of refuge on their territory should be immediately communicated to all parties involved and should include any practical requirements set as a condition of entry.

6.1.2. Decision not to grant a place of refuge
Before taking any decision, the necessary risk assessments and/or inspection visits should always be completed. Unless deemed unsafe, there should be no rejection without inspection. The State that receives a request to provide a place of refuge cannot refuse for commercial, financial or insurance reasons alone.

Whilst each MS should remain sovereign in their decision, if a CA refuses a request for place of refuge, it should immediately communicate to the other parties involved and to the shipowner/operator the information on which its decision has been made, including any assessment relating to:

- Safety persons on board and threat to public safety on shore;
- Environmental Sensitivities;
- Lack of availability of suitable resources at desired PoR and concern over structural stability and ability for ship to make successful safe transit to same;
- Prevailing and forecast weather conditions, ie. Lack of sheltered area for proposed works;
- Physical limitations and constraints incl. bathymetry, navigational characteristics;
- Foreseeable consequences escalation, i.e. pollution, fire, toxic and explosion risk;
- Any other reason.

Copies of the Member State’s Risk Assessment and/or Inspection Report(s) should also be made available as appropriate.
6.1.3. Subsequent Request to another MS to grant a POR

When the risk assessment carried out following an incident concludes that a place of refuge on another Member State’s territory is the only solution in order to preserve the safety of the vessel involved, the safety of navigation and to protect or mitigate the risks to the environment, the CMS refusing the request for a place of refuge for objective reasons shall forward all information relevant to the circumstances on which their decision is based to the State or States to whom the subsequent request [by the operator] is made. Forwarding all relevant information should greatly facilitate the risk assessment and decision making on the subsequent request.

6.1.4. Passage Plan & Monitoring

When a suitable place of refuge has been determined and agreed the CMS will assume responsibility for agreeing a passage plan with the requesting party and will engage with the SMSs as necessary, but in particular where the casualty may have to pass through or transit in close proximity to another MS’s jurisdiction [(in accordance with relevant UNCLOS provisions)]^{22}.

In order to be prepared to face potential difficulties during the transit to the designated place of refuge, Member States should consider on one or more backup places of refuge en route.

---- Click to come back to PoR Quick Reference ----

^{22} Articles 194 and 195 of UNCLOS establish obligations of coastal States to prevent, reduce and control pollution to the marine environment caused – among other factors – by shipping, as well as not to transfer environmental hazards on to other sea areas. In addition, Articles 198 and 199 of UNCLOS lay down coordination rules for neighbouring States dealing with pollution incidents, including a duty to notify each other and to draw up joint contingency plans.
Chapter 7

Financial Security

Financial security, generally in the form of insurance, for maritime claims for specific types of damage and costs (e.g. oil pollution, wreck removal) covers a ship in need of assistance for potential liabilities, including potential economic losses incurred by third parties during the accommodation of a ship in a place of refuge.

Ships over 300gt are required (under Directive 2009/20/EC) to carry proof of insurance cover for maritime claims irrespective of the flag they fly when they enter a port under a Member State’s jurisdiction, and – in some cases – when they operate in territorial waters of a Member State. Also, ships over 300 gt flying the flag of a Member State shall – in any event – have insurance cover in line with this requirement. This insurance cover may be in the form of an ‘International Group of P&I Clubs Certificate of Entry’ or another type of financial security, including self-insurance.

A certificate of insurance that is in line with EU law requirements must contain at least: the ship's name, IMO number and port of registry, the shipowner's name and principal place of business, the type and duration of the insurance, and the name and principal place of business of the insurance provider.

In addition, a ship will carry certificates of insurance issued for liabilities arising under a number of IMO Conventions that cover pollution prevention and clean up and costs arising from activities associated with a vessel in need of assistance, where such Conventions are in force in the Member State(s) concerned or where they are required by the State of the ship's registration.23

Information on potential liabilities and details of insurance cover pertinent to the accommodation of ships in need of assistance can be found in Appendix J.

7.1. Operational action points

On an operational level the issue of financial security/insurance, cost recovery and compensation can be reflected in 3 key action points:

(a) Any procedures applicable to liability and financial security for places of refuge should be outlined in the national plans for the accommodation of ships in need of assistance, in accordance with existing EU law, which are available to the CA (not public) and can be shared with parties involved in the incident in hand;

(b) CAs can seek proof of financial security in accordance with existing international and EU law (see above Chapter 2 on 'Information Gathering'), but they cannot be exonerated from their obligation to assess and respond in a timely manner to a request for a place of refuge on the basis of the absence of a certificate of insurance in line with Directive 2009/20/EC;

(c) CAs cannot refuse to accommodate a ship in a place of refuge on the basis of the lack of an insurance certificate in line with Directive 2009/20/EC alone.

23 The IMO publishes a comprehensive table on the status of ratification of all IMO Convention, which is updated monthly and can be found at: http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx
Chapter 8

Media and Information Handling

8.1. Media and Information Handling
The delivery of accurate, clear, timely and up to date information and advice to the public and other key stakeholders is an important aspect of the successful handling of any shipping incident. Media handling should be incorporated into national contingency planning and a media handling procedure should be developed.

8.2. Key Principles
- Media activity must not interfere with the management of the incident in any way; particularly it should not impede the operational activities of the emergency services. Media speculation should not be considered when making the decision to grant a place of refuge.
- All steps should be taken to protect victims from press intrusion.
- Only factual information should be provided. There should be no speculation about causes, future developments, or actions.
- Information and advice should not be released by one organisation if it covers the area of responsibility of another, UNLESS the information (and its release) has been agreed by the responsible organisation.

8.3. Key interest groups
- Press and Media
- General public, including NGOs and civil society
- Ministers, national and local authorities, European Commission
- Shipping and insurance industries, ports, harbours, terminal operators

8.4. Key actions for persons handling incident
- KNOW who is responsible for activating media handling process/establishment of Media Team for the incident (on the understanding that the media team may be required for a longer duration)
- ARRANGE regular briefings between different response cells (eg. Salvage Control, MRC, onshore clean-up team etc.) – either in meetings, or by telephone/video conference.
- IDENTIFY the designated responsible person(s), who will:
  - liaise between CA and press;
  - take the lead in providing strategic SITREPS to national authorities and SSN;
  - communicate with key interest groups contacts when there are significant developments to report
- FOLLOW Key Principles at all times
Chapter 9

Lessons Learned

9.1. National & Regional De-briefs

Member States should hold a de-brief session after each significant incident.

As a minimum, the de-brief should consider the incident background, response factors (e.g. coordination, communications, risk assessment, decision making and any other aspects considered relevant. Depending on the nature of the incident, the debrief could either be for all the authorities and stakeholders involved, or smaller sub-groups could be convened to focus on particular aspects of the incident.

Where appropriate, neighbouring or other regional Member States should be invited to participate. If the debrief identifies issues that might be of wider interest, the outcomes from the debrief process could be shared at regional and/or EU MS level.

The methodology for the Debrief & Exchange could follow the IMO Resolution 949 annex 2 Guidelines for the evaluation of risks associated with the provision of places of refuge. Although the annex is meant to be used in the decision making process, the same list is useful to check the actions taken in the Debrief & Exchange.

Reference is also made to the Guidelines that were produced in the Consultative Technical Group under EMSA: Common Assessment Framework for Lessons Learned: response during major oil pollution incidents at sea.

It is recommended that a task manager is appointed to report on the evaluation, conclude on the outcomes and produce a list of action points aimed at improving procedures for the future handling of vessels in need of assistance.

9.2. Places of Refuge CA Co-operation Group De-brief

The group established under the VTMIS Directive (art.20.3) – the Member States Cooperation group on Places of Refuge – meets regularly to discuss and exchange expertise on all matters related to ships in need of assistance and places of refuge, including lessons learned usefully shared within the Co-operation Group with the aim to improve measures taken generally and pursuant to these Guidelines. Depending on circumstances such discussions may also involve industry stakeholders.

9.3. Exercises & Workshops

If it is thought appropriate, lessons learned from an incident could be the subject of a regional or national exercise, or a smaller exercise at a more local level e.g. port authorities. An exercise could focus on the handling of the whole incident, or it could concentrate on one or two aspects of what happened.

Exercises could either be “live”, or take the form of a table top exercise. In addition to National or Regional exercises, the EU may facilitate workshops and/or desk top exercises to disseminate lessons learned and to test any new procedures or protocols as appropriate.
N.B. It is recognised that these Operational Guidelines may place additional resource demands on CA’s and it is fundamental to the success of an emergency response that such resources are in place, operational and exercised prior to any event.
Appendix A

List of MAS / MRCC

Direct access to lists of MAS/MRCC via this link:


In situations involving also States outside the European Union the user can seek information using this link:


On this webpage, the circular can be downloaded by clicking on the circular number on the right hand side of the page.

**Attention** is drawn for the need to consult the latest revision of the IMO Circular, as it may have been revised.

**Attention** is also drawn to Article 22.2 of Directive 2002/59/EC as amended:

*Article 22*

2. Each Member State shall ensure that the shipping industry is properly informed and regularly updated, notably via nautical publications, regarding the authorities and stations designated pursuant to paragraph 1[CA, port authorities and coastal stations], including where appropriate the geographical area for which they are competent, and the procedures laid down for notifying the information...
Appendix B

List of Competent Authorities

Direct access to designated Competent Authorities (CA) in the European Union is via

Appendix C

--- Click to come back to PoR Quick Reference ---

Formal Place of Refuge Request Form

Note: For Places of Refuge requests following SAR action it is likely that much of the ship/cargo/bunker information will already be held by the MRCC / MAS.

<table>
<thead>
<tr>
<th>Request for Place of Refuge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date: ...........................</td>
</tr>
<tr>
<td>From</td>
</tr>
<tr>
<td>To</td>
</tr>
<tr>
<td>For attention of: Competent Authority</td>
</tr>
</tbody>
</table>

Section 1

**Appraisal of the situation**
The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship’s need of assistance. [IMO Guidelines A.949(23) paragraph 1 of Appendix 2 refers].

Section 2

**Identification of Hazards and Assessment of Associated Risks**
Having made the appraisal above the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board:
- if the ship remains in the same position;
- if the ship continues on its voyage;
- if the ship reaches a place of refuge; or
- if the ship is taken out to sea.

Section 3

**Identification of the required actions**
The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. [IMO Guidelines A.949(23) paragraph 3 of Appendix 2 refers].

Section 4

**Supporting Documentation**

Section 5

**Any other Member States / Ports Contacted to Date**

* See Section 1.1.5
<table>
<thead>
<tr>
<th>Section 6</th>
<th>Information from the MS/Port contacted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[At the end of its assessment process]</td>
</tr>
<tr>
<td></td>
<td>The recipient CA should inform the requestor of its action</td>
</tr>
<tr>
<td></td>
<td>[Using this space in the request].</td>
</tr>
</tbody>
</table>
Appendix D

Decision Making Tool

Incident Pre-Planning
As part of their contingency planning work individual Member States should create inventories of key information providers with their contact details and available means to set up conferencing when initiated for response. Essentially: who are the key individuals with critical information and decision making capability?

STEP 1 – Determination of relevant key data to feed the QDM

Information gathered and already available (under chapter 2) should be used as far as is possible.

The assignment or rejection of a place of refuge is arrived at as a result of weighing the risks for public health and socio economic interests and the marine and coastal environment. A minimum amount of information is required for assessment even in cases of highest urgency.

Key Data to be collected if not already available in the SSN System (as far as available and depending on the situation at hand)

<table>
<thead>
<tr>
<th>Initial Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vessel and Crew</td>
</tr>
<tr>
<td>- Vessel Name and Flag;</td>
</tr>
<tr>
<td>- Vessels Identification Number (IMO Number);</td>
</tr>
<tr>
<td>- Type of vessel, cargo classification;</td>
</tr>
<tr>
<td>- Number of persons on board; Is there a risk to safety;</td>
</tr>
<tr>
<td>- Details of any casualties on board or in the vicinity of the ship;</td>
</tr>
<tr>
<td>- Size, tonnage, length, beam and draft of ship;</td>
</tr>
<tr>
<td>- Vessel position, course and speed.</td>
</tr>
<tr>
<td>- Departure and destination ports.</td>
</tr>
<tr>
<td>Nature of Incident</td>
</tr>
<tr>
<td>- Nature of the incident (collision, grounding, loss of structural integrity, etc.)</td>
</tr>
<tr>
<td>- Damage assessment: structural and mechanical integrity of the ship:</td>
</tr>
<tr>
<td>- Precise position of ship + close proximity to other ships, shallow water, shore or any other hazard; ability to anchor;</td>
</tr>
<tr>
<td>- Course and speed (underway, making way, adrift or at anchor);</td>
</tr>
<tr>
<td>Environmental conditions</td>
</tr>
<tr>
<td>- Weather, sea state and tidal conditions;</td>
</tr>
<tr>
<td>- Ice conditions</td>
</tr>
<tr>
<td>Pollution potential</td>
</tr>
<tr>
<td>- Type and quantity of bunker fuel on board;</td>
</tr>
<tr>
<td>- Cargo details, including location on board.</td>
</tr>
</tbody>
</table>
- Nature and quantity of any Hazardous or Noxious Substances (HNS) or cargo classed as Dangerous Goods (DG); packaging details.
  - Actual pollution or potential for such;
  - Observations to aid with estimation of release rates.

- **Environmental and Public Health Impact Assessment**
  - Statutory bodies involved
  - Proximity to human population
  - Key environmental threats
  - Key environmental sensitivities, shallow water, sensitive shorelines, environmental designations
  - Proximity to Ports / other ships

- **Owners/Insurers**
  - Name (s) registered owners or operators:
  - Name and contact details of hull insurers (or of the lead hull insurer authorised to act on behalf of hull insurers) and/or P&I Insurers
  - Name and contact details of Classification Society;
  - Name and contact details of the “Designated Person Ashore” as nominated on ISM documentation;
  - Name and address of agents or representatives.

- **Initial response / actions underway**
  - Response actions taken by the ship (salvors engaged or contracted);
  - Any other measures already taken;
  - Nature of Immediate assistance required;
  - Details of place of refuge request; what services required:
  - Inspection including diving, repair work, cargo transfer, etc.;

- **Master / Salvor’s Initial Risk Assessment**
  - Master’s appraisal of vessel:
    - remains in initial position;
    - continues her voyage;
    - reaches a place of refuge;
    - is taken out to sea.

- **Future intentions**

---

**Data sources: where do we get the information from?**

Information on the vessel, position and HAZMAT available in the Union Maritime Information and Exchange system, SSN, should be used as far as is possible.

<table>
<thead>
<tr>
<th>Source</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casualty Crew</td>
<td>Present condition of ship, all crew actions to date</td>
</tr>
<tr>
<td>Shipping company, owner, charterer</td>
<td>Initial condition of ship, status of insurance, drawings/specification</td>
</tr>
<tr>
<td>Class</td>
<td>Expert analysis of damage condition and proposals for mitigation</td>
</tr>
<tr>
<td>Inspection / Fact Finding Mission</td>
<td>Present damage condition, evaluation of human health/life impact environmental impact - real and potential.</td>
</tr>
</tbody>
</table>
STEP 2 – Preparation of an emergency incident analysis: Providing information in an appropriate reproducible structure to facilitate the PoR decision making process

All relevant information available from STEP 1 is to be structured and presented in such a way to facilitate decision making on the best option(s) to deal with the casualty, which include consideration of a PoR. The likely consequences of each considered option should be reflected on individually according to time available. The search for possible and realistic PoR’s can be ongoing in parallel with the emergency analysis. The qualitative confidence level for the data analysis is as good as the information available on the day and the methodology adopted.

Emergency analysis of the available data should consider adopting the following steps:

- Assimilating and prioritising key information. Which factors are key in terms of the threat they present and therefore must be agreed as highest priority and addressed most urgently?
- Assessment of realistic worst case scenario(s) and best potential means to mitigate.
- Rationale for responders promoting specific PoR recommendations and Port and Harbour Authorities rejecting / accepting a PoR request.
- Costs for all realistic options, ball park figures. Are the mechanisms/funds available to cover all options? (see chapter 7 and appendix K)
  - Costs for response
  - Cost covered by owner, insurer, P&I Club, cost ceilings?

STEP 3 – Risk assessment for a vessel to remain at sea

The decision about whether the vessel should be moved to sheltered waters or remain at sea is considered by taking account of the risks and benefits based on operational criteria.

Can the vessel remain at sea as an alternative to moving to a PoR

- Risk to human life in case of evacuation / controlled disembarking
- Emergency Response promising?
- Environmental impact – worst case?
- Risk to socio-economic interests?
STEP 4 – Risk assessment for a vessel to be directed/ recommended to a PoR in a sheltered area or in a Port

**Vessel directed to a sheltered area (Place of Refuge)**

Weighing-up of benefits and risks posed by the vessel entering harbour approach, the roads or channels on the basis of operational criteria: decision to allow the vessel approaching sheltered waters close the coast line.

A suitable Place of Refuge is to be selected on the basis of contingency plans and weighing-up of the likely relevant risks specific to the casualty, and the potential PoR location.

- Detailed RA for vessel remaining at sea.
- Risk of sinking?
- Risk to public health from casualty?
- For any proposed PoR? Can vessel reach in time?
- Socio-economic and environmental risks? Risk for fish farms? High cost risks?
- Risk for sensitive property / area?
- Shore side access and infrastructure available?
- Risk to navigation for routine marine traffic?
- Suitable weather conditions/ sea energy forecast?

**Vessel moves to a Place of Refuge**

Weighing-up of benefits and risks being posed by the vessel enters the harbour on the basis of operational criteria it is decided to allow the vessel entering the protected area of a port and can be reached by land based response forces.

- Detailed RA for vessel remaining at sea.
- Has a Place of Refuge been approved? Can it be reached in time?
- Can port accommodate vessel draught?
- Port facilities with likely mitigation measures, e.g. vacant suitable berth (with cranage).
- Risk to navigation? Risk of (significant) economic impact on the port? And/or local area?
- Risk of environmental impact en route and nearby PoR?
- Transfer to an alternative sheltered area available as an option?
- For any proposed PoR? Can vessel reach in time?

**Decision for assigning a specific PoR**

Once the technical decision on the most appropriate PoR is agreed it must be discussed with the relevant stakeholders, except in cases where a direction can be made in an emergency situation. In general, the decision is made following consultation which may include local harbour masters, the traffic control centres and other local authorities representing socio-economic and environmental interests as appropriate. The decision-making process will be supported by expert contributions of legal, environmental, nautical and other specialised disciplines.

The final decision will be made by the designated Competent Authority.

**Directing/ recommending a vessel to an agreed place of refuge**
Once the decision on the most appropriate PoR is taken it has to be transferred by an instruction to the Master or the Salvor in charge for the casualty and to the local authorities, the harbor master and other stakeholders in charge for the assigned PoR.

The CA is responsible to decide if a Place is to be allocated or not. Such a decision has to be taken in good time especially if a disaster has to be averted. The CA should therefore have the necessary power to intervene when required and to give the necessary directions. However, in view of the impact this may have on 3rd party port facility operators, it is recommended that such decisions are to be taken following consultation with Coast Guard and/or Navy, port authorities, harbour masters, local governments, environmental authorities, etc.

The allocation of a PoR is dependent on the actual situation and has to be chosen carefully, therefore the following has to be taken into consideration:

- Safety and protection of the persons on board
- Safety of the ship and cargo
- Proximity of residential areas and population density where the health and safety of human life in the vicinity of the ship is given priority
- Protection of the sea and coastal regions
- Protection of sensitive installations and the socio-economic impact on the area
- Wind and weather forecasts
- The impact on 3rd party privately operated terminals and/or facilities
- Suitable place for in water surveys taking into consideration underwater visibility and weather conditions to enable the assessment the vessel’s structural integrity by divers
- Tidal conditions
- Sheltered anchorage areas for prevailing weather conditions and water depths
- Adequate manoeuvring space for handling a vessel under tow
- Access by land and sea to deploy salvage and pollution response equipment and proximity of such resources
- Security issues in relation to ISPS

This information should be readily at hand for the CA to use when necessary and when dealing with an incident.

The CA is to ensure that from the information it has in hand the situation is under control and is to establish confirmation of who is responsible for the ship at that time.

In the case where a ship is already at a safe PoR and there is a request to transfer that ship to another PoR, the entity responsible for the ship at the time should formally confirm that the ship is fit for the transfer. The CA should then confirm the status of the ship and, once all parties (including the CA for the proposed new PoR) agree, the transfer should be permitted in accordance with any conditions imposed by the relevant CAs.
Appendix E

Integrated Maritime Services

The integrated maritime services of the Union Maritime Information and Exchange System, allows Member States that so wish to make full use of the integrated vessel reporting information from terrestrial and satellite AIS, LRIT, VMS, as well as national vessel position data such as coastal radar and patrol assets. Services are being developed, and include access to meteorological and oceanographic data, as well as to automated behaviour algorithms.

IMS combines information from the various traffic and pollution monitoring systems operated at EMSA. In addition to the integrated position reports, and the Earth Observation related satellite imagery and oil spill alerts from CleanSeaNet the services provide access to Satellite-AIS data as well as fisheries VMS data (depending on strict user access policies), all of which considerably complement both the geographical extent and frequency of coverage for monitoring an incident and/or vessel (i.e. at the site of the vessel in need of assistance, en-route to PoR and at the PoR).

Integrated maritime services may support the PoR related activities, as follows:

- During the initial alert: the identification and positioning of the vessel involved (especially if outside T-AIS coverage), the collection of the information specific to the vessel (integrated ship profile) and her cargo, the detection and information of vessels close by or liable to assist, provision of EO satellite imagery, as well as access to relevant met-ocean information.
- During the operation: the follow up on the vessel’s situation, progress on her transit towards a place of refuge, surveillance of traffic in close vicinity (impact on areas of dense traffic, etc.)

In addition EMSA provides an advanced Search and Rescue service to the EU Member States. The service is called the ‘Enhanced SAR SURPIC’ (Search and Rescue Surface Picture) and it can be used by maritime Search and Rescue authorities during rescue operations. The SAR SURPIC provides an overview picture of the ships present in any ocean region, worldwide. Nearby ships can then be contacted to go to the rescue of the seafarers in distress. The SAR SURPIC combines information on the position of ships from all available sources, including satellite AIS and LRIT. The system can also include the position information of fishing vessels from VMS.
## Member State Handover Co-ordination Form

All sections are to be completed to ensure that information has not been mistakenly omitted, if a section is not required or not applicable an entry to that effect should be made.

<table>
<thead>
<tr>
<th>Identifier</th>
<th>Function</th>
<th>Information Required</th>
</tr>
</thead>
</table>
| A | **Identity of Casualty Vessel** | Name and call-sign of the vessel  
IMO Number  
Flag State |
| B | **Reason for refuge**  
(Brief details of issue affecting the vessel) | |
| C | **Member State Transferring Co-ordination** | Identity of Member State  
Name and title/position of the Competent Authority |
| D | **Member State Accepting Co-ordination** | Identity of Member State  
Name and title/position of Competent Authority |
| E | **Dates and times** | Date and time of agreement to transfer co-ordination  
Agreed date and time of actual co-ordination transfer – if different from above |
| F | **Position of co-ordination transfer** | Latitude & Longitude  
Bearing and distance from conspicuous point landmark/port/harbour etc.  
Anchorage latitude and longitude |
| G | **Place of Refuge (if known)** | Name of agreed destination – port/harbour/anchorage |
| H* | **Other Member State(s) if there is a requirement for transit through other MS territorial waters** | Identity of member state  
Identity of member state |
| I | **Transfer Completion - Member State Accepting Coordination** | Identity of Member State  
Name and title/position of Competent Authority  
Date and time of completion |
| J | **Transfer Completion - Member State Transferring Coordination** | Identity of Member State  
Name and title/position of Competent Authority  
Date and time of completion |
<table>
<thead>
<tr>
<th>K</th>
<th>Reason for not granting a Place of Refuge</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

H* - Template to allow for additional member states to be inserted if/as required.
Guidance

Transfer of Co-ordination

A formal transfer of co-ordination is required to ensure a seamless transition of co-ordination from one member state to another when a vessel is in urgent need of a place of refuge to ensure the safety of the vessel, its crew and cargo, thereby minimising the risk to personnel, potential pollution damage to the environment or a hazard to navigation.

A transfer of co-ordination should include relevant information focusing on the actual transfer of co-ordination between member states and should not include detailed information. Detailed and essential information relating to the incident and the casualty vessel(s) should have been previously, and continually, distributed by the use of the Place of Refuge Situation Report(s) and discussed prior to reaching an agreement to transfer co-ordination.

If a collision occurs and both vessels were in need of a place of refuge two separate templates would be required, one for each vessel. The inclusion of both vessels on the same template would only be appropriate if both vessels were being provided with a place of refuge by the same member state and be given refuge at the same location. As this situation would be extremely unlikely individual reports should be made for each vessel.

If a transfer of co-ordination is required on more than one occasion for the same incident, for example a casualty vessel passing through other Member States waters, the format should be repeated rather than attempting to include any additional transfers on one document.

There is a requirement to identify an agreed position, date and time of the proposed transfer of co-ordination. There is also a condition to acknowledge and document that the transfer of co-ordination has been completed and retained on file by both Member States.

There are four steps required to complete the transfer of co-ordination.

Procedure for completion of the Transfer of Co-ordination template:

- Transferring Member State is to complete the template up to and including section ‘H’, when done so they are to send to the Accepting Member State (and other Member States if applicable) by e-mail or facsimile.

- When the actual transfer of co-ordination has been completed the Accepting Member State is to complete section ‘I’ when done so send to the Transferring Member State.

- Transferring Member State to complete section ‘J’.

- The completed template is to be sent back to the Accepting Member State as a formal notification and record of transfer completion.

- At the end of the assessment process, when transferring the coordination to another MS the reason(s) for not granting a PoR should be stated by completing section ‘K’.
Appendix G

SITREP Template - including for Place of Refuge (POR)

All sections should be completed to ensure that information has not been unintentionally omitted, if a section is not required, not applicable or details are unknown an entry to that effect should be made.

The first section is the original SITREP template as currently exchanged via SSN (and the information therein may already be available). The second section relates to the POR specific information (see also guidance below).

<table>
<thead>
<tr>
<th>Identifier</th>
<th>Function</th>
<th>Information Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Identity of casualty</td>
<td>IMO, number, Name of vessel, call-sign, flag state</td>
</tr>
<tr>
<td>B</td>
<td>Position</td>
<td>Latitude/longitude or bearing and distance from a mark</td>
</tr>
<tr>
<td>C</td>
<td>Situation</td>
<td>Type of message - e.g. distress/ urgency, date/time, nature of distress/urgency, e.g. fire on board, collision, medical evacuation, grounding flooding, abandon ship, capsizing, list, shifting of cargo, engine failure, structural failure, steering gear failure, electrical generating system failure, navigational equipment failure, etc.</td>
</tr>
<tr>
<td>D</td>
<td>Number of persons at risk</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Assistance required</td>
<td>A request by the co-ordinating station for specific assistance from one or more of the addressees</td>
</tr>
<tr>
<td>F</td>
<td>Co-ordinating MRCC</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>Description of casualty</td>
<td>Physical description, owner/charterer, cargo carried, passage from/to, lifesaving appliances carried, etc.</td>
</tr>
<tr>
<td>H</td>
<td>Weather on scene</td>
<td>Wind, sea/swell state, air/sea temperature, visibility, cloud cover/ceiling, barometric pressure</td>
</tr>
<tr>
<td>J</td>
<td>Initial actions taken</td>
<td>By casualty and co-ordination centre</td>
</tr>
<tr>
<td>K</td>
<td>Search area</td>
<td>As planned by the co-ordinating MRCC</td>
</tr>
<tr>
<td>L</td>
<td>Co-ordinating instructions</td>
<td>OSC/ACO designated, units participating, communications, etc.</td>
</tr>
<tr>
<td>M</td>
<td>Future plans</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>Additional information/conclusion</td>
<td>Include time SAR Operation terminated</td>
</tr>
<tr>
<td>O</td>
<td>Address where cargo information can be found</td>
<td></td>
</tr>
</tbody>
</table>

**Place of Refuge (POR) Situation Report (POR Specific Information)**

<table>
<thead>
<tr>
<th>PoR_1</th>
<th>Report Number:</th>
<th>Ships name followed by the sequential number of the report (e.g. “MV STARLIGHT - POR Situation Report No.01”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PoR_2</td>
<td>Coordinating Authority/Member State:</td>
<td>Identification of the Coordinating Authority/Member State</td>
</tr>
<tr>
<td>PoR_3</td>
<td>Ship Information</td>
<td>Ship type, length, breadth, draught, gross and deadweight tonnage, height (bridge/cabling clearance) etc., as required</td>
</tr>
</tbody>
</table>
| PoR_4 | PoR Status | i) Status Report  
| PoR_5 | Transfer of Coordination Position | Coordinates: A 4-digit group giving latitude in degrees and minutes suffixed with N (north) or S (south) and a 5-digit group giving longitude in degrees and minutes suffixed with E (east) or W (west) or True bearing (first three digits) and distance (state distance) in nautical miles from a conspicuous point  
| PoR_6 | Course | True course as a 3-digit group  
| PoR_7 | Speed | Speed in knots and tenths of knots as a 3-digit group  
| PoR_8 | Port of Departure | Name of last port of call  
| PoR_9 | Entry in MS Area of Responsibility | Date, time and point of entry into the member state’s area of responsibility, if applicable, expressed as in (PoR_5).  
| PoR_10 | Route | Intended track, including waypoints, as specified by agreed passage plan  
| PoR_11 | Radio Communications | State full names of stations/frequencies guarded and main communications frequency for the incident. (see also field L above)  
| PoR_12 | Exit from MS Area of Responsibility | Date, time and point of exit from member state’s area of responsibility, expressed as in (PoR_5).  
| PoR_13 | Original Destination | Name of original port of destination  
| PoR_14 | PoR Destination | Name of place of refuge (e.g. port or area)  
| PoR_15 | Pilot | State whether deep-sea or local pilot is on board  
| PoR_16 | Next Communication Report | Date time group of the next agreed scheduled communication report  
| PoR_17 | Current Draught | Maximum present static draught expressed as a 4-digit group in meters and centimetres. If draught is not consistent for the length of the vessel draughts are to be noted as Bow, Mid-ships, Stern, port and starboard as appropriate.  
| PoR_18 | Cargo and Quantity | Cargo and details of any dangerous cargo as well as harmful substances and gases that could endanger persons or the environment. Quantities should include individual weights and classification of multiple hazardous cargoes.  
| PoR_19 | Defect, damage, deficiency, limitations | Brief details of defects, damage, deficiencies or other limitations; radar, steerage, communications  
| PoR_20 | Pollution/dangerous goods lost and potential to lose overboard | Brief details of type of pollution (oil, chemicals etc.) or dangerous goods lost, or potential to lose, overboard including bunker fuel; position expresses as in (PoR_5).  
| PoR_21 | Weather Forecast | Weather forecast for the next 24 hours  
| PoR_22 | Ships Agent/Representative | Ships P&I Club/H&M Insurers/charterers and/or owner  
| PoR_23 | Salvage / Towing | Name of Salvage and/or Towage Company if appointed  
| PoR_24 | Medic | Doctor, physician’s assistant, nurse, personnel without medical training  
| PoR_25 | Persons | Number of persons on board by:  
| PoR_26 | PoR Incident Details / Remarks | Any other information – including as appropriate brief details of the incident; explosive potential, structural integrity, health concerns, water ingress and of other ships involved either in the incident, providing assistance or salvage, Maritime Security declaration of vessel’s flag state  
| PoR_27 | Relay | Request to relay information, if necessary, to other member states and/or reporting systems.  
| PoR_28 | End of Report | End of Report  

25 Date and Time format: “YYYY-MM-DDThh:mm:ssTZD”. Where TZD = time zone designator (Z or +hh:mm or -hh:mm).
Guidance

Detailed essential incident and ship information will be required by a Member State prior to agreeing to a formal Transfer of Co-ordination request, this information should be distributed by the use of a SITREP Template including Place of Refuge (POR) Situation Report.

Information that may be required by some Member States can be extensive and a template cannot be developed to include every eventuality or every member state requirement. The sections included in the template should satisfy the majority of Member States and their requirements however any additional requests for information received can be entered into section ‘PoR_25’.

The template needs to include the relevant information without initially having to emphasise every detail (to be filled in as far as possible in the light of the given circumstances), the situation may be deteriorating and it is important to share the initial situation information with all participating Member States as soon as possible.

When further information is apparent whether by deterioration or improvement of the situation additional particulars should be entered onto the template and distributed appropriately.

Prior to a Transfer of Co-ordination agreement every effort should be made to ensure the template is completed with all details and forwarded to the Member State.

The most up to date SITREP including POR should be sent to the Accepting Member state, and other Member States, if involved, immediately following, prior to or at the same time as the Transfer of Co-ordination template document.

The POR Situation Report Number (PoR_1) are to include the ships name and be numbered consecutively, the initial report submitted by the original Co-ordinating Member State, should state the Ship Name(s) followed by No.1, example;

‘MV STARLIGHT - POR Situation Report No.01’

Thereafter the Transferring Member State, which may be the original Co-ordinating Member State, will have the responsibility to provide updates on the situation until such time as a Co-ordination Transfer has occurred.

When the Co-ordination Transfer has been completed the Accepting Member State will assume responsibility for continuing to provide the latest information via the SITREP with POR Situation Reports to other Member States that have been involved.

When the ship has reached its final refuge destination (PoR_13) it is the responsibility of the new Co-ordinating Member State (Accepting Member State) to issue a final report using the next consecutive number and including ‘Final’ in the title, example;

‘MV STARLIGHT - POR Situation Report No.05 & Final’

This will indicate to the other Member States involved that the operation to provide a safe haven for the ship has been completed.
Appendix H

International and European Law – relevant rules

International Law

UN Convention on Law of the Sea (UNCLOS 1992)

*UNCLOS in Part XII on the "Protection and Preservation of the Marine Environment" contains a number of provisions that frame the general obligation of coastal States to prevent and fight pollution of the marine environment following incidents in their territorial sea or beyond.*

Article 192: “States have the *obligation to protect and preserve* the marine environment”. Article 194(2): “States shall take *all measures necessary* to ensure that activities under their jurisdiction or control are so conducted as *not to cause damage by pollution* to other States and their environment, and *that pollution* arising from incidents or activities under their jurisdiction and control *does not spread beyond the areas where they exercise sovereign rights* in accordance with this Convention.”

*Article 194:* “1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent: (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping; (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels; [...]”

Article 195: “In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as *not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.*”

Article 198: "When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations."
Article 199: "In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment."

Article 221: "1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences. 2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo." (extra-territorial application)

Article 225: "In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk, shall not bring to an unsafe port or anchorage".

In relation to liability of the State towards other States and of the State towards private parties, UNCLOS contains a few provisions which could be of direct relevance in cases involving accommodation of a ship in a place of refuge.

Article 235(1): “States shall be liable in accordance with international law”.

Article 304: UNCLOS provisions “are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law”.

The above-mentioned Articles simply make reference to the general international rules on State responsibility for internationally wrongful and non-wrongful acts that apply also in cases involving ships in need of assistance.

Article 232: It deals specifically with State liability for enforcement measures taken to protect the marine environment and provides that “States shall be liable for damage or loss attributable to them arising from [enforcement] measures taken (...) when such measures are unlawful or exceed those reasonably required in the light of the available information. States shall provide recourse in their courts for actions in respect of such damage or loss.”

Article 235(2): It requires States to “ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction”.
It is clear in the latter two provisions that international law only sets out the general framework for State liability to be developed in detail in national law.

**Salvage Convention 1989**

Salvage Convention provides for the duty of a coastal state to take into account cooperation among the actors concerned to enable a successful salvage when taking up a decision relating to place of refuge matters.

Article 11: “State Party shall, whenever regulating or deciding upon matters relating to salvage operations, such as admittance to ports of vessels in need of assistance or the provision of facilities to salvors, **take into account the need for co-operation between salvors, other involved parties and public authorities** in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.”

**Intervention Convention 1969**

This instrument gives States broad rights to take measures on the high seas to prevent or mitigate or eliminate dangers arising from oil pollution casualties.

Article VI: a State that has taken measures “causing damage to others shall be obliged to pay compensation to the extent of the damage caused by the measures which exceed those reasonably necessary to achieve the end”.

The same rule has been extended to apply to other forms of pollution than oil, through Article II of the 1973 Protocol to the Convention.

The above provisions do not amount to a general obligation for coastal States to accommodate a ship in need of assistance, but their combined effect may impose certain obligations on them to find the most environmentally friendly and safest solution in a situation of distress.

**IMO Guidelines on Places of Refuge 2003 (Resolution A.949(23))**

The Guidelines are not binding but have become the most important guidance document for such situations. In recognising “the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal state to protect its coastline”, the Guidelines provide for a checklist of actions for the master of the ship and salvors to undertake when the ship needs assistance and a checklist of elements that the coastal authorities should take into consideration while deciding on the acceptance or refusal of a ship to a place of refuge. The purpose is to provide all parties involved with a framework enabling them to respond effectively and to correctly assess the situation of the ship in need of assistance.
The above mentioned rules apply to the situations when there are no persons in distress on board of the ship. In the contrary case (i.e. danger to human life), rules of International Convention for the Safety of Life at Sea (SOLAS 1974) and International Convention on Maritime Search and Rescue (SAR 1979) take precedence, as well as the IMO SAR Guidelines (Resolution A.950(23)).

IMO/ILO Guidelines on Fair Treatment of Seafarers in the Event of Maritime Accident (IMO Resolution LEG.3(91))

The Guidelines give advice on steps to be taken by all those who may be involved following an incident: the port or coastal State, flag State, the seafarer’s State, the shipowner and seafarers themselves. The emphasis is on co-operation and communication between those involved and in ensuring that no discriminatory or retaliatory measures are taken against seafarers because of their participation in investigations. All necessary measures should be taken to ensure the fair treatment of seafarers.

International Convention on Civil Liability for Oil Pollution Damage as amended (‘CLC’) and International Convention Establishing the International Oil Pollution Fund as amended (‘IOPC Fund’), as well as Supplementary Fund 2003

The CLC/IOPC system covers pollution damage occurred in consequence of carriage of oil (persistent hydrocarbon mineral oil) by the vessel. In particular, this damage is defined as: "loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur."

Anyone who has suffered prejudice due to damage caused by escape or discharge of oil from the vessel may claim compensation from the shipowner. The compensation should cover:

- any quantifiable damage, including damage to environment,
- loss of profit,
- preventive measures which are defined as "any reasonable measures taken by (...) after an incident has occurred to prevent or minimise pollution damage."

Compensation for “impairment of environment” other than loss of profit should be “limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken”.

The Convention applies to the damage caused:

- in the territory of the State Party to CLC,
- its exclusive economic zone,
- with regards to preventive measures, it applies to them wherever they were taken.

It is a two-tier system of liability. The shipowner is responsible, on the basis of strict liability but with certain exceptions including acts of war, force majeure, fault entirely attributed to a third party and wrongful act of a governmental authority responsible for the maintenance of navigational aids, up to a certain limit depending on the tonnage of his ship. In case of a ship carrying more than 2,000 tons
of oil in bulk as cargo he has to maintain insurance to cover his potential liability (see more in the chapter on “Insurance and Liability”).

The IOPC Funds of 1971 and 1992, created from annual contributions of oil importers by sea, provide compensation above the limit of shipowners’ liability or if no liability of the shipowner arises (e.g. act of war or else if the shipowner is financially incapable to meet all obligations. The 1992 IOPC Fund provides compensation up 203 million SDR (~ € 227 million). In 2003 the IMO adopted the Supplementary Fund Protocol which increased available compensation to 750 million SDR (~ € 840 million).

**International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Oil Convention 2001)**

**Bunker Oil Convention** applies to pollution damage resulting from the escape or discharge of bunker oil from the ship. In similarity to CLC Convention, the compensation covers:

- any quantifiable damage, including damage to environment,
- loss of profit,
- preventive measures which are defined in the same way as in the CLC.

Compensation for “impairment of environment” other than loss of profit should be “limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken”.

Territorially, it applies to:

- pollution damage in the territory and the territorial sea of the State Party to the Convention,
- its exclusive economic zone (or an equivalent zone),
- to measures taken to prevent or minimise such damage wherever taken.

The Convention is based on the rule of strict liability of the registered owner of vessel. He is liable regardless of fault with only limited exceptions (similar to CLC above), but his liability is limited up to a ceiling calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 or 1996, as amended (in the text binding in a relevant state). Unlike CLC, there is no fund to provide for additional compensation. In relation to a ship with a tonnage greater than 1000 GT the owner obliged to maintain insurance.


In May 1996 the IMO adopted the **HNS Convention** and in April 2010 it adopted an amending Protocol. None has entered into force yet.
The Convention creates a system of strict liability of the shipowner, similar to the CLC (see above) with an additional exception introduced for any failure of the shipper or other person to provide information on the shipped hazardous and noxious substances. HNS damage includes:

- loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances,
- loss of or damage to property outside the ship,
- loss or damage by contamination of the environment,
- the costs of preventive measures and further loss or damage caused by them.

Claims in respect of death or personal injury have priority over other claims.

It applies to:

- any damage occurred in the territory and territorial sea of the State Party,
- damage by contamination of the environment occurred in the exclusive economic zone or equivalent of the State Party
- preventive measures wherever they were taken, as well as
- damage, other than damage by contamination of the environment, caused outside the territory of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party.

The shipowner is liable up to certain limit calculated on the basis of the tonnage of the ship. The maximum amount available under this first tier is 100 million SDR (now around 112 million euro). He is required to maintain insurance or other financial security for this purpose.

In cases where full compensation is not available under the first tier, a compensation fund (HNS Fund) will provide compensation. The total maximum compensation is of 250 million SDR (~280 million euro) per incident. The fund will be financed by receivers of HNS substances transported by sea in the Member States in excess of certain thresholds.

**The Nairobi International Convention on the Removal of Wrecks 2007**

**Wreck Removal Convention** was adopted in 2007 and has entered into force in April 2015.

The Convention holds the owner liable for the cost of locating, marking and removing the wreck. The liability is excluded in the event of an act of war or force majeure, as well as if the maritime casualty was intentionally caused entirely by a third party.

However, the owner can limit liability pursuant to any applicable limitation regime – it will mostly be the International Convention on Limitation of Liability for Maritime Claims, although a State Party may, when ratifying LLMC, specifically exclude the right to limit in respect of wrecks.
The Convention requires the owner of a ship of 300 GT or more to maintain insurance or another form of financial security to cover liability under the Convention.

**LLMC Convention – global limitation of liability**

The *Convention on Limitation of Liability for Maritime Claims* provides for the right of shipowners (charterers, managers, operators, etc.) and salvors to limit their liability for a variety of maritime claims related to the operation of a ship (e.g. in respect of loss of life or personal injury and loss or damage to property, including damage occurred during salvage operations).

The limitation amount is calculated on the basis of the tonnage of the ship in question according to the method described in the Convention.

The Convention was first adopted in 1976, then the limits of liability where increased in 1996 and again increased in 2012 – the latter have entered into force in June 2015.

The only claims excluded from under the limits of LLMC are those regulated by special regimes, CLC and HNS, which define their own liability limits or wreck removal claims if the State signatory to LLMC specifically excluded them. Other claims, such as bunker oil pollution claims and any other claims as defined by national laws are subject to LLMC limits.

The right to the limitation of liability is considered very difficult to 'break' since its Article 4 provides only that "a person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".

It is important to note that LLMC does not provide for rules of liability, it only provides for financial limitation of liability once the liability itself has been ascertained according to applicable rules.

**European Union Rules**

**Directive 2002/59/EC on Community vessel traffic monitoring and information system as amended (‘VTMIS Directive’)**

Article 19 and Annex IV: establish the obligations of the parties concerned with an incident at sea threatening to safety of shipping or persons, or the protection of the environment. As far as the coastal State is concerned, the Directive contains in Annex IV a non-exhaustive list of measures to be considered by the Member States in the event of an incident. The shipowner, the operator, the master and the charterer are strictly held to cooperate with the national competent authorities in order to minimise the consequences of such incidents. Finally, the master of the ship involved in an incident at sea bears additional responsibilities of notification and cooperation with the competent authorities in case of an assignment of a place of refuge.

Article 20 requires Member States to designate one or more competent authorities to take independent decisions concerning the accommodation of ships in need of assistance. The authority
(or authorities) should have sufficient expertise and power to make a variety of decisions, among others to restrict the movement of the ship or direct it to follow a particular course, to give a notice to the master to end a particular threat to environment or maritime safety, to send an evaluation team on board of the ship or direct a ship to a place of refuge.

Article 20a requires Member States to draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The plans should contain at least: the identity of the authority responsible for receiving and handling alerts (name and contact), the identity of the authority responsible for decisions on acceptance or refusal of a ship to a place of refuge, information on the coastline of Member States and all elements facilitating a prior assessment and rapid decision regarding the place of refuge, the assessment procedures for acceptance or refusal of a ship, relevant resources and installations, procedures for international coordination and decision-making and financial guarantee and liability procedures. Member States shall communicate on request the relevant information concerning plans to neighbouring Member States.

Article 20b states that on the basis of the national plan, the competent authority will decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation. The ship will be admitted to a place of refuge if such an accommodation is the best course of action for the purposes of the protection of human life or the environment.

Article 20c notes the relevance of insurance or other financial security in accordance with Directive 2009/20/EC for the ship in need of assistance, which Member States may require to see evidence of. However, the absence of such certificate does not exonerate a Member State from the preliminary assessment of the situation and is not a sufficient reason to refuse to accommodate a ship in a place of refuge.

Article 21: Competent authorities of Member States involved in the management of an incident at sea shall broadcast relevant information to the parties concerned, and shall inform and exchange information with any other Member States with a potential interest in the case at hand.

Article 20d: Member States shall also cooperate, among themselves and with the European Commission in drawing up, if appropriate, concerted plans to accommodate ships in need of assistance.

**Directive 2009/20/EC on the insurance of shipowners for maritime claims (‘insurance Directive’)**

All ships above 300 GT flagged in the EU Member States, as well as any other ships of the same tonnage flying a non-EU flag when they enter a port under the EU Member State’s jurisdiction, have to have insurance adequately covering potential maritime claims subject to limitation under the LLMC. The amount of the insurance is calculated according to the rules in the LLMC 1996. Such insurance means indemnity insurance of the type currently provided by the International Group of P
& I Clubs and other effective forms of financial security and insurance (including proved self-insurance).

**Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (‘ELD’)**

The Directive introduces rules relating to pollution of the environment in general. Those rules can also be applied to pollution of marine environment in particular it provides that an operator of an “occupational activity” (which includes also transport by sea of hazardous materials) is obliged, in case of environmental damage or damage to protected species and natural habitats, as well as in case of an imminent threat of such damage, to undertake preventive and remedial measures.

**The rules do not apply to** environmental damage arising from an incident in respect of which liability or compensation falls within the scope of any of the international liability conventions, namely CLC and HNS. This means in practice that a competent authority should first consider the applicability of the above-listed international conventions before examining the relevant steps to take in accordance with national law transposing the ELD.

According to Articles 5 and 6 of the ELD preventive and remedial measures have to be taken in cooperation with a competent authority (different to the one established in accordance with Article 20 of the VTMIS) designated by the Member State for this purpose. The competent authority may require the operator i.a. to provide information, follow instructions, and undertake specific measures to address the environmental consequences of the incident at sea.

The operator shall bear the costs for the preventive and remedial actions and shall be responsible for the costs if such measures were taken by the competent authority with the exceptions of the situations when the damage was caused by a third party and occurred despite the fact that appropriate safety measures were in place or when it resulted from compliance with a compulsory order or instruction emanating from a public authority. Even if the Directive provides for the strict liability of the operator, the Member States may allow the operator not to bear the cost of remedial actions when he was not at fault or negligent and the environmental damage was caused by an emission or event expressly authorised under applicable national law or by an activity which was not considered likely to cause environmental damage.

The Directive is without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing LLMC, therefore, even if the shipowner is liable for the costs of preventive and remedial measures, his financial liability will in most circumstances be limited.

It is to be noted that the provisions of the Directive are directed to the Member States. They do not provide for any compensation rules for third parties, they only concern the liability of the operator towards the Member State for the costs incurred. They may potentially be applied to a place of refuge situation, in combination with the rules on limitation of liability. It is possible that in a case involving a ship in need of assistance both competent authorities (under the VTMIS and the ELD) will
be concerned. However, the allocation of liability toward the State can only follow the assessment and decision on the accommodation of the ship in need of assistance.
Appendix I

List of Websites/Contacts

www.iacs.org.uk  International Association of Classification Societies
www.ics-shipping.org  The International Chamber of Shipping
www.igpandi.org  International Group of P&I Clubs
www.imo.org  International Maritime Organisation
www.marine-salvage.com  The International Salvage Union
www.iumi.com  International Union of Marine Insurance
www.equasis.org  Equasis
www.marine-salvage.com  International Salvage Union
www.itopf.com  The International Tanker Owners Pollution Federation
[to be added]
Appendix J

Liability and Compensation

It is important to note that a ship will remain on risk throughout the period covered by the maritime casualty and in the event of an incident where a ship is in need of assistance and requests a place of refuge, the following three types of marine insurance cover will normally apply:

**Hull & Machinery (H&M) insurance, Cargo insurance and Protection & Indemnity (P&I) insurance**

The H&M insurance is the vessel’s property insurance and covers: damage to the vessel itself, its machinery, the ship’s proportion of salvage costs and the vessel’s contribution to general average. Salvage costs are covered regardless of whether the Master remains on board or not during the operations.

Cargo insurance is also property insurance and covers all damages to the cargoes loaded on board and the cargoes’ proportional share of general average, normally based on the York-Antwerp-Rules. Average bonds and guarantees are signed by the cargo owner and their insurers.

The P&I insurance covers the shipowner’s liability to third parties such as personal injury to passengers and seafarers, damage to third party property, wreck removal costs, counter-pollution measures and clean-up operations, cargo damage etc. Hence, the P&I insurance is the most relevant one for the purposes of a place of refuge situation.

It is important to note that the ship’s H&M, Cargo and P&I insurance covers are not prejudiced by a ship seeking assistance or a safe place of refuge whether that is in a sheltered haven, port or terminal.

**Potential liabilities & related costs**

Accommodation of a ship in a place of refuge may lead to the following types of damage or related costs, which are covered by a shipowner’s insurance cover arrangements:

- physical damage to the environment,
- economic damage,
- personal injury or death,
- damage to property,
- wreck removal,
- clean-up costs,
- costs resulting from unloading, unpacking, storing, transhipping, etc. of cargo.
Insurance Cover

Insurance covering claims subject to limitation under the International Convention on the Limitation of Liability for Maritime Claims (see **LLMC Convention – global limitation of liability**) is mandatory in the EU for all ships over 300gt, when these are entering EU ports, or—in some cases—when these operate in the territorial waters of a Member State, or—in any event—when these are registered in a Member State.

Mandatory insurance is also a requirement under a number of IMO international conventions (see Appendix H) for the shipowner's liabilities for: oil, including bunker oil, as well as wreck removal and any activities undertaken to render the wreck - or any parts thereof - harmless. Liability in respect of pollution prevention, damage and clean-up of HNS is also a covered risk for P&I insurance providers (see **International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention 1996 and HNS Protocol 2010)**).

Once cover arrangements for the ship concerned are verified, the CA will have access to the identified insurance provider who will respond under the relevant IMO convention/s or national legislation. International Group Clubs may also provide a Letter of Undertaking following consultation with the affected State.
## List of Acronyms

--- Click to come back to PoR Quick Reference ---

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Competent Authority</td>
</tr>
<tr>
<td>CMS</td>
<td>Co-ordinating Member State</td>
</tr>
<tr>
<td>CS</td>
<td>Classification Society</td>
</tr>
<tr>
<td>DPA</td>
<td>Designated Person Ashore</td>
</tr>
<tr>
<td>CSN</td>
<td>CleanSeaNet</td>
</tr>
<tr>
<td>EEZ</td>
<td>Economic Exclusion Zone</td>
</tr>
<tr>
<td>EMSA</td>
<td>European Maritime Safety Agency</td>
</tr>
<tr>
<td>ERS</td>
<td>Emergency Response Service</td>
</tr>
<tr>
<td>GESAMP</td>
<td>Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection</td>
</tr>
<tr>
<td>H&amp;M</td>
<td>Hull and Machinery</td>
</tr>
<tr>
<td>IACS</td>
<td>International Association of Classification Societies</td>
</tr>
<tr>
<td>IBC</td>
<td>International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk</td>
</tr>
<tr>
<td>ICS</td>
<td>International Chamber of Shipping</td>
</tr>
<tr>
<td>IGP&amp;I</td>
<td>International Group Protection &amp; Indemnity</td>
</tr>
<tr>
<td>IMDG</td>
<td>International Maritime Dangerous Goods code</td>
</tr>
<tr>
<td>ISU</td>
<td>International Salvage Union</td>
</tr>
<tr>
<td>IOPC Funds</td>
<td>International Oil Pollution Compensation Funds</td>
</tr>
<tr>
<td>ITOPF</td>
<td>International Tanker Owners Pollution Federation Limited</td>
</tr>
<tr>
<td>MAR-ICE</td>
<td>Marine – Intervention in Chemical Emergencies Network</td>
</tr>
<tr>
<td>MAR-CIS</td>
<td>Marine Chemical Information Sheets</td>
</tr>
<tr>
<td>MAS</td>
<td>Maritime Assistance Service</td>
</tr>
<tr>
<td>MRCC</td>
<td>Maritime Rescue Co-ordination Centre</td>
</tr>
<tr>
<td>MSS</td>
<td>Maritime Support Services</td>
</tr>
<tr>
<td>NCP</td>
<td>National Contingency Plan</td>
</tr>
<tr>
<td>QDM</td>
<td>Quick Decision Methodology</td>
</tr>
<tr>
<td>SERS</td>
<td>Ship Emergency Response Service</td>
</tr>
<tr>
<td>SITREP</td>
<td>Situation Report</td>
</tr>
<tr>
<td>SMS</td>
<td>Supporting Member State</td>
</tr>
<tr>
<td>SRR</td>
<td>Search and Rescue Region</td>
</tr>
<tr>
<td>SSN</td>
<td>The Union Maritime Information and Exchange System, SafeSeaNet</td>
</tr>
<tr>
<td>THETIS</td>
<td>EU Port State Control Inspection Regime database</td>
</tr>
<tr>
<td>VTS</td>
<td>Vessel Traffic Service</td>
</tr>
<tr>
<td>VTMIS</td>
<td>Vessel Traffic Monitoring and Information System (2002/59/EC)</td>
</tr>
</tbody>
</table>
## List of Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag State</td>
<td>“Member State whose flag the ship is flying” according to Directive 2009/21/EC on compliance with flag State requirements</td>
</tr>
<tr>
<td>Charterer</td>
<td>Bareboat charterer</td>
</tr>
<tr>
<td>Company</td>
<td>According to the ISM Code, point 1.1.2 it “means the Owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the Shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the [ISM] Code.”</td>
</tr>
<tr>
<td>Coordination</td>
<td>The organization of the different elements of a complex body or activity so as to enable them to work together effectively.</td>
</tr>
<tr>
<td>MAR-ICE</td>
<td>The network established by EMSA in close cooperation with the French institution Research and Experimentation on Accidental Water Pollution (Cedre) and the European Chemical Industry Council (Cefic).</td>
</tr>
<tr>
<td>MAR-CIS</td>
<td>The datasheets provided to requesting maritime administrations in case of emergencies through MAR-ICE.</td>
</tr>
<tr>
<td>SafeSeaNet</td>
<td>The Union Maritime Information and Exchange System</td>
</tr>
<tr>
<td>Salvor</td>
<td>The salvor is the party providing services to a vessel in need of assistance on a volunteer basis and who is responsible for the conduct of those services.</td>
</tr>
<tr>
<td>Salvage Operation</td>
<td>Means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever</td>
</tr>
</tbody>
</table>

--- Click to come back to PoR Quick Reference ---

--- For the purposes of these guidelines ---
INDEX

Background........................................................................................................................................... 3

POR GUIDELINES – FLOW CHART (QUICK REFERENCE) ................................................................. 5

Chapter 1 .................................................................................................................................................. 10

Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge .......... 10

1.1. Responsibilities of Member States ................................................................................................. 10

1.1.1. Member State’s Competent Authority ......................................................................................... 10

1.1.2. Co-ordinating and Supporting Member States ........................................................................ 11

1.1.3. Responsibilities of the Co-ordinating Member State (CMS) .................................................... 11

1.1.4. Responsibilities of the Supporting Member States (SMS) ....................................................... 12

1.1.5. Role of Maritime Assistance Service and Maritime Rescue Co-ordination Centre .......... 12

1.2. Responsibilities of other involved parties ...................................................................................... 13

1.2.1. The master .................................................................................................................................. 13

1.2.2. Persons responsible for the vessel at the time of the incident .................................................. 14

1.2.3. The Flag State ............................................................................................................................. 15

1.2.4. The Classification Society ......................................................................................................... 15

1.2.5. The Salvor ..................................................................................................................................... 15

1.2.6. Port & Harbour Authorities ....................................................................................................... 16

1.2.7. Insurers ....................................................................................................................................... 16

Chapter 2 ............................................................................................................................................... 17

Initial Incident Reporting, Monitoring & Information gathering ..................................................... 17

2.1. Initial Incident Reporting ................................................................................................................ 17

2.2. Monitoring the situation .................................................................................................................. 18

2.2.1. Obtaining information relative to the vessel and cargo: ......................................................... 18

2.2.2. SafeSeaNet, information system relative to the event: ........................................................... 18

2.2.3. Relative to dangerous, polluting and toxic goods ................................................................. 19

2.2.4. Integrated Maritime Services ................................................................................................. 20
2.3. Information Gathering ................................................................. 20
  2.3.1. Information sources and accessibility ........................................... 21
  2.3.2. Contacts .............................................................................. 21
  2.3.3. Information on insurance coverage .............................................. 21
  2.3.4. Actions in case of absence of proof of insurance .......................... 23

Chapter 3 .......................................................................................... 24

Places of Refuge Co-ordination .......................................................... 24
  3.1. Incidents within jurisdiction of a Member State ................................... 24
    3.1.1. Place of refuge request - following SAR operation ....................... 24
    3.1.2. Place of refuge request – no initial SAR operation ....................... 24
  3.2. Incidents outside jurisdiction of any one Member State ..................... 25
  3.3. Obligations on Co-ordinating Authority and Neighbouring Member States ............................ 25
  3.4. Transfer of co-ordination ................................................................ 25

Chapter 4 .......................................................................................... 26

Requesting a Place of Refuge ............................................................... 26
  4.1. Process .................................................................................... 26
    4.1.1. Appraisal of the situation ......................................................... 26
    4.1.2. Identification of Hazards and Assessment of Associated Risks .......... 26
    4.1.3. Identification of Assistance / Services Required in place of refuge .... 26
    4.1.4. Transmission of request to the Member State and cooperation .......... 26
  4.2. Formal Request for a Place of Refuge ........................................... 27
  4.3. Member States’ Plans for allocating a Place of Refuge ....................... 27

Chapter 5 .......................................................................................... 28

Risk Assessment & Inspection .............................................................. 28
  5.1. EU Decision Methodology .......................................................... 28
  5.2. Inspection / Expert Analysis ......................................................... 29

Chapter 6 .......................................................................................... 30

Decision Making & Outcomes .............................................................. 30
Dear Sirs,

**Maritime Labour Convention 2006 As Amended (MLC) – Liability for Uninsured MLC Liabilities**

As Members will be aware from the Club’s Notices to Members No.13 2016/2017 of July 2016 and No.17 2016/2017 of October 2016 concerning the implementation of financial certification requirements in accordance with the amendments to the Maritime Labour Convention 2006 ("MLC"), the Boards of all International Group Clubs agreed that Clubs would provide the necessary certification.

The Notices also made clear however that whilst some of the liabilities arising under the certificates – i.e. compensation for death or long-term disability in accordance with Regulation 4.2., Standard A4.2. and Guideline B4.2. - would be covered by standard P&I cover, the liabilities for outstanding wages and repatriation of seafarers together with incidental costs and expenses in accordance with MLC Regulation 2.5, Standard A2.5.2 and Guideline B2.5 would fall outside of cover. Should the Club be required to meet those liabilities in the first instance under its certificate, Members will be obliged to reimburse the Club.

This position is reflected in the terms of the MLC Extension Clause 2016 against which the Club issues MLC Certificates. The MLC Application Form that Members are required to sign to obtain their Certificates explicitly binds all Co-Assureds, Members and Joint Members to the terms of the MLC Extension Clause and now includes a warranty that the party signing the Application Form has the authority of all those parties to so bind them.

This Notice is therefore intended to remind Members of the need to obtain the authority of all joint assureds on the policy to sign the Application Form on their behalf and to bind them to their obligations under the MLC Extension Clause, and to remind all Members and Joint Member that they are jointly and severally liable to reimburse the Club for any MLC liabilities falling outside standard P&I cover. Thus, if the Member fails to meet the obligation the Club will look to other Members and all other Joint Member/Joint Entrants on the policy to make good the debt.

All Clubs in the International Group have issued a similar circular.

Yours faithfully
For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

**Anthony Paulson**
Director
MLC Certificates issued by P&I Clubs
Further advice given by the International Group
19 February 2018

The Clubs provide security for shipowners’ MLC liabilities and issue certificates for Standard 2.5.2 and Standard 4.2 in accordance with the 2006 MLC, as amended, providing the insured person has applied for MLC certificates from the club and sign an undertaking. I note that Sophoclis’ email is not so concerned with Standard 4.2 liabilities so this reply concentrates on the security provided by the Clubs for Standard 2.5.2 risks.

The Standard 2.5.2 certificate is issued to an entered ship, providing the Member has agreed the terms which are conditional upon issuing such certificate. This includes an undertaking which has applied since the inception of the 2014 Amendments became effective on 18 January 2017. Nothing has changed in this regard. However, in the interests of transparency and to remind Members of the conditions upon which MLC certificates are issued, we recently issued the Group Circular to which Sophoclis has referred. The Standard 2.5.2 security is provided for the potential exposure of a shipowner arising from an abandonment necessitating seafarer repatriation and the payment of wages and entitlements etc.

A shipowner’s liability for back wages results in a potentially significant exposure to Clubs that issue certificates and it was recognised by Club Boards (comprising shipowners) that security will be provided on the basis of a fleet exposure, providing the security did not impact the existing International Group pooling arrangements and general excess of loss layers. In other words, while the shipowner members of Club Boards wanted their Club to provide the MLC certificates that shipowners need, the IG had to develop a new way of securing the risk. This was done by agreement that Clubs would retain the first $10 million exposure across a fleet and a fleet exposure excess $10 million would be covered by the Group’s MLC reinsurance, per abandonment, per event. From 20 February 2018, the total retention and reinsurance exposure is $210 million per event, per feet.

If a crew manager becomes insolvent and does not pay the seafarers’ wages this could trigger a right to claim against the MLC financial security provider even where the shipowner has not severed ties with the seafarers, remains solvent and is capable of operating the ship and paying seafarer wages. However, it is common practice for some shipowners to outsource crew management to a crew manager. In such circumstances, if a crew manager becomes insolvent and does not pay the seafarers’ wages, the shipowner will be liable for Standard 2.5.2 liabilities, I refer to the definition of shipowner in the MLC, and if the Club is required to pay Standard 2.5.2 claims, it is entitled to seek reimbursement from the Member according to the undertaking that the Member/insured person must sign. If the shipowner is also insolvent the loss will remain with the Club or the Club will seek recovery in proceedings following the insolvency and any sale of assets etc.

The scenarios arising under this type of event may best be illustrated by the following –
**Scenario 1**
A Club issues a Standard 2.5.2 certificate in the name of the insured shipowner. The shipowner becomes insolvent and seafarers' wages are outstanding. Cover will respond to the MLC Standard 2.5.2 liability.

**Scenario 2**
A Club issue a Standard 2.5.2 certificate in the name of the insured shipowner. The shipowner has sub-contracted crewing to a crew manager (who is not a co-assured) who is responsible for payment of wages. The crew manager becomes insolvent and seafarers’ wages are outstanding. The insured shipowner remains solvent and pays the MLC back wages liability. Under the MLC extension clause, however, the shipowner may not recover this payment from the Club, as the Club is only responsible for claims made directly by seafarers and not for reimbursing their Members who step in to meet the obligations that were contracted to a crew manager. In this case, even if the seafarers claimed against the Club and the Club paid the seafarers directly, then the Club would have a right of indemnity from the insured shipowner for any such payment under the provisions of the MLC Extension Clause. Indeed, other members or co-assureds on the entry share this responsibility. There is nothing new in this. A co-assured is also responsible for paying a proportion of the premium and is a named entity on the Certificate of Entry. If a co-assured does not want to share the liability they should not be a co-assured.

If, however, a situation arises where a shipowner is solvent and they have put the crew manager in funds to pay wages, but for some reason these have not been paid to the crew and owners cannot afford to pay twice, the Club will be obliged to meet claims by the crew under the direct action provision in Standard 2.5.2. This has been the situation since the inception of the 2014 MLC amendments and the inception of the MLC security on 18 January 2017. As aforementioned, nothing has changed in this regard.

To some extent, the way in which MLC is applied and enforced by some States is unhelpful. Most MLC flag and port States would prefer to see the name of the DMLC Part I and DMLC part II shipowner named on the MLC financial security certificates as this is an easier reference point for them, but this is often not possible because either the party named on the DMLC is the ISM manager or another party connected with the operation of the ship and they are not necessarily the insured person. This is one of the reasons that Clubs issue certificates in the name of the registered owner (who will always be responsible under a Standard 2.5.2 liability) and possibly a co-assured.

The IG Clubs have agreed an MLC MOU which contains references to the MLC Extension Clause 2016, which is freely available on all Club websites e.g. [http://www.nepia.com/media/502208/MARITIME-LABOUR-CONVENTION-EXTENSION-CLAUSE-2016.PDF](http://www.nepia.com/media/502208/MARITIME-LABOUR-CONVENTION-EXTENSION-CLAUSE-2016.PDF), including an undertaking that obliges an insured person to sign only if they have the consent of the other parties named on the entry and the other parties have given their consent to be bound by the conditions on which Standard 2.5.2 certificates are issued and security is provided. Again, this is merely putting in practice a regime that has applied since last year.
The financial security concept for Standard 2.5.2 risks was always different to the standard terms of cover that apply to other risks and liabilities such as those that may arise in respect of a certificated liability for an oil pollution incident from oil tanker. The Clubs issued FAQs and Circulars in 2016 that explained the process on the run up to 18 January last year. I have referred to FAQs 11 and 19 below (http://www.nepia.com/media/480962/International-Group-FAQs-for-Members.pdf)

“11 Is the risk covered by the Rules?
Liability for disability due to occupational injury under Regulation 4.2 will normally fall within the scope of standard crew cover under the Rules. Repatriation and unpaid wages will be covered under the Rules in some cases, including when due to a shipwreck. However, repatriation and overdue wages fall outside the scope of P&I cover when arising from abandonment under Standard A2.5.2 due to a shipowner’s financial default.” (my emphasis)

“19. Which entities are obliged to reimburse the Club where a claim paid to a seafarer falls outside the scope of cover?
Some of the risk under the MLC Certificates falls outside the scope of standard P&I cover (see FAQ 11 for more information). Paragraph 2 of the MLC Extension Clause 2016 imposes an obligation on the Member to reimburse its Club if a claim which the Club has paid to a seafarer falls outside the scope of cover (see FAQ 12 for more information). Paragraph 9 of the MLC Extension Clause 2016 defines a Member as “any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry”. The Club is entitled to claim reimbursement from any insured party falling within this definition.” (my emphasis in bold, underline).
## REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS ONE HUNDRED AND THIRD SESSION

<table>
<thead>
<tr>
<th>Section</th>
<th>Paragraph Nos.</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>1.1 – 1.8</td>
</tr>
<tr>
<td>2</td>
<td>REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS</td>
<td>2.1</td>
</tr>
<tr>
<td>3</td>
<td>FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION OF THE 2010 HNS PROTOCOL</td>
<td>3.1 – 3.12</td>
</tr>
<tr>
<td>4</td>
<td>PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS, AND SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO, OR DEATH OF SEAFARERS, IN LIGHT OF THE PROGRESS OF AMENDMENTS TO THE ILO MARITIME LABOUR CONVENTION, 2006</td>
<td>4.1 – 4.9</td>
</tr>
<tr>
<td>5</td>
<td>FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT</td>
<td>5.1 – 5.7</td>
</tr>
<tr>
<td>6</td>
<td>PIRACY</td>
<td>6.1 – 6.5</td>
</tr>
<tr>
<td>8</td>
<td>ANALYSIS AND CONSIDERATION OF RECOMMENDATIONS TO REDUCE ADMINISTRATIVE BURDENS IN IMO INSTRUMENTS AS IDENTIFIED BY THE SG-RAR</td>
<td>8.1 - 8.5</td>
</tr>
<tr>
<td>9</td>
<td>TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION</td>
<td>9.1 – 9.17</td>
</tr>
</tbody>
</table>
### Section | Paragraph Nos. | Page No.
--- | --- | ---
10 | REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS EMANATING FROM THE LEGAL COMMITTEE | 10.1 – 10.7 | 14
11 | WORK PROGRAMME | 11.1 – 11.17 | 15
12 | ELECTION OF OFFICERS | 12.1 – 12.5 | 18
13 | ANY OTHER BUSINESS | 13.1 – 13.27 | 19

### ANNEXES

| ANNEX 1 | AGENDA FOR THE 103RD SESSION |
| ANNEX 2 | HNS CORRESPONDENCE GROUP – REVISED TERMS OF REFERENCE |
| ANNEX 3 | BIENNIAL STATUS REPORT 2016-2017 |
| ANNEX 4 | ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 104 |
| ANNEX 5 | STATEMENTS |
1 INTRODUCTION

1.1 The Legal Committee (LEG) held its 103rd session at IMO Headquarters from 8 to 10 June 2016, under the chairmanship of Dr. Kofi Mbiah (Ghana).

1.2 The session was attended by delegations from Members and Associate Members; by observers from the intergovernmental organizations with agreements of cooperation and by observers from non-governmental organizations in consultative status, as listed in document LEG 103/INF.1.

1.3 The session was also attended by the Chairman of the Marine Environment Protection Committee (MEPC), Mr. Arsenio Domínguez (Panama), Chairman of the Technical Cooperation Committee (TCC), Mr. Zulkurnain Ayub (Malaysia), and Chairman of the Facilitation Committee (FAL), Mr. Yury Melenas (Russian Federation).

Expressions of condolences

1.4 The Secretary-General referred to the terrorist attacks committed in Brussels on 22 March 2016 and expressed the Organization's, the Secretariat's and his own condolences to the delegation of Belgium and the bereaved families, friends and colleagues of the innocent victims. The Committee held a minute of silence in memory of Mr. Johan Van Steen, a highly esteemed and respected member of the Committee, who had sadly been one of the victims. Following the minute of silence, other delegations and the Chairman joined the Secretary-General in his words of condolences to the delegation of Belgium and the family of Mr. Johan Van Steen.

The Secretary-General's opening address

1.5 The Secretary-General then welcomed participants and delivered his opening address, the full text of which can be downloaded from the IMO website at the following link: http://www.imo.org/en/MediaCentre/SecretaryGeneral/Secretary-GeneralsSpeechesToMeetings/Pages/LEG-103-opening.aspx

1.6 The Chairman thanked the Secretary-General for his opening address and stated that his comments would be given every consideration in the deliberations of the Committee.

Adoption of the agenda

1.7 The agenda for the session, as adopted by the Committee, is set out in annex 1.

1.8 A summary of deliberations of the Committee with regard to the various agenda items is set out below.

Audio file: Wednesday, 8 June 2016: a.m.

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report of the Secretary-General that the credentials of 79 delegations attending the session were in due and proper form.

Audio file: Wednesday, 8 June 2016: a.m.
3 FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION OF THE 2010 HNS PROTOCOL

3.1 The Committee recalled that, with the entry into force of the Nairobi International Convention on the Removal of Wrecks, 2007 on 14 April 2015, the 2010 HNS Convention was the remaining gap in the global framework of liability and compensation conventions.

3.2 The Committee also recalled that, at its previous session, it had agreed that an internationally coordinated approach for ratification and implementation of the 2010 HNS Protocol was needed, and that it had therefore extended the mandate of the HNS Correspondence Group.

3.3 The Committee considered the report of the correspondence group contained in document LEG 103/3 and was informed by the Coordinator of the HNS Correspondence Group, Mr. François Marier (Canada), of the publication of the brochure "The HNS Convention: Why it is Needed", the work done on HNS Incident Scenarios and developments regarding drafting an Assembly resolution on implementation and entry into force of the 2010 HNS Protocol.

3.4 The Committee then considered document LEG 103/3/1 (Canada) providing an outline and proposed text of the HNS Incident Scenarios presentation for endorsement by the Committee. The Coordinator referred to an editorial error regarding slide 9 on page 2 of the annex to this document and informed the Committee that "26 million SDR" should read "37 million SDR".

3.5 The Committee finally considered document LEG 103/3/2 (Canada, Norway and Turkey) introducing the principles and concept of a potential resolution on the implementation and entry into force of the 2010 HNS Protocol.

3.6 The Committee noted that the HNS Correspondence Group had identified three specific items that could be further developed by the group, if its mandate was extended, namely "HNS Incident Scenarios"; a resolution on the implementation and entry into force of the 2010 HNS Protocol; and a programme for a workshop in conjunction with the 104th session of the Committee. In this regard, the Committee was invited to extend the mandate of the HNS Correspondence Group until the next session of the Committee and to hold a workshop in conjunction with that session.

3.7 Among the views expressed were the following:

- the Member States and organizations which had participated in the work of the HNS Correspondence Group should be indicated in the report of the group;

- paragraphs 1 and 2 of the terms of reference of the HNS Correspondence Group had not been addressed in the report of the group and therefore should be deleted;

- the HNS Correspondence Group should carry on working on the finalization of the draft resolution on the HNS Convention and the completion of the presentation on the HNS Incident Scenarios for consideration at LEG 104;

- the draft resolution was acceptable in principle but there should be no reference to the target entry-into-force date, which is not embodied in the text of the Convention;
• with due regard to the global nature of IMO as an international organization, the draft resolution should not refer to ratification or accession to the HNS Protocol by groups of Member States;

• LEG 104 should decide on the nature of the resolution, specifically whether it should be adopted by LEG or by the Assembly;

• major incidents with ships carrying HNS are not rare and therefore there was an urgent need for the entry into force of the HNS Convention;

• the HNS Scenarios presentation would be very helpful to identify the type of incidents for which the HNS Convention is relevant, and to highlight the benefits the Convention will bring by creating a safety net for States;

• the brochure "The HNS Convention: Why it is needed" is a very informative tool for all stakeholders to the HNS Convention;

• the HNS Incident Scenarios presentation should list the incidents and their impact since the adoption of the 1996 HNS Convention as previously identified by a document submitted by the International Group of P&I Associations in preparation for the 2010 HNS Diplomatic Conference;

• the HNS Correspondence Group should fine-tune the Scenarios by taking into account incidents that have actually happened, showing how the HNS Convention, if in force, would have helped in resolving the problems related to these incidents;

• the draft HNS Scenarios presentation should be considered at LEG 104 for final approval;

• the wish expressed earlier by Member States to ratify the HNS Convention had still not changed; and

• a workshop could be held, but the timing, place and the format had to be further considered in relation to possible budgetary implications and the schedule of meetings in 2017.

3.8 The Secretariat informed the Committee that a list of Member States and organizations which had participated in the work of the HNS Correspondence Group will be added to the report of the correspondence group in the form of a revision.

3.9 Following the discussion, the Committee agreed:

• to extend the mandate of the HNS Correspondence Group until its next session under the coordination of Canada\(^1\) with the amended terms of reference as set out in annex 2;

\(^1\) Coordinator:
Mr. Francois Marier (Canada)
Email: Francois.marier@tc.gc.ca
Tel: 1-613-993-4895

https://edocs.imo.org/Final Documents/English/LEG 103-14 (E).docx
• to endorse the proposed outline of the HNS Incidents Scenarios and to further develop the presentation in the HNS Correspondence Group with a view to consideration at LEG 104;

• that consideration should be given to the statistics on HNS-related claims that were made available to the 2010 International Conference on HNS by the International Group of P&I Associations and to refer questions on such statistics to the HNS Correspondence Group for consideration or clarification;

• in principle, on the draft resolution, provided that there will be no reference to a target ratification date; no reference to group ratification; no reference to the HNS Correspondence Group; that the need for the HNS Convention and the risks of not ratifying it will be further explained; and that LEG 104 will decide on its nature;

• to refer the draft resolution to the HNS Correspondence Group for finalization with a view to further consideration at LEG 104; and

• to consider at LEG 104 whether to hold a workshop on the HNS Convention on the basis of a programme to be developed by the HNS Correspondence Group.

3.10 The Committee expressed its appreciation to the correspondence group and its coordinator and thanked the delegations of Canada, Norway and Turkey for their submissions.

3.11 The Committee noted document LEG 103/3/3 (Canada) containing a report of an international workshop on the 2010 HNS Convention hosted by Canada on 17 and 18 March 2016 in Montréal, Canada. It also provided a status of the implementation of the HNS Convention in Canada.

3.12 In conclusion, the Committee encouraged Member States to ratify and bring into force the 2010 HNS Protocol as soon as possible.

Audio file: Wednesday, 8 June 2016: a.m. and p.m.

4 PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS, AND SHIPOWNERS’ RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO, OR DEATH OF SEAFARERS, IN LIGHT OF THE PROGRESS OF AMENDMENTS TO THE ILO MARITIME LABOUR CONVENTION, 2006

4.1 The Committee recalled the entry into force, on 20 August 2013, of the ILO Maritime Labour Convention, 2006 (MLC), and the adoption, in April 2014, of amendments relating to the provision of financial security for abandonment, personal injury to and death of seafarers by the first meeting of the Special Tripartite Committee established under the MLC.

4.2 The Committee recalled also that the International Labour Conference (ILC), at the 103rd annual meeting of the International Labour Organization (ILO) in June 2014, had voted in favour of the MLC amendments in order to better protect abandoned seafarers, and to provide financial security for compensation to seafarers and their families in cases of seafarers’ death or long-term disability.

4.3 The Secretariat then introduced document LEG 103/4 informing the Committee that the amendments to the MLC were developed over nearly a decade of discussion in a Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.
4.4 The Committee noted that, as of March 2016, the ILO's Abandonment of Seafarers Database lists 192 abandoned merchant ships, some dating back to 2006 with abandonment cases still unresolved. Many abandoned seafarers are working and living on board ships without pay, often for several months, and lack food and water supplies, medical care or means to return home.

4.5 The Committee also noted that the MLC amendments will enter into force on 18 January 2017.

4.6 The Committee recalled that, at its ninety-sixth session in October 2009, it had agreed that it should remain seized of the issue and keep it under consideration in the event that the amendments to the MLC 2006 proved not to be feasible or timely. Accordingly, the Committee, at its 100th session in April 2013, inserted a corresponding planned output in its agenda for the biennium 2016-2017.

4.7 Having been invited to comment on the information provided by the Secretariat and, in particular, as to whether it should keep the issue under consideration, the Committee expressed the following views:

- the amendments to the MLC have been completed in a timely manner and will likely enter into force in only six months on 18 January 2017, so that there would be no need to follow up on this in the current biennium 2016-2017;

- abandonment can be a very distressing experience for seafarers, while quite a number of reported cases in the ILO Database have not been resolved. This should be taken very seriously and the item should therefore, for the time being, be retained on the agenda of the Committee to look into reports on abandonment incidents at LEG 104;

- working conditions of seafarers are very important and cases of abandonment of seafarers happen on a daily basis for which charitable organizations render a lot of assistance; and

- it will still take some months before the entry into force of the amendments to the MLC in January next year, therefore LEG 104 should consider whether further action is required regarding the implementation of the amendments.

4.8 The Committee noted with appreciation the information on the entry into force of the amendments to the MLC relating to the provision of financial security for abandonment, personal injury to and death of seafarers.

4.9 In the light of the discussion on the serious issue of abandonment of seafarers, and because the ILO data indicates that there still remain a number of unresolved cases, the Committee agreed that it should keep the issue under consideration.

Audio file: Wednesday, 8 June 2016: p.m.

5 FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

5.1 The Committee recalled that, at its 102nd session, it further analysed the outcome of a survey concerning the implementation of the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident (the Guidelines) (LEG 102/4), which had been commissioned by the International Transport Workers' Federation (ITF) and the International Federation of Shipmasters' Associations (IFSMA), and which was conducted by Seafarers' Rights International (SRI).
5.2 The Committee further recalled that, at that session, a substantial number of delegations had supported the document and that it had concluded, inter alia, that technical support and assistance should be provided by the Technical Cooperation Committee (TCC) in order to facilitate the wide implementation of the Guidelines to improve the conditions for seafarers, taking into account human rights issues.

5.3 The representative of ITF introduced document LEG 103/5 providing further information on the analysis of the laws of the Member States giving effect to the Guidelines. ITF reminded the Committee that, at its last session, it had concluded that fair treatment of seafarers was an important issue and consequently should be placed on the work programme of the Committee. Furthermore, ITF informed the Committee that, as agreed at LEG 102, it was preparing guidance for States on the implementation of the Guidelines, drawing on all the materials, answers and comments that it had received in response to the survey. In view of the different approaches that States had taken in implementing the Guidelines, ITF suggested that an effective way to promote the Guidelines would be to organize regional or national workshops to discuss and refine the guidance being prepared, to make it useful for as many States as possible. ITF also proposed that a workshop could be organized to develop and approve the guidance to be submitted to the next session of the Committee for endorsement.

5.4 The Committee expressed its appreciation to ITF for presenting a further analysis of the survey on compliance with the Guidelines and for their continuous efforts. Numerous delegations spoke in support of the organization of a workshop on the implementation of the Guidelines. In the ensuing discussion, the following views were expressed:

- it was important that seafarers all over the world be treated fairly and with dignity in the event of a maritime accident;
- fair treatment of seafarers should be promoted at the global level;
- educational and research institutions related to IMO should concentrate more on training and research activities concerning the legislative and implementing aspects of the Guidelines;
- Member States were mindful that they had different approaches in interpreting and implementing the Guidelines and that the organization of a workshop to develop a guidance on the Guidelines would therefore be a great opportunity to adopt a common and consistent approach for their effective and uniform implementation;
- consideration should also be given to the current discussions on the development of a new chapter of SOLAS regulating industrial personnel, and to how the Guidelines would apply to industrial personnel;
- fair treatment of seafarers should not be an isolated issue and an effective linkage has to be established between the work of the Maritime Safety Committee (MSC) dealing with the reports on marine casualty investigations (that could lead to unfair treatment of seafarers) and TCC through which the workshop and further assistance should be requested; and
- the organization of a workshop would be useful to provide assistance to Member States and should be requested through the Integrated Technical Cooperation Programme (ITCP) of TCC.
5.5 A number of delegations also offered their support and help in the organization of the workshop proposed by ITF.

5.6 The Secretary-General congratulated ITF for its work. He highlighted the importance of the human element issues relating to both safety aspects and the fair treatment of seafarers, and of finding the proper linkage between the work of TCC and the work of MSC on this issue. In this context, the Secretariat would report the outcome of the Committee on this issue to TCC and MSC.

5.7 The Committee concluded that the different approaches in the implementation of the Guidelines could be streamlined through the development of a guidance and therefore decided that the workshop proposed by ITF would be useful to provide assistance to Member States to give effect to the Guidelines in a uniform and consistent way. The Committee further invited Member States to continue to comply with the Guidelines.

**Audio file:** Wednesday, 8 June 2016: p.m.

6 PIRACY

6.1 The Committee noted that no submissions relating to this agenda item had been received at this session.

6.2 At previous sessions of LEG, the Secretariat had reported on the work undertaken by Working Group 2 of the Contact Group on Piracy off the Coast of Somalia (CGPCS), including that, in January 2014, at the CGPCS Strategy Meeting held in Paris, it was agreed that Working Group 2 had successfully achieved all of the aims it had intended and that, as a result, it would only convene on an ad hoc basis.

6.3 The Committee noted the following information provided by the Secretariat:

- the "Legal Forum of the CGPCS" had not convened since January 2014;
- the Legal Affairs Office of IMO had not conducted or participated in any activities related to piracy since LEG 102;
- there had also been no activity relating to High-level Action No. 6.2.2 to "Promulgate information on prevention and suppression of acts of piracy and armed robbery against ships"; and output No. 6.2.2.1 to "Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building" since LEG 102; and
- all counter-piracy initiatives undertaken by the Maritime Safety Division of IMO and any developments related to output 6.2.1.1 on "Consideration and analysis of reports on piracy and armed robbery against ships" have been and will continue to be reported to MSC under agenda item "Piracy and armed robbery against ships".

6.4 Following the information provided by the Secretariat, the delegation of India raised two issues regarding the provision of rescue, relief and rehabilitation to seafarers who have become victims of piracy, as follows:

- there was no consistent practice by flag States regarding the provision of information to the seafarer's State on rescue operations, no medical support to seafarers in captivity, and no assistance from flag States to ensure that shipowners continue to pay the seafarers' wages; and
the short duration of seafarers' contracts, usually three to six months, often meant that contracts would run out during the captivity of the seafarer and shipowners would not feel contractually obliged to continue paying the wages.

6.5 The Committee noted the two issues raised and invited the delegation of India to submit a document addressing these issues to LEG 104 for its consideration, if they wished to pursue this further.

Audio file: Wednesday, 8 June 2016: p.m.


7.1 The Committee considered document LEG 103/7 providing information on matters arising from the 114th and 115th regular sessions of the Council, the twenty-eighth extraordinary session of the Council, and the twenty-ninth regular session of the Assembly, all held in 2015.

7.2 The Committee took note of the information of relevance to it contained in LEG 103/7.

7.3 In view of the request of the delegation of the Bahamas during the twenty-ninth session of the Assembly, to bring to the attention of the Secretariat a need to prepare a suitable corrigendum to paragraph 11.27 of the report of LEG 102 (LEG 102/12), the Secretariat introduced document LEG 103/7/1 containing a transcription of the relevant parts of the discussion during LEG 102 as recorded on audio files.

7.4 One delegation was of the opinion that the report adopted at LEG 102 correctly reflected the discussion and should remain as is; however, others who spoke emphasized that a corrigendum to the report was normal practice in other committees of the Organization and that it should also be issued in this case.

7.5 The Committee instructed the Secretariat to issue a corrigendum to paragraph 11.27 of the report of its 102nd session based on the text of paragraph 7 of document LEG 103/7/1.

Audio file: Thursday, 9 June 2016: p.m.

8 ANALYSIS AND CONSIDERATION OF RECOMMENDATIONS TO REDUCE ADMINISTRATIVE BURDENS IN IMO INSTRUMENTS AS IDENTIFIED BY THE SG-RAR

8.1 The Committee recalled that the Council, at its 113th regular session, requested the relevant committees to review administrative requirements under their purview and to consider how to proceed with the outcome of the Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR), with a view to developing appropriate outputs to be included in the High-level Action Plan (HLAP) for 2016-2017.

8.2 The Committee also recalled that, at its previous session, it had noted the requirements considered by the SG-RAR related to the work of LEG, which had been identified as an administrative burden, and that it had included a new planned output in the 2016-2017 HLAP on "Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR". The target completion year for this task is 2017.
8.3 The Committee further recalled that several requirements related to the depositary role of IMO and that there was currently no legal mechanism for accepting deposits of instruments electronically in a manner that would satisfy its obligations as depositary under part VII of the Vienna Convention on the Law of Treaties, 1969.

8.4 Having considered document LEG 103/8 providing the Secretariat's analysis of the information set out in the annex to document LEG 102/6 together with recommendations for each requirement identified as an administrative burden by the SG-RAR, the Committee decided:

1. to encourage States Parties to use the expanded GISIS module on "Recognized organizations" to fulfil the relevant reporting requirements as required by the 2001 Bunkers Convention, the 2002 Athens Convention and the 2007 Nairobi Wreck Removal Convention, taking into account resolution A.1074(28);

2. to request the Secretariat to expand the GISIS module on "Recognized organizations" to include all the relevant data as required by the 2001 Bunkers Convention, the 2002 Athens Convention and the 2007 Nairobi Wreck Removal Convention;

3. to urge States Parties to expedite the implementation of electronic certificates under CLC 1969, CLC 1992 and the 2001 Bunkers Convention taking into account the guidance provided in FAL.5/Circ.39/Rev.2;

4. to request the Secretariat to include insurance certificates under the 2002 Athens Convention, the 2007 Nairobi Wreck Removal Convention and the 2010 HNS Convention into the list of certificates and documents required to be carried on board ships contained in the annex to FAL.2/Circ.127, MEPC.1/Circ.817 and MSC.1/Circ.1462, and to issue a new LEG circular on the subject;

5. to defer the issue of the use of the single model certificate, as contained in LEG 96/4, for consideration under agenda item 13; and

6. to agree that no action is necessary with regard to requirements relating to the work of the IMO depositary.

8.5 The Committee also agreed, that with the exception of the consideration of the single model certificate issue considered and ultimately rejected under agenda item 13, the remaining decisions are meeting the recommendations of the SG-RAR and will be reported as such to the Council.

Audio file: Thursday, 9 June 2016: a.m.

9 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

Technical cooperation activities on maritime legislation for 2015

9.1 The Secretariat introduced document LEG 103/9 reporting on IMO's technical cooperation activities related to maritime legislation for 2015. The Committee recalled that, at its last session, it had approved its thematic priorities for the 2016-2017 ITCP emphasizing the outcome of the upcoming Mandatory Audit Scheme and the assistance which Member States
may need in drafting, updating and bringing into force primary and secondary maritime legislation in matters related to IMO instruments. In this context, the Committee noted that the Legal Affairs Office of the Secretariat was developing training aimed at improving the understanding of the principles of IMO instruments and their legal implications, to guide lawyers and legislative drafters, responsible for the implementation of the conventions into their domestic legislation, on legislative drafting techniques and mechanisms that should be applied when developing national law.

9.2 The Committee also noted that the second main priority of the 2016-2017 ITCP in the legal field was the promotion of a wider acceptance of the limitation of liability and compensation conventions and that, in this context, the Legal Affairs Office of the Secretariat was offering a comprehensive training on the implementation and enforcement of all the IMO civil liability conventions and associated guidelines.

9.3 The Committee further noted that there was a critical need for experienced French- and Arabic-speaking maritime lawyers and legal drafters to participate in IMO's capacity-building and technical cooperation efforts in the fields of maritime legislation and general maritime administration and policy in francophone and arabophone countries.

9.4 The delegation of Denmark informed the Committee that most of their domestic legislation implementing IMO conventions had been translated into English and that it could be shared with Member States, as needed.

9.5 Other views expressed included the following:

- training of lawyers as well as non-lawyers in maritime administrations on IMO instruments is very important and should be further pursued;
- in this respect, IMLI short courses were extremely useful, as personnel from maritime administrations could not always attend long courses;
- an online training course could also be developed; and
- IMLI dissertations and legislation drafting projects should be made readily available for the use of national Governments.

9.6 The Secretariat informed the Committee about an active discussion with IMLI regarding the organization of short courses on legislative drafting and regarding the electronic dissemination of the dissertations and drafting projects. Furthermore, the Secretariat will also look into the possibility to organize online courses.

9.7 The Committee concluded by noting the efforts of the Secretariat to provide assistance on legal drafting within the framework of the Mandatory Audit Scheme. The Committee also noted the importance of the internet and online training to complement these efforts and, finally, encouraged French- and Arabic-speaking maritime lawyers and legal drafters to register on IMO's e-roster of consultants.

**IMO International Maritime Law Institute**

9.8 The Director of IMLI introduced document LEG 103/9/1 reporting on the activities of IMLI for the year 2015 and officially launched Volume III of the IMLI Manual on International Maritime Law by presenting it to the Secretary-General.
9.9 The Committee noted that IMLI had developed a Master of Science in International Maritime Law and Logistics (IMLLog) degree programme, to begin in October 2016 in cooperation with Kühne Logistics University (KLU) in Hamburg and that it would, together with the World Maritime University (WMU), provide a joint Master of Philosophy Programme (M.Phil.) in International Maritime Law and Ocean Policy beginning in September 2017. In addition, the Committee noted that IMLI had also announced a Master of Humanities (M.Hum) degree programme in International Maritime Legislation, to include a requirement that candidates complete a roadmap for successful development of domestic implementing legislation in their home countries, to begin in October 2016.

9.10 The Committee expressed its sincere appreciation to the Director of IMLI and acknowledged his stewardship and personal contribution to IMLI’s excellence and congratulated the nine recent IMLI graduates present at the session.

9.11 The delegation of Japan indicated that the Nippon Foundation had provided 126 scholarships and donated two chairs to improve the academic capacity of the Institute and that it would increase the annual number of scholarships from 10 to 15 and the number of chairs from two to three in 2017.

9.12 The Committee expressed its gratitude to the Nippon Foundation for its continuous support.

9.13 The Committee also noted document LEG 103/INF.3 providing the lists of dissertations and maritime legislation drafting projects undertaken by IMLI students in the 2014-2015 academic year and an interim list of students’ dissertations and maritime legislation projects for the year 2015-2016.

9.14 In this context, the delegation of the Islamic Republic of Iran noted the inappropriate use of terms referring to the Persian Gulf in the title of two of the dissertations. The full statement is provided in annex 5.

Activities to support the implementation of the international tanker oil pollution liability and compensation regime

9.15 The Director of the IOPC Funds introduced document LEG 103/9/2 reporting on the work that it had carried out in cooperation with IMO and regional organizations to promote the accession to, and implementation of, the 1992 CLC and the 1992 Fund Convention during the biennium 2014-2015. The Director also mentioned that the IOPC Funds was running annual short courses covering the oil pollution liability and compensation regime and invited Member States to nominate participants for the next course in 2017.

9.16 The Committee thanked the IOPC Funds Secretariat and noted the information provided in document LEG 103/9/2.

9.17 The Secretary-General, noting the discussions on the technical activities related to maritime legislation and the interest expressed by Member States during the discussions, to receive technical assistance in this field, confirmed that the outcome of the Committee on this item would be duly reported to TCC.

Audio file: Wednesday, 8 June 2016: p.m. and Thursday, 9 June 2016: a.m.
10 REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS EMANATING FROM THE LEGAL COMMITTEE

10.1 The Committee noted the information contained in documents LEG 103/10 and LEG 103/WP.3 on the status of conventions and other treaty instruments emanating from the Legal Committee.

10.2 Several delegations provided updates on progress with regard to the ratification and implementation of IMO instruments as follows:

(i) following their ratification in August last year of SUA 2005 and SUA PROT 2005 the United States of America submitted a notification, pursuant to article 8bis, paragraph 15 of SUA 2005, providing the contact details of the designated authority to receive and respond to requests for assistance, confirmation of nationality, and authorization to take appropriate measures (circular SUA.3/Circ.38). In this regard, the delegation of the United States encouraged States Parties to SUA to submit such information for dissemination among interested Governments. The delegation further encouraged Member States towards widespread ratification and implementation of these essential instruments for the prevention of, and response to, transnational maritime security threats;

(ii) the delegation of Japan, noting that the 1996 LLMC Protocol had a current status of 52 ratifications, encouraged Member States, which had not yet done so, to consider early ratification and implementation of this Protocol;

(iii) the delegation of Canada informed the Committee that the Canadian Parliament had adopted, in 2014, legislation for the implementation of the 2010 HNS Protocol in their national law and that the regulations that govern the reporting requirements under the Protocol would be published by the end of 2016, enabling reporting to take place in 2017 and thus ratification in 2018. The Committee was further informed that Canada was considering ratification of the NAIROBI WRC 2007;

(iv) the delegation of Greece informed the Committee that there had been good progress towards ratification of the NAIROBI WRC 2007; and

(v) the delegation of Australia informed the Committee that new implementing legislation for the BWM Convention would enter into force on 16 June 2016 and that its Government intended to ratify the BWM Convention, subject to the approval by the Parliament, by the end of 2016.

10.3 Member States were invited, when acceding to the NAIROBI WRC 2007 to apply the Convention in its territory, including the territorial sea. Member States that had already acceded to the Convention but had not notified IMO of the intention to apply the Convention in their territory, including the territorial sea, were also encouraged to do so.

10.4 The Committee encouraged delegations to consider ratifying the 2010 HNS Protocol to enable its entry into force (see section 3 of this document).

10.5 The Committee noted the denunciation requirements when ratifying certain treaty instruments, in particular upon ratification of the 2002 Athens Protocol, to denounced the 1974 Athens Convention and its 1976 and 1990 Protocols.
10.6 The Committee encouraged delegations to work with their respective Governments towards achieving effective and uniform implementation of IMO conventions and to report any barriers to implementation to LEG for advice and guidance.

10.7 Additional statements were made by the delegations of Bulgaria, Spain and the United Kingdom, which are set out in annex 5 of the report.

Audio file: Thursday, 9 June 2016: p.m.

11 WORK PROGRAMME


11.1 The Committee recalled that the Council, at its 114th regular session, had endorsed the Committee's decisions taken at LEG 102 on planned outputs for the 2016-2017 biennium.

11.2 The Secretariat introduced document LEG 103/11 and reminded the Committee that, in accordance with paragraph 9.1 of the document on the Application of the Strategic Plan and the High-level Action Plan of the Organization (resolution A.1099(29)), the reports on the status of outputs included in the High-level Action Plan (HLAP) should be prepared and annexed to the report of each session of the Committee, and to the biennial report of the Council to the Assembly.

11.3 The Committee considered a draft report prepared by the Secretariat, as set out in the annex to document LEG 103/11, on the status of planned outputs for the current biennium (2016-2017), including all planned outputs (POs) related to LEG.

11.4 Having considered the information provided in the column "Status of output for Year 1" of the draft report, the Committee decided to delete the square brackets and approved the report, as set out in annex 3, for submission to the Council.

Audio file: Thursday, 9 June 2016: p.m.

Draft amendments to the Guidelines on the Organization and Method of Work of the Legal Committee (Committee's Guidelines)

11.5 The Committee noted that the Secretariat had prepared two documents proposing draft amendments to the Guidelines on the Organization and Method of Work of the Legal Committee (LEG.1/Circ.7), as set out in the annex to documents LEG 103/11/1 and LEG 103/11/2, and a consolidated track-change version of all draft amendments, as set out in the annex to document LEG 103/WP.2.

11.6 The Committee was informed that the Assembly, at its twenty-ninth session, had adopted resolution A.1099(29) on the Application of the Strategic Plan and the High-level Action Plan of the Organization, which requested the Council and the committees to review and revise, during the 2016-2017 biennium, their guidelines on the organization and method of work, taking into account the resolution, as appropriate.

11.7 The Committee noted the main changes introduced by resolution A.1099(29), and also noted that, in addition to the draft amendments required for the alignment with resolution A.1099(29), the Secretariat prepared further draft amendments to paragraphs 6.6 and 6.8 of the Committee's Guidelines, as set out in the annex to document LEG 103/11/2, proposing an extension of the document submission deadlines for LEG, in order to align them with those of other IMO committees and to facilitate the work of the translation sections in IMO's Conference Division.
11.8 Following the introduction of the documents by the Secretariat, the Committee approved the amendments to the Committee's Guidelines, both those resulting from the alignment with resolution A.1099(29) (LEG 103/11/1) and those relating to the document submission deadlines (LEG 103/11/2), provided that the following amendments were made for the purpose of further alignment with resolution A.1099(29) and other Committees' Guidelines:

- in paragraph 4.7, the word "should" is replaced with the word "must" as proposed by a delegation;
- in paragraph 4.17, the second sentence starting "Notwithstanding" is deleted;
- in paragraph 4.25, the chapeau is amended to be fully aligned with paragraph 6.1 of the annex to Assembly resolution A.1099(29);
- in paragraph 4.31, the word "Committee" is replaced with the word "Member States"; and
- paragraph 6.2 is aligned with paragraph 6.2 of MSC-MEPC.1/Circ.4/Rev.4 and, accordingly, the proposed new reference to documents submitted in electronic form in paragraph 6.6.3 is deleted.

11.9 The Committee also agreed to the following additional amendments to the Committee's Guidelines, as proposed by a delegation:

- section 3 is aligned with section 3 of FAL.3/Circ.211, as appropriate;
- paragraphs 4.20 to 4.24 are moved to a new section; and
- paragraph 6.8 is split into two paragraphs with the first paragraph ending after the words "following consultation with the Secretariat".

11.10 Also, having noted the information provided by the Secretariat, that FAL 40 and MSC 96 had already revised their guidelines in line with resolution A.1099(29) and, taking into account the mandatory language used in the resolution, had agreed to delete the word "Guidelines" from the title and to replace it with the word "document" throughout the text (FAL 40/19, paragraph 19.5.1 and MSC 96/WP.1/Add.1, paragraph 22.7), the Committee agreed to apply the same approach to the Legal Committee's Guidelines.

11.11 Having agreed with the proposal in document LEG 103/11/2 to align the document submission deadlines of LEG to those of other Committees, the Committee noted the concern of one delegation that the document submission deadlines and the deadlines for posting documents on IMODOCS would in some cases not allow enough time for commenting documents. The Committee referred to discussions that had taken place at MSC 96 on the same subject and noted that this issue would be further considered at MSC 97 following a thorough analysis of the issue. In this regard, the Committee decided to await the outcome of MSC 97 before further aligning the deadlines in the future.

11.12 Having approved the Committee's Guidelines, as amended following the decisions taken, the Committee instructed the Secretariat to prepare the revised Committee's Guidelines, incorporating any additional amendments agreed by the Committee and making any necessary editorial changes, and circulate it by means of a revised LEG circular (LEG.1/Circ.8).

Audio file: Thursday, 9 June 2016: p.m.
Proposal to add a new output to develop a new instrument on foreign judicial sales of ships and their recognition

11.13 The Committee noted document LEG 103/11/3 (China, the Republic of Korea and CMI) proposing the inclusion of a new output to develop a new instrument on the foreign judicial sales of ships and their recognition based on a draft convention prepared by CMI, in order to ensure that the purchaser of a ship in a judicial sale can be confident of obtaining clean title to the ship, free of any pre-existing mortgages, liens or other encumbrances. The co-sponsors argued that there was no uniform international instrument providing a solution to common problems arising in connection with the recognition of foreign judicial sales of ships and presented the Committee with specific cases in order to demonstrate that the problems were increasing and that there was a compelling need for action. The co-sponsors pointed out that the Organization had previously been involved in the development of the *International Convention on Maritime Liens and Mortgages, 1993* and the *International Convention on Arrest of Ships, 1999* with a view to establishing that the Committee was the correct forum for the further consideration of the issue.

11.14 In considering the preliminary assessment of the proposed new output prepared by the Chairman in accordance with paragraph 4.10 of the Committee's Guidelines, as set out in the annex to document LEG 103/WP.5, the following views were expressed:

- while most delegations felt that this was an important subject of interest to the Committee, some argued that the development of a new instrument on the foreign judicial sales of ships and their recognition was a matter of private and commercial law and did, therefore, not fall within the remit of the Committee, in particular with a view to articles 2 and 3 of the IMO Convention;

- it was also argued that the proposed output did not fit within the scope of Strategic Directions 1 and 12.2 and did also not fall under the proposed High-level Action 1.3.3;

- others, however, held that IMO's past involvement in similar legislative initiatives was a strong argument that this issue was in fact within the Organization's scope and that LEG was the proper forum to discuss this issue further, also with a view to Article 1 of the IMO Convention;

- some delegations who spoke were of the opinion that, if this issue was pursued at all, it should be done in cooperation with UNCTAD;

- considering the question as to whether or not there was a compelling need for the development of a relevant instrument, the Committee was divided as to whether the co-sponsors had provided enough evidence in this regard;

- some delegations highlighted that they accepted foreign judicial sales of ships in their national legislation and that it entailed a lot of benefits, in particular because it provided certainty to all stakeholders;

- it was pointed out that this was also an important issue from the perspective of the port industry, as arrests of vessels can negatively affect the efficient port operation; and

- some delegations felt that they needed further information as to whether this was, in fact, within the remit of the Organization, and that further work needed to be done, before discussing this further at the next session.
11.15 Following the discussion, the Committee concluded that, while there had been support for the proposal and appreciation for the information provided by CMI, a compelling need had not been established at this point in time. Therefore, the Committee did not accept, at this time, the specific proposal for the inclusion of a new output to develop a new instrument on the foreign judicial sales of ships and their recognition. Member States could of course raise the subject again at a later session of the Committee under the standing agenda item "Work programme". The Committee noted that CMI intended to bring the matter to the attention of other relevant international fora, and may report back to the Committee at a later stage.

Audio file: Thursday, 9 June 2016: p.m. and Friday, 10 June 2016: a.m.

Items for inclusion in the agenda for LEG 104

11.16 The Committee approved the list of substantive items for inclusion in the agenda for LEG 104, as set out in annex 4.

11.17 When considering the inclusion of the issue of piracy on the agenda of the next session, the Committee decided to amend Output 6.2.2.1 as follows: Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building, and retain the item on the agenda for LEG 104.

Audio file: Friday, 10 June 2016: a.m.

12 ELECTION OF OFFICERS

Election of the Chairman

12.1 The Committee, in accordance with rule 17 of its Rules of Procedure, as amended, and after requesting that he serve another term, unanimously re-elected Mr. Kofi Mbiah (Ghana) as Chairman for 2017.

Election of the Vice-Chairman

12.2 The Committee, in accordance with rule 17 of its Rules of Procedure, as amended, unanimously elected Ms. Gillian Grant (Canada) as Vice-Chairman for 2017.

12.3 The Committee expressed its deep appreciation to the outgoing Vice-Chairman, Mr. Walter de Sá Leitão for Brazil, for his long and distinguished service to the Committee and to the Organization.

Audio file: Friday, 10 June 2016: a.m.

Proposed amendment to the Committee's Rules of Procedure

12.4 The Chairman introduced document LEG 103/12/1 containing a proposal to amend the Committee's Rules of Procedure with a view to limiting the term of office of the Chairman and the Vice-Chairman to four years in order to align the practice of LEG with that of MSC and TCC.

12.5 Taking into account that the Bahamas, in document C 116/4/3 has proposed to the Council that the terms of officers at all IMO Committees be limited to five years, the Committee decided to defer the discussion in this matter to the next session.

Audio file: Friday, 10 June 2016: a.m.
13  ANY OTHER BUSINESS

List of codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Legal Committee

13.1 The Committee noted the information contained in document LEG 103/13 on the Global Integrated Shipping Information System (GISIS) module on "Non-mandatory instruments" and proposals for an updating mechanism of the list of codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Legal Committee.

13.2 The Committee noted that the GISIS module entitled "Non-mandatory instruments" was released in January 2015. The module intends to provide, inter alia, an indexed list of valid IMO non-mandatory instruments, as well as information on their implementation by Member States on a voluntary basis. It further offers Member States the possibility to upload the corresponding domestic legislation with regard to non-mandatory instruments which have been adopted by means of Assembly or Committee resolutions.

13.3 The Committee endorsed the updated list contained in the annex to document LEG 103/13 and authorized the Secretariat to migrate this list into the GISIS module and to keep it updated thereafter. However, one delegation suggested that Assembly resolutions A.930(22) and A.931(22), listed in the annex, may need to be reconsidered in light of the entry into force of the Maritime Labour Convention, 2006.

13.4 The Committee invited Member States to take into account, when developing a new instrument, the consequential impact of its approval and/or adoption on existing non-mandatory instruments, so that the list can be kept updated.

13.5 The Committee further invited Member States, IGOs and NGOs to provide the Secretariat with feedback in order to maintain the accuracy of the list, while issues of a more sensitive nature would be reported to the relevant Committee by the Secretariat for consideration.

Audio file: Thursday, 9 June 2016: a.m.

Transboundary pollution damage

13.6 The Committee recalled its agreement, at its ninety-ninth session, to inform the Council that it wished to further analyse the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without revising Strategic Direction 7.2. This decision was duly noted by C 108.

13.7 The Committee also recalled its recommendation, at its previous session, that Member States should send examples of existing bilateral and regional agreements to the Secretariat. Member States and observer delegations had been encouraged to continue to cooperate with the delegations of Indonesia and Denmark intersessionally, lending their expertise to develop elements and legal principles for incorporation into the guidance on bilateral and regional arrangements or agreements.
13.8 The delegation of Indonesia, also on behalf of the co-sponsor (Denmark), introduced document LEG 103/13/1, containing in its annex the revised draft guidance for bilateral/regional arrangements or agreements on liability and compensation issues connected with transboundary oil pollution damage resulting from offshore exploration and exploitation activities for review by the Committee.

13.9 The Committee was informed that the draft guidance contained two sections: an introduction and examples of elements that may be included in bilateral/regional arrangements or agreements. The second section consisted of a non-exclusive list of elements which could be discussed and elaborated upon when States are considering and negotiating a bilateral/regional arrangement or an international agreement.

13.10 The Committee noted document LEG 103/INF.2 submitted by the Secretariat presenting two examples of regional agreements which were provided by the Ministry of Transport of the Kingdom of Saudi Arabia.

13.11 The Committee made the following comments:

- Guidance on this issue could not be in the form of an IMO instrument as the subject matter would require amending Strategic Direction 7.2;
- there was no compelling need for the development of an international instrument on the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities;
- coastal States have full responsibility in the areas that are covered by their sovereign rights;
- the guidance should not contain any reference to an international agreement or to IMO Member States and therefore, paragraphs 1.3, 1.4 and 1.5 of the draft guidance should be removed;
- the scope of responsibility and geographical scope of application of the guidance need to be further clarified;
- the guidance consisted of a non-exclusive list of issues and therefore the voluntary nature of the annex was consistent with international law; and
- the guidance was in the interest of strategic environmental concerns.

13.12 The statement made by the delegation of Argentina is set out in annex 5 of the report.

13.13 The Committee agreed not to change the outcome of earlier considerations on this issue and restated that there is no compelling need to develop an international instrument. The guidance could be a useful document to assist States in concluding voluntary bilateral and regional arrangements or agreements.

13.14 The Committee encouraged Indonesia, Denmark and other interested parties to finalize the guidance, taking into account the comments made in plenary.

13.15 The Committee reiterated its recommendation that Member States should send examples of existing bilateral and regional agreements to the Secretariat.
13.16 The Committee expressed its appreciation to the delegations of Indonesia and Denmark for their submission, and thanked the Kingdom of Saudi Arabia for sending examples of regional agreements to the Secretariat.

Audio file: Thursday, 9 June 2016: a.m. and p.m.

Delegating the authority of issuing certificates under the CLC and HNS Convention and other matters related to insurance certificates

13.17 The Committee recalled that LEG 102 considered document LEG 102/11/5 submitted by France on the delegation of authority to issue certificates under the 1992 CLC and the 2010 HNS Convention. The Committee also recalled that, there had been a general agreement that the delegation of authority to issue certificates under the 1992 CLC and the 2010 HNS Convention was possible, but that further deliberations at future sessions of the Committee could be carried out.

13.18 The delegation of France introduced document LEG 103/13/2 inviting the Committee to continue the discussions that had taken place at LEG 102 on this issue and requesting the Committee to consider the most appropriate approach to confirm the possibility for States Parties to delegate the authority to issue certificates of insurance under the CLC and the HNS Convention and how to regulate such delegation. The Committee was invited to consider three different approaches as follows:

1. an Assembly resolution to be prepared by LEG; or

2. a resolution adopted by a conference of the States Parties to provide a uniform interpretation of the CLC (as the HNS Convention is not in force); or

3. an amendment of the Conventions through a Protocol.

13.19 The delegation of France indicated that the conference procedure was more burdensome but would allow to convene simultaneously a conference of Parties for all conventions under the purview of IMO and could be the opportunity to tackle other issues relating to certification. In this context, the delegation of France recalled the deliberations at LEG 94 and LEG 95 on a single model insurance certificate and recalled that at that time the Committee considered necessary to amend all the liability conventions since model certificates were an integral part of them. Harmonization of provisions on electronic certificates would also be a possible issue to be discussed if the conventions were going to be amended, and the definition of the State of registration of the ship, as the State responsible for the issuing of the certificates, could also be reconsidered.

13.20 The delegation of France noted that, although they were open to any of the approaches outlined, their preferred option was a draft Assembly resolution confirming the possibility of delegation of the issuance of certificates under the CLC and HNS Convention by States Parties, under certain conditions, as this was considered to be a simple and rapid solution that would bring the necessary clarification.

13.21 The Committee thanked the delegation of France for the document. In considering it, the Chairman suggested to structure the discussion around two main issues.

13.22 On the first issue of the single model certificate pursuant to the request of the SG-RAR, considered under agenda item 8, the Committee expressed the following views:

- a single insurance certificate could reduce administrative burdens, however, adoption of a non-binding resolution would create some practical problems, including the acceptance of a single certificate by port State control officers;
the introduction of a single model certificate would require amendments to all liability conventions currently in force, however the discussion on the revision of the conventions should not be reopened;

the in-depth consideration of a single model certificate should be done through the presentation of a new output for the Committee and the compelling need to reintroduce this issue should be demonstrated; and

in view of the fact that the liability insurance regime was not yet fully in force, the issue of a single model certificate should be reconsidered at a future session of the Committee.

13.23 In view of the above, the Committee decided not to pursue further the issue of a single model certificate under all civil liability conventions.

13.24 On the delegation of authority to issue insurance certificates under the CLC and the HNS Convention, the Committee expressed the following views:

- the delegation of authority to issue certificates under CLC and HNS Convention is in principle possible;
- the adoption of an Assembly resolution was not necessary; States Parties already have the authority to decide whether they could delegate the issuance of insurance certificates under the conventions and nothing was preventing them from doing so in the absence of explicit provisions to the contrary in the conventions;
- the possibility to delegate the authority to issue insurance certificates has to be explicitly provided for by the CLC and HNS Convention and they would have to be amended;
- the delegation of authority to recognized organizations or P&I Clubs could be problematic for some States and this would need to be addressed in the proposed Assembly resolution;
- States Parties need clarity on the possibility to delegate the authority to issue insurance certificates;
- an Assembly resolution was not the most appropriate approach;
- the Assembly resolution would be a non-binding instrument and its appropriate implementation would be left to the discretion of Member States, some of whom had been faced with problems arising from inappropriate certificates under the CLC. Therefore, delegating States need to stay aware that they would remain liable if the delegated insurance certificate did not satisfy the requirements of the 1992 CLC or the 2010 HNS Convention in the same way they would be liable for certificates not delegated;
- the draft Assembly resolution should clearly provide the conditions to allow for the delegation of authority to issue insurance certificates under the CLC and the HNS Convention to ensure that the certificates meet the requirements set out in the conventions;
- there was a need to consider the international standards for ROs to whom the issuance of insurance certificates would be delegated by analogy with the Code for recognized organizations;
• an Assembly resolution on the delegation of authority to issue insurance certificates would be the most speedy process, but there was a need to discuss its contents and the safeguards it should contain;

• further work needed to be done on the draft Assembly resolution in document LEG 103/13/2;

• the delegation was legally possible under CLC and HNS, but only the issuance could be delegated, whilst the responsibility should remain with the State, and it was necessary to further consider the risks and consequences of the delegation; and

• although the HNS Convention is not yet in force, the resolution on the delegation of authority should cover both the CLC and the HNS Convention.

13.25 Taking into account the above views, the Committee supported the development of an Assembly resolution to allow for the delegation of authority to issue insurance certificates under the CLC and the HNS Convention. The Committee further agreed in principle with the elements of the draft Assembly resolution contained in document LEG 103/13/2. The Committee therefore decided to establish an intersessional Correspondence Group under the coordination of France², with the instruction to further develop the draft Assembly resolution using the text in the annex to document LEG 103/13/2 as a basis, for consideration by LEG 104.

13.26 The proposed terms of reference of the intersessional Correspondence Group are:

Taking into account any comments, proposals and decisions made at LEG 103, the intersessional Correspondence Group on the delegation of authority to issue insurance certificates under the CLC and the HNS Convention is instructed to:

.1 further develop the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the CLC and the HNS Convention using the text in the annex to document LEG 103/13/2 as a basis, for consideration by LEG 104, with a view to adoption by A 30; and

.2 submit a written report and the draft Assembly resolution to LEG 104.

13.27 The Committee agreed to the suggestion that the content of the Assembly resolution, when adopted and in force, should be brought to the attention of all Member States and possibly as well circulated to the Secretaries of the PSC MoUs to ensure that PSC officers are aware that the authority to issue insurance certificates can be delegated by States Parties to the CLC and the HNS Convention.

Audio file: Thursday, 9 June 2016: a.m.

***

² Coordinator:
Mr. Fabien Joret
Mission de la flotte de commerce
Direction des affaires maritimes
Ministère de l'Environnement, de l'Énergie et de la Mer
Tel.: +33 (0)1 40 81 73 28
Email: Fabien.Joret@developpement-durable.gouv.fr

https://edocs.imo.org/Final Documents/English/LEG 103-14 (E).docx
Opening of the session

1 Adoption of the agenda

2 Report of the Secretary-General on credentials

3 Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol

4 Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006

5 Fair treatment of seafarers in the event of a maritime accident

6 Piracy

7 Matters arising from the 114th and 115th regular sessions of the Council, the twenty-eighth extraordinary session of the Council and the twenty-ninth regular session of the Assembly

8 Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR

9 Technical cooperation activities related to maritime legislation

10 Review of the status of conventions and other treaty instruments emanating from the Legal Committee

11 Work programme

12 Election of officers

13 Any other business

14 Consideration of the report of the Committee on its 103rd session

***
ANNEX 2

HNS CORRESPONDENCE GROUP

Revised terms of reference

The terms of reference for the HNS Correspondence Group are as follows:

1. to develop three specific items:
   
   .1 presentation on HNS Incident Scenarios (PowerPoint) for approval by the Committee;
   
   .2 draft resolution on implementation and entry into force of the 2010 HNS Protocol; and
   
   .3 programme for a workshop for consideration by the Committee.

2. to report to the 104th session of the Legal Committee.

***
## LEGAL Committee (LEG)

<table>
<thead>
<tr>
<th>Output number</th>
<th>Description</th>
<th>Target completion year</th>
<th>Parent organ(s)</th>
<th>Associated organ(s)</th>
<th>Coordinating organ(s)</th>
<th>Status of output for Year 1</th>
<th>Status of output for Year 2</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.1.1</td>
<td>Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance</td>
<td>2017</td>
<td>Assembly</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td>Council</td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.1.2</td>
<td>Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary</td>
<td>Annual</td>
<td>LEG</td>
<td></td>
<td></td>
<td></td>
<td>Postponed</td>
<td></td>
</tr>
<tr>
<td>1.1.2.1</td>
<td>Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance</td>
<td>2017</td>
<td>Assembly</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td>Council</td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3.1.1</td>
<td>Advice and guidance on issues under UNCLOS relevant to the role of the Organization</td>
<td>Annual</td>
<td>LEG</td>
<td></td>
<td></td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3.4.2</td>
<td>Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners’ responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006</td>
<td>2017</td>
<td>LEG</td>
<td></td>
<td></td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output number</td>
<td>Description</td>
<td>Target completion year</td>
<td>Parent organ(s)</td>
<td>Associated organ(s)</td>
<td>Coordinating organ(s)</td>
<td>Status of output for Year 1</td>
<td>Status of output for Year 2</td>
<td>References</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>-----------------</td>
<td>---------------------</td>
<td>-----------------------</td>
<td>-----------------------------</td>
<td>-----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>2.0.1.3</td>
<td>Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments</td>
<td>Annual</td>
<td>LEG</td>
<td></td>
<td></td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.0.1.4</td>
<td>Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol</td>
<td>2017</td>
<td>LEG</td>
<td></td>
<td></td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.0.2.1</td>
<td>Analysis of consolidated audit summary reports</td>
<td>Annual</td>
<td>Assembly</td>
<td>MSC / MEPC / LEG / TCC / III</td>
<td>Council</td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4.1.1</td>
<td>Input on identifying emerging needs of developing countries, in particular SIDS and LDCs to be included in the ITCP</td>
<td>Continuous</td>
<td>TCC</td>
<td>MSC / MEPC / FAL / LEG</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5.1.1</td>
<td>Identify thematic priorities within the area of maritime safety and security, marine environmental protection, facilitation of maritime traffic and maritime legislation</td>
<td>Annual</td>
<td>TCC</td>
<td>MSC / MEPC / FAL / LEG</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5.1.2</td>
<td>Input to the ITCP on emerging issues relating to sustainable development and achievement of the MDGs</td>
<td>2017</td>
<td>TCC</td>
<td>MSC / MEPC / FAL / LEG</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.0.1.3</td>
<td>Endorsed proposals for new outputs for the 2016-2017 biennium as accepted by the Committees</td>
<td>Annual</td>
<td>Council</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output number</td>
<td>Description</td>
<td>Target completion year</td>
<td>Parent organ(s)</td>
<td>Associated organ(s)</td>
<td>Coordinating organ(s)</td>
<td>Status of output for Year 1</td>
<td>Status of output for Year 2</td>
<td>References</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>-----------------</td>
<td>---------------------</td>
<td>-----------------------</td>
<td>---------------------------</td>
<td>---------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>4.0.2.1</td>
<td>Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)</td>
<td>Continuous</td>
<td>Council</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.0.3.1</td>
<td>Development of a new strategic framework for the Organization for 2018-2023</td>
<td>2017</td>
<td>Council</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td></td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.0.5.1</td>
<td>Revised guidelines on organization and method of work, as appropriate</td>
<td>2016</td>
<td>Council</td>
<td>MSC / MEPC / FAL / LEG / TCC</td>
<td></td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1.2.3</td>
<td>IMO's contribution to addressing Unsafe Mixed Migration by Sea</td>
<td>2017</td>
<td>MSC / FAL / LEG</td>
<td></td>
<td></td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2.1.2</td>
<td>Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns</td>
<td>Annual</td>
<td>MSC</td>
<td>LEG</td>
<td></td>
<td>No work requested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2.2.1</td>
<td>Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building</td>
<td>Annual</td>
<td>LEG</td>
<td></td>
<td></td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.0.3.1</td>
<td>Requirements for access to, or electronic versions of, certificates and documents, including record books required to be carried on ships</td>
<td>2017</td>
<td>FAL</td>
<td>MSC / MEPC / LEG / TCC</td>
<td></td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output number</td>
<td>Description</td>
<td>Target completion year</td>
<td>Parent organ(s)</td>
<td>Associated organ(s)</td>
<td>Coordinating organ(s)</td>
<td>Status of output for Year 1</td>
<td>Status of output for Year 2</td>
<td>References</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>-----------------</td>
<td>---------------------</td>
<td>-----------------------</td>
<td>-----------------------------</td>
<td>-----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>14.0.1.1</td>
<td>Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments including those identified by the SG-RAR</td>
<td>2017</td>
<td>Council</td>
<td>III / HTW / PPR / CCC / SDC / SSE / NCSR</td>
<td>MSC / MEPC / FAL / LEG</td>
<td>In progress</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

***
ANNEX 4

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 104

- Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
- Provision of financial security in case of abandonment of seafarers, and shipowners’ responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006
- Fair treatment of seafarers in the event of a maritime accident
- Piracy
- Advice and guidance in connection with implementation of IMO instruments
- Matters arising from the 116th and 117th regular sessions of the Council
- Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR
- Technical cooperation activities related to maritime legislation
- Review of the status of conventions and other treaty instruments emanating from the Legal Committee
- Work programme
- Election of officers
- Any other business
- Consideration of the report of the Committee on its 104th session

***
ANNEX 5

Statements

Statement by the Islamic Republic of Iran on the use of the term "Persian Gulf"

This delegation would like to thank IMLI and the Secretariat for preparing document LEG 103/INF.3 on the list of dissertations and maritime legislation drafting projects during the academic years 2014-2015 and 2015-2016, among which there are many useful and interesting topics. However, among the list of dissertations, we have noticed inappropriate use of the term Persian Gulf and for that matter, mindful of the fact that it is the title of dissertation only, hence we would like to remind the Committee that in accordance with the UN Directive ST/CS/SER/A/29/Add.2 of 18 August 1994, the full name term of Persian Gulf has always been as the standard geographical designation for the sea area between Arabian peninsula and the Islamic Republic of Iran. Having said that, the Islamic Republic of Iran draws all attention to the proper use of the term Persian Gulf and no other name.


The Republic of Bulgaria has accepted the jurisdiction of the International Tribunal of the Law of the Sea.

The Republic of Bulgaria would like to express its gratitude and appreciation to the Chair of the Legal Committee, the Vice Chair and the Rapporteur. We would like to thank the Committee's Secretariat for its excellent work in preparing for and facilitating the session.

The Republic of Bulgaria has the honour to inform the distinguished delegates of the Legal Committee that in accordance with Article 278, paragraph 1 of the United Nations Convention on the Law of the Sea, the Republic of Bulgaria has accepted the jurisdiction of the International Tribunal of the Law of the Sea for the settlement of disputes concerning the interpretation or application of the UNCLOS.

This decision has been effective since the 2nd of December 2015.

Bulgaria's choice is based on the facts that the Tribunal is composed of 21 independent judges, elected from among persons of recognized competence in the field of the Law of the Sea and enjoying the highest reputation for fairness and integrity, in addition Bulgaria recognizes that throughout the years the Tribunal has established itself as an independent, quick and effective judicial institution specialized in solving disputes in the field of the Law of the Sea.

In conclusion, on behalf of the Republic of Bulgaria I would like to thank delegations attending the 103rd session of the Legal Committee for their attention.

Statement by Spain concerning the extension, by the United Kingdom of the Nairobi International Convention on the Removal of Wrecks, 2007, to Gibraltar

En relación con el punto del orden del día relativo a la notificación por el Reino Unido de extensión a Gibraltar del Convenio de Nairobi de 2007 sobre remoción de restos de naufragio, la delegación española desea hacer constar lo siguiente:
De acuerdo con Naciones Unidas, Gibraltar es un territorio no autónomo pendiente de descolonización. Naciones Unidas recuerda desde 1965 que la cuestión de Gibraltar debe ser resuelta mediante negociaciones bilaterales entre España y el Reino Unido y que la situación colonial de Gibraltar destruye la unidad nacional y la integridad territorial de España y es incompatible con la Resolución 1514 (XV), párrafo 6, de 1960, sobre descolonización en general. Gibraltar, cuyas relaciones exteriores son responsabilidad del Reino Unido, constituye por tanto una colonia en territorio europeo, una situación anacrónica en pleno Tercer Decenio Internacional para la Erradicación del Colonialismo (2011-2020).

El Peñón fue cedido por España al Reino Unido en el Tratado de Utrecht de 1713 que especifica claramente lo que se cede: la ciudad y el Castillo de Gibraltar junto con su puerto (con sus aguas interiores únicamente), defensas y fortalezas que le pertenecen. En ningún momento ni con posterioridad se cedieron las aguas que rodean al Peñón, por lo que dichas aguas permanecen hasta la actualidad bajo soberanía española. España no reconoce ninguna otra jurisdicción sobre dichas aguas ni, por tanto, unas pretendidas "aguas territoriales británicas de Gibraltar".

En relación con las aguas que rodean Gibraltar, al ratificar en Nueva York, el 5 de diciembre de 1984, la Convención de las Naciones Unidas sobre el Derecho del Mar el Gobierno español declaró que ese acto "no puede ser interpretado como reconocimiento de cualesquiera derechos o situaciones relativas a los espacios marítimos de Gibraltar que no estén comprendidos en el artículo 10 del Tratado de Utrecht, de 13 de julio de 1713, suscrito por las Coronas de España y Gran Bretaña."

Por tanto, a pesar de que España no es parte en el Convenio de Nairobi, no puede aceptar la declaración gibraltareña de que "aplicará la Convención a restos de naufragio localizados en su territorio, incluyendo su Mar Territorial", debido a que las aguas a las que se está refiriendo están bajo jurisdicción española.

Este asunto presenta una particular importancia política para mi país, ya que afecta a la soberanía e integridad territorial del Reino de España, por lo que estoy convencido de que la OMI entenderá los argumentos de España.

Statement by the United Kingdom with regard to the statement made by Spain above

With regard to the Government of Spain's statement (above) on the Nairobi International Convention on the Removal of Wrecks, the Government of the United Kingdom has no doubt about the sovereignty of the United Kingdom over Gibraltar, including its territorial waters. The Government of the United Kingdom, as the administering authority of Gibraltar, extended the Convention with effect from 16 April 2015. The Government of the United Kingdom therefore rejects as unfounded the Spanish statement.

Statement by Argentina on guidance for transboundary pollution damage

Agradecemos a las delegaciones de Dinamarca e Indonesia la elaboración y la presentación del documento LEG 103/13/1. Asimismo, tomamos nota sobre las objeciones relativas a la competencia de esta Organización para el tratamiento de esta temática, lo cual que ha sido objeto de reiterados debates en el ámbito de este Comité.

Compartimos con los autores de este documento lo manifestado en los párrafos 1.1. y 1.2. del Anexo a ese documento, a saber, que la Convención de las Naciones Unidas sobre el Derecho del Mar establece obligaciones muy claras y específicas para cada Estado ribereño que autorice la realización de actividades de exploración y explotación de hidrocarburos en su plataforma continental. En síntesis, no cabe duda alguna que los Estados son plenamente responsables por las consecuencias ambientales de esas actividades.
Por la misma razón, no llegamos a coincidir en cuanto a la segunda oración del punto 1.3. del Anexo de ese documento. En efecto, allí se sostiene que -no obstante la vigencia de las normas mencionadas- no existen instrumentos internacionales que regulen lo relativo a la responsabilidad y las compensaciones derivadas de este tipo de daños. Al respecto, cabe advertir que la propia Convención de las Naciones Unidas sobre el Derecho del Mar establece diferentes mecanismos de solución de controversias en cuyo ámbito pueden abordarse tales aspectos sin necesidad de celebrar instrumentos adicionales a la Convención de 1982.

Agradeceré que esta intervención quede adecuadamente reflejada en las actas.
Treasury Announces Largest North Korean Sanctions Package Targeting 56 Shipping and Trading Companies and Vessels to Further Isolate Rogue Regime

WASHINGTON – The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) today announced the largest North Korea-related sanctions tranche to date, aimed at disrupting North Korean shipping and trading companies and vessels to further isolate the regime and advance the U.S. maximum pressure campaign. Today’s action targets one individual, 27 entities, and 28 vessels located, registered, or flagged in North Korea, China, Singapore, Taiwan, Hong Kong, Marshall Islands, Tanzania, Panama, and Comoros. Today, Treasury, along with the U.S. Department of State and U.S. Coast Guard, also issued an advisory alerting the public to the significant sanctions risks to those continuing to enable shipments of goods to and from North Korea.

“Treasury is aggressively targeting all illicit avenues used by North Korea to evade sanctions, including taking decisive action to block the vessels, shipping companies, and entities across the globe that work on North Korea’s behalf. This will significantly hinder the Kim regime’s capacity to conduct evasive maritime activities that facilitate illicit coal and fuel transports, and erode its abilities to ship goods through international waters,” said Treasury Secretary Steven Mnuchin. “The President has made it clear to companies worldwide that if they choose to help fund North Korea’s nuclear ambitions, they will not do business with the United States.”

These designations are consistent with the North Korea Sanctions Policy and Enhancement Act of 2016 as well as the Countering America’s Adversaries Through Sanctions Act of 2017, which provide broad designation criteria for certain trade and for providing certain shipping- and vessel-related services.

As a result of today’s action, any property or interests in property of the designated persons in the possession or control of U.S. persons or within the United States must be blocked, and U.S. persons are prohibited from dealing with any of the designated parties.
OFAC Issues Global Shipping Advisory

In addition to sanctions, OFAC issued a global shipping advisory today, in consultation with the U.S. Department of State and the U.S. Coast Guard, to alert persons of the significant sanctions risks to those continuing to enable shipments of goods to and from North Korea. The advisory also alerts industries to North Korea’s deceptive shipping practices. [Click here for advisory](#)

North Korea is known to employ deceptive shipping practices including, but not limited to, falsifying and concealing information displayed on North Korean vessels and conducting ship-to-ship transfers, a practice prohibited by United Nations Security Council Resolution (UNSCR) 2375 of September 11, 2017. For example, the following images depict deceptive North Korean practices. The first image, taken on December 6, 2017, depicts the U.S.-designated North Korean vessel KUM UN SAN 3 falsifying its vessel information. The second image, taken on December 9, 2017, depicts recent attempts by the same North Korean vessel to conduct a ship-to-ship transfer, possibly of oil, with the Panama-flagged KOTI in an effort to evade sanctions. For additional images, [click here](#).
Third-Country Shipping and Oil Targets

Today, OFAC sanctioned nine international shipping companies and nine of their vessels pursuant to E.O. 13810. The following vessels have been used to export coal from North Korea or to engage in UN-prohibited ship-to-ship transfers of refined petroleum products. The regime has been known to use coal export revenues to fund its weapons of mass destruction and missile programs. These vessels are capable of carrying over $5.5 million worth of coal at a time:

- HUA FU, Panama-flagged
- ORIENTAL TREASURE, Comoros-flagged
- ASIA BRIDGE 1
- DONG FENG 6, Tanzania-flagged
- HAO FAN 2
- HAO FAN 6
- XIN GUANG HAI
- KOTI, Panama-flagged
- YUK TUNG

The full list of international companies designated by OFAC today is:
• Shandong, China-based Weihai World-Shipping Freight and Shanghai, China-based Shanghai Dongfeng Shipping Co Ltd;
• Hong Kong-based shipping companies Liberty Shipping Co Ltd, Chang An Shipping & Technology, Hongxiang Marine Hong Kong Ltd, Shen Zhong International Shipping Ltd, and Huaxin Shipping Hong Kong Ltd;
• Singapore-based Yuk Tung Energy Private Limited; and
• Panama-based M.T. Koti Corporation.

OFAC also designated Taiwan citizen Tsang Yung Yuan pursuant to E.O. 13722. Tsang has coordinated North Korean coal exports with a Russia-based North Korean broker, and he has a history of other sanctions evasion activities. OFAC also designated two entities, Taiwan-based Pro-Gain Group Corporation and Taiwan and Marshall Islands-based Kingly Won International Co., Ltd., pursuant to E.O. 13722 for being owned or controlled by Tsang. In 2017, Tsang and Kingly Won attempted to engage in an oil deal valued at over $1 million with the Russian firm Independent Petroleum Company, which OFAC designated in 2017 pursuant to E.O. 13722 for operating in the energy industry in the North Korean economy.

North Korean Shipping and Trading Companies

OFAC designated the following 16 North Korean shipping companies pursuant to E.O. 13810 for operating in the transportation industry in North Korea and blocked 19 of their North Korean-flagged vessels:

• Chonmyong Shipping Company Limited and its oil tanker CHON MYONG 1;
• Hapjianggang Shipping and its crude oil tanker NAM SAN 8 and general cargo ship HAP JANG GANG 6;
• Korea Achim Shipping Co and its products tanker CHON MA SAN;
• Korea Ansan Shipping Company and its chemical tanker AN SAN 1;
• Korea Unpha Shipping & Trading and its products tanker KUM GANG 3;
• Korea Myongdok Shipping and its products tanker YU PHYONG 5. In late November 2017, the YU PHYONG 5 conducted a ship-to-ship transfer of 1,721 metric tons of fuel oil;
• Korea Samjong Shipping, its crude oil tanker SAM JONG 1, and its chemical/oil products tanker SAM JONG 2;
• Korea Samma Shpg Co and its oil products tanker SAM MA 2. The beneficial owner of the SAM MA 2 is the Government of North Korea. In November 2017, the SAM MA 2 conducted a ship-to-ship transfer, loading 1,219 metric tons of fuel oil from a Russian vessel;
• Korea Yujong Shipping Co Ltd and its oil products tanker YU JONG 2;
• Paekma Shipping Co and First Oil JV Co Ltd. and their oil products tanker PAEK MA.
• Phyongchon Shipping & Marine, its bunkering tanker JI SONG 6, and its general cargo ships the JI SONG 8 and WOORY STAR;
• Pochon Shipping & Management and its products tanker PO CHON;
• Songwon Shipping & Management and its products tanker SONG WON;
• Tonghung Shipping & Trading Co and its oil products tanker TONG HUNG 5; and
• Myohyang Shipping Co and its products tanker YU SON.

For identifying information on the individual, entities, and vessels sanctioned today, click here.

####
North Korea Sanctions Advisory

Issued: February 23, 2018

Title: Sanctions Risks Related to North Korea’s Shipping Practices

The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), with the U.S. Department of State and the U.S. Coast Guard, is issuing this advisory to alert persons globally to deceptive shipping practices used by North Korea to evade sanctions. These practices may create significant sanctions risk for parties involved in the shipping industry, including insurers, flag registries, shipping companies, and financial institutions. Parties subject to U.S. and/or United Nations (UN) sanctions should be aware of these practices in order to implement appropriate controls to ensure compliance with their legal requirements.

As part of the maximum pressure campaign against North Korea, the United States is committed to disrupting North Korea’s illicit funding of its weapons programs, regardless of the location or nationality of those facilitating such funding. The North Korean shipping industry is a primary means by which North Korea evades sanctions to fund its nuclear weapons and ballistic missile programs. As such, the United States will continue targeting persons, wherever located, who facilitate North Korea’s illicit shipping practices.

The United States and its international partners have demonstrated resolve to pursue those violating sanctions in the North Korean shipping industry through the adoption of UN port entry bans, the detention of vessels complicit in sanctions evasion, and through national-level sanctions designations. Both the United States and the UN maintain robust sanctions regimes against North Korea. The United States prohibits trade and other transactions directly or indirectly involving North Korea, and the United States can sanction entities and individuals who engage in trade, among many other things, with North Korea. The UN prohibits most exports and imports, with very limited exceptions, and maintains prohibitions related to ship-to-ship transfers, sanctions evasion, and port entry of designated vessels, among other areas.

This advisory contains two annexes. The first provides an overview of U.S. and UN sanctions relevant to the shipping industry, including a non-exhaustive list of bases for which persons can be sanctioned by OFAC. The second provides a list of North Korean vessels that are capable of engaging in ship-to-ship transfers.

Deceptive Shipping Practices Employed by North Korea

As the global community increases its pressure, North Korea continues to deploy deceptive practices with respect to shipping to evade sanctions. The following list provides examples of the types of tactics used by North Korea to obfuscate the identity of the vessels, the goods being shipped, and the origin or destination of cargo.
- **Physically Altering Vessel Identification:** Maritime vessels meeting certain tonnage thresholds are required to display their name and International Maritime Organization (IMO) number (a unique, seven-digit identifying vessel identification code) in a visible location either on the ship’s hull or superstructure. A vessel’s IMO number is intended to be permanent and should remain consistent regardless of a change in a vessel’s ownership or name. North Korean-flagged merchant vessels have physically altered their vessels to obscure their identities and attempt to pass themselves off as different vessels. These physical alterations include painting over vessel names and IMO numbers with alternate ones.

- **North Korean Ship-to-Ship (STS) Transfers:** STS transfers are a method of transferring cargo from one ship to another while at sea rather than while located in port. STS transfers can conceal the origin or destination of cargo. North Korea operates a fleet of 24 tankers capable of engaging in STS transfers of refined petroleum products and other banned goods. The names and IMO numbers of these vessels are listed in Annex 2, though they are subject to change as North Korea seeks to conceal the identity of vessels it owns and operates. The following map shows area where ship-to-ship transfers commonly occur.
• **Falsifying Cargo and Vessel Documents**: Complete and accurate shipping documentation is critical to ensuring all parties to a transaction understand the parties, goods, and vessels involved in a given shipment. Bills of lading, certificates of origin, invoices, packing lists, proof of insurance, and lists of last ports of call are examples of documentation that typically accompany a shipping transaction. North Korea has been known to falsify vessel and cargo documents to obscure the origin or destination of cargo.

• **Disabling Automatic Identification System (AIS)**: AIS is a collision avoidance system, which transmits, at a minimum, a vessel’s identification and select navigational and positional data via very high frequency (VHF) radio waves. While AIS was not specifically designed for vessel tracking, it is often used for this purpose via terrestrial and satellite receivers feeding this information to commercial ship tracking services. Ships meeting certain tonnage thresholds and engaged in international voyages are required to carry and operate AIS; however, North Korean-flagged merchant vessels have been known to intentionally disable their AIS transponders to mask their movements. This tactic, whether employed by North Korean-flagged vessels or other vessels involved in trade with North Korea, could conceal the origin or destination of cargo destined for, or originating in, North Korea.

• **Manipulating AIS**: North Korean-flagged merchant vessels have also been known to manipulate the data being transmitted via AIS. Such manipulation could include altering vessel names, IMO numbers, Maritime Mobile Service Identities (MMSIs), or other unique identifying information. This tactic could also be used to conceal a vessel’s next port of call or other information regarding its voyage.

**Risk Mitigation Measures**

North Korea’s deceptive practices are intended to circumvent existing sanctions compliance controls used by the shipping industry and other actors involved in shipping-related transactions (such as insurance companies and financial institutions). The risk of engaging in prohibited activity or processing prohibited transactions can be mitigated by implementing the following types of measures:

• **Monitor for AIS Manipulation**: Ship registries, insurers, charterers, vessel owners, or port state control entities should consider investigating vessels that appear to have turned off their AIS while operating in the area surrounding the Korean peninsula. Any other signs of manipulating AIS transponders should be considered red flags for potential illicit activity and should be investigated fully prior to continuing to provide services to, processing transactions involving, or engaging in other activities with such vessels.

• **Conduct Research Prior to STS Transfers**: Vessels conducting STS transfers in the area surrounding the Korean peninsula should be aware of the potential for North Korean
vessels to use deceptive practices to hide their identities, including by using false vessel names or IMO numbers. Vessel operators should ensure that they have verified the vessel name, IMO number, and flag prior to engaging in such a transfer, and ensure there is a legitimate business purpose for the STS transfer.

- **Review All Applicable Shipping Documentation:** Individuals and entities processing transactions pertaining to shipments potentially involving North Korean-flagged vessels or shipments to or from North Korea should ensure that they request and review complete and accurate shipping documentation. Such shipping documentation should reflect the details of the underlying voyage and reflect the relevant vessel(s), cargo, origin, and destination. Any indication that shipping documentation has been manipulated should be considered a red flag for potential illicit activity and should be investigated fully prior to continuing with the transaction. In addition, documents related to STS transfers should demonstrate that the underlying goods were delivered to the port listed on the shipping documentation.

- **Clear Communication with International Partners:** Not all parties to a shipping transaction may be subject to the same sanctions regimes, so clear communication is a critical step for international transactions. Clearly communicating U.S. and UN sanctions obligations and discussing sanctions compliance obligations with parties to a transaction can ensure more effective compliance with relevant sanctions programs.

- **Leverage Available Resources:** There are several organizations that provide commercial shipping data, such as ship location, ship registry information, and ship flagging information. This data should be incorporated into due diligence practices, along with available information from OFAC, the UN, and the Coast Guard, as outlined below in the “North Korea Sanctions Resources” section of this advisory.

### Penalties for Violations of U.S. and UN Sanctions Regimes

Individuals and entities engaged in shipping-related transactions should be aware of the potential consequences for engaging in prohibited or sanctionable conduct.

OFAC investigates apparent violations of its regulations and maintains enforcement authority as outlined in its Economic Sanctions Enforcement Guidelines. Persons that violate U.S. sanctions with respect to North Korea can be subject to civil monetary penalties equal to the greater of twice the value of the underlying transaction or $289,238, per each violation.¹ See [hyperlink](#) for additional information regarding OFAC’s enforcement authorities, Economic Sanctions Enforcement Guidelines, and recent civil penalties and enforcement actions.

The UN also maintains various enforcement mechanisms for ensuring compliance with its requirements. It may direct a member state and the relevant shipping registry to drop registration

---

¹ Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74 (FCPIA), OFAC adjusted its civil monetary penalty amounts on August 1, 2016 and February 10, 2017, and will adjust those amounts annually.
of a ship designated by the UN for violating sanctions and may also direct that it be denied entry at all ports. Ships suspected to be carrying UN prohibited cargo may be inspected at sea upon the consent of the flag state, or directed by the flag state to proceed to a specific port for inspection. Vessels whose registration cannot be confirmed or who are deregistered by the flag state may be treated as a vessel without nationality and be subject to the laws of the nation conducting the inspection.

**North Korea Sanctions Resources**

For questions or concerns related to OFAC sanctions regulations and requirements, including to disclose a potential violation of U.S. sanctions regulations, please contact OFAC’s Compliance Hotline at 1-800-540-6322 or via OFAC_Feedback@treasury.gov. To submit a request for a specific OFAC license, see https://licensing.ofac.treas.gov/Apply/Introduction.aspx.

IHS Maritime is the manager of the IMO ship numbering scheme. For verification of IMO numbers for individual ships, you can find existing IMO numbers at https://gisis.imo.org/Public/SHIPS/Default.aspx. IHS Maritime can be contacted via email at ship.imp@ihs.com or at the following address: IHS Maritime, Sentinel House, 163 Brighton Road, Surrey CR5 2YH, United Kingdom.

The U.S. Coast Guard, in coordination with the Department of State, has published a list of vessels that are owned or operated by North Korea or a North Korean person which will be denied entry to all U.S. ports. This list is separate from that maintained by OFAC or described in Annex 2. The link to that list is located here http://www.nvmc.uscg.gov/CAATSA.aspx. For questions regarding the list, please call or e-mail the Coast Guard’s Headquarters Foreign & Offshore Vessel Compliance Division, 202-372-1232, portstatecontrol@uscg.mil.

To report potential North Korea-related UN shipping violations, including suspected STS transfers with North Korean-flagged vessels in violation of UN requirements, please email: DPRKcargo@state.gov.
ANNEX 1

Overview of Sanctions Related to the Maritime Industry

Insurers, flag registries, shipping companies, financial institutions, and others involved in shipping-related transactions may be subject to one or more sanctions prohibitions related to North Korea. A high-level overview of these prohibitions follows, but all individuals and entities reviewing this advisory are encouraged to ensure they understand fully all sanctions obligations that pertain to their activities. Please note this section is current as of the date of this advisory – the most up-to-date information can be found at the websites listed in the footnotes below.

The United States prohibits, among other things\(^2\):

- Any transactions or dealings with the Government of North Korea or the Workers’ Party of Korea;
- Direct or indirect exports and imports to or from North Korea of nearly all goods, services, and technology;
- Vessels that have called at a port in North Korea in the previous 180 days, and vessels that have engaged in an STS transfer with such a vessel in the previous 180 days, from calling at a port in the United States; and
- Registering a vessel in North Korea, obtaining authorization for a vessel to fly the North Korea flag, and owning, leasing, operating, and insuring any vessel flagged by North Korea.

The United Nations prohibitions include but are not limited to\(^3\):

- Owning, leasing, operating, chartering, or providing vessel classification, certification or associated service and insurance or re-insurance, to any DPRK-flagged, owned, controlled, or operated vessel;
- Providing insurance or re-insurance services to vessels Member states have reasonable grounds to believe were involved in activities or the transport of items prohibited by the relevant resolutions;
- Providing bunkering or servicing of North Korean vessels suspected of carrying prohibited items;
- STS transfers to or from North Korean-flagged vessels of any goods or items that are supplied, sold, or transferred to or from North Korea; and

\(^2\) These prohibitions apply to transactions by a U.S. person or within the United States, including those that pass through the U.S. financial system. In addition, this document is explanatory only and does not have the force of law. This document does not supplement or modify the statutory authorities, Executive orders (E.O.s), or regulations. For additional details on OFAC prohibitions related to North Korea, see [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

\(^3\) All UN Member States have a legal obligation to implement the sanctions measures imposed by UN Security Council resolutions (UNSCRs). North Korea-related UNSCRs can be found at the 1718 Committee website at [https://www.un.org/sc/suborg/en/sanctions/1718](https://www.un.org/sc/suborg/en/sanctions/1718).
• Port entry of vessels if designated by the United Nations Security Council (UNSC) or if a State has information that provides reasonable grounds believe that vessel is owned, controlled, or operated by persons designated by the UNSC.

While the U.S. government imposes a comprehensive prohibition on the importation of North Korean goods, the UN prohibits the importation from North Korea of the following:

- Coal
- Textiles
- Seafood
- Iron and iron ore
- Lead and lead ore
- Copper
- Nickel
- Zinc
- Gold
- Silver
- Titanium ore
- Rare earth metals
- Vanadium ore
- Statues and monuments
- Conventional arms
- Food and agricultural products
- Machinery
- Electrical equipment
- Earth and stone, including magnesia and magnesite
- Wood
- Vessels
- Fishing rights

Similarly, the U.S. government imposes a comprehensive prohibition on the exportation of goods to North Korea, the UN prohibits the exportation to North Korea of the following goods:

- Refined petroleum* (beyond 500,000 barrels/year)
- Crude oil* (beyond 4,000,000 barrels/year)
- Aviation fuel (except fuel required for an aircraft to return to North Korea)
- Rocket fuel
- Condensates and natural gas liquids
- Industrial machinery
- All transportation vehicles (including motor vehicles, trucks, trains, ships, aircraft, helicopters)
- Iron, steel, and other metals
- Conventional arms
- Ballistic missiles
- Weapons of mass destruction & components
- Luxury goods

*Any transfers below the annual cap established by the UNSC (a) must be fully reported to the 1718 Committee within 30 days, (b) must not involve any individual or entity associated with the DPRK’s nuclear or ballistic missile programs or other UNSC-prohibited activities, and (c) must be exclusively for livelihood purposes of DPRK nationals and unrelated to generating revenue for the DPRK’s nuclear or ballistic missile programs or other UNSC-prohibited activities. If any of these three conditions are not met, even transactions below the authorized annual cap are a violation of UNSC resolution 2397.

Binding and non-binding UNSC measures (to be implemented by UN Member States):

Actions on the high seas:
• Inspect vessels with consent of the flag State, on the high seas, if inspecting State has information that provides reasonable grounds to believe that the vessel carries prohibited cargo (non-binding);
• Flag State to cooperate with such inspections (non-binding);
Actions within the territorial sea or within ports:
- Seize, inspect, and freeze (impound) any vessel in its ports when there are reasonable grounds to believe that a vessel is transporting prohibited items or was involved in prohibited activities involving North Korea (binding);
- Seize, inspect, and freeze (impound) any vessel subject to its jurisdiction in its territorial waters if there are reasonable grounds to believe that the vessel transported prohibited items or was involved in prohibited activities involving North Korea (non-binding);
- Inspect cargo going to or from North Korea by sea, air, rail or road (binding).

Actions on high seas or in territorial waters/ports:
- Seize and dispose of any items the transport of which is prohibited by the UNSCR that is discovered in inspections (binding).

Registration and other flag State responsibilities:
- Immediately deregister a vessel if it refuses to comply with flag State direction to permit inspection on the high seas or to proceed to port for inspection (binding);
- Deregister, and cease to provide classification services for, any vessel that State has reasonable grounds to believe was involved in activities, or transported items, prohibited by UNSCRs and to deregister any vessel that is owned, operated or controlled by the DPRK as well as deny registration of vessels deregistered by other member states or flag registries for violation of sanctions (binding);
- Immediately deregister any vessel designated by the 1718 Sanctions Committee (binding).

Activities That Could Result in Designation:

OFAC designations:

U.S. statutory law requires the U.S. government to impose sanctions on any person determined to knowingly, directly or indirectly:
- Provide significant amounts of fuel or supplies, provide bunkering services, or facilitate a significant transaction or transactions to operate or maintain a vessel or aircraft that is designated under a North Korea-related E.O. or UNSCR, or that is owned or controlled by a person designated under a North Korea-related E.O. or UNSCR; or
- Insure, register, facilitate the registration of, or maintain insurance or registration for, a vessel owned or controlled by the Government of North Korea.

The U.S. government is also aggressively targeting for designation any person, among others, that:
- Facilitates a significant export to or import from North Korea; or
- Engages in the transportation industry of the North Korea economy.

If the Secretary of the Treasury determines that a foreign financial institution has knowingly facilitated a significant export to or import from North Korea, or knowingly facilitated a significant transaction on behalf of a North Korea-related blocked person, that institution may,
among other potential restrictions, lose the ability to maintain a correspondent account in the United States.

UN designations:

The Security Council or the Committee Established pursuant to UNSC Resolution 1718 (the 1718 Committee) can designate for targeted sanctions (asset freeze and travel ban for individuals) any individual or entity engaged in or providing support for, including through other illicit means, DPRK’s nuclear-related, other weapons of mass destruction-related and ballistic missile-related programs.

In addition, the 1718 Committee may list maritime vessels for a variety of actions to be taken on them by all UN Member States. The Committee could list a vessel for a global port entry ban for engaging in activities prohibited by North Korea-related UNSCRs or transporting prohibited items from the DPRK, as authorized by paragraph 6 of UNSC resolution 2371 (2017). The Committee, as authorized by paragraph 12 of UNSC resolution 2321 (2016), could also list vessels for (a) deflagging, (b) direction to a designated port for inspection and follow-on actions, (c) a global port entry ban, and/or (d) an asset freeze (impoundment).

Finally, when States confront uncooperative vessels on the high seas about which they have information that provides reasonable grounds to believe that the cargos of such vessels contain items the supply, sale, transfer or export of which are prohibited by relevant UN Security Council resolutions, the 1718 Committee could take a variety of actions against those vessels. If a flag State of the vessel in question neither consents to inspection on the high seas nor directs the vessel to proceed to an appropriate and convenient port for the required inspection, or if the vessel in question refuses to comply with flag State direction to permit inspection on the high seas or to proceed to such a port, then the 1718 Committee shall consider designating the vessel for an asset freeze and other measures authorized in paragraph 12 of UNSC resolution 2321 (2016). Further, when the Committee makes the designation, the relevant flag State must immediately deregister that vessel. Any State that does not receive the cooperation of a flag State of a vessel suspected of carrying illicit cargo on the high seas must promptly submit a report to the 1718 Committee containing relevant details regarding the incident, the vessel and the flag State, which the Committee will publish on its website on a regular basis.
ANNEX 2

North Korean Vessels Capable of Engaging in Ship-to-Ship Transfers of Petroleum

<table>
<thead>
<tr>
<th>Ship Name</th>
<th>IMO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAM JONG 2</td>
<td>7408873</td>
</tr>
<tr>
<td>NAM SAN 8</td>
<td>8122347</td>
</tr>
<tr>
<td>SAM JONG 1</td>
<td>8405311</td>
</tr>
<tr>
<td>CHON MA SAN</td>
<td>8660313</td>
</tr>
<tr>
<td>CHON MYONG 1</td>
<td>8712362</td>
</tr>
<tr>
<td>KUM UN SAN</td>
<td>8720436</td>
</tr>
<tr>
<td>KUM UN SAN 3</td>
<td>8705539</td>
</tr>
<tr>
<td>PAEK MA</td>
<td>9066978</td>
</tr>
<tr>
<td>RYE SONG GANG 1</td>
<td>7389704</td>
</tr>
<tr>
<td>MU BONG1</td>
<td>8610461</td>
</tr>
<tr>
<td>SAM MA 2</td>
<td>8106496</td>
</tr>
<tr>
<td>YU JONG 2</td>
<td>8604917</td>
</tr>
<tr>
<td>YU PHYONG 5</td>
<td>8605026</td>
</tr>
<tr>
<td>YU SON</td>
<td>8691702</td>
</tr>
<tr>
<td>JI SONG 6</td>
<td>8898740</td>
</tr>
<tr>
<td>SAEBYOL/CHONG RIM 2</td>
<td>8916293</td>
</tr>
<tr>
<td>AN SAN 1</td>
<td>7303803</td>
</tr>
<tr>
<td>CHONG RIM 3</td>
<td>8665131</td>
</tr>
<tr>
<td>KU BONG RYONG</td>
<td>8983404</td>
</tr>
<tr>
<td>UN PHA 2</td>
<td>8966535</td>
</tr>
<tr>
<td>PO CHON</td>
<td>8848276</td>
</tr>
<tr>
<td>SONG WON</td>
<td>8613360</td>
</tr>
<tr>
<td>KANG DONG</td>
<td>8977900</td>
</tr>
<tr>
<td>TONG HUNG 5</td>
<td>8151415</td>
</tr>
</tbody>
</table>
International Group of P and I Associations
General Excess of Loss Reinsurance Contract Structure - Owned and Chartered Entries (including Overspill Protection, Hydra Participation, Pooling, Private Placements and Individual Club Retentions)
12 Months at Noon GMT 20th February, 2018

- 2017 - 2019 Multi-Year Private Placement
- 2015 - 2019 Multi-Year Private Placement
- 2016 - 2018 Multi-Year Private Placement
Promoting Maritime Treaty Ratification

The ICS and CMI Campaign